R E P U B L I C O F BULGARIA

MINISTRY OF LABOUR AND SOCIAL POLICY

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Approved
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NATIONAL REPORT

For the period from 1st January 2001 to 31st December 2004 made by the Government of Republic of Bulgaria 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.

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PREFACE

The present Report has been prepared after consultations and in cooperation with the relevant authorities.

In accordance with Article C of the Revised European Social Charter, copy of this Report has been communicated to the national representative organizations of employers' and workers' presented in National Council for Tripartite Cooperation.

The present Report contains information for the first part of the accepted non hard-hard core provisions of the ESC (r) (Articles 1.4, 2.2, 2.4, 2.5, 2.6, 2.7, 3.1, 3.2, 3.3, 3.4, 4.2, 4.3, 4.4, 4.5, 21, 22, 24, 26.1, 26.2, 27.2, 27.3, 28 and 29).

The Bulgarian national currency is leva (BGN) and its exchange rate is fixed to the Euro at 1.95583 BGN for 1 Euro (0.511292 Euro for 1 BGN).

Article 1 - The Right to work

Article 1, Paragraph 4

Vocational guidance

Questions and comments of the European Committee of Social Rights:

The Committee asks the next report to clarify the institutions involved in vocational guidance services, their organisation, staff and number of beneficiaries. It also asks for the guidance specifically provided to persons with disabilities.

As far as unemployed people are concerned, the Committee notes that the labour offices provide them with vocational guidance,vocational information and consultancy. The Committee asks for more exhaustive information on this kind of guidance.

1. Institutions providing vocational guidance

1.1. Within the structure of the National Employment Agency

In the 2003-2004 period vocational advice and consultancy was carried out in the Employment Bureau Directorates (EBD) or in the Vocational Guidance Centres (VGC), including the following: Vocational Information Centres (VIC), Centers for Vocational Training and Counseling (CVTC) and Job Clubs. The VIC's and CVTS's offer vocational information, self information and counseling for unemployed persons, employed persons and persons who are studying, up-to-date information about different vocations, as well as possibilities for education, qualification and career development. The Job Clubs carry out personalized and group trainings for acquiring active labor market behavior skills.

Order № 130 of the Executive Director of the National Employment Agency, based on article 65, paragraphs 1 and 2 of the Employment Promotion Act, reformed the existing VIC's, CVTS's and Job Clubs into Job Centers (as of 1 February 2005), as specialized units under the respective Employment Bureau Directorate with activities in the field of vocational guidance and creation of active labor market behavior skills.

The unification of the specialized information and consultation units facilitated the establishment of unified practices in this field, with goals that are clearly defined, work techniques, methodological guidance and information supply.

In 2005 6 new Job Centers were opened and as of this moment the National Employment Agency has 52 functioning information and consultation units.

1.2. Within the structure of the Ministry of Education and Science

In 2004 the Minister of Education and Science issued an order establishing a National Pedagogical Center. The latter represents a state service unit in the meaning of Article 33a, Paragraph 1, Item 1 of the National Education Act.

The Center organizes and coordinates activities for the implementation at a national and regional level of the Ministry of Education and Science policy in the field of pedagogical support and consultation of students, teachers and parents. Activities are aimed at qualification of teaching staff; keeping students in school and prevention of them dropping out; vocational guidance and consultation.

The Center structure consists of a central management and regional centers with seats in all cities that are regional centers, and with a total personnel number of 72 staff members.

2. Activities carried out by the units within the professional guidance system – common and according to target groups

The vocational guidance – information and consultation, implemented by the EBD may be individual, group and independent vocational guidance.

2.1. Individual vocational guidance is carried out by a labour mediator.

During individual information and consultation the persons seeking employment receive information concerning types of jobs that are in demand on the labor market (working tasks performed, working environment, requirements for exercising certain jobs, etc.), ways of acquiring a new job or updating the knowledge and skills connected with their previous job. They are informed about market situation and trends concerning qualification services, they use the available specialized information materials (brief descriptions, files, leaflets about jobs, videotapes, multimedia products, computer software, etc.)

During consultation interviews with persons who have been considered to have qualification in a job that is in demand on the labour market, special attention is paid to basic skills (computer literacy – common or vocationally orientated, communication skills, foreign languages).

Clients whose professional qualification does not provide them with a high possibility of finding employment are directed towards a vocational training course in other jobs/specialties in order to give them faster labor market placement. The mediator guides the clients towards different alternative vocational fields and gradually leads him or her to a self-conscious choice of a specific job.

2.2 Group vocational guidance is carried out in the Job Centers, as well as by the EBD's in rooms suitable for work in groups. Depending on the topic of the specific group class there is a different EDB expert in charge – employment mediator, expert from the Programmes, Measures, Qualification and Contracts Sector, legal expert, psychologist.

Group vocational guidance is organized when there are several clients with similar interest, from the same groups at risk, when including them in employment programmes and measures, etc.

Group forms of vocational guidance include the following:

- Presentation of an employment and an employer – presentation of occupations that are sought after in the region or the municipality in different vocational fields, as well as employers along with their stated vacancies and requirements for starting work with them.

- Information about the services on offer in the EBD – rights and obligations of those unemployed persons who have registered and receive training, informative and explanatory sessions for projects, national and regional programmes, training programme content, preferences and self-employment programmes, international treaties and information about the demand of certain vocations abroad, etc.

- Training of unemployed persons in active labour market behavior – composition and writing of CV and motivation letter; acquiring techniques for job interviews for certain positions.

2.3. Independent vocational information

The EBD also provides independent usage of specialized information materials and vocational guidance products of the Job Centers for all persons interested through their posting boards.

3. Organization of work in vocational guidance units

The organization of work in the EBD's and the Job Centers towards them is consistent with the technology for the implementation of a processual model of work in Employment Bureaus and the Guidelines for Organizing and Implementing the Activity of Vocational Guidance in the National Employment Agency, in force since 27 January 2005.

Individual vocational guidance is directed by the EBD labour mediator and the implemented consultation interviews are accounted for in the data included in the action plan of the unemployed persons seeking employment through a computer software in the Acquisition of Vocational Qualification and Motivation Training reference.

The activity of each Job Center is carried out by an EBD official, whose functionary record contains the descriptions of the activities specific for the relevant Center. The official bares the responsibility for the material base, the maintenance and the updating of information materials, the organizations of group exercises and the customer service.

The working hours of Job Centers are specified and posted on the information board by the EBD.

Newly-registered persons are directed towards group guidance. It lasts for about two hours and the advisable number of participants in one group is 15 to 20 persons.

Group exercises are noted in a Diary of Group Forms of Work. Data from this diary is summarized on monthly basis and is submitted to the administration information system of the EBD for the Acquisition of Vocational Qualification and Motivation Training reference. Every three months the data from this diary is sent to the Regional Employment Agency Directorate where it is summarized and submitted to the Programmes and Organization of Vocational Training and Vocational Information and Consultation Unit of the National Employment Service.

The NEA offers information files and lists for 451 jobs, leaflets for 50 jobs, 120 video films and 100 multimedia products.

The brief descriptions of 402 jobs are updated and are available through the internet site of the National Employment Agency - **www.az.government.bg**. This provides users from all branches with the possibility to use them, as well as the users of the global network with the possibility to learn about available positions. The internet version of the information materials enables a faster updating of the information and reflecting of ongoing changes in the scope of occupations, the requirements for their acquisition and exercising, as well as respective training programmes.

In order to increase the quality of consultation in the EBD, the labour mediators are provided with translated materials from the Federal Employment Service of Germany.

The EBD specialized information materials are exposed at places available to the customers. Unemployed persons and students may use them independently or according to the assessment of the labour mediators and the psychologist.

4. Number and level of education of the personnel, employed in vocational guidance units as of the end of 2005

Vocational guidance activities are carried out by:

- The central administration of the National Employment Agency – four civil servants from the Methodology and Organization of Vocational Information and Consultation Sector, in the Programmes Organization of Vocational Training and Vocational Information and Consultation Unit, in the Directorate General Employment Services;
- Job Centerss - 52 officials, including 12 psychologists;
- EBD – labour mediators.

All servants are university graduates.

5. Training of the personnel, employed in vocational guidance units

In 2003-2004 30 servants from the National Employment Agency units passed two-year training under the Vocational Development Guide Project. The training was carried out in the University for National and World Economy Center for Post Graduation Studies and in the Center for Post Graduation Studies of the Varna University of Economy. The project was implemented with the assistance of the Federal Employment Service of Germany and the High College of Labour Administration in the city of Manheim.

6. Data concerning the number of persons who have made use of the vocational guidance services

Year	Self informed unemployed persons (number)	Individually informed unemployed persons (number)	Unemployed persons guided in groups (number)
2003	17 495	114 336	46 006
2004	18 259	154 218	40 190
2005	21 453	104 873	58 720

The group exercises in vocational guidance in 2005 have also covered 7 213 students, of whom respectively 6 312 when presenting a job and an employer, 555 persons were informed about the employment services and 346 students received consultations in order to acquire active labour market behavior skills.

Continuing vocational training

The Committee asks whether the training costs of employees are met by the companies or by the individuals themselves.

When initiating and carrying out a training of their workers, employers bear all the costs of the training or they may apply for incentive measures under the Employment Promotion Act.

According to Article 44 of the Employment Promotion Act, an employer who provides the maintenance and the increase of the qualification level of his/her workers may apply for financing from the state budget for up to the half of the maximum amount of the expenses for vocational qualification training (according to the National Employment Action Plan for 2006 the funds assigned for one person are 250 BGN).

Guidance, education and vocational training for people with disabilities

The Committee asks for information on the guidance and vocational training provided for persons with disabilities in practice.

The Agency for Persons with Disabilities (APD) is charged with the implementation of state policy in the field of the integration of persons with disabilities. One of its main tasks is the development of programmes and financing of projects aimed at promoting the economic entrepreneurship of persons with disabilities. The APD activity is has a priority of providing vocational guidance, training and employment to persons with disabilities.

Consultation of persons with disabilities in terms of their vocational guidance is implemented by:

- nongovernmental organizations through APD-financed projects;

- specialized enterprises and cooperations of persons with disabilities through APD-financed projects.

Up to 1 January 2005 the Rehabilitation and Social Integration Fund, the predecessor of the APD, used to finance only the projects of specialized enterprises and cooperations of persons with disabilities. Along with the entering into force on 1 January 2005 of the Integration of Persons with Disabilities Act, the Agency for Persons with Disabilities started the financing of projects of employers with regular working environment, as well as projects for development of personal economic activity of persons with disabilities. According to approved methodologies, one of the mandatory criteria of assessment in all kinds of projects is the prequalification and increasing of the qualification of working persons with permanent disabilities. The increase in the number of persons with disabilities that take part in vocational guidance and training activities under APD-financed projects, as well as the inclusion of vocational training as a mandatory component of all projects is indicative of its priority significance in the policy of integration of persons with disabilities. The financing of projects aims at providing consultation and information to the employers about the possibilities of persons with disabilities on one side, and on the other, to the persons with disabilities in the fields, in which they can receive training, the ways and means of training, and the employment opportunities. All methodologies for project assessment are aimed at providing thorough information about employers and persons with disabilities regarding the possibilities for new openings and the increase in the number of already existing positions for persons with disabilities.

Providing employment to persons with disabilities in a specialized working environment:

In 2005 the APD has financed 23 socially designed projects for the provision of safe and healthy working conditions, opening of new working places and adjustment of existing ones, vocational training of persons with disabilities. The beneficiaries under these projects were 1 784 persons, 981 of whom with disabilities. During the 2003-2005 period, 142 specialized enterprises and cooperations of persons with disabilities have received funding under socially designed projects.

In 2005 the APD subsidized 28 projects aimed at the technological renovation, the opening of new working places and the improvement of the technical condition of existing ones. 305 new positions for persons with disabilities were open. During the 2003-2005 period 62 organizations of persons with disabilities received financing under business-orientated projects.

The provision employment to persons with disabilities in usual working environment is implemented under APD-financed projects of employers who are willing to hire persons with permanent disabilities. Subject to financing is the access, the adaptation and/or equipment of the working station for a person with a disability. For the year 2005, 24 employers were subsidized and they provided employment to 37 persons. For the 2003-2005 period, this line of financing was used by 114 employers and that provided employment to 150 persons with disabilities.

When **providing independent employment to persons with disabilities** the APD activity is related to providing consultancy to persons with disabilities regarding the opportunities for them to start and develop their own independent economic activity.

The Agency for Persons with Disabilities assists through financing of projects for implementation of vocational guidance and training for persons with disabilities developed by nongovernmental organizations. A total of 16 such projects were implemented in 2005. 333 persons with permanent disabilities took part. Trainings included the occupations of attendant, waiter-bartender, office manager, cashier-accountant, and beautician. A total of 75 nongovernmental organizations' projects, of which 20 involving vocational training, received financing in the 2003-2005 period.

When carrying out the monitoring activity on the implementation of financed projects, the APD performs activities of consultancy of employers of persons with disabilities in connection with their vocational guidance, training and provision of employment.

The nationally-representative organizations of and for persons with disabilities receive subsidies by the state budget and part of that funding is redirected towards the development and implementation of programmes for vocational guidance and training of persons with disabilities, based on the kind and level of their disability, aimed at providing employment, for development and opening of consultation centers throughout the country that are to serve the persons with disabilities.

Special forms of vocational guidance for persons with disabilities

All EBD's and Job Centres also provide vocational guidance services to registered persons with disabilities.

The EBD's Oborishte in Sofia and Dunav in Rousse have a significant experience in the field of vocational information and consultation of persons with disabilities. They have established Opportunity Development Centres (ODS) for persons with physical and sensorial disabilities. Amongst the clients of the ODS's there are persons with disabilities, employers, foundations, associations and societies of working persons with disabilities.

The following technical means and materials are provided to assist persons with disabilities:

- ✓ a monitor that increases the text font when reading type information materials about vocations, leaflets, etc.;
- ✓ an information folder dedicated to the profession of masseur, written in Braille alphabet;
- ✓ VALPAR tests and working models used to establish the condition and level of the body motive activity for verifying the physical capability for taking a certain job.

Information regarding the number of persons with disabilities assisted in the EBD Oborishte in Sofia

Year	**Number of registered persons with disabilities**	**Number of consultations carried out**	**Number of persons to start a job**	**Number of persons included in training courses**
2004	430	1 010	66	30
2005	1 025	1 030	71	45

Information regarding the number of persons with disabilities assisted in the EBD Dunav in Rousse

Year	**Number of registered persons with disabilities**	**Number of consultations carried out**	**Number of persons to start a job**	**включени в курс (Number of persons included in training courses бр.)**
2003	614	6 281	166	14
2004	471	6 593	240	28
2005	501	6 109	197	19

Programmes and projects for vocational training of persons with disabilities

A basic precondition for the integration of persons with disabilities and the improvement of the quality of their life is their active participation in the labour market. The possibilities for finding employment for persons with disabilities in non-subsidized positions are extremely limited due to their different disabilities and low level of qualification and education. Therefore, the Ministry of Labour and Social Policy is carrying out adequate active policy of **labour mediation, implementation of active**

programmes and measures for training and employment in correspondence with the necessities of this group of unemployed persons and the National Strategy for Equal Opportunities for Persons with Disabilities.

❖ **National Programme for Employment and Vocational Training of Persons with Permanent Disabilities**

The Programme is being implemented from May 2003. The main goal of the Programme is the overcoming of social isolation and the integration in society of unemployed persons with permanent disabilities in active age through providing them with vocational training in order to increase their employability, to provide them with employment and to create and/or adapt working places for them. The training includes motivation training and vocational qualification of unemployed persons training, suitable to the specifics of the disabilities of the different groups of unemployed persons. Funding is being secured for motivation training and vocational qualification training; scholarships, transportation and housing for the participating persons for the duration of the training.

❖ Under the PHARE 2003 Programme, the **Improvement of the Quality of Life of Persons with Mental Disabilities Project** develops and improves alternative medical, social and education services for persons with mental disabilities.

❖ Under the PHARE 2004 Programme **Deinstitutionalization through Rendering of Social Services in the Community for Groups at Risk Project** assists the system of services for persons with disabilities living in specialized institutions through rendering community-based social services.

❖ A new **Training of Persons with Disabilities Project** started in 2006. Its purpose is to increase the employability of persons with permanent disabilities through training for acquisition of new skills in working with information technologies. It is to be implemented on pilot basis in the Pleven region.

In 2005 the implementation of the regional **Programme for Vocational Training and Qualification of Persons with Permanent Disabilities** started in the municipality of Mezdra. **The Integration in Society Ptogramme** is about to start in 2006 in the municipality of Dobrich, as well as the **Training of Trainers for Working with Persons with Disabilities and Specific Needs** in the municipality of Dobrich.

The Committee asks whether equal treatment for nationals of the other Contracting Parties to the Revised European Social Charter and of Parties to the 1961 European Social Charter lawfully residing and regularly working in Bulgaria, is ensured.

Yes, for those who have been granted with permanent residence permit.

Article 2 – Right to just conditions of work

Paragraphs 1 to 7

In comparison to the previous report the legislative framework has been changed in the following way:

The legislation concerning the collective labour agreements was additionally detailed in the Labour Code.

Until the latest amendments, **Article 66, Paragraph 1** of the Labour Code envisioned that *the labour contract shall define the place of work, the nature of work and the labour remuneration.*

Under the amended **Article 66, Paragraph 1,** as promulgated in the State Gazette, Issue 52 of 2004, the labour contract shall contain information about the parties and shall define:

1. the place of work;
2. the position name and the nature of work;
3. the signing date and the beginning of its implementation;
4. the term of the labour contract;
5. the length of the basic and of the extended paid annual leave, and of the additional paid annual leaves;
6. equal term of notice for both parties in cases of termination of the labour contract;
7. the basic and additional labour remuneration of permanent nature, as well as the time periods of their payment;
8. the length of the working day or week.

Additional labour, extended and reduced time of work:

There is an effective prohibition on additional labour (Article 112 of the Labour Code) for workers and employees who are:

1. drivers of vehicles;
2. employed in hazardous or unhealthy conditions - in the event that work under the same or other hazardous or unhealthy conditions is concerned;
3. as specified by a law or an act of the Council of Ministers.

The previous wording of Article 113 was incorporated into Paragraph 1 (State Gazette, Issue 52 of 2004), under which the maximum duration of the working hours under an employment contract *for additional work*, **together with** the duration of the working hours under the primary employment relationship, shall not violate the **minimal uninterrupted rest between days and weeks** established under the Labour Code.

A New Paragraph 2 was introduced (State Gazette, Issue 52 of 2004, as Amended, Issue 27 of 2005.) Under this new paragraph, in the cases under Paragraph 1, **with daily calculation of the working time**, the maximum duration of the working week:

1. shall not be more than 40 hours for workers and employees under 18 years of age;

2. may be more than 40 hours for others workers and employees, but only with the **consent** of the worker or the employee and without stepping over the minimal uninterrupted rest between days and weeks established.

There is amendment to the wording of Article 136a, which concerns *the extension of working hours* by order in writing of the employer and the compensation of the worker by means of respective reduction through other periods. Paragraph 2 (Amended and Supplemented - State Gazette, Issue 52 of 2004), envisions that the duration of the extended work day under the provisions of paragraph (1) may not exceed 10 hours, and for workers and employees at reduced working hours – up to one hour in addition to their reduced working hours. In these cases the continuation of the working meek shall not exceed 40 hours, and for the workers and employees at reduced working hours – 40 hours. The employer shall be obliged to keep a special book for recording the extension and the compensation of the working hours, respectively. Under Paragraph 3 extension of the working hours pursuant to paragraphs (1) and (2) shall be allowed for a period of up to 60 working days throughout one calendar year, but not to exceed 20 consecutive working days. Under Paragraph 4, in the cases under paragraph (1) the employer shall be obliged to compensate the extension of the working hours with respective reduction of the working hours per each working day within up to 4 months. Where the employer fails to compensate the extension of the working hours within the specified term, the employees shall be entitled to determine themselves the time to compensate for the extension of the working hours with respective reduction thereof, whereas they shall notify in writing the employer to that effect at least two weeks in advance. Under Paragraph 5, in the event of termination of the employment relationship before the compensation under paragraph (4) takes effect, the difference to the normal working day shall be paid as overtime work. For workers and employees under Article 147 extension of the working hours shall be allowed pursuant to the provisions concerning overtime work as set forth in the same Article.

The wording of Article 137 concerning the reduced working time is amended as follows:

Article 137. (1) (Previous wording of Article 137 - State Gazette, Issue 25 of 2001) Reduced working hours shall be established for:

1. (Amended and Supplemented – State Gazette, Issue 100 of 1992, as Amended, Issue 83 of 2005) workers and employees working under specific conditions and hazards for their life and health that cannot be removed or reduced, regardless of the adopted measures, but reduction of the duration of working time shall lead to reduced risks for the life and health thereof.

The previous revision of this provision envisioned only that reduced working hours shall be established for workers and employees working under unhealthy conditions or doing work under special conditions upon the decision of the Council of Ministers.

In pursuance of the newly introduced Paragraph 2, as promulgated in the State Gazette, Issue 83 of 2005, the types of work to be entitled to reduced working time shall be specified with an Ordinance of The Council of Ministers.

In pursuance of Article 137, Paragraph 2 of the Labour Code it was issued an **ORDINANCE concerning the types of work with established reduced working time,** as promulgated in the *State Gazette, Issue 103 of 23 December 2005***:**

Article 2. The entitlement to six-hour working day shall be granted to the workers and the employees engaged in work at:

1. units of anatomy, morbid anatomy and forensics, sectional halls and mortuaries – only for the directly involved therein;

2. laboratories of histology, histochemistry and cytochemistry whenever these work with human corpses.

Article 3. The entitlement to seven-hour working day shall be granted to the workers and the employees engaged in work:

1. at production, packaging, formulation and usage of products for vegetal protection and biocides, disinfectants, deratisators and desinsectors – only for the directly involved therein;

2. as galvanization engineers, galvanization sculptors, thermists and temperers, servicing cadmium, chrome, zinc, cyanic and lead tubs;

3. with individuals suffering of mental disorders, central nervous system disorders, inborn malformations and cancer diseases;

4. with biological agents in clinical laboratories; laboratories of microbiology, virology, parasitology; centers for transfusion hematology and dialysis centers; treatment and medical establishments servicing individuals suffering of contagious and parasitic diseases, including tuberculosis, as well as such engaged in work with animals experimentally infected with biological agents;

5. at medical establishments in capacity of surgery doctors, anesthetists, obstetricians, surgical and anesthetic nurses – in the days of surgery, as well as hospital attendants in surgical halls;

6. in emergency aid centers and the medical establishment units providing emergency aid;

7. with high frequency (200 W) therapeutical medical generators as specialists in physical and rehabilitation medicine, with paraffin, as rehabilitators, massage experts and kinesitherapists;

8. in the production and testing of serums and vaccines – only for directly involved therein;

9. in a medium of ionization radiation;

10. at which they are exposed to carcinogen or mutagens, to organic dissolvers or heavy metals exceeding the regular rates;

11. under water in subterranean silica threatening: pits, mines, geological sites and sites of tunnel and mine construction – only for directly involved therein;

12. under water in subterranean Hydro-Power Plants (HPP) and Pump and Storage Hydro Power Plants (PSHPP) – only for directly involved therein;

13. under water as divers and caisson workers;

14. in closed spaces (closed containers);

15. in the production and casting of cast-iron, concrete, ferrous mixtures, non-ferrous metals and their compounds – only for directly involved therein;

16. in the production of coke and metallurgical heat-resisting materials – only for directly involved therein;

17. in the procession of concentrates and agglomerates of ore – only for directly involved therein;

18. in the production of lead batteries – only for directly involved therein;

19. with lead – casting of bearings and welding;

20. in productions and installations where silica threatening, mineral or coal powder – only for directly involved therein;

21. in the production of marl and glass wool and voalite – only for directly involved therein;

22. with asbestos and asbestos-compound materials – only for directly involved therein;

23. in the sheds producing carbide – only for directly involved therein;

24. in the production and testing of explosives and ammunitions – only for directly involved therein;

25. in subterranean sewage systems – only for directly involved therein;

26. in deep freezing cameras – only for directly involved therein;

27. in incinerators.

Article 4. The entitlement to reduced working hours is granted to workers and employees for the days when they perform the work as specified under Article 2 and Article 3, for time not less the half of normally established work time under the Labour Code.

Article 5. The workers and the employees entitled to reduced work hours under this Ordinance shall be defined by a written order of the employer after holding preliminary consultations with representatives of the workers and the employees, the labour medicine service and the committee/the group for conditions of work and in compliance with the assessment of risk.

Article 6. The duration of night work time for the workers and the employees working at reduced work hours shall be equal to the same during the day, but shall not exceed the duration established under Article 140, Paragraph 1 of the Labour Code.

Article 7. When introducing reduced work time in pursuance of Article 137, Paragraph 2 of the Labour Code, the workers and the employees shall receive the same monthly work remuneration and shall keep all the rest of rights under the actual employment and social security legislation.

The provisions referring to reduced work time, the organization of work time and the work at shifts have not been amended for the relevant period under the present report.

Civil Service Act – as amended in 2003 г. (State Gazette, Issue 95 of 2003)

In pursuance with the amendments of Article 15, Paragraph 1 concerning the service legal relationship in cases of replacement, the civil servant may be employed for a fixed period of time only in the cases of replacement of a civil servant who is absent from work for more than **3 months (**under the previous wording it was "for more than 30 days"**)**. The wording of Paragraph 2, providing for the opportunity that this service legal relationship may also arise without a competition procedure, makes a reference to the legal framework regulating **the terms and conditions of appointment,** Article 7 and next. This legal framework was additionally detailed in 2003.

Paragraph 4 (concerning the termination of the service legal relationship on the day of return to work of the titular) and Paragraph 5 (concerning the retention of the rank acquired during replacement) are **both repealed**.

Article 16 of The Civil Service Act concerning the additional service legal relationship in case of a vacant full-time position was amended as follows: in pursuance of Paragraph 1, the employment body may propose to a civil servant to hold a second job, within the same unit, **for a period of time not to exceed 6 (six) months until the date of appointment of a civil servant on the vacant full-time position,** whereas the civil servant will receive, additionally to his/her regular remuneration, also **50 percent of** the minimal work wage attributable to the vacant position. The amendments as quoted herein repealed the previous legal condition specifying that to the end of holding a second job it was necessary to have a vacant full-time position and that no candidate has applied for it.

The provisions concerning the open-ended work time under the **Civil Service Act** (Article 50) and **the Interior Ministry Act** (Article 209) have not been amended during the relevant period under the present report. The same is applicable about the rules concerning the work time under **the Defense and Armed Forces of the Republic of Bulgaria Act**.

Decree № 322 of the Council of Ministers of 27.12.1994, which established reduced work time for specific activities, professions, productions, sheds and work positions, **was repealed** in pursuance of § 1, Item 1 of the conclusive provisions of Decree № 267 of the Council of Ministers of 12 December 2005 concerning the adoption of regulations by the Council of Ministers in reference to the implementation of the Labour Code – State Gazette, Issue 103 of 23 December 2005.

Article 2, Paragraph 2 – Public holidays with pay

Question A

Concerning the **number** of official public holidays, there have been no legal amendments during the relevant period under the present report.

Compared to the previous report, the legislative framework has been amended in the following manner:

The wording of Article 154, Paragraph 2 of the Labour Code was supplemented as promulgation in the State Gazette, Issue 52 of 2004**:**

Laboru Code, 1986.

Article 154 (2) (**Supplemented** - State Gazette, Issue 52 of **2004**) The Council of Ministers may also declare other days for one-time public holidays, days for the commemoration of certain professions, and shift the days off in the course of the year. **In these cases, the duration of the work week shall not be longer than 48 hours, and the duration of the week rest – not shorter than 24 hours.**

Question B

Labour Code

Remuneration for work at official public holidays

Article 264. (Amended - State Gazette, Issue 100 of 1992) Work on official holidays, **irrespective of whether it represents overtime work or not**, shall be remunerated to the worker or the employee pursuant to the agreement, but not less than the double amount of the labour remuneration.

Legal amendments during the relevant period:

Labour Code

Article 142. (4) (Amended - State Gazette, Issue 100 of 1992, Supplemented, Issue 52 of **2004**) The maximum duration of a work shift under a summarized calculation of working hours can be up to 12 hours, as the duration of the working week shall not be more than 56 hours and for employees at reduced working hours it can be up to one hour beyond their reduced working hours.

Defense and Armed Forces of the Republic of Bulgaria Act

Article 224. (Amended - State Gazette, Issue 40 of 2002, enforced on 01.01.2003) (1) Military persons shall receive a monthly remuneration in accordance with the military rank attributed to them.

(2) (Amended - State Gazette, Issue 105 of 2005, enforced on 1.01.2006) The size of remuneration per military rank shall be defined by the Council of Ministers upon proposal by the Minister of defense.

1. (repealed - State Gazette, Issue 105 of 2005, enforced on 01.01.2006)

2. (repealed - State Gazette, Issue 105 of 2005, enforced on 01.01.2006)

(3) (New - State Gazette, Issue 105 of 2005, enforced on 01.01.2006) The basis used to define the size of the basic monthly remuneration for the lowest position shall be approved on a yearly basis under the State Budget of the Republic of Bulgaria Act, and the monthly remuneration shall be increased by means of a coefficient applicable to the approved basis, as follows:

1. for military persons on regular service:

a) for officers – not less than 2.1;

b) for sergeants – not less than 1.4;

c) for soldier on regular service – not less than 1.2;

2. for military person on conscription service: for the rank of "private" – not less than 0.15.

Ordinance concerning the rate of remuneration for overtime work of military persons at regular service

Article 3. (1) Remuneration per each hour of overtime work by military persons at regular service, under the terms and conditions of Article 159 of the Rules for Regular Military Service, shall be defined on the basis of the basic monthly remuneration as defined under the provisions of Article 224, Paragraph 2 of the Defense and Armed Forces of the Republic of Bulgaria Act, in accordance with the category of respective regular service military person, as follows:

1. (Amended - State Gazette, Issue 118 of 2002, enforced on 01.01.2003) for officer – in reference to the size of remuneration established for the rank of “captain”;

2. (Amended - State Gazette, Issue 118 of 2002, enforced on 01.01.2003) for sergeant – in reference to the size of remuneration established for the rank of "senior sergeant";

3. (Amended - State Gazette, Issue 118 of 2002, enforced on 01.01.2003) for regular service soldier – in reference to the size of remuneration established for the rank of "private".

Questions of the European Committee of Social Rights:

The Committee requests clarification as to the precise circumstances under which public holidays can be worked and as to the legal provisions in question.

In addition to the information supplied under the topic of the previous report concerning the payment of remuneration to the workers and the employees for days at work during official public holidays, it is relevant to specify that under the actual Bulgarian legislation and regulations working during these days of public holidays is considered in some cases as overtime work in the sense of Article 143 (1) of the Labour Code:

Definition and Prohibition

Article 143. (1) (Amended - State Gazette, Issue 100 of 1992, Issue 25 of 2001) Work done **on the order of, or with the knowledge of and with no objection from** the employer or the respective superior, by a worker or employee beyond his/her agreed working hours shall be considered overtime work.

(2) Overtime work shall be prohibited.

The exceptional circumstances under which the workers and the employees shall work overtime under the Labour Code, including on the days of public holidays, are defined under Article 144:

Admissibility as an Exception

Article 144. Overtime work shall be permitted as an exception in the following cases only:

1. for the performance of work related to the national defence;

2. (Supplemented - State Gazette, Issue 100 of 1992, Amended, Issue 19 of 2005) for the prevention, getting control and overcoming the consequences from crises;

3. (Amended - State Gazette, Issue 100 of 1992) for the performance of urgent publicly necessary work to restore water and electrical supply, heating, sewerage, transport and communication links, and for providing medical assistance;

4. (Amended - State Gazette, Issue 100 of 1992) for performing emergency repairs in working premises, on machines and other equipment;

5. (Amended - State Gazette, Issue 100 of 1992) for the completion of work which can not be completed within the regular working hours - in case stoppage of such work may result in danger for the life and health of people, and in damaging machines and materials;

6. (New - State Gazette, Issue 100 of 1992) for the performance of intensive seasonal work.

Inadmissibility of Overtime Work

Article 147. (Amended and Supplemented - State Gazette, Issue 100 of 1992) (1) Overtime work shall be not permitted for:

1. workers or employees who have not reached 18 years of age;

2. (Amended - State Gazette, Issue 52 of 2004) pregnant female workers or employees;

3. (Amended - State Gazette, Issue 52 of 2004) mothers of children up to 6 years of age, as well as mothers, who take care of disadvantaged children, notwithstanding of their age, unless by their written consent;

4. reassigned employees or workers, except with their own consent, and only when such employment will not be detrimental to their health in the opinion of the medical authorities;

5. workers or employees who are continuing their education while under employment, except with their own consent.

(2) (Amended - State Gazette, Issue 83 of 2005) With the exception of the cases under Article 144, sub-paragraphs 1-3, overtime work shall not be permitted for employees for whom is established reduced working hours under art. 137, para.1, Item 1.

Article 137. (1) (Previous wording of Article 137 - State Gazette, Issue 25 of 2001) Reduced working hours shall be established for:

1. (Amended and Supplemented – State Gazette, Issue 100 of 1992, as Amended, Issue 83 of 2005) workers and employees working under specific conditions and hazards for their life and health that cannot be removed or reduced, regardless of the adopted

measures, but reduction of the duration of working time shall lead to reduced risks for the life and health thereof.

Refusal to Work Overtime

Article 148. (Amended - State Gazette, Issue 100 of 1992) The worker or the employee shall be entitled to refuse to work overtime, in case the provisions of this Code, of another normative act, or of a collective agreement are not observed.

The legal text providing for due payment of overtime work, irrespectively of whether the work conditions were legal or not, was amended as follows:

Payment of overtime work

Article 150. (Amended - State Gazette, Issue 100 of 1992, Issue 52 of 2004) For overtime work done, shall be paid work remuneration with increased amount, as provided under Article 262.

Article 262. (Amended - State Gazette, Issue 100 of 1992) (1) Overtime work performed shall be remunerated with an increase agreed upon by the worker or the employee and the employer but not less than:

1. 50 per cent for work on working days;
2. 75 per cent for work on weekends;
3. 100 per cent for work on official holidays;
4. 50 per cent for work with an summarized calculation of the working time.

(2) Whenever there is no other provision the increase in accordance with the preceding paragraph shall be calculated on the basis of the work remuneration as set forth in the employment contract.

Remuneration for Overtime Work in case of Open-Ended Work Day

Article 263. (Amended - State Gazette, Issue 100 of 1992) (1) No additional work remuneration shall be paid for overtime work on working days to workers and employees with open-ended work day.

(2) Overtime work performed by workers and employees with open-ended work day on weekends and official holidays shall be remunerated pursuant to Article 262, paragraph 1, subparagraphs 2 and 3.

Under the Labour Code, the agreement on overtime work at open-ended working day obliges the workers and the employees, when necessary, to perform their duties at work even after the end of the regular working hours. Civil servants, when necessary, are obliged to keep on performing their duties at work even after the end of the regular working hours, without interrupting the daily and weekly rest. Overtime work beyond the regular working hours during work days shall be compensated with additional paid annual leave, whereas work at days of weekends and public holidays – with increased remuneration due for overtime work. (Under Article 139, Paragraph 4 of the Labour Code, for some categories of workers and employees, due to the special nature of their work, the employer may, after consultations with the representatives of the workers and the employees, establish open-ended working hours, inasmuch as the collective agreement does not provide otherwise.)

Labour Remuneration for Work on Official Holidays

Article 264. (Amended - State Gazette, Issue 100 of 1992) Work on official holidays, irrespective of whether it represents overtime work or not, shall be remunerated pursuant to the agreement, but not less than the double amount of the labour remuneration.

Civil Service Act

Gross salary

Article 67. (Amended - State Gazette, Issue 95 of 2003, enforced on 1.01.2004) (1) Gross salary includes the basic salary and any additional remunerations.

(2) Minimal and maximum sizes of the basic salaries shall be defined by an act of the Council of Ministers. The employment body shall define the individual size of the basic salary for each civil servant, while taking into account the rank of the respective job position and the assessment of individual performance obtained in the latest attestation procedure, under terms and conditions as set forth by the Council of Ministers.

(3) Additional payments shall be defined for:

1. work experience;
2. work at weekends and public holidays;
3. overtime work;
4. night work;
5. disposable time;
6. achieved results under terms and conditions as set forth with a normative act or under respective internal rules on work salary;
7. other cases as specified under a normative act.

(4) The size and terms of payment of additional remuneration shall be defined under an act of the Council of Ministers and shall not be less than the size as set forth under the actual labour legislation.

Notwithstanding provisions on increased pay for work on public holidays, the Committee considers that equivalent compensatory rest must be ensured, at least as an option for the workers concerned. It therefore asks whether such compensatory rest is guaranteed under Bulgarian law.

Compensation of the workers and the employees with compensatory rest is provided for under the Bulgarian legislation, as it is evident from the relevant legislative provisions as follows:

Labour Code

Payment of overtime work

Article 150. (Amended - State Gazette, Issue 100 of 1992, Issue 52 of 2004) For overtime work done, it shall be paid labour remuneration with increased amount, as provided under Article 262.

The previous wording of Article 150 included Paragraph 2, which envisioned for prohibition of overtime work being compensated by compensatory rest. The repeal of this explicit prohibition is evidence of the will of the Bulgarian legislator that the workers and

the employees are provided with an opportunity for compensation with respective compensatory rest.

An explicit provision in the sense thereof is formulated in the Civil Service Act:

Entitlement to rest

Article 33. When performing civil service duties the civil servant is entitled to rests intermittently during the working day, to daily and weekly rest and rest at official public holidays.

Article 2, Paragraph 4 – Elimination of risks for workers in dangerous or unhealthy occupations

Question A

Health and Safety at Work Act

Article 2. (1) This Law shall apply to all undertakings and places, where work or training is carried out regardless of the organizational form, type of ownership or legal grounds on which the work or training is carried out, unless otherwise provided in another law or international agreement to which the Republic of Bulgaria is a party.

Chapter Four

Organization and management of the activity

Article 35. The Council of Ministers shall determine and implement the policy for provision of health and safety at work.

Article 36. (Amended - State Gazette, Issue 18 of 2003) The Minister of Labour and Social Policy shall develop, coordinate and implement the state policy in the field of provision of safety and health at work and shall:

1. (Amended - State Gazette, Issue 18 of 2003) on an annual basis, jointly with the Minister of Health, elaborate analyses of the condition, trends and problems of the activities for providing health and safety at work and proposing measures for its improvement;

2. (Amended - State Gazette, Issue 18 of 2003) independently or with other ministers shall adopt legal and administrative provisions aimed at ensuring health and safety at work, shall organize and coordinate the drafting of legal and administrative provisions in this field which are of the competence of different ministers and shall approve rules for provision of health and safety at work;

3. (Amended - State Gazette, Issue 25 of 2001) execute integrated control through the Executive Agency "General Labour Inspectorate" on the compliance with the legislation and the fulfillment of the obligations for providing safety and health at work in all sectors and activities regardless of the form of ownership;

4. set forth the terms, procedure and requirements for carrying out training, measurements and consultations in the field of safety and health at work;

5. (repealed - State Gazette, Issue 18 of 2003)

Article 37. (Amended - State Gazette, Issue 18 of 2003) The Minister of Health shall manage and coordinate the activities for protection and improvement of health at work and shall:

1. analyze the condition of the working environment and of the working process and their impact on health and develop obligatory measures for reducing occurrence of occupational diseases and diseases related to labour;

2. (Amended - State Gazette, Issue 18 of 2003) develop national programmes for protection and improvement of health and work capacity and shall assist methodologically the implementation thereof;

3. adopt standards, rules, requirements and methods for protection of health of the workers and for assessment of the health risk;

4. assess the health state of the workers;

5. manage methodologically the activity and determine the conditions, procedure and requirements for carrying out the training, measurements and consultations in the field of the occupational health and the labour medicine;

6. (New - State Gazette, Issue 18 of 2003, Amended - State Gazette, Issue 70 of 2004, enforced on 01.01.2005) control the activities of the labour medicine services through the bodies of the state health control.

Article 38. The policy for providing health and safety at work shall be determined and implemented after coordination within permanent or temporary structures of the tripartite cooperation at national, sectoral and regional level.

Article 39. (1) Permanent body for coordination, consultations and cooperation in elaborating and implementation of the policy for providing safety and health at work at national level shall be the National Council on Conditions at Work.

(2) The National Council on Conditions at Work shall be based on the principle of public service and the Council shall consist of representatives of:

1. The Council of Ministers;

2. The National Social Security Institute;

3. nationally representative employers' organizations;

4. nationally representative workers' and employees' organizations.

5. (repealed - State Gazette, Issue 18 of 2003)

(3) The Minister of Labour and Social Policy shall be chairperson of the National Council on Conditions at Work.

(4) The representative workers' and employees' organizations and employers' organizations participating in the National Council on Conditions at Work shall designate from their representatives two deputy chairpersons of the Council.

(5) Members of the National Council on Conditions at Work shall adopt Rules of Procedure of the Council.

(6) The oorganization of the activities, technical and administrative services of the National Council on Conditions at Work shall be provided by the Ministry of Labour and Social Policy.

Article 40. The National Council on Conditions at Work shall:

1. discuss the state of the working conditions and proposes measures for their improvement;
2. discuss and express opinions on draft laws and regulations in the field of working conditions and make proposals for their amendment and supplement;
3. decide on establishing sectoral and branch structures for tripartite cooperation in the field of working conditions;
4. establish subsidiary bodies to the Council for specific matters;
5. coordinate the activities of the bodies which are entrusted with the control in the field of working conditions;
6. study and promote Bulgarian and foreign practice, organize national contests, workshops, campaigns and other forms for activity promotion;
7. adopt programmes for studying and elaborating projects for solving the problems in providing safety and health at work, financed by 'Working Conditions' Fund.

Article 41. (1) Sectoral and branch councils on working conditions shall consist of the representatives of the national sectoral or branch federations, unions and trade-unions of the representative workers' and employees' organizations, of the sectoral or branch structures of the representative employers' organizations and equal number representatives of the respective Ministry or public institution.

(2) Sectoral and Branch Councils on Conditions at Work shall elect among their members a chairperson and shall adopt Rules of procedure of the Council.

Article 42. (1) Sectoral and branch councils on conditions at work shall:

1. analyze the state of the activities for providing safety and health at work in the respective sector;
2. organize drafting and discuss the drafted specific rules and requirements for providing health and safety at work for the respective sector;
3. study and promote the experience, organize competitions, seminars, campaigns, etc.
4. organize and conduct training on the rules, standards and measures on safety and health at work of the employer, of officials and of workers' and employees' representatives.

(2) Upon decision of the sectoral or branch working conditions councils, temporary structures designed to examine specific issues may be set-up to the councils concerned.

Article 43. (1) Regional (district and municipal) councils on working conditions shall consist of representatives of the existing regional unions or organizations of representative workers' and employees' organizations or employers' organizations and of equal number of representatives of the district administration or of the local government authorities

(2) Regional councils on conditions at work shall:

1. adopt regional programmes for study and development of projects aimed at optimizing the working conditions and submit them to Working Conditions Fund for co-financing;
2. discuss the state of the activities related to the provision of health and safety at work in the relevant region or individual undertakings;
3. coordinate the activities of the territorial bodies which are in charge of the working conditions control.
4. render assistance to the councils and groups on working conditions in view of solving specific issues.

Chapter Six

Economic forms for improvement of the conditions at work

Article 51. (1) Workers and employees shall be mandatory insured for occupational diseases and occupational accidents and the insurance contributions shall be on the account of the employers concerned.

(2) (Repealed - State Gazette, Issue 76 of 2005)

(3) The terms and procedure for occupational accidents and occupational diseases insurance shall be determined in a separate law.

Article 52. (Amended - State Gazette, Issue 76 of 2005) (1) The workers and employees who perform work activities involving a hazard for their life and health shall be

mandatory insured for "occupational accident" risk on the account of the employer concerned in accordance with the terms and procedure provided for in an act of the Council of Ministers.

(2) When determining the terms and procedure referred to in paragraph 1, the economic activity carried out by the undertaking concerned and the average value of occupational diseases prevalence and gravity coefficients relevant for the country shall be taken into account.

Article 53. (Repealed - State Gazette, Issue 76 of 2005)

Chapter Seven

Control and administrative-penal liability

Article 54. (1) The overall control on the implementation of this Law shall be carried out by the Ministry of Labour and Social Policy.

(2) (Amended - State Gazette, Issue 25 of 2001) Specialized control activities on the implementation of this Law, as well as of other laws and regulations shall be carried out by the structural units of Executive Agency "General Labour Inspectorate".

(3) (Amended - State Gazette, Issue 25 of 2001) The structure and the activities of Executive Agency "General Labour Inspectorate" shall be laid down in its Rules of procedure, approved by the Council of Ministers.

Article 55. Persons who violate the requirements or do not fulfill their obligations under this Law shall be liable pursuant to Articles 413, 414, 415 and 416 of the Labour Code and to other specific for the relevant activity laws and regulations.

Additional provisions

§ 1. For the purposes of this Law:

1. 'Health and safety at work' shall mean such working conditions which do not lead to occupational diseases and occupational accidents and create conditions for complete physical, mental and social welfare of the workers.

…

3. 'Harmful agents for the health and safety' shall mean such physical (including mechanical, acoustic, electric, optical, radiating, ionizing, vibrating etc.), chemical, biological, psychological, organizational and other effects, which have negative impact or endanger health and safety of the workers.

4. 'Occupational risk' ('risk') shall mean the probability of occurrence of unfavorable consequences for the health and safety of the workers as a result of specific impact of harmful agents at work and the severity of the consequences.

5. 'Health risk' shall mean the probability of occurrence of unfavorable changes in the health condition as a result of specific impact of agents harmful for the health as well as severity of such changes.

9. "Minimum safety and health requirements" shall mean the minimum admissible requirements for health protection of workers and ensuring their safety at work. The employer may implement more stringent requirements, which shall ensure better protection of workers but not less stringent requirements that the minimum ones.

10. (New - State Gazette, Issue 76 of 2005) 'Temporary employment business' shall mean a legal or natural person who hires workers or employees to place them at the disposal of other natural or legal persons to perform the work assigned by them.

The most important normative acts of secondary legislation that, along with the above quoted three laws form the Bulgarian legislation in the field of health and safety at work include as follows:

Ordinance № 7 of 1999 on the Minimum Safety and Health Requirements for Workplaces and Use of Work Equipment; Issued by the Minister of Labour and Social Policy and the Minister of Health (State Gazette, Issue 88 of 1999);

Ordinance № 5 of 1999 on the procedure, manner and frequency of carrying out risk assessment (State Gazette, Issue 47 of 1999);

Ordinance № 3 of 1998 on the functions and tasks of state officials and specialized services at enterprises in view with the organization of implementing activities related to the protection and prophylactics of occupational risks (State Gazette, Issue 91 of 1998);

Ordinance № 3 of 1996 on the Occupational Safety and Health and Fire Safety Instructions to the Workers and Employees; (State Gazette, Issue 44 of 1996);

Ordinance № 4 of 1998 on Training for Representatives in Working Conditions Groups/Committees in Enterprises (State Gazette, Issue 133 of 1998);

Ordinance № 14 of 1998 on the Labour Medicine Services (State Gazette, Issue 14 of 1998);

Ordinance on the reporting, investigation and registration of work accidents, adopted with Decree of the Council of Ministers № 263 of 30.12.1999 (State Gazette, Issue 6 of 2000);

Ordinance № 3 of 2001 on the Minimum Safety and Health Protection Requirements for Workers when Using Personal Protective Equipment at Work; Issued by the Minister of Labour and Social Policy and the Minister of Health (State Gazette, Issue 46 of 2001);

Ordinance № 4 of 1995 on the Health and Fire Safety Signs and Signals at Work (State Gazette, Issue 77 of 1995);

Ordinance № 16 of 1999 on the Physiological Standards and Rules for Manual Handling of Loads (State Gazette, Issue 54 of 1999);

Ordinance № 15 of 1999 on the Conditions, Rules and Requirements for Development and Implementation of Physiological Work and Rest Patterns at Work; (State Gazette, Issue 54 of 1999);

Ordinance № 7 of 2005 on the Minimal Requirements for Providing Healthy and Safe Working Conditions with Video Screen Equipment (State Gazette, Issue 70 of 2005);

Ordinance № 2 of 2004 on minimal requirements for safety and health at work in construction and assembly works (State Gazette, Issue 37 of 2004.);

Ordinance No. 10 of 2003 on the Protection of Workers From the Risks Related to Exposure to Carcinogens and Mutagens at Work (State Gazette, Issue 94 of 2003);

Ordinance № 4 of 2002 on the protection of workers from risks related to exposure to biological agents at work (State Gazette, Issue 105 of 2002);

Ordinance № 9 of 2003 on the Minimal Requirements for Ensuring the Safety and Health of the Employees in the Extraction of Underground Mineral Resource Deposits (State Gazette, Issue 79 of 2003);

Ordinance № 9 of 1997 on the General Requirements for Managing the Safety and Health of Mine Workers (State Gazette, Issue 123 of 1997);

Ordinance of 2003 on the employment and related to employment relationships between seafarers and shipowner, adopted with Decree of the Council of Ministers № 226 (State Gazette, Issue 93 of 2003);

Ordinance № 9 of 2003 on the Medical Care on Ships; Issued by the Minister of Transport and Communications and the Minister of Health (State Gazette, Issue 17 of 2003);

Ordinance № 13 of 2003 on the Protection of Workers From the Risks Related to Exposure to Chemical Agents at Work (State Gazette, Issue 8 of 2004);

Ordinance № 1 of 2003 on the Protection of Workers Against Risks Related to Exposure to Asbestos at Work (State Gazette, Issue 32 of 2003);

Ordinance № 6 of 2005 on the Minimum Requirements for Providing Health and Safety to Workers Exposed to Risks Related to Exposure to Noise at Work (State Gazette, Issue 70 of 2005);

Ordinance № 11 of 2004 on the Minimum Requirements for Ensuring the Safety and Health Protection of Workers Potentially at Risk from Explosive Atmospheres (State Gazette, Issue 6 of 18.01.2005);

Ordinance № 3 on the Minimum Requirements to the Provision of Health and Safety of Workers Exposed to Risks of Vibration; Issued by the Minister of Labour and Social Policy and the Minister of Health (State Gazette, Issue 40 of 12.05.2005);

Statute Rules of the Executive Agency "General Labour Inspectorate" (State Gazette, Issue 44 of 2000).

Question B

Ordinance determining the types of work entitling workers and employees to additional paid annual leave
(Promulgated in the State Gazette, Issue 103 of 23 December 2005, Amended State Gazette, Issue 35 of 28 April 2006)

Article 1. This Ordinance shall determine the types of work performed in special conditions and risks to the life and health of workers and employees which cannot be eliminated, limited or reduced irrespective of the measures undertaken to do so, which entitle workers and employees to additional paid leave as an additional preventive measure against health risks.

Article 2. Entitled to additional paid leave pursuant to Art. 1 shall be workers and employees who perform work:
1. underground in: underground mines, mining facilities, underground sites for geological exploration, tunnel and mine construction, underground hydropower stations and pumped-storage power stations;
2. as crew members of sea and river vessels;
3. underwater as divers and in caissons;
4. as crew members of aircraft;
5. in an environment of ionizing radiation;
6. exposing them to carcinogens, mutagens or chemical substances above the established levels;
7. exposing them to noise and vibration above the established levels;
8. exposing them to electromagnetic fields above the established levels;
9. with lasers class III B and IV;

10. in contact with biological materials, liquids and secretions, creating a risk for infections, in urban waste-water treatment plants, as drivers of sewerage-cleaning machines and as sewerage cleaners servicing urban sewerage systems;
11. in contact with biological agents in clinical laboratories of microbiology, virology, parasitology; in centers for transfusion hematology; in dialysis centers; in medical care establishments for infections and parasitic diseases, including tuberculosis, as well as work in contact with animals experimentally infected with biological agents;
12. in contact with persons with psychic disorders, mental disabilities, central nervous system disorders and congenital malformations;
13. with medical generators for high-frequency therapy with power of 200W, such as experts in physical and rehabilitation medicine, work with paraffin, work as rehabilitators, masseur/masseuse, and kinesitherapists;
14. in open mines and quarries and in the surface facilities of underground mines – only for the directly engaged in such work;
15. in geological explorations, oil and gas extraction and work as drillers;
16. in the manufacture and hot processing of cast iron, including iron casting, steel, ferroalloys, non-ferrous metals and their alloys, work in the plastic processing of ferrous and non-ferrous metals - only for the directly engaged in such work;
17. in the manufacture of coke and metallurgical refractory materials - only for the directly engaged in such work;
18. in the extraction of sea salt;
19. in the extraction, processing and dressing of mineral resources;
20. in the processing of ore concentrates and ore sintering - only for the directly engaged in such work;
21. in the production and operation of lead batteries - only for the directly engaged in such work;
22. in the manufacture and testing of explosives and ammunitions - only for the directly engaged in such work;
23. under the influence of slag, glass, and basalt fibre;
24. under the influence of silica powders;
25. in morgues, incinerators and as persons performing autopsies;
26. as railway engine drivers, assistant railway engine drivers, railway staff, work in the maintenance and operation of rail tracks and equipment of railways and metropolitan railways, as well as in the railway transport lines of open mines and industrial railway branch lines;
27. as operators of tampers, sieving machines and tractors; operators of special machines for maintenance and repair works of the overhead contact wire system and equipment of railways, tram transport and metropolitan railways;
28. as drivers of trams, trolley buses and buses and coaches in public, inter-city and international transport, involving timetables;
29. as drivers of trucks of more than 12 tons;
30. permanently in the open in average daily temperatures below 10°C or above 30°C;
31. in hot dip galvanizing, electrical galvanizing and electroplating productions;
32. in the generation, transmission and distribution of electricity and heating energy, including in repair works and technological transport;
33. in the operation and maintenance of the electricity distribution and electricity transmission network - only for the directly engaged in such work;
34. in “hot” glass and glassware workshops;
35. in cement-production facilities - only for the directly engaged in such work;
36. in the operation and maintenance of circular furnaces for the manufacture of bricks, refractory materials and other ceramic products;

37. as air traffic controllers and controllers in the railway transport, the national power grid and electricity distribution networks;
38. in loading/unloading activities in ports - only for the directly engaged in such work;
39. in the production of fuels, petrochemical products and polymers - only for the directly engaged in such work;
40. in special (closed) spaces with cleanness class A, B and C;
41. as persons who slaughter and skin animals.

Article 3. Entitled to additional paid annual leave shall be workers and employees with total loss of sight or total loss of hearing, irrespective of the type of work.

Article 4. (1) Entitled to additional paid annual leave pursuant to Art. 2 shall be workers and employees who work under such conditions for duration not less than half of the statutory working hours as set forth in the Labour Code.

(2) The amount of the additional paid annual leave shall not be less than five working days, provided that the worker or employee has worked in the conditions described in Paragraph 1 within one calendar year.

(3) When the worker or employee works less than the period specified in Para. 2, the amount of the additional paid annual leave shall be determined proportionally to the worked time.

(4) (Amended State Gazette No 35 from 2006)The workers and employees entitled to additional paid annual leave pursuant to this Ordinance shall be determined by an order in writing of the employer, after preliminary consultations with the representatives of the workers and employees, with the occupational healthcare service and with the committee/group on the conditions of work, in compliance with the risk assessment.

(5) Longer periods of duration of the additional paid annual leave may be agreed in a collective agreement, as well as between the parties to an employment relationship.

Question of the European Committee of Social Rights:

From observations submitted by the Association of Democratic Trade Unions the Committee notes that a number of dangerous or unhealthy activities are not covered by the 1993 Regulation such as work involving exposure to vibration exceeding sanitary and hygiene norms and to extreme temperatures. Also not covered according to these observations is farm work, construction, flotation, lifting and hoisting machines, work on blast and melting furnaces, operation of steam boilers, gas and electric welding in the shipbuilding and boiler-building industry, underwater work, construction work on high towers and others.

The Committee asks the government to comment on these observations and whether it intends to extend the coverage of the 1993 Regulation.

The Republic of Bulgaria has adopted and implemented national legislation in the field of safety and health at work, which is in full compliance with the European Union acquis communautaire in this field. With the adoption of the Health and Safety at Work Act, the Labour Code and the Social Security Code, as well as with the relevant secondary legislation, the Republic of Bulgaria has established a modern system providing for the health and safety at work.

As of December 2004 the Bulgarian legislation framework has transposed all the European Union directives enforced in the EU Member states. Since June 2004 Bulgaria

has been transposing the European Union directives in the field of health and safety at work, which have the same enforcement terms for Bulgaria as for the EU Member states.

In reference to the above quoted, please refer to the explanations provided under Question B.

From observations submitted by the Association of Democratic Trade Unions the Committee notes that also not covered is farm work, construction, flotation, lifting and hoisting machines, work on blast and melting furnaces, underwater work, construction work and others.

This situation has been changed with the adoption of the ordinances as quoted herein above, and particularly the Ordinance determining the types of work entitling workers and employees to additional paid annual leave (refer to herein above).

The report explains that the application in practice of labour health and safety regulations is still not satisfactory, especially in small and medium-sized enterprises.

In pursuance with the Health and Safety at Work Act, employers shall provide servicing of their staff by Occupational Medicine Services. The fulfillment of the obligation for providing safety and health at work applies for all sectors and activities (form of ownership). The Occupational Medicine Services shall be units with predominantly preventive functions. They shall consult and assist the employers, Working Conditions Committees and Groups in the process of planning, organization and fulfillment of their obligations with respect to providing and maintenance of safety and health at work, as well as for strengthening health and work capacity of working persons in respect of the work carried out by them.

The Occupational Medicine Services shall be established by the employers independently or on a partnership basis, or by other legal persons. In case it is practically impossible for the employer to establish independently or on a partnership basis an Occupational Medicine Service, he shall conclude a contract with a registered Occupational Medicine Service. The functions and the tasks of the Occupational Medicine Services, the requirements for the composition and qualifications of the staff, the good practice and the quality of the activities, the terms and procedure for registration and deletion of the registration are laid down in Ordinance № 14 of 1998 of the Minister of Health in co-ordination with the Minister of Labour and Social Policy, as quoted herein above. The activities of the Occupational Medicine Services shall be subject to accreditation.

The number of legal entities operating in the country under due registration as Occupational Medicine Services (external occupational medicine services) has exceeded 650.

At all big and at the majority of middle-sized enterprises and companies Occupational Medicine Services have been established, while the rest use, under an agreement, duly registered Occupational Medicine Services. The supervisory activity and checks executed by the Executive Agency “General Labour Inspectorate” have revealed that a large part of small and micro-enterprises do not still meet this legislative requirement. Hence a set of measures, including informational, explanatory, as well as forceful administrative and administrative penal measures have been put in place.

The Committee asks that the next report contain detailed information on the implementation of measures taken to eliminate risks in dangerous or unhealthy occupations where it has not yet been possible to eliminate or sufficiently reduce these risks.

Please refer to responses provided under Questions A, B, and C

The Committee also wishes to receive information on the activities of the labour inspection in supervising compliance with the rules on reduced working hours, additional paid holidays or other relevant measures reducing the length of exposure to risks for workers and employees.

Report on the activities of the Executive Agency "General Labour Inspectorate" for 2004

In 2004 the biggest is the number of the established offences against the rules regulating Occupational Safety and Health (OSH) securing for the employees – 129,210 offences, i.e. 75.1 % of all violations. A reason for that high relative share is the fact that many employers are not well aware of the big number of rules and regulations and the concrete standards therein related to the provision of normal working conditions, for securing the technical safety of the used machinery, installations and technologies, for safe accomplishment of the industrial operations.
In the recent four years a steady increase has been found in the share of the offenses against the rules and standards as set forth under the Health and Safety at Work Act – from 69 % in 2001 to 75.1 % in 2004.
The fewest in number were the applications, complaints and warnings filed in GLI-EA on Occupational Safety and Health (OSH) matters – just 70, or 0.9 % of the total number of applications, complaints and warnings received in 2004 - and 68 were resolved, as the employees still do not seek legal protection for their rights to secured Occupational Safety and Health (OSH). The workers and employees are concerned only to receive their work remuneration, rather than about the conditions at work.
In general, the data from the inspection activity in 2004 indicate that the control on occupational hygiene manifests a positive trend as regards its development. The inspectors paid more attention and applied more strictness on matters related to occupational hygiene. Accumulated was considerable experience and skills for the realization of the control on securing occupational hygiene in the inspected enterprises.

Report on the activities of the Executive Agency "General Labour Inspectorate" for 2005

In their inspection activities in 2005 the Executive Agency "General Labour Inspectorate" found that the infringements of the legislation in the field of securing Occupational Safety and Health (OSH) – 142,371 offences – form the majority of 72.6 % of all offences. A key reason for this relatively high share is the availability of normative acts and the specific standards and rules therein concerning normal conditions at work, the provision of technical safety of used machinery, facilities and technologies, for stricter measures of safety at production operations, the level of managerial and executive personnel, the level of material and technical basis and the state of the organization at work, and the labour and technological discipline.

The highest group of *infringements of the standards and rules concerns the regulations of the organization of activities securing Occupational Safety and Health (OSH)*. The recorded offences in this field of the labour legislation stand at 84,355, or 59.2 % of all the legislative infringements regulating the application of the Health and Safety at Work Act, and 43.8 % of all detected infringements in the field of labour legislation (Health and Safety at Work Act, and the Labour Code).

Established violations of the HSWA

- organisation and management of activity under HSWA
- safety at work
- occupational hygiene

In addition, The Committee wishes to receive the Government's comments on the allegations of the General Center of Industrial Trade Unions.

From observations submitted by the General Centre of Industrial Trade Unions in Bulgaria the Committee notes that particular problems seem to exist in the lead and zinc mines of the towns of Rudozem and Madan where work takes place under extremely harmful conditions. According to the observations thousands of workers, especially women, suffer from silicosis and many other diseases and do not live beyond the age of 35 or 40 years. Serious employment-related health problems also affect other big industrial centers such as Burgas, Pernik and Dimitrovgrad. The General Centre of Industrial Trade Unions alleges that employers ignore the health concerns of their employees and accept paying fines instead of investing in measures to eliminate the problems.

The statistics of occupational diseases is in charge of the National Center for Public Health, unit of the National Register of the Occupational Diseases. The Register is the official book-keeper of statistical data concerning occupational diseases in the country and is engaged in annual reporting on national data, structured per sex, age and work experience groups, per groups of occupation, economic sectors, diagnosis and assessment of workability, per regions, etc.

The Register is a permanent member of the Statistical Service of the European Union (EUROSTAT), Directorate F "Social Statistics and Information Society", and supplies to EUROSTAT the above quoted data on an annual basis.

The National Register of the Occupational Diseases keeps data on all individuals with recognized occupational disease who have undergone due certification and re-certification in the respective expert committees. The established National Health Network of Medical Committees work under methodological guidelines as approved by the National Register of the Occupational Diseases while applying classifications, nomenclatures and methods of EODS Phase 1 (European Occupational Diseases Statistics, Phase I). Thus in 2001 all individuals suffering of occupational diseases in the country were included into the National Register of the Occupational Diseases.

The National Register of the Occupational Diseases develops also activities in the field of initiating preventive measures aimed at economic sectors characterized with the highest recorded rate of occupational diseases, such as construction, mining – ore extraction, coal extracting, energy production, chemical industry, in collaboration with the respective Labour Medicine Services. When initiating preventive measures the health status of workers is being taken into account not only as statistics of occupational diseases and work accidents, but also taking into account the rate of workers' absence due to general illnesses with reduced workability and disability, usually affected by the existing conditions at work.

Absolute number and relative share of recorded occupational diseases for the period 2000 – 2005

	2000	2001	2002	2003	2004	2005
General	**429**	**660**	**895**	**950**	**1168**	**1010**
A Issue	8	25	24	25	49	50
%	1.9	3.8	2.5	2.6	4.2	5.0
B Issue	-	-	-	-	1	-
%					0.1	
C Issue	151	147	262	186	280	237
%	35.2	22.3	28.5	19.6	24.1	22.4
D Issue	176	296	272	222	409	446
%	41.0	44.8	30.4	23.4	35.1	44.2
E Issue	1	5	5	5	15	13
%	0.2	0.8	0.8	0.5	1.3	1.3
F Issue	18	19	19	32	30	50
%	4.2	2.9	1.9	3.4	2.6	5.0
G Issue	3	-	3	-	10	9
%	0.7		0.3		0.9	0.9
H Issue	-	-	-	-	3	2
%					0.3	0.2
I Issue	15	28	30	29	67	89
%	3.5	4.2	3.2	3.1	5.7	8.8
J Issue	-	-	2	-	-	1
%			0.2			0.1
K Issue	-	-	-	-	7	2
%					0.6	0.2
L Issue	-	7	19	15	34	35
%		1.1	2.1	1.6	2.9	3.5
M Issue	4	3	3	4	3	14
%	0.9	0.5	0.3	0.4	0.3	1.4
N Issue	24	21	12	26	25	17
%	5.6	3.2	1.3	2.7	2.1	1.7
O Issue	25	24	39	46	27	12
%	5.8	3.6	4.5	4.8	2.2	1.2
P Issue	-	-	-	-	-	-
%						
Q Issue	-	-	-	-	-	-

%						
No data	4 0.9	85 12.8	195 23.8	360 37.9	208 17.6	43 4.1

A Rural, hunting and forestry industry
B Fishery industry
C Extraction
D Processing
E Production and distribution of electricity and heating energy, gassed fuels and water
F Construction
G Commerce, reconstruction and technical servicing of vehicles and motorcycles, of personal belongings and household commodities
H Hotels and restaurants
I Transportation, storage and communications
J Financial brokerage
K Real estate transaction, renting activities, and business services
L State governance and defense, mandatory public social security
M Education
N Health care and social activities
O Other activities in public and individual service
P Household activities
Q Exterritorial organizations and services

Article 2, Paragraph 5

Question A

The amendments to the Bulgarian legislation concerning the relevant period, compared to the previous report, are as follows:

Labour Code

Weekly Rest

Article 153. (2) (Amended - State Gazette, Issue 25 of 2001, enforced on 31.03.2001, Amended - State Gazette, Issue 52 of 2004, enforced on 01.08.2004) When sumarized calculation of the working time is done, the uninterrupted week rest shall be not less than 36 hours.

Under the previous wording of the legal provision: not less than 24 hours.

(3) (New - State Gazette, Issue 52 of 2004, enforced on 01.08.2004) With change of shifts in summarized calculation of the working time, the uninterrupted week rest may be shorter than the rest, as provided by Paragraph 2, but not shorter than 24 hours, in cases where the real and technical organization of work in the enterprise impose this.

(4) (New - State Gazette, Issue 52 of 2004, enforced on 01.08.2004) For work, done during the 2 days of the week rest, while calculating the working time day- by- day, the worker or employee shall have the right to, apart from the increased payment of this work, also to an uninterrupted rest during the following work week not shorter than 24 hours.

Replacement of Conscription Military Service with Alternative Military Service Act
Amended State Gazette, Issue 50 of 30 May 2003, Amended State Gazette, Issue 70 of 10 August 2004, Amended, State Gazette Issue 91 of 15 November 2005.

Article 28. (Amended - State Gazette, Issue 50 of **2003**) (1) During service of the peace-time alternative duties on behalf of citizens and employers, respectively Article 124 - 129, Chapters Seven and Ten, Sections I and II, Article 215, Chapter Thirteen and Chapter Fourteen of the Labour Code shall be applied.
(2) Overtime or night work shall be remunerated in accordance with the provisions of the Labour Code.

Please describe, where appropriate, whether measures permitting derogation from statutory rules in your country regarding daily and weekly working hours have an impact on rules pertaining to the duration of annual holidays.

The amendments to the Bulgarian legislation concerning the relevant period, compared to the previous report, are as follows:

Article 20 of the Ordinance on work time, rests and paid leaves was repealed:

Decision № 9353 of 21.10.2002 under administrative case № 6866/2001 (Promulgated in the State Gazette, Issue 103 of 2002)
Under Article 20

The wording was as follows: "Article 20. (1) The initial and final hours of the working day and due rests during it, as well as the daily and weekly rest shall be defined under the rules of internal order of the respective enterprise, unless they are set forth in the Labour Code or any other normative act.
(2) (Repealed , State Gazette, Issue 54/2001).
(3) At work at shifts the enterprise shall be obliged to provide for the worker and the employee with at least 12 intermittent rest after the end of such shift."

Paragraph 1 of Article 20 was unlawful and is must be repealed on the grounds of Article 5, Paragraph 2 of The Ordinance, *namely:*
(Paragraph 2 of Article 5 is) contradicting to the provisions of Article 181 of the Labour Code, under which each employer shall have the right to issue internal labour regulations which shall specify the rights and obligations of the employees and the employer pursuant to the employment relationship, and shall regulate the organization of the work process in the enterprise according to the specific nature of its activities. The quoted legal norm is disposition – it grants an entitlement, but not an obligation for the employer to issue internal labour regulations. Paragraph 2 of Article 5 of The Ordinance must be repealed on the grounds of Article 12, Item 4 of the Supreme Administration Court Act (repeal of administrative acts due to contradiction with material legal provisions).

Questions of the European Committee of Social Rights:

The Committee asks that the next report explain the notion of summarized calculation of working hours.

The summarized calculation of working hours provides that the established duration of the working day shall be observed for an average period of time defined on a daily or a weekly basis. The duration of the working time at separate working days can exceed the regular duration thereof, but overtime work shall be made up for with compensatory rest within the period of accountancy and the balance of working time and rest period shall be observed on the average for the period of accounting (summarizing) the working time.

Summarized calculation finds application at productions and activities where the conditions at work do not allow for daily calculation – for example in construction, transportation, etc. In these cases the rate of working time is characterized as derivative of the working day – it is being defined by taking the normal duration of the working day and multiplying it by the respective working days for the period. The rate of working time is definable along with the schedule of work.

Depending on the calendar period to which summarized calculation of working time is applicable, it may be calculated on the basis of a working week, working month, etc. The longest allowable by law period for summarized calculation of working time during the reference period used to be 4 months, but under the latest amendments to the Labour Code adopted in 2006 it was fixed at 6 months.

Labour Code

Accounting for Working Time

Article 142. (1) Working time shall be calculated in working days, for each day.

(2) (Amended - State Gazette, Issue 100 of 1992, Issue 25 of 2001, Issue 48 of 2006) The employer may establish summarized calculation of the working time - weekly, monthly or for other calendar period which may not be longer than 6 months.

(3) (Amended - State Gazette, Issue 100 of 1992) The summarised calculation of working hours shall not be allowed for workers or employees on open-ended working time.

(4) (Amended - State Gazette, Issue 100 of 1992, Supplemented , Issue 52 of 2004) The maximum duration of a work shift under a summarised calculation of working time may be up to 12 hours, with a duration of the working week - not longer than 56 hours, and for workers or employees at reduced working time it may be up to one hour beyond their reduced working hours.

Furthermore, the Committee requests clarification as to whether it is possible to postpone the weekly rest period, and if so, for how long.

Labour Code

Official holidays

Article 154 (2) (Supplemented - State Gazette, Issue 52 of 2004, enforced on 01.08.2004) The Council of Ministers may also declare other days for one-time public holidays, or for the commemoration of certain professions, and shift the days off in the course of the year. In these cases the duration of the working week shall not be longer than 48 hours, and the duration of weekly rest – not less than 24 hours.

Decision № 9353 of 21.10.2002 under administrative court case № 6866/2001 (Promulgated in the State Gazette, Issue 103 of 2002) repealed as unlawful the provisions of Article 21 of The Ordinance on working time, rests and leaves, which were included in the previous report of the Republic of Bulgaria. *Under the Decision, the provisions of Article 153, Paragraphs 1 and 2 of the Labour Code regulated the days for rest. The Ordinance is secondary legislation and cannot introduce other types of rest days than those as set forth by law. Hence there is the ground of Article 12, Item 4 of the Supreme Administration Court Act for repeal of Article 21, Paragraphs 1 and 2 of The Ordinance.*

Road Transport Act, *latest Amended State Gazette, Issue 30 of 11 April 2006*

Article 79. (Amended - State Gazette, Issue 11 of 2002) (1) After a maximum six daily periods of driving the driver must make use of a weekly rest. In cases of international transport of passengers, excluding transport at regular routes, the maximum daily periods of driving, after which the driver must make use of a weekly rest, shall be twelve.

(2) The time to make use of a due weekly rest may be postponed for the end of the sixth day, if the total duration of driving time for the six days cumulatively does not exceed the maximum of six daily periods of driving.

(3) Concerning the weekly rest beginning in the end of one and continuing through the next week, it may be considered as belonging to the first or the second week.

The Committee asks that the next report contain information on the measures taken to ensure proper application of the rules on the weekly rest period, in particular on the supervision activities of the labour inspection in this regard.

The overall information concerning reports on the activities of the Executive Agency “General Labour Inspectorate” is compiled into its annual reports accessible at web address: http://git.mlsp.government.bg/Eng/godishen-doklad.html

Article 2, Paragraph 6

Question A

The amendments to the Bulgarian legislation concerning the relevant period, compared to the previous report, are as follows:

Labour Code

Contents
Article 66. (Amended - State Gazette, Issue 100 of 1992) (1) (Amended - State Gazette, Issue 52 of 2004 г., enforced on 01.08.2004 г.) The employment contract shall contain party details and shall specify:
1. the place of work;
2. the job title and nature of work;
3. the date it has been signed and the start of its execution;
4. the duration of the employment contract;
5. the duration of the regular and extended paid annual leave and of the additional paid annual leaves;
6. the same notice period for both parties in case of contract termination;
7. the basic and additional labour remunerations, as well as the regularity of their payment;
8. the duration of the working day or week.

(2) Other terms and conditions may also be negotiated in the employment contract pertaining to the provision of labour which are not regulated by mandatory provisions of the law, as well as terms and conditions which are more favourable for the worker or employee than those established by the collective agreement.

Form
Article 62. (Amended - State Gazette, Issue 100 of 1992) (1) (Amended - State Gazette, Issue 2 of 1996) The employment contract shall be concluded in a written form.
(2) (New - State Gazette, Issue 2 of 1996, repealed - State Gazette, Issue 120 of 2002)
(3) (New - State Gazette, Issue 120 of 2002, Amended - State Gazette, Issue 105 of 2005, enforced on 01.01.2006) In three days term from the conclusion or the amendment of the employment contract and in seven days term after its termination the employer or his/her representative is obligated to notify the relevant territorial branch of the National Revenues Agency thereof.
(4) (New - State Gazette, Issue 120 of 2002, Amended - State Gazette, Issue 105 of 2005, enforced on 29.12.2005) The data, contained in the notification and the procedure for its submission shall be laid down in an ordinance of the Minister of Labour and Social Policy, co-ordinated with the director of the National Revenues Agency and the chairperson of the National Statistical Institute.
(5) (New - State Gazette, Issue 2 of 1996, Previous Paragraph 3 - State Gazette, Issue 120 of 2002) **When concluding** the employment contract, the employer **shall introduce** the worker or the employee with the respective work duties of the job description or the job position.

Beginning of performance

Article 63. (1) (New - State Gazette, Issue 120 of 2002, Amended - State Gazette, Issue 105 of 2005, enforced on 01.01.2006) The employer shall provide the worker or the employee with a copy of employment contract, signed by both of the parties before the start of the work *(the previous provision's wording provided for a deadline of one week to meet this obligation by the employer)* and a copy of the notification referred to in Article 62, paragraph 3, certified by the territorial branch of the National Revenues Agency.
(2) (New - State Gazette, Issue 120 of 2002) The employer shall not have the right to admit to work the worker or the employee before providing the documents referred to in paragraph 1.

Article 414. (Amended - State Gazette, Issue 25 of 2001, enforced on 31.03.2001, Amended - State Gazette, Issue 120 of 2002) (3) An employer or official, who violates the provisions of Article 62, paragraphs 1 or 3 and Article 63, paragraph 1 or 2, shall be imposed a fine in the amount of BGN 1000 for each separate violation.

Question B

There are no exceptions.

Questions from the European Committee of Social Rights:

The Committee asks that the next report contain more exhaustive details on all the essential aspects to be included in the written employment contract under Bulgarian law, including any documents specified by the Minister of Labour and Social Policy and including any information relevant in this respect provided by means other than the employment contract. Finally, the Committee also wishes to know what the legal consequences are if an employer does not comply with the information requirements.

The essential aspects of the written employment contract are set forth in the Labour Code. Exhaustive details thereon can be found in Articles 61-76, 110-115.

Under Article 66 (1) The employment contract shall contain party details and shall specify:

1. the place of work;
2. the job title and nature of work;
3. the date it has been signed and the start of its execution;
4. the duration of the employment contract;
5. the duration of the regular and extended paid annual leave and of the additional paid annual leaves;
6. the same notice period for both parties in case of contract termination;
7. the basic and additional labour remunerations, as well as the regularity of their payment;
8. the duration of the working day or week.

(2) Other terms and conditions may also be negotiated in the employment contract pertaining to the provision of labour which are not regulated by mandatory provisions of the law, as well as terms and conditions which are more favourable for the worker or employee than those established by the collective agreement.

(3) The registered office of the undertaking with which the employment contract has been concluded shall be deemed as the place of work, unless otherwise agreed or ensuing from the nature of the job.
(4) In any case of change in the employment relation, the employer shall provide in due time or not later than one month after the change takes effect, to the worker or the employee, the necessary information, in a written form, containing data on the adopted changes.

Duration
Article 67 (1) The employment contract may be concluded:
1. for an indefinite term;
2. as an employment contract for a fixed term.
(2) The employment contract shall be considered concluded for an indefinite period, unless expressly agreed otherwise.

Within the employment contract the parties can agree on all the issues that are not settled by the actual law, or if such are settled by the actual law, but unlike imperative with dispositional legal norms. On the other side, subject of individual agreement can be all the issues that are not subject of collective labour agreement.

Under the provisions of the Labour Code, Article 62 (6) and the actual enforced Ordinance 4 of 11.05.1993 concerning the documents requisite for concluding of employment contract, issued by the Minister of Labour and Social Policy (Promulgated in the State Gazette, Issue 44 of 1993), it is envisioned that the worker or the employee shall submit to the employer the following documents, along with the request for job appointment:

Article 1. To the end of concluding an employment contract, it is necessary to submit:

1. personal passport or other personal identity document, which is rendered back immediately;
2. document certifying completed level of education, major of specialization, qualification, legal capacity, scientific rank or position, whenever such refer to the job position or the work the person is applying for;
3. document certifying professional work experience, whenever the job position or the work the person is applying for requires for such work experience;
4. document of medical check at first appointment at work and after termination of employment relation for more than three months;
5. certificate showing no previous conviction, whenever actual law or regulation provides for certification of previous conviction;
6. permission issued by the labour inspectorate, if the individual has not completed 16 years of age or is at age between 16 and 18 years.

Beyond the documents as set forth under this Ordinance, other documents could be requested for only in pursuance of a special law or normative act of the Council of Ministers. The idea in pursuit is to prevent any arbitrary at the employer's discretion or limitless increase of the number of documents requisite for stepping in office, which would pose hurdles to the worker or the employee.

In pursuance of Article 62 (3) of the Labour Code: In three days term from the conclusion or the amendment of the employment contract and in seven days term after its termination the employer or his/her representative is obliged to notify the relevant territorial branch of the National Social Security Institute thereof.

In pursuance of Ordinance 5 of 29.12.2002 concerning the contents and terms of forwarding the notice under Article 62, Paragraph 4 of the Labour Code, issued by the Minister of Labour and Social Policy:

Article 1 The employer or his/her representative shall inform the competent territorial directorate of the National Revenues Agency on any conclusion, amendment or termination of the employment contracts by sending a notice thereof.

Article 5 The notice shall contain:

1. data about the employer – unique statistical identification code under the BULSTAT register of the social security contributor;
2. data about the worker or the employee – all names and personal identity number;
3. data about the terms and conditions of the labour contract

a) legal grounds to conclude the labour contract in pursuance of the Labour Code;

b) number of the contract, if the employer keeps a register on employment contracts;

c) date of conclusion of the employment contract;

d) term of the employment contract, if the latter is concluded for a definite period of time;

e) size of the main work remuneration;

f) designation of the job position;

g) date of termination of the employment contract;

4. other data:

a) code under the National Classification of Occupations and Job Positions as pertaining to the respective job position at the time of sending the notice thereof;

b) name and code under the National Classification of Economic Activities, as pertaining to the respective job position at the time of sending the notice thereof;

c) code of office for individuals engaged in assistance activities for the social security contributor, whenever the latter performs more than one economic activity, under the National Classification of Economic Activities.

There are certain legal consequences, if the employer fails to meet the necessary requisites and data containing in the labour contract:

Labour Code:

Control of compliance with labour legislation

Article 399. The overall control of compliance with labour legislation in all sectors and activities shall be carried out by the Executive Agency "General labour inspectorate" with the Minister of Labour and Social Policy.

The scope of control concerning the observation of the labour legislation is widely outlined. On the one side it is defined as overall control on complying with the labour legislation. It means it comprises all “parts” of the labour legislation. The body of control

on compliance with the labour legislation is the Executive Agency "General labour inspectorate". The Executive Agency "General labour inspectorate" provides for the control on compliance with the labour legislation, provides information and technical advices to employers, the workers and the employees for compliance with the labour legislation, informs the state authorities on the deficiencies and omissions found during checks on compliance with the labour legislation.

In pursuance of Article 404 (1): In order to prevent and terminate the violations of labour legislation, as well as for prevention and elimination of damages resulting there from, the General Labour Inspectorate and its bodies, as well as the bodies under Articles 400 and 401, on their own initiative or on proposal of the trade union organisations, may apply the following coercive administrative measures – compulsory instructions, termination of activities of enterprises, units and productions, suspending implementation of illegal decisions or orders of the employer and officials, suspending workers and employers from work.

For any violation concerning the compliance with the labour legislation in all of its parts, including the data contained in the employment contract, the employer shall be attributed administrative-penal responsibility under the Labour Code, the Administrative Procedure Code and the Administrative Violations and Penalties Act.

In 2005 a total of 560 decrees were issued by inspectors for declaring employment relations with individuals without having firstly formulated employment contracts. In 2004 the number of such decrees was 800, while in 2003 it was 1771. As a result of the systematic and scrutiny control as adopted since the beginning of 2003, after the amendments to the Labour Code took effect, which was also extended in 2004 and 2005, positive changes have taken place concerning the practice of conclusion of written employment contracts. The zero tolerance of the Labour Inspectorate towards employers hiring workforce in violation of the provisions of Article 62 and Article 63 of the Labour Code, will continue also in 2006 and afterwards, until occurrences like these settle as accidental. In 2005 the inspectors of the General Labour Inspectorate compiled 9,757 acts seeking administrative and penal responsibility from labour legislation violators, 8116 penal decrees took effect and fines to the cost of 3,621,799 leva were imposed.

Article 2, Paragraph 7

Question A

During the relevant period under the present report no amendments were introduced to the legislation concerning the working hours and the duration to which the term "night work" is applicable *(Article 140 Paragraph 1: The normal duration of the weekly working time at night for a five-day work week shall be* ***up to 35 hours****. The normal duration of the night working time for a five-day work week shall be* ***up to 7 hours****. Night work is the work performed* ***between 10.00 p.m. and 6.00 a.m****., and for underage workers and employees -* ***from 8 p.m. to 6 a.m.****).*

The legislative amendments for the relevant period under the present report include as follows:

Labour Code
Night work

Article 140. (4) (Amended - State Gazette, Issue 100 of 1992) Night work shall be prohibited for:

1. workers and employees who are under 18 years of age;

2. (Amended - State Gazette, Issue 52 of 2004, enforced on 01.08.2004) pregnant workers or employees;

3. (Amended - State Gazette, Issue 52 of 2004, enforced on 01.08.2004) mothers of children up to 6 years of age, as well as mothers raising disabled children irrespective of the latter's age, except with their consent;

4. reassigned workers or employees, except with their consent, and only when such employment will not be detrimental to their health in the opinion of the health authorities;

5. workers or employees who continue their education while under employment, except with their consent.

(5) (New - State Gazette, Issue 52 of 2004, enforced on 01.08.2004) The workers and employees who work only nights, or who work in shifts including night work, shall be accepted to work only after a preliminary medical examination which shall be for the account of the employer.

Ordinance on the working time, rests and leaves, *adopted with Decree № 72 of the Council of Ministers, latest amendments, State Gazette, Issue 103 of 23 December 2005.*

Article 7. (Amended - State Gazette, Issue 54 of 2001, enforced on 31.03.2001, Amended - State Gazette, Issue 72 of 2004, enforced on 01.08.2004) The consent for night work of mothers with children up to 6 years of age, mothers who take care of disabled children, irrespective of their age and of reassigned workers and employees, shall be given in a written form. The consent referred above may be withdrawn 3 days at the latest before the date from which the worker and the employee wish to terminate the performance of the night work, unless there are valid reasons, which require the immediate termination thereof.

Ordinance on the civil position of civil servants
Article 22. (Amended - State Gazette, Issue 18 of 2004, enforced on 01.01.2004) For each hour of night work or part of the work performed in the period between 10.00 p.m. and 6.00 a.m. additional remuneration shall be paid for night work at the size of 0.10 leva.

As promulgated in the State Gazette, Issue 52 of 2004, a New Paragraph 5 was adopted saying that the workers and the employees engaged only at night work or working at shifts, including during night, shall be employed only after passing medical examination on the account of the employer.

Questions of the European Committee of Social Rights:

In terms of other measures provided for to take account of the special nature of night work, the report states that the employer shall provide employees with "hot food, refreshments and other facilities for the effectiveness of night work." The Committee asks that the next report contain detailed information on such measures.

The amendments to Article 285 of the Labour Code have provided for considerable expansion of the scope of enterprises and workers whereto the respective rules are applicable:

Labour Code

Free food

(Title Supplemented - State Gazette, Issue 25 of 2001, enforced on 31.03.2001, Title Amended – State Gazette, Issue 83 of 2005)

Article 285. (Amended – State Gazette, Issue 83 of 2005) (1) The employers shall provide free food and/or food additives to the employees working in undertakings with specific nature and organization of work.

(2) The terms and conditions for provision of the free food and/or food additives referred to in paragraph 1 shall be determined with an Ordinance of the Minister of Labour and Social Policy and the Minister of Health.

In pursuance of **Ordinance № 11 of 21.12.2005 on determining the terms and conditions for the provision of free food and/or food additives thereto (**issued by Minister of Labour and Social Policy and the Minister of Health, as Promulgated in the State Gazette, Issue 1 of 3.01.2006), in accordance with the specific character of labour free food and/or food additives shall be provided for the workers and the employees, engaged in work:

1. under water in pits, geological sites and sites of tunnel and mine construction, in subterranean Hydro-Power Plants (HPP) and Pump and Storage Hydro Power Plants (PSHPP);

2. under water as divers and caisson workers;

3. at average daily temperatures under +10 °C and over +30 °C during most of half of the regular working time as set forth under the Labour Code;

4. in staff of seafarers and marine crew;

5. in a medium of ionization radiation;

6. at which they are exposed to carcinogen or mutagens, to silica zoo-threatening powder, to heavy metals, organic dissolvers and biological agents, chemical agents, dust, noise and vibrations;

7. at medical establishments in capacity of surgery doctors, anesthetists, obstetricians, surgical and anesthetic nurses – in the days of surgery, as well as hospital attendants in surgical halls;

8. in contact with biological agents in clinical laboratories; laboratories of microbiology, virology, parasitology; centers for transfusion hematology and dialysis centers; treatment and medical establishments servicing individuals suffering of contagious

and parasitic diseases, including tuberculosis, as well as such engaged in work with animals experimentally infected with biological agents;

9. in the generation, transmission and distribution of electricity and heating energy, including in repair works and technological transport;

10. directly in as follows:

a) in the production and casting of cast-iron, including cast moulds, concrete, ferrous mixtures, non-ferrous metals and their compounds, in the plastic procession of ferrous and non-ferrous metals;

b) in the production of coke and metallurgical heat-resisting materials;

c) in the procession of concentrates and agglomerates of ore;

d) in the production and enforcement of coal;

e) in the production of lead batteries.

11. in the production and testing of explosives and ammunitions – only for directly involved therein

12. in the drilling, procession and reinforcement of ores;

13. in hot dip galvanizing, electrical galvanizing and electroplating productions;

14. in special (closed) spaces with cleanness class A, B and C.

(2) For works under specific organization of work, free food and/or food additives shall be provided for to the workers and the employees who:

1. are engaged to work at the enterprise before/after the established working time with duration not less than two hours;

2. are engaged to work at 12-hour working day under summarized calculation of the working hours;

3. are engaged in productions with continuous process of work;

4. work at distanced sites without opportunities to make use of sites of cafeteria.

Article 3. During night shifts or at night work the workers and the employees shall be provided with refreshment and fitness drinks.

Article 4. (1) The workers and the employees working under the terms as set forth under Article 2 are entitled to free food and/or food additives to it under the present Ordinance.

(2) Free food and/or food additives to it shall be provided for to workers and employees only for the days when they work under the conditions of Article 2 .

Article 5. (1) The cost of free food and/or food additives to it under the present Ordinance cannot be less than two leva a day per worker or employee.

(2) The cost of refreshment and fitness drinks shall not exceed one leva a shift.

Article 6. Expenses for the provision of free food and/or food additives to it under the present Ordinance shall be on the account of the company's budget.

Article 7. (1) On the grounds of the risk assessment, after holding due consultations with the representatives of the workers and the employees and the committee/the group on conditions at work, and after written coordination with the labour medicine service, the employer shall define with a written order the workers and the employees entitled to:

1. free food;

2. additive food;

3. free food and additive food.

(2) The order under Paragraph 1 shall define the type and the cost of the food and/or food additives.

Article 8. Any bigger cost of the food and/or food additives can be re-negotiated under the collective labour agreement, as well as between the parties to the employment relation.

Article 9. In the cases when workers and employees use free food and/or food additives on any different ground, they shall receive food and/or food additives under only one of the grounds herein above.

Article 3 – Right to safe and healthy working conditions

Paragraphs 1-4

The legislative amendments during the relevant period under the present report are as follows:

Labour Code

Tripartite cooperation

Article 3. (Amended - State Gazette, Issue 100 of 1992, Amended - State Gazette, Issue 25 of 2001, enforced on 31.03.2001) (1) (Supplemented - State Gazette, Issue 120 of 2002) The State shall carry out the regulation of labour and the directly related relations, the insurance relations, as well as the living standard issues, in cooperation and after consultations with the workers' or employees' and the employers' representative organisations. The scope of the issues of the living standard, subject to consultations, shall be determined with act of the Council of Ministers upon proposal from the National council for tripartite cooperation.

(2) (Amended - State Gazette, Issue 120 of 2002) The cooperation and the consultations shall obligatory be implemented when adopting regulations (legal acts) on the relations and the issues, referred to in paragraph 1.

National Council for Tripartite Cooperation

Article 3a. (4) (New - State Gazette, Issue 120 of 2002) The National Council for Tripartite Cooperation shall elect among the persons, legally representing the organisations of the workers and the employees and of the employers on a rotation principle one deputy chairperson of the council for a term of one year.

The Rules of work of the National System of Tripartite Cooperation, as adopted under Decree № 51 of The Council of Ministers of 1993 were repealed.

A new Statute Rules of the Council of Ministers and its administration was adopted, as Promulgated in the State Gazette, Issue 84 of 21 October 2005:

Article 4. (2) The Council of Ministers shall work in cooperation with the management bodies of the trade unions, of the organisations of employers and of the organisations for social protection, as well as of other non-governmental organisations.
…
Article 103. The Directorate for Economic and Social Policy (specialized administration of the Council of Ministers)
17. performs as secretarial body of the National Council for Tripartite Cooperation.

Article 3, Paragraph 1

The state policy in the field of Safety and Health at Work is directed towards provision and maintenance of workability and health of the workforce and population. The obligation to carry out such a policy is laid down in the Constitution of the Republic of Bulgaria and particularly under Article 48, Paragraph 5. Therefore the protection of health, life and workability of workers is among the priority purposes and tasks facing the government of Bulgaria.

The establishment and implementation of a modern policy of Safety and Health at Work is connected with the national implementation of the overall framework of legal, social and economic, technical, organizational and health measures aimed at the conditions of work securing the life, physical and psychical health and welfare of the workers.

A substantial characteristic which is also a key element and purpose of the national policy in the field of Safety and Health at Work is in fact safeguard prevention of health and safety of workers through the implementation of preventive measures put in place in all the levels of nationwide government with effect to each enterprise and workplace. A key instrument of prevention is a legal requirement and established practice to carry out, in a written form, a risk assessment in each company, enterprise and workplace. The risk assessment is being carried out and at each change of the work environment or the requirements, or periodically.

The development and implementation of the national policy in the field of Safety and Health at Work is explicitly set forth in the Safety and Health at Work Act of 1997 and its following amendments and supplements. The law amending and supplementing the Safety and Health at Work Act was prepared with the actively participation, cooperation and approval of the social partners – the national representative organisations of the workers and the employees and of the employers. To the end of discussing, formulating, coordinating, assessing and cooperating in the implementation of the national policy in the field of Safety and Health at Work there is a permanent body established for tripartite cooperation in the field of Safety and Health at Work – National Council on the Conditions at Work, with the participation of representatives of state administration, the organizations of workers and of employers. The decisions of the National Council on the Conditions at Work are adopted with consensus. In sectoral and territorial aspects, the policies in the field of Safety and Health at Work are being coordinated by branch and regional councils on conditions at work. In companies and enterprises, the Committee on Conditions at Work include the employer and its representatives and the representatives of the workers and the employees on the issues in the field of Safety and Health at Work.

A regular check and update of the national policy is being implemented by the National Council on the Conditions at Work. The national policy is being developed and unfolded in full compliance with the policy of the European Union and the EU Member states in this field.

The measures of implementation of the national policy are being planned and undertaken at all levels of governance and being implemented for the provision of Safety and Health at Work (national, sectoral, entrepreneurial) and form an integral part of the governance of economic and social activity. In view with performing monitoring, carrying out regular review and assessment of effectiveness, the measures are being prepared in a written form. On national level they are predominantly strategies (guidelines).

After carrying out a substantial part of the main tasks as laid down in the national strategy in the field of Safety and Health at Work adopted by the government in 1996 and the necessity of its further development and update, with a Decree of 2002 the Council of Ministers adopted Guidelines for the development of the activities for health and safety at work in the period until 2006, that are in compliance with the European Union strategy for

safety and health at work. An accent was put on the provision of "welfare at work" and keeping into account the changes in the field of labour and the appearance of new risks.

As a whole, the national legal framework introduces principles, approaches, requirements and measures for the provision of healthy and safe conditions at work at each workplace. Some of the key characteristics are related to:

- avoidance of any risk for health and life;
- assessment of any risk that could not be avoided;
- fight against any risk at the moment of appearance;
- adaptation of the conditions at work to each individual with the purpose of reducing and eliminating any such aftermath on health and safety;
- introduction of the technical progress into the technological processes, machineries and facilities;
- replacement of any harmful productions, work equipment, instruments, substances and materials with safe or less harmful essence;
- implementation of a common general policy for prevention, comprising the technology, workplaces and organization of work, the conditions at work and the social relations;
- implementation of the collective means for protection giving advantage to individual protective gears;
- information supply to the workers in relation to the provision of healthy and safe conditions at work;
- consulting with the workers;
- identification of the existing threats and sources of factors harmful for the health and safety;
- provision of health surveillance on the workers;
- involving of all interested parties and securing cooperation when defining and implementing the measures for Safety and Health at Work;
- organizing of appropriate training and instructions on safety, hygiene at work and fire fight security;
- coordination between employers during work on the same object or construction site;
- combining the implementation of requirements for Safety and Health at Work with the implementation of substantial requirements and assessment of the compliance of products (free movement of goods), with the requirements for quality and certification as well as the environment requirements.
- external and internal control and monitoring on the compliance with the requirements for Safety and Health at Work.

In the period since the latest report the following amendments to the Safety and Health at Work Act were adopted:

Safety and Health at Work Act

Article 16. (1) When carrying out the activities on providing safety and health at work the employer must:
3. (Amended - State Gazette, Issue 18 of 2003) take into account the specific risks to workers and employees who need special protection, including those with limited work capacity;
(2) (New - State Gazette, Issue 76 of 2005) When fulfilling his obligations referred to in paragraph 1, the employer must ensure safety and health at work and equal level of

protection from production related risks to all workers and employees regardless of the duration of the contract concerned and the duration of the working time.
(3) (New - State Gazette, Issue 76 of 2005) Legal and natural persons who use the services of workers and employees, assigned by a temporary employment business shall be obligated to:
1. perform the activities referred to in paragraph 1;
2. to inform the temporary employment business on the specific requirements relating to the working place, the occupational risks and the required professional skills.
(4) (New - State Gazette, Issue 76 of 2005) The temporary employment business shall provide the information referred to in paragraph 3 to the workers and employees concerned.
…
Article 36. (Amended - State Gazette, Issue 18 of 2003) The Minister of Labour and Social Policy shall develop, coordinate and implement the state policy in the field of provision of safety and health at work and shall:
1. (Amended - State Gazette, Issue 18 of 2003) on annual basis, jointly with the Minister of Health elaborate analyses of the condition, trends and problems of the activities for providing health and safety at work and proposing measures for its improvement;
2. (Amended - State Gazette, Issue 18 of 2003) independently or with other ministers shall adopt legal and administrative provisions aimed at ensuring health and safety at work, shall organize and coordinate the drafting of legal and administrative provisions in this field which are of the competence of different ministers and shall approve rules for provision of health and safety at work;
3. (Amended - State Gazette, Issue 25 of 2001) carry out integrated control through General Labour Inspectorate Executive Agency of the compliance with the legislation and the fulfillment of the obligations for providing safety and health at work in all sectors and activities regardless of the form of ownership;
4. set forth the terms, procedure and requirements for carrying out training, measurements and consultations in the field of safety and health at work;
5. (repealed - State Gazette, Issue 18 of 2003) (previously: independently or jointly with other ministries assesses the compliance between the health norms and the requirements on safety at work)

…
37. Article 37. (Amended - State Gazette, Issue 18 of 2003) The Minister of Health shall manage and coordinate the activities for protection and improvement of health at work and shall:
2. (Amended - State Gazette, Issue 18 of 2003) draft national programmes for protection and improvement of health and work capacity and shall assist methodologically the implementation thereof;

6. (New - State Gazette, Issue 18 of 2003, Amended - State Gazette, Issue 70 of 2004, enforced on 01.01.2005) control the activities of the occupational medicine services through the bodies of the state health control.
…
Article 39. (2) (2) The work of the National Council on Working Conditions shall be based on the principle of public service and shall consist of representatives of:
5. (repealed - State Gazette, Issue 18 of 2003) previously: the Council for mutual security of the members of work production cooperatives.
…
Chapter five

Working conditions fund

Article 44. (1) (Previous wording of Article 44, Amended - State Gazette, Issue 18 of 2003) The Working Conditions Fund, a secondary budget spending unit, shall be set up to the Minister of Labour and Social Policy with the aim to finance the activities and actions designed to improve the working conditions.

(2) (New) - State Gazette, Issue 18 of 2003) The Working Conditions Fund shall be a legal person seated in Sofia.

Article 3, Paragraph 2

Question A

The Republic of Bulgaria has adopted and applies the national legislation in the field of safety and health at work, which is in full compliance with the European Union acquis communautaire in this field. The framework consisting of Safety and Health at Work Act, the Labour Code and the Social Security Code, as well as the accompanying secondary legislation has built up the modern system of safe and healthy conditions at work.

Since December 2004 the Bulgarian legislation has transposed all the directives of the European Union enforced for the EU Member states. Since June 2004 the EU directives are transposed in the national legislation and enter into force in the same terms as set out for the EU member states.

The Safety and Health at Work Act obliges the employer to provide for healthy and safe conditions at work whenever all possible risks and dangers, including recent ones, even when there is no specific secondary legislation providing for prescribed specific measures for implementation. For any possible threats and activities that are not covered by specific EU directives there are national secondary legislation acts that are not contradicting the EU acquis communautaire and the national legislation in this field.

The most important secondary legislation acts that, along with the above quoted three laws, form the Bulgarian legislation in the field of safety and health at work are shown in the Question A to Article 2, Paragraph 4.

The Bulgarian legislation in the field of safety and health at work has been applied (has personal scope) in all the sectors and spheres of work activity (including education and training), in all the companies and enterprises, in all organizations and departments and with all categories of workers and employees irrespectively of the manner, the duration and other terms and conditions of recruitment, including state officials, home workers, self-employed, home personnel.

In comparison to the previous report the legislative framework has been changed in the following way:

Labour Code

Obligations of the employer to provide working conditions

Article 127. (1) (Amended - State Gazette, Issue 100 of 1992, previous wording of Article 127, Supplemented - State Gazette, Issue 25 of 2001, enforced on 31.03.2001) The employer is obliged to provide to the worker or employee normal conditions to perform the job under the employment relationship he/she has agreed upon, providing namely:

1. the work specified upon establishment of the employment relationship;
2. working place and conditions in accordance with the nature of work;
3. (Amended - State Gazette, Issue 25 of 2001, enforced on 31.03.2001) healthy and safe conditions at work;
4. (New - State Gazette, Issue 25 of 2001, enforced on 31.03.2001, Amended - State Gazette, Issue 52 of 2004, enforced on 01.08.2004) job description, copy of which is handed to the worker or employee at the time of conclusion of the employment contract;
5. (Previous Item 4, Amended - State Gazette, Issue 25 of 2001, enforced on 31.03.2001) instructions on the procedure and the way of performance of the labour

obligations and exercising the labour rights, including introduction to the rules for the internal work order and to the rules on health and safety at work.

.....

Special work clothing and personal protective equipment

Article 284. (4) (New – State Gazette, Issue 83 of 2005) Replacement of personal protective equipment with their pecuniary equivalent shall be prohibited.

Free food (Title Supplemented - State Gazette, Issue 25 of 2001, enforced on 31.03.2001, Title Amended – State Gazette, Issue 83 of 2005)

Article 285. (Amended – State Gazette, Issue 83 of 2005) (1) The employers shall provide free food and/or food additives to the employees working in undertakings with specific nature and organization of work.

(2) The terms and conditions for provision of the free food and/or food additives referred to in paragraph 1 shall be determined with an Ordinance of the Minister of Labour and Social Policy and the Minister of Health.

All the workers working at conditions failing to meet the sanitary and hygiene norms shall be provided with compensation in the form of free protective food, refreshment drinks and anti-dotes.

The Disabled People Integration Act was adopted, as promulgated in the State Gazette, Issue 81 of 17 September 2004, enforced on 1 January 2005, which repealed the Disabled People Protection, Rehabilitation and Social Integration Act.

Disabled People Integration Act

Prophylactics and Rehabilitation of disabilities

Article 14. (3) The bodies of local administration, the national representative organizations of disabled people, the national representative organizations for disabled people, the national representative organizations of employers and the national representative organizations of the workers and the employees shall cooperate for the prevention of disabilities by means of:

1. health and environmental instruction to limit the risk factors related to the way of life and the environment;

2. health prophylactics;

3. provision of healthy and safe conditions at work.

Question B

Legislative amendments through the relevant period under the present report:

The wording of Article 288 of the Labour Code was repealed which envisioned for the employer to report on an annual basis the healthy and safe conditions at work in the respective enterprise as per indicators and under terms as stipulated by the Ministry of Labour and Social Policy and the Ministry of Health.

Due to the numerous legislative amendments herein it is enclosed the text of the Protection from the Harmful Impact of Chemical Agents and Substances on Health Act (Title Amended - State Gazette, Issue 114 of 2003) – Appendix 2.

See herein above the list legislative acts in the field of safety and health at work.

Article 3, Paragraph 3

Question A

As it was specified in the previous report, the overall control on the implementation of the labour legislation in all economic sectors and activities is being carried out by the Executive Agency "General Labour Inspectorate" with the Minister of Labour and Social Policy. (Article 399 of the Labour Code).

In pursuance with the Health and Safety at Work Act, the scope of control includes "all enterprises and locations where there is any work activity or training, irrespectively of the form of organization, the type of property rights or the grounds to perform the work or the training" – Article 2 of the Health and Safety at Work Act.

We present the following data from the Annual Report 2005 of Executive Agency "General Labour Inspectorate":

In 2005 were made 35,111 inspections, against a planned figure of 27,184 set in the ANP. All RLI-D conducted a bigger number of inspections than their planned figures for 2005. Beyond the plan were made 7,927 inspections. The largest part of unplanned checks were carried out by the district directorate of the Executive Agency "General Labour Inspectorate" in Sofia-city, Pleven, Shumen, Smolyan, Yambol, Kyustendil, and Dobritch.
In accordance with the scope and character, the executed checks are distributed in the following way:

- routine 13090 – 37.3 percent;
- special 15217 – 43.3 percent;
- follow-up 6804 – 19.4 percent.

The distribution of executed checks reveals that the biggest share is attributed to the special checks. The main reason thereof is the considerable share of checks for regular control in risk enterprises and activities and checks committed after signals. In economic activities where the risk is highest and respectively the regularity of special checks is predominant. For example, in the sector of "Coal and Peat extraction", where checks are being carried out every three months, the share of special checks stands at 83 percent. Similarly is the situation with "Ferrous ore extraction"– 80 percent. In the sectors of "Non-ferrous materials and raw materials extraction", "Production of chemicals", "Construction" and "Other activities in the field of business services" the share of special checks exceeds 50 percent.

In connection with newly-emerged problems with securing occupational safety and health in individual economic activities in 2005, by order of the Executive Director of the Executive Agency "General Labour Inspectorate" were conducted four specialized inspections nationwide – in March in mills, in September in factories for vegetable oil manufacture, and in December in meat-processing factories and in woodworking and furniture-manufacturing enterprises.

Significant number of the inspections made in 2005 were prompted by the need to investigate the causes of occurring accidents, to clarify the facts mentioned in the petitions and complaints addressed to the Executive Agency "General Labour Inspectorate", or forwarded there by other institutions in line with the competence, to check warnings of workers and employees, trade union structures, government authorities, employers' organizations, mass media, etc.
The total number of inspections made throughout the year for that reason is 6,012, among which:

- 4,078 to investigate complaints;

- 348 to clarify the causes of occurring accidents;
- 1,586 to investigate warnings of various institutions addressed to the Executive Agency "General Labour Inspectorate", or to its structures.

In view of the big number of risk assessments, made with no available data about the condition of the working environment parameters, in the course of inspection in 2005, during 4.2 percent of the inspection visits were made control measurements of the parameters, characterizing the condition of the working environment.

The largest number of checks accompanied by control measurements was performed by the district directorates of the Executive Agency "General Labour Inspectorate" in Sliven, Dobritch and Razgrad.

After the repeal of Article 288 of the Labour Code the enterprises are no more obliged to report annually on the conditions at work. Therefore in many parts of the country the share of enterprises maintaining book records on the conditions at work is quite low.

It requires that the district directorates of the Executive Agency "General Labour Inspectorate" carrying out the control in these districts increases considerably the number of checks accompanied by control measurements to force employers bound to obligatory instructions to make measurements and wherever the parameters of the working environment exceed the sanitary and hygiene norms and requirements to make them compliant with the legal requirements.

Trade union representatives attended 247 inspections, while members of Working Conditions Committees/Groups (WCC/G) took part in 2,738 inspections. It is still scarce the will of members of Working Conditions Committees/Groups (WCC/G) to carry out independent checks irrespectively of the fact that each check at an enterprise having incorporated Working Conditions Committees/Groups (WCC/G), members thereof are invited to participate.

Inspections were carried out in all economic activities registered in the National Classifier of the Economic Activities (NCEA).

Quite a number of the inspections in 2005 were performed in the course of realization of the national and local campaigns, i.e. 19.2 percent of all inspections, **3,229** of them taking place during the national campaigns and **3,514** being held at the time of the local campaigns.

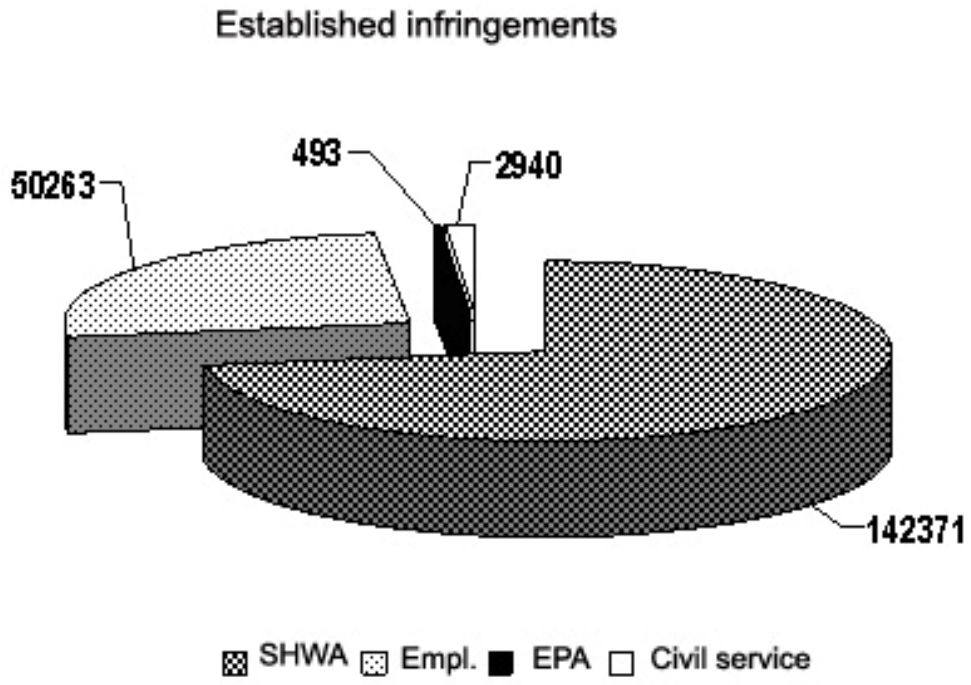
As a result of the inspections made in 2005 were checked 28,897 enterprises, i.e. 12.3 percent of all economic entities in the country using hired labour, compared to 27,540 enterprises in 2004.

In 10 percent of the inspected enterprises were checked only their separate units.

In the inspected enterprises were employed 1,221,941 persons, 685,956 of them, or 56 percent of all employees in the inspected enterprises, being males and 535,985, or 44 percent being females.

Question B

At the inspections in 2005 were established altogether 196,067 infringements. The majority of them – 142,371 – are against the safety and health at work.



The above graphic shows that the majority share of found infringements, established altogether against rules and regulations for securing Safety and Health at Work, - 142,371 offences or 72.6 percent of all the offences. A key reason for this relatively high share is the availability of normative acts and the specific standards and rules therein concerning normal conditions at work, the provision of technical safety of used machinery, facilities and technologies, for stricter measures of safety at production operations, the level of managerial and executive personnel, the level of material and technical basis and the state of the organization at work, and the labour and technological discipline.

The share of the infringements of the legislation in the sphere of securing OSH used to grow steadily, i.e. from 69 percent in 2001 to 75.1 percent in 2004, while in 2005 it dropped down to 72.6 percent.

The level of the used work equipment, the vocational qualification and expertise of the executive and managerial staff, the established tradition to comply with the labour laws, the awareness of the legal standards, the potential risk hidden in the various productions and activities, and many other factors give their impact on the number of the identified offences in the various economic activities and in the individual enterprises of one and the same economic activity. For that reason, a bigger number of infringements is established at the inspections in agriculture, the processing industry and construction.

In all other economic activities the relative share of the identified infringements is proportionate to the relative share of the performed inspections.

In 36 economic activities the relative share of the infringements against the rules regulating the securing of OSH is over 70 percent of all infringements established in the said activities. In 17 economic activities that share is over 80 percent, while in 'Coal and Peat Mining', 'Metal Ore Mining', 'Mining of Non-metal Raw Material and Stock', 'Production and Distribution of Electricity, Gaseous Fuels and Heat', 'Manufacture and Casting of Metals' and 'Household Activities Employing Family Members' the share of the infringements in the sphere of OSH is over 90 percent.

The lowest is the share of the infringements in the sphere of OSH in the 'Other Activities in the Field of Business Services' – 56 percent, and the 'Activities of Professional, Trade Union, Political, Religious and Public Organizations' – 59 percent.

The infringements of legislative standards regulating the health and safety at work have the following characteristics:

The highest group of infringements of the standards and rules concerns the regulations of the organization of activities securing Occupational Safety and Health (OSH). The recorded infringements in this field of the labour legislation stand at 84,355, or 59.2 percent of all the legislative infringements regulating the application of the Health and Safety at Work Act, and 43.8 percent of all detected infringements in the field of labour legislation (Health and Safety at Work Act, and the Labour Code).

In almost all the economic activities in the field of commerce, services, education, health care and state governance, the share of infringements regulating the activities providing for safety and health at work account for more than 50 percent of all the infringements in the field covered by the Health and Safety at Work Act.

The highest is the share of the infringements in the field of Health and Safety at Work (OSH) in the "Other Activities in the Field of Business Services" – 77 percent, "Retail trade, Excluding retail trade with Automobiles and Motor Vehicles; Repairs of personal belongings and household utilities" – 72 percent and "Hotels and Restaurants" – 70 percent, while the lowest is the share of the offences in the field of "Coal and peat extraction" – 28 percent, "Ferrous metals extraction" – 30 percent and "Production and casting of metals" – 38 percent.

The main reason for the high relative share of offences in the field of organization of the activities aimed to provide for the Health and Safety at Work under the Health and Safety at Work Act, concerning the above outlined economic activities, is the assignment of these activities to officials lacking the required competence and knowledge in the relevant actual legislation and regulations in the field of Health and Safety at Work.

Out of all the infringements, established altogether against rules and regulations for securing Health and Safety at Work (OSH), 23.2 percent refer to the safe condition of the machines and the industrial equipment.

The highest is the share of these infringements in the mining industry, in the economic activity "Coal and Peat Extraction", which accounts for 57 percent of all the offences in the field of Health and Safety at Work, while in "Ferrous ores extraction" – 59 percent.

Low is the share of offences, established altogether against rules and regulations for securing Health and Safety at Work (OSH) at machines and industrial equipment, the productions and activities where fewer machinery is being applicable on the account of more manual labour and mental skills. For example, in the sector of "Other Activities in the Field of Business Services" those account for only 8 percent, while in the sector of "Retail trade, Excluding retail trade with Automobiles and Motor Vehicles; Repairs of personal belongings and household utilities" – 13 percent, in the sector of "Forestry and Logging and other services related thereto", "Hotels and Restaurants" and "Postal Services and Communications" – 15 percent and in the sector of "Road transport, including pipe work" – 16 percent.

Infringements of the norms regulating occupational hygiene is traditionally taking up the smallest share of infringements of rules and regulations for securing Occupational Health and Safety (OSH). The low share is not due to the fact of scarce infringements of the norms regulating occupational hygiene, but on the contrary: occupational hygiene is a major problem for a number of production sectors and activities, such as mining, metallurgy, metal casting, logging and timber procession, etc. The main reason for recording an insignificant share of infringements of the norms regulating occupational hygiene – 17.6 percent - is the lack of data about the facts indicative of occupational hygiene.

Out of the 28,897 enterprises inspected in 2005 altogether, only 34 percent of the total number of inspected enterprises held records of the state of conditions at work.

In enterprises of certain economic sectors such as "Agriculture and Hunting and services related thereto", "Air Transport", "By-work of financial brokerage", the share of enterprises keeping records of the state of conditions at work does not exceed 20 percent of checked enterprises.

Hence the conclusion that enterprises where the production process presumes more frequent violation of one or another parameter of the working environment must be subject to more often checks, accompanied by control measurements and adoption of stricter measures, including suspension of production and activities to which employers fail to undertake measures taking the conditions at work in line with the sanitary and hygienic rules and regulations.

A more detailed analysis of offences in the field of Occupational Health and Safety (OSH) gives grounds to make the following conclusions:

- in the field of organization of activities to provide for Occupational Health and Safety (OSH) the largest is the share of offences related to meeting the provisions of the Ordinance on instructing and training of the workers and the employees. A total of 18,307 infringements were found on the rules and regulations in the field of instructing and training. This kind of infringements account for 21.7 percent of all the infringements of the rules and regulations under the Health and Safety at Work Act, and for 12.9 percent of all the infringements of rules and regulations in the field of Occupational Health and Safety. The infringements connected to missing required documentation amount to 17.3 percent. Another relatively big share is attributed to infringements for the availability and the contents of internal normative deeds in enterprises designed to secure the Occupational Health and Safety (OSH) – they account for 14.4 percent of the infringements.

Infringements of the rules and regulations of the Occupational Health and Safety (OSH) concerning the risk assessment, the contents of the risk assessment, the availability of a programme to remove the risk provide for 13 percent of all the infringements in the organization of activities providing for Occupational Health and Safety (OSH);

- in the field of safety of work equipment and technologies, the recorded infringements stand at a total of 32,998 or 23.2 percent of all the infringements in the field of Occupational Health and Safety (OSH). Infringements of the rules and regulations concerning the protection of workers from indirect contact to electricity total 5,304 and amount to 16 percent, while together with the infringements of the rules and regulations on the protective exploitation of electrical facilities amounting to 19.7 percent, account for 30.7 percent of all the infringements of the rules and regulations concerning the safety of equipment and technologies at work.

Imminent risks of electricity harms are really underestimated at a number of enterprises. Established were 4,494 offences related to the lack of protective and blocking devices in machines and installations, which accounts for 13.6 percent of all the infringements in the field of safety of equipment and technologies at work. These infringements are among the most occurring reasons for traumatic harms with workers at work;

- in 2005 were established 23,018 offences against the hygienic standards and requirements, which is 17.6 percent of the infringements of provisions regulating the securing of Occupational Health and Safety (OSH). A larger share of infringements in the field of occupational hygiene was found in the following economic sectors: "Manufacture of Textile and Textile Goods, Excluding Clothing" – 25 percent of all the infringements in the field of Occupational Health and Safety (OSH); "Logging and Production of timber products, excluding furniture" and "Manufacture of furniture; production, which is not classified anywhere else" – 24 percent, "Manufacture of Clothing, Including Leathern;

Treatment of Fur Hides", "Production and metal casting" and "Manufacture of electrical appliances and apparatus, which is not classified anywhere else" – 23 percent and "Manufacture of Rubber and Plastic Articles" – 22 percent. The most frequent infringements referred to the requirement of availability and usage of personal protective equipment, the execution of regular medical examinations of workers, the maintenance of data on the status of working environment status. A few infringements were found in meeting the rules and regulations concerning sanitary and communal services on behalf of the workers and the requirements to settle a physiological regime of labour and rest.

The principal measure of compulsion applied at inspections in 2005 was to give recommendations that infringements identified at the inspection should be eliminated. Given were 190,799 recommendations altogether. The recommendations constitute 98.6 percent of all measures of compulsion.

By virtue of Article 404, paragraph 1, item 1 of the Labour Code were given 187,462 recommendations, on the grounds of Article 78 paragraph 1, item 1 of Employment Promotion Act (EPA) – 435 recommendations and on the grounds of Article 131 of the Civil Service Act – 2,902 recommendations.

Whenever at the inspections it was established that the workers' life and health were threatened by the technical condition, in which was operating a certain machine, installation, workplace, production site, etc., the measure of compulsion stipulated in Article 404, paragraph 1, item 3, i.e. 'suspension', was applied.

In 2005 the measure of 'suspension' was applied to 1,828 individual machines, installations, workplaces, sites, entities, etc.

The suspension of machines and installations is indicative of the latter's condition in terms of technical safety, as well as of the constant implementation of yet stricter measures of compulsion inciting the employers to secure Occupational Health and Safety (OSH) for their employees.

That is the reason for the steady growth in the number of machines and installations suspended from exploitation in the recent 3-4 years.

Whenever machines and installations of key importance for the production process are suspended, the employers take immediate steps to bring them in compliance with the safety requirements for their exploitation. The inspection practice shows that, more often than not, the suspended machines and installations are brought in compliance with the safety standards in due time and their exploitation is resumed. Instances are to be encountered, however, when for economic considerations an employer eliminates a suspended machine or installation forever, i.e. the latter goes to scrap.

In 2005 the biggest is the number of the suspended machines and installations in the following economic activities:

Construction	- 644 items
Manufacture of Timber and Timber Articles, Excluding Furniture	- 193 items
Manufacture of Motor Vehicles, Excluding Automobiles	- 139 items
Agriculture	- 118 items
Education	- 100 items.

Compared to 2004, in the construction sector the number of the suspended machines and installations is four times as big. The machines and installations were mainly suspended during the national campaign in construction. Simultaneously, in 16 economic activities not a single machine or installation has been suspended.

The measure of ‘suspension’ constitutes 1 percent of all measures of compulsion, however, in the above mentioned economic activities it is 1.4 percent to 2.8 percent.

For technological inapplicability of the measure of ‘suspension’, in 2005 were given 85 recommendations for the implementation of ‘a special safe work regime’ on the grounds of Article 404, (1), item 6, compared to 89 such instances in 2004.

A larger number of recommendations to introduce ‘special safe work regime’ was issued by the district directorates of the Executive Agency "General labour inspectorate" in each of the following towns and cities: Kyustendil (15), Vratza (11), Razgrad (8) and Veliko Tarnovo, Lovetch and Sofia District each of 7 recommendations.

A “special safe work regime” was implemented in a number of economic activities. Most numerous were the instances of recommended implementation of “a safe work regime” in ‘Construction’, i.e. 9 such cases, with respect to the ‘Manufacture of Furniture; Manufacture Not Classified Elsewhere’ and ‘Education’ there were 8 cases in each, and as regards the ‘Manufacture of Foodstuffs and Drinks’, ‘Manufacture of Timber and Timber Articles, Excluding Furniture’, ‘Manufacture of Metal Goods, Excluding Machinery and Equipment’ and ‘Production and Distribution of Electricity, Gaseous Fuels and Heat’ there were 6 instances in each.

In 2005 once again at the inspection were spotted instances of tasks assigned to persons, not instructed for safe performance, or lacking the statutory certificate.

For each such case the labour inspectors applied the measure of compulsion under Article 404, paragraph 1, item 5 of the Labour Code, i.e. ‘suspension from work’. In 2005 on those legal grounds were suspended from operation 202 persons, compared to 281 in 2004 and 144 in 2003. The said infringement is most frequent in the small-sized enterprises, where the common practice is to hold more than one appointment, disobeying and neglecting the legal provisions. It is a major offence as any worker, lacking the statutory instructions or certificate, can easily become himself/herself the victim of an accident, or s/he can damage another person’s life of health. The fact that the number of such instances is on the decrease compared to the figures reported for 2004, proves the effect of the approach applied in 2005, i.e. parallel to implementing ‘suspension’ as a measure, to seek administrative and penal responsibility from the officials, failing to conduct adequate training, or assigning the fulfillment of a task without an adequate certificate.

Such infringements were found by a number of the district directorates of the Executive Agency "General labour inspectorate" in the country wherein they imposed the measure “suspension”.

The biggest is the number of the said infringement and most frequently the above mentioned measure of compulsion was applied in the following economic activities: ‘Construction’ - 57 instances, ‘Trade, Technical Maintenance and Repair of Automobiles’ - 30 instances, ‘Agriculture and Hunting, and Related Services’ and ‘Manufacture of Medical, Precision and Optical Instruments and Devices; Manufacture of Clocks and Watches’ – 15 instances in each.

In 2005 again, like in 2004, the seeking of **administrative-penal liability** from offenders of the rules and regulations was one form of impact on the persons with **grave breaches** of the labour laws and an instrument of compulsion for compliance with the normative acts.

Administrative-penal liability was sought from persons failing to fulfill in due time the given recommendations, from those who constantly repeat the same violations, deliberately deviate from the legal provisions on the employment, use and dismissal of labour, or place obstacles before the inspectors in the fulfillment of the latter’s statutory powers.

In 2005 were drawn up 9,757 statements establishing administrative-penal liability, against 9,488 in 2004.

For established breaches of legal provisions in the Occupational Safety and Health (OSH) sphere were drawn up 5,606 statements for the establishment of an administrative offence (SEAO), which is 57.5 percent of all drawn up statements for the establishment of an administrative offence (SEAO).

For violations of the standards, related to the organization of the activity on securing occupational safety and health, were drawn up 3,863 statements for the establishment of an administrative offence (SEAO), which is 68.9 percent of all the statements for the establishment of an administrative offence (SEAO) drawn up in the field of occupational safety and health.

Statements for the establishment of an administrative offence (SEAO) on the activity, concerning the arrangements for securing Occupational Safety and Health (OSH), were drawn up most often in cases of established offences against the provisions of Article 16 of Health and Safety at Work Act and related to risk assessment and the workers' instruction and training.

The labour inspectors applied greatest strictness to the persons breaking the rules for safe work. Statements for the establishment of an administrative offence (SEAO) were drawn up for every third offence and procedure was started for seeking administrative-penal liability. High was also the strictness to the offenders against the provisions of Health and Safety at Work Act related to the industrial risk assessment at the workplace.

Less strictness was attributed to persons infringing the rules and regulations on labeling any threats and also concerning deficiencies when compiling internal statutory deeds on safe and health conditions at work.

For violation of the provisions, regulating the safety of the work equipment and technologies, were drawn up **772** statements for the establishment of an administrative offence (SEAO). In that sphere of the laws statements for the establishment of an administrative offence (SEAO) were most frequently drawn up for failure to protect the workers from direct or indirect contact with electricity.

In the field of the legislation, regulating the securing of occupational hygiene, were drawn up altogether 971 statements for the establishment of an administrative offence (SEAO). The greatest was the strictness with respect to the requirement that personal protective equipment (PPE) should be secured and used. For failure to comply with those legal provisions were drawn up 703 statements for the establishment of an administrative offence (SEAO), i.e. 72 percent of all the statements for the establishment of an administrative offence (SEAO) drawn up for established offences in the field of occupational hygiene.

Based on the statements for the establishment of an administrative offence (SEAO) drawn up in 2005 in compliance with the legal procedure for the administrative proceedings, as at December 31, 2005 were served 8,144 penal enactments. In court were lodged appeals against 1,336 penal enactments.

Altogether 8,116 penal enactments entered into force, i.e. 6,829 penal enactments against which no appeal was lodged and 1,287 ones with a confirmed verdict of the court.

The total amount of the fines from penal enactments taking effect by the end of 2005, is 3,621,799 levs.

It is really difficult for the district directorates of the Executive Agency "General labour inspectorate" to seek administrative-penal liability and gain a positive effect from the inspection activity, for the following reasons:

- The majority of the participants in the production process deny to testify upon the offences established by the labour inspector;

- The majority of the separate entities have no officials authorized by the employer to bear specific responsibility on the compliance with the labour laws and, respectively, with respect to the sanctions for breaches of the law;
- Many enterprises, where the employers are foreign owners, lack authorized representatives charged with the responsibility within the meaning of the law. In such instances, the said employers are not liable to sanction and cannot be served recommendations for the elimination of established offences;
- Major difficulties are faced with the implementation of the procedure under Article 43, paragraph 4 of the Administrative Violations and Sanctions Act (AVSA) for drawing up a statement in the absence of the offender and serving it through the municipal administrations in residence of the offender;
- The frequent stay of proceedings on the appealed penal enactments is time consuming for the labour inspectors called to witness, and wastes time they can use for immediate inspection activities.

Question C

Under the Social Security Code, enforced on 01.01.2000, the administration of the work **accidents** in The Republic of Bulgaria is ascribed entirely to the National Social Security Institute. Under Article 15 of the Ordinance on the ascertaining, investigation, registration and accounting of working accidents, issued on the grounds of Article 57, Paragraph 3 of the Social Security Code, the National Social Security Institute was assigned to create and maintain an information system of work accidents. To this end in 2001 the Statistical System "Work Accidents" was created and launched. Its development and operation provided for the implementation of the European System of Work Accidents (ESAW).

The Statistical System "Work Accidents" introduces and summarizes the data on work accidents, which occurred after 31.12.2002. The official web site of the National Social Security Institute (http://www.nssi.bg/), under the section "Work Accidents", has published statistical and operative data on work accidents.

The Statistical System "Work Accidents" has applied all the characteristics (variables) laid down in the European System of Work Accidents ESAW – I, II and III. It also provides for coverage of all the economic sectors of the National Classification of Economic Activities (2003), which is in fact a direct implementation of NACE Rev. 1.

The system covers only the work accidents, which occurred with all categories of *employed persons*, who under the Bulgarian legislation are obligatorily granted social security on the account of the employers for the social security risks "work accident" and "occupational disease". The latter comprise the following risks:
- risk of temporary incapacity for work;
- risk of temporary reduced workability;
- disability; and
- death

Self-employed persons (as well as jobless persons) are not insured against these risks and under the Bulgarian legislation work accidents, which affected them, are not considered as work related. Therefore these accidents as well as other not-work-related accidents are not covered by the Statistical System "Work Accidents".

The scope of the social insured persons against work accident or occupational disease compared to the general number of employed persons (respectively the number of persons covered by the statistics of work accidents) is continuously increasing – of 63.8 percent in 2000 up to – 66.7 percent in 2004.

Under the Bulgarian legislation work accident is any sudden harm on the health, which occurred during and in relation to or because of executed work, as well as during any work performed to the interest of the enterprise whenever the latter has cause incapacity for work or death (Article 55, Paragraph 1 of the Social Security Code). Work accident is the one, which occurred during the time of going to (return from) the location of the workplace.

Whenever work accident occurred, the fund "Work accident and occupational disease" covers the expenses on payment of pecuniary compensations (in cases of temporary incapacity for work or death), pensions and social benefits.

Besides the coverage of such expenses, the Fund also provides, on an annual basis, financing for the following:

- active events to prevent work accidents and occupational diseases; and
- assistance and technical means related to the disability.

The expenses for diagnostics and treatment due to work accident and occupational disease, as well as for medical prophylactics of the latter two, are not covered by the Fund "Work accident and occupational disease" (this is provided for by the health insurance funds and other sources), which reduces the interest therein on the side of both the employers and the casualties to report on the cases of traumatic harms.

The Table enclosed herein /Appendix 4/ quotes the statistical information on work accidents for the period 2000 – 2005.

Concerning occupational diseases – see the information provided under Responses to the questions of the European Committee on Social Rights to Article 2, Paragraph 4.

Article 3, Paragraph 4

Question A

Under Health and Safety at Work Act, employers shall provide servicing of their staff by Occupational Medicine Services. The fulfillment of the obligations for providing safety and health at work refer to all sectors and activities (including institutions). The Occupational Medicine Services shall be units with predominantly preventive functions. They shall consult and assist the employers, Working Conditions Committees and Groups in the process of planning, organization and fulfillment of their obligations with respect to providing and maintenance of safety and health at work, and strengthening health and work capacity of working persons in respect of the work carried out by them.

The Occupational Medicine Services shall be established by the employers independently or on a partnership basis, or by other legal persons. In case it is practically impossible for the employer to establish independently or on a partnership basis an Occupational Medicine Service, he/she shall conclude a contract with a registered Occupational Medicine Service. The functions and the tasks of the Occupational Medicine Services, the requirements for the composition and qualifications of the staff, the good practice and the quality of the activities, the terms and procedure for registration and deletion of the registration are laid down in Ordinance № 14 of 1998 as quoted herein above. The activities of the Occupational Medicine Services shall be subject to accreditation.

The number of legal entities operating in the country under due registration as Occupational Medicine Services (external occupational medicine services) has exceeded 650.

At all big and at the majority of middle-sized enterprises and companies Occupational Medicine Services have been established, while the rest use, under an agreement, duly registered Occupational Medicine Services. The supervisory activity and checks executed by the Executive Agency "General Labour Inspectorate" have revealed that a large part of small and micro-enterprises do not still meet this legislative requirement. Hence a set of measures, including informational, explanatory, as well as forceful administrative and administrative penal, have been put in place.

Question B

These issues have been regulated under Ordinance № 14 of 07.08.1998 on the Occupational Medicine Services, as issued by the Minister of Health and promulgated in the State Gazette, Issue 95 of 14.08.1998. The wording of The Ordinance is applied to the previous report. No further amendments have been made to the Ordinance.

Questions from the European Committee of Social Rights:

In reference to paragraph 1 - Health and safety and the working environment:

The Committee asks for the next report to describe the national policy on occupational health and safety and any new legislation or regulations concerning prevention and employee protection, with reference to risks for health and safety at work. Describe also any measures for implementation of such national policy, as well as procedures adopted for regular review and assessment. Such policy should include strategies for making occupational risk prevention an integral aspect of the public

authorities' activity at all levels. To comply with this provision states must ensure the following:
– the assessment of work-related risks and introduction of a range of preventive measures taking account of the particular risks concerned, monitoring of the effectiveness of those measures and provision of information and training for employees, since, within individual firms, occupational risk prevention means more than simply applying regulations and remedying situations that have led to occupational injuries;
– the development of an appropriate public monitoring system - more often than not a responsibility for the labour inspectorate - to maintain standards and ensure they apply in the workplace;
– the establishment and further development of programmes in areas such as:

- **training (qualified staff);**
- **information (statistical systems and dissemination of knowledge);**
- **quality assurance (professional qualifications, certification**
- **systems for facilities and equipment);**
- **where appropriate, research (scientific and technical expertise).**

Relevant information thereto was provided herein above under Paragraph 1 of the Report.

In reference to paragraph 2 - Issue of safety and health regulations:

The Committee asks for information in the next report on any new legislation or regulations concerning prevention and employee protection, with reference to whether all health risks are provided for by the Bulgarian legislation. This is confirmed by the European Commission, which has stated that major efforts are required to bring Bulgarian regulations into line with Community health and safety legislation and put them into practice.

The Republic of Bulgaria has adopted and implemented national legislation in the field of safety and health at work, which is in full compliance with the European Union acquis communautaire in this field. With the adoption of the Health and Safety at Work Act, the Labour Code and the Social Security Code, as well as with the relevant secondary legislation, the Republic of Bulgaria has established a modern system providing for the health and safety at work.

As of December 2004 the Bulgarian legislation framework has transposed all the European Union directives enforced in the EU Member states. Since June 2004 Bulgaria has been transposing the European Union directives in the field of health and safety at work, which have the same enforcement terms for Bulgaria as for the EU Member states.

- The Committee asks that the next report state whether Bulgarian law prohibits or restricts the use of asbestos or materials containing asbestos in the workplace and whether the upper exposure limits comply with Council Directive 83/477/EEC on the protection of workers against risks connected with exposure to asbestos during work, as amended by Council Directive 91/382/EEC of 25 June 1991.

The issue is treated under Ordinance № 1 of 2003 on the Protection of Workers Against Risks Related to Exposure to Asbestos at Work; Issued by The Minister of Labour and Social Policy and the Minister of Health (State Gazette, Issue 32 of 2003).

Information concerning this Ordinance was provided in the Third National Report on the implementation of the European Social Charter (Revised) of 2004 in response to questiona concerning Article 11 of the European Social Charter (Revised) – Right to Health Protection.

The adoption of the Ordinance has made for the transposition of the European Union legislation standards concerning the use of asbestos or materials containing asbestos in the workplace.

- The Committee asks that the next report state measures to ensure that non-permanent workers receive appropriate information, training and medical surveillance, so that they are not discriminated against in terms of occupational health and safety on account of their employment status.

The Bulgarian legislation in the field of safety and health at work has been applied (in individual aspect) in all the sectors and spheres of work activity (including education and training) irrespectively of the manner, the duration and other terms and conditions of recruitment.

It was adopted Ordinance № 5 of 20 April 2006 on securing health and safety at work for the workers at temporary employment relation, issued by the Ministry of Labour and Social Policy and promulgated in the State Gazette Issue 43 of 26 May 2006. Herein enclosed you can find the text of the Ordinance – Appendix 3.

- The Committee notes that according to the Association of Democratic Trade Unions the National Tripartite Co-operation Council, which is consulted by government on all proposed health and safety legislation or regulations, is in fact a sham body whose opinions carry no practical weight and only represents a fifth of the working population. The Committee asks for the Government's comments on this.

Concerning the statement expressed to the attention of the European Committee on Social Rights with the Council of Europe by the Association of Democratic Trade Unions, we should inform you that this organization does not meet the criteria for national representation. On the part of the workers, The National Tripartite Co-operation Council, as well as the National Council on Working Conditions, includes participation of the Confederation of Independent Trade Unions in Bulgaria (CITUB) and the Confederation of Labour "Podkrepa", comprising more than 95 percent of the members of trade unionist organizations in Bulgaria.

The Committee notes from the ILO Yearbook of Labour Statistics (2001) that there were 7 641 occupational injuries in 1999, a decline of 50 percent since 1996. Compared with total employment1, these figures show an accident frequency of 0,25 per 100 employees. There were 89 fatal accidents in 1999, or 1,1 per 100 accidents.
The Committee is surprised by the extremely low number and frequency of accidents, a situation that does not seem to be fully consistent with other information in the report suggesting that working conditions in many undertakings, mainly small and medium sized enterprises, do not comply with minimal health and safety requirements, particularly in such at-risk industries as construction, mining and chemical engineering. The report indicates for example that in the Sofia region 70 percent of construction workers and 92 percent of those employed in mines and quarries work in poor conditions. The Committee asks for the Government's

comments on this subject and in particular for a description of the procedure for notifying accidents at work and an assessment of its effectiveness in practice.

The notification of accidents at work is regulated under the Ordinance on the ascertaining, investigation, registration and accounting of working accidents, adopted with Decree № 263 of the Council of Ministers of 30.12.1999, as promulgated in the State Gazette, Issue 6 of 21.01.2000, enforced on 1.01.2000, Amended, Issue 61 of 25.07.2000 , Amended and Supplemented , Issue 19 of 19.02.2002., enforced on 1.01.2002.

In 2002 certain amendments were made with the purpose to increase the effectiveness at ascertaining and accounting of the accidents at work. These amendments are related to strengthened participation of the groups and subcommittees on the conditions at work involved in the process of ascertaining accidents at work.

An extension was provided to the term within which the suffering party or his/her heirs are entitled to submit a declaration in case of failure to declare any work accident by the senior official, to be submitted to the respective territorial department of the National Social Security Institute – from six months to one year (from the date of occurrence of the work accident).

Herein we enclose the text of the Ordinance on the ascertaining, investigation, registration and accounting of working accidents, by making stress on the amended legal texts in relation thereto.

Ordinance on the ascertaining, investigation, registration and accounting of working accidents

Article 2. (1) In every case of working accident the sufferer (victim), his direct (immediate) manager or the witnesses of the accident shall notify immediately the head of the insurance organization or the official duly authorized by him.

(2) (Amended - State Gazette, Issue 19 of 2002) Immediately after the notification about a working accident, the manager of the insuring organization or the official person properly authorized by him shall be obliged to organize an investigation of the circumstances related to the accident. In the course of the investigation it is mandatory to invite representatives of the committees or groups related to the conditions of work, as well as representatives of the trade unions in the enterprise.

(3) (New - State Gazette, Issue 19 of 2002) A record shall be prepared of the results of the investigation, which must contain the data in accordance with article 10, paragraph (1) and, attached to it, the evidence in writing of the witnesses of the accident.

(4) (New - State Gazette, Issue 19 of 2002) A copy of the record as per paragraph (3) shall be submitted to the territorial department of the National Social Security Institute (NSSI).

Article 3. (1) (Amended - State Gazette, Issue 19 of 2002) When the circumstances of the occurrence of the accident provide grounds to suppose that it is a working accident, the manager, or the official authorized by him, shall be obliged, within a period of three working days from the moment of becoming informed about the occurrence of the accident, to submit to the territorial department of the National Social Security Institute (NSSI) (corresponding to the registration of the insurance organization) a declaration, in conformance with a format template approved by the head of the National Social Security Institute (NSSI) and promulgated in the "State Gazette". The declaration shall be written down (entered) in the register of the working accidents in the enterprise.

(2) (New - State Gazette, Issue 19 of 2002) The manager, or the official authorized by him, shall submit the declaration as per paragraph (1) also in the case, when, during the investigation of the accident performed by the supervising bodies of the National Social Security Institute (NSSI), it has been found out that the nature of the accident is that of a working accident. In this case the declaration shall be submitted within a period of three working days from the issuance of directions by the supervising body of the National Social Security Institute (NSSI).

(3) (Previous Paragraph 2, Amended - State Gazette, Issue 19 of 2002) When the accident is not declared by the procedure of paragraph (1), the sufferer or his heirs shall have the right to submit the declaration at the territorial department of the National Social Security Institute within a period of one year after the occurrence of the accident.

(4) (Previous Paragraph 3 - State Gazette, Issue 19 of 2002) When there is more than one sufferer (victim) in the accident, a declaration shall be submitted for each suffering person.

(5) (Previous Paragraph 4, Amended - State Gazette, Issue 19 of 2002) The declaration shall be submitted in four copies, two of which shall remain at the territorial department of the National Social Security Institute (NSSI), one is delivered to the sufferer or his heirs, and one is submitted to the insurance organization.

Article 4. (1) (Amended - State Gazette, Issue 61 of 2000, previous wording of Article 4, Amended and Supplemented , Issue 19 of 2002) When there exists evidence of a working accident, which has led to temporary incapacity for work, the insuring organization shall submit to the territorial department of the National Social Security Institute (NSSI) also a copy of the patient's chart. If a directive is issued for acknowledgement of the accident as a working accident, and if an extension of the term of the patient's charts exists, the insuring organization shall submit also a copy of the extension documents.

(2) (New - State Gazette, Issue 19 of 2002) In the cases as per paragraph (1), copies of the patient charts shall be sent to the territorial department of the National Social Security Institute (NSSI) within a three-day period after their presentation to the insuring organization.

Article 5. (Amended - State Gazette, Issue 19 of 2002) Irrespectively of the submission of the declaration pursuant to article 3, the insuring organization shall be obliged to notify immediately the territorial department of the National Social Security Institute (NSSI), the territorial administration of the Executive Agency "General Labour Inspectorate", and the other competent bodies about every accident, which has caused harm or injury to more than three workers, as well as about every accident, which has led to disability or death, or there exists ground to suppose, that it will lead to such damages. In the case when the accident has led to disability or death, the prosecutor's office shall be notified in a mandatory manner.

Section III

Investigation and Acknowledgement of Working Accidents

Article 6. The territorial department of the National Social Security Institute (NSSI) shall open a file of working accident on every submitted declaration according to article 3.

Article 7. (1) (1) On the basis of the data in the declaration, the official as laid down in Article 60, paragraph (1) of the Mandatory Social Security Code, shall determine if proceedings for the investigation of the accident must be opened (initiated). The opening of proceedings for investigation of the accident shall be based upon an order issued by the head of the territorial department of the National Social Security Institute (NSSI).

(2) The investigation of the accident shall be mandatory in all cases, when evidence exists that damage has been done to more than three workers, or the accident has led to disability or death, or there exists ground to suppose, that it will lead to such damages. In these cases the proceedings of the investigation of the accident shall be opened immediately, independent of the prerequisite of submitting declaration.

(3) Proceedings for investigation of a working accident may be opened on the initiative of the supervising bodies of the National Social Security Institute (NSSI), when sufficient evidence is present of the occurrence of a working accident.

(4) Proceedings according to paragraphs (1) to (3) shall be opened independent of the fact of investigation of the accident by the prosecutor's office or by other competent bodies.

Article 8. (1) The members of the commission for investigating the accident shall be appointed in the order for opening of the proceedings.

(2) (Amended - State Gazette, Issue 19 of 2002) In the cases of investigation pursuant to article 7, paragraph (2) the commission shall include as members: representatives of the Executive Agency "General Labour Inspectorate", one representative of the employer and one representative of the workers from the committee or group on working conditions, as well as representatives of other competent bodies depending on the particular case.

(3) (Amended - State Gazette, Issue 19 of 2002) In every case of investigation of an accident, the persons as laid down in article 58, paragraph 4 and 5 of the Social Security Code, shall have the right to attend, depending on the particular case.

Article 9. (Amended - State Gazette, Issue 19 of 2002) The investigation of a working accident must determine the particular circumstances and causes of its occurrence, the type of damages, as well as all other data, which will help the territorial department of the National Social Security Institute (NSSI) in pronouncing on the nature of the accident.

Article 10. (1) The results and findings of the investigation shall be compiled into a record, which shall contain data of:

1. The insurance organization;
2. The suffering persons;
3. The place and time of the accident;
4. The witnesses of the accident and the person, who has delivered first aid;
5. (Amended - State Gazette, Issue 19 of 2002) General characteristic of the work performed by the sufferer (sufferers) before the accident.
6. The specific physical action performed by the sufferer (sufferers) at the moment of the accident and the material factor involved with this action.
7. Deviations from the normal actions and conditions and the material factor related to these deviations;
8. The manner of damage and the material factor, which has caused the damage;
9. Infringements of the normative documents, which have happened;
10. The persons, who have let the infringements happen;
11. The measures needed for avoiding such accidents.

(2) (Amended - State Gazette, Issue 19 of 2002) The record as per paragraph (1) shall be attached to the file of the working accident. A copy of the record shall be handed to the representatives pursuant to Article 8, paragraph (2), as well as to the respective bodies, which perform the investigation of the working capacity (fitness for work), when it is a matter of non-traumatic harm.

Article 11. The persons as laid down in article 58, paragraphs 4 and 5 of the Social Security Code shall sign the record as per article 10, that they have become familiar with it and, if they disagree with the findings therein, or the way the investigation has been carried out, they shall submit their objections in writing within a period of three days, which shall be attached to the record sheet.

Article 12. (1) The official, as laid down in article 60, paragraph (1) of the Social Security Code, on the basis of the data in the file of the working accident, within a period of seven days after the declaration, shall issue an order of acknowledgement or rejection of the accident as a working one using a template form approved by the head of the National Social Security Institute (NSSI).

(2) (New - State Gazette, Issue 19 of 2002) In the case of a declared accident concerning a non-traumatic harm, the order of paragraph (1) shall be issued within a seven-day period after the receipt of the decision of the bodies performing the investigation of the work capacity (fitness for work).

(3) (Previous Paragraph 2, Amended - State Gazette, Issue 19 of 2002) The order as per paragraph (1) shall be sent to the insured person and to the insurance organization in a seven-day period after its issuance. A copy of the order together with one copy of the declaration of working accident shall be sent to the respective territorial administration of the Executive Agency "Chief Labour Inspectorate".

(4) (Previous Paragraph 3, Amended - State Gazette, Issue 19 of 2002) The order as per paragraph (1) may be appealed by the insuring organization and by the sufferer or his/her heirs following the procedure of article 117 of the Social Security Code.

Article 13. The causal connection between the temporary incapacity for work, temporary reduced capacity for work, disability or death, which has occurred, and the accident – acknowledged as working one - shall be determined by the bodies pursuant to article 15 of the Social Security Code during the proceedings of the investigation of the work capacity (fitness for work).

Section IV

Registration and Accounting of Working Accidents

Article 14. (1) The insurance organization shall keep a register of the working accidents, where the following data shall be entered:

1. Number and date of the declaration of working accident;
2. The filing number of the declaration at the territorial department of the National Social Security Institute (NSSI);
3. The full name and the unified civil code of the sufferer (the PNF in the case of a foreigner);
4. The place and time of the accident;
5. The number and date of the order of the territorial department of the National Social Security Institute (NSSI) for acknowledgement or rejection of the accident as a working one;
6. The consequences of the accident (temporary incapacity for work, temporary reduced capacity for work, disability or death);
7. The number of the days (calendar and working) since the accident.

(2) The insurance organization with a written order shall appoint a person for keeping the register as per paragraph (1) and for preserving the declarations of working accidents.

(3) The insurance organization shall keep the declarations of working accidents for a period of not less than five years after the date of the registration.

Article 15. The National Social Security Institute (NSSI) shall create and support an information system of the working accidents, which shall include also the data of the declarations of working accidents.

Article 16. (Repealed - State Gazette, Issue 19 of 2002).

Article 17. (1) (Amended - State Gazette, Issue 19 of 2002) The following indicators (indices) shall be established for accounting of the working accidents:

1. Frequency coefficient (K_f):

$$K_f = \frac{\text{Number of working accidents, which have occurred during the reference period}}{\text{Average list number of the insured persons against working accident or professional disease}} \times 1000;$$

2. Frequency index (I_f):

$$I_f = \frac{\text{Number of working accidents, which have occurred during the reference period}}{\text{Total number of worked off (effective) man-hours during the reference period}} \times 1{,}000{,}000;$$

3. Weight coefficient (K_w):

$$K_w = \frac{\text{Lost days as a result of working accident, which have occurred during the reference period}}{\text{Average list number of the insured persons against working accident or professional disease}};$$

4. Weight index (I_w):

$$I_w = \frac{\text{Lost days as a result of working accident, which have occurred during the reference period}}{\text{Total number of worked off (effective) man-hours during the reference period}} \times 1{,}000{,}000.$$

(2) The lost days as a result of working accidents in the calculations of paragraph (1) shall be in calendar days.

Article 18. (Amended - State Gazette, Issue 19 of 2002) In the process of determination of the coefficients of article 17, as well as for the purpose of other statistical information on working accidents:

1. A working accident shall be considered as working accident with lethal outcome, when the death has occurred on the day of the accident or during a period of one year after the day following the accident;
2. The lost days as a result of a working accident shall be calculated for a period of up to one year after the day following the accident;
3. The day of the occurrence of the accident shall not be included in the lost days as a result of a working accident.

Article 19. The National Social Security Institute (NSSI) shall provide periodically information about working accidents to the Ministry of Labour and Social Policy and to the National Statistical Institute (NSI). The periodicity, type and volume of the information shall be determined jointly by the Minister of Labour and Social Policy, the head of the National Social Security Institute (NSSI) and the chairman of the National Statistical Institute (NSI).

FINAL PROVISIONS

§ 1. The ordinance has been adopted on the grounds of Article 57, Paragraph (3) of the Social Security Code.

§ 2. The ordinance shall come in force on January 1, 2000.

Statistical data on the number of work accidents is provided in detail in the enclosed herein table – Appendix 4.

According to data of the National Social Security Institute, in 2005 the largest part of accidents at work occurred in 17 economic sectors, namely: "Construction", "Machinery and equipment production", "State management and defense", "Foodstuff and drink production", "Human health care and social activities", "Ferrous ore extraction", "Road transport", "Metal Production and Casting", "Production and distribution of electricity, gaseous fuels and heating energy", "Retail sale and commercial brokerage", "Other activities in the field of business services", "Production of clothing, including leather", "Assistance activities in the field of transport", "Coal and peat extraction", "Production of transportation vehicles, wirhout cars", "Education" and "Post office and communications".

In 2005, out of the total number of accidents at work with lethal outcome, 79 or 76 percent occurred in 10 economic activities: "Construction", "Retail sale and commercial brokerage", "Foodstuff and drink production", " Road transport", "Metal Production and Casting", "Coal and peat extraction" and "Production of ferrous products", "Agriculture and hunting industry" and "Machinery and equipment production", and " Other activities in the field of business services ".

Compared to 2004 the total number of accidents at work has marked a decrease, including the total number of accidents at work with lethal outcome. The total number of accidents at work with disability outcome has sharply decreased for the period from 2004 to 2005.

The largest part of accidents at work with disability outcome occurred in four economic activities: "Construction", "Foodstuff and drink production", " Machinery and equipment production" and "Production of furniture|".

In 2005 г. the number of accidents at work has marked an increase in 16 economic activities: "Ferrous ore extraction", "Retail sale and commercial brokerage", "Production of stuff of other non-ferrous mineral resources", "Production of ferrous products", "Human

health care and social activities", "Textile production", "Assistance activities in the field of transport" and "Foodstuff and drink production".

During the same year there is a certain decrease in the number of work accidents in 28 economic activities.

Limitation in the scope of damages as a result of trauma occurrence at work, hence its decrease is among the purposes of the management of safety and health at work in the Republic of Bulgaria.

- The Committee notes the information presented in the previous report stating that of a total of 700 000 economic entities, 490 335 are subject to inspection. The Committee asks why so many enterprises fall outside the inspectorate's competence.

Inspection activities carried out by the Executive Agency "General Labour Inspectorate" cover ministries, other institutions, enterprises and other places where there are work activities or profession, i.e. in these places **employed workforce** is meant to be done.

In the relevant period under the present report, the **total number** of enterprises stands at 700,000. Not all the registered subjects perform the full scope of activities they are registered for. Not all of them involve employed labour. As the report says, as quoting various sources, the directorates "District Labour Inspectorate" receive information about the number of enterprises, the subject of activity and the workers employed therein. It should be noted that the acquired data are operative and to a certain extent dynamic.

- The Committee would like further information on the extent of inspectors' powers of investigation and asks for the next report to indicate whether they are authorised to carry out any examinations, checks or enquiries deemed necessary and, in particular, question employers or any members of their workforce, with or without witnesses, on any subjects relating to the application of the law, and collect and remove for analysis samples of materials and substances used or handled.

The powers of the control bodies (inspector) include:

- to **visit, at any time**, ministries, other institutions, enterprises and other places, where there are work activities and professions being carried out, as well as wherever there are rooms used by the workers and the employees;
- to **demand from the employer and the persons under check explanation** and presentation of all the necessary documents, papers and data in relation to the controlling activity;
- to acquire **direct information from the workers**, the employees and jobless persons on all the issues related to the controlling activity;
- to **take trials, samples and other similar materials** for laboratory examination;
- to find the causes and circumstances that might have caused the work accidents;
- to prescribe obligatory guidelines to the employers and state officials for the rectification of violations concerning the labour legislation and the civil service legislation, as well as for the rectification of deficiencies in the provision of healthy and safe conditions at work;
- to suspend the execution of projects and the commissioning of buildings, machinery and equipment, productions and sites, if they do not meet the rules of healthy and safe conditions at work;
- to suspend activities at enterprises, productions and sites, including any construction and reconstruction thereof, as well as machinery, facilities and work places,

whenever occurring violations of the rules of healthy and safe conditions at work pose imminent threat on the life and health of humans;

- to suspend the execution of unlawful decisions or instructions of employers and state officials referring to the hygiene and safety at work and the employment, the distribution of social funds and the provision of social communal services to the workers and the employees;
- to remove from office workers and employees who are unaware of the rules of safety and health at work or do not hold the required capacity to operate;
- to provide instructions for the introduction of a special regime providing for safety at work whenever there is imminent threat for the life and health of workers in cases of physical or technological incapacity to impose "suspension";
- to inform the competent prosecution authorities whenever infringements are found to contain evidence of involved crime or other delinquencies;
- to seek administrative criminal liability from persons who incurred infringement of the labour legislation and from persons who failed to meet the guidelines for infringement rectification in pursuance of the Civil Service Act.

- The Committee asks for the next report to specify the total number of inspectors assigned to monitoring the application of health and safety regulations or, failing this, the proportion of time spent by the inspectors in monitoring these regulations.

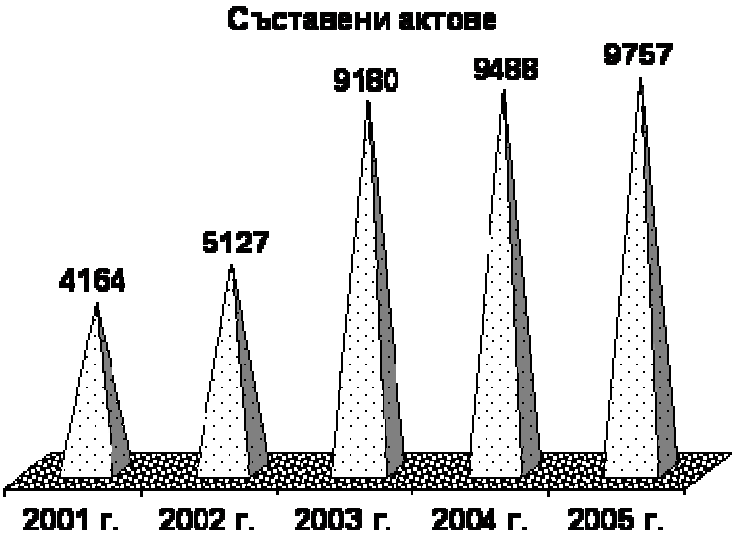
During the checks carried out in 2005 a total of 196,067 infringements were reported. Among them 142,371 accounted for violations of the rules of safety and health at work.

- According to the report in 2000 there were 13 516 identified breaches of health and safety regulations; 3 736 written reports were issued and in 1 800 cases suspension or closure was ordered. The low number of breaches recorded was apparently due to the fact that the labour inspectorate has only recently taken over responsibility for inspections in this area (see above). The Committee is surprised to note how few written reports were issued given the number of breaches identified and asks for an explanation of this situation.

The issue of enactments as an element of the administrative-penal liability for infringing rules and regulations is a form of impact on the persons with **grave breaches** of the labour laws and an instrument of compulsion for compliance with the normative acts.

Administrative-penal liability is being sought from persons **failing to fulfill in due time the given recommendations, from those who constantly repeat the same violations, deliberately deviate from the legal provisions on the employment, use and dismissal of labour, or place obstacles before the inspectors in the fulfillment of the latter's statutory powers**. It means that it is not every found infringement that is sanctioned with penal enactments issued by the controlling body.

In 2005 were drawn up 9,757 statements establishing administrative-penal liability, against 9,488 in 2004.



The chart above illustrates a steady growth in the number of the drawn up statements, which is a function of the continuous increase in the number of the established infringements.

It is worth mentioning, however, that in the five-year period under discussion the rise in the established infringements is 74 percent, while the drawn up statements rose 2.2 times. Hence the conclusion that each consecutive year of this five-year period yet greater strictness was applied to the offenders against legal provisions in the sphere of labour and related to employment promotion, i.e. administrative-penal responsibility was sought more often from offenders of the legislation.

- The Committee asks for the next report to indicate the scale of fines and the circumstances in which they are imposed.

Labour Code

Liability for violation of the legal requirements for health and safety at work (Title Amended - State Gazette, Issue 25 of 2001)

Article 413. (Amended - State Gazette, Issue 100 of 1992, Issue 2 of 1996, Issue 25 of 2001) (1) A person who violates the rules for ensuring health and safety at work shall be fined with BGN 20 to BGN 250, unless liable to a heavier sanction.

(2) (Amended - State Gazette, Issue 48 of 2006) An employer who fails to perform his obligations to ensure health and safety at work shall be imposed a material sanction or fine in the amount of BGN 1500 to BGN 5000, unless liable to a heavier sanction, while in case of official – 250BGN to BGN 1000, unless liable to a heavier sanction.

(3) In case of repeated violation the sanction shall be:

1. under paragraph 1 - a fine in the amount of BGN 40 to BGN 500;

2. (Amended - State Gazette, Issue 48 of 2006) under paragraph 2 – a material sanction or a fine in the amount of BGN 3000 to BGN 10,000, or a fine of BGN 500 to BGN 2000 respectively.

...

Liability for non-fulfilment of prescriptions and obstructing control bodies

Article 415. (Amended - State Gazette, Issue 100 of 1992, Issue 2 of 1996, Issue 124 of 1997) (1) (Amended - State Gazette, Issue 25 of 2001) A person who fails to

implement a mandatory prescription of control bodies for compliance with the labour legislation, shall be imposed a fine in the amount of BGN 250 to 2000.

(2) (Amended - State Gazette, Issue 25 of 2001, Issue 48 of 2006) An employer who unlawfully obstructs control bodies for compliance with labour legislation in implementing their duties, shall be imposed a material sanction or fine in the amount of BGN 4000 to 10,000, unless liable to heavier sanction, while in case of official - a fine in the amount of BGN 1000 to 5000, unless the liable to heavier sanction.

Establishing of violations, issuing, appealing and executing penal decrees

Article 416. (1) (Amended - State Gazette, Issue 100 of 1992) Violations of labour legislation shall be established by acts, issued by state control bodies.

(2) (Amended - State Gazette, Issue 100 of 1992) Penal decrees shall be issued by the head of the respective control body or by persons authorised by him in compliance with the departmental subordination of the authors of the acts.

(3) Establishing of the violations, issuing, appealing and executing penal decrees shall be carried out pursuant to the procedure provided for in the Law on the Administrative Violations and Sanctions.

(4) A violation shall be considered repeated when committed within 1 year of the entering into force of a penal decree by which the offender has been sanctioned for the same type of violation.

(5) (Amended - State Gazette, Issue 100 of 1992, Issue 2 of 1996, Issue 25 of 2001, Issue 120 of 2002, Supplemented, Issue 48 of 2006) The collected amounts of the imposed fines according to the procedure of this section shall be deposited in the budget of the Ministry of Labour and Social Policy to an account of the National Agency "Executive Agency "General labour inspectorate" and shall be used according to the procedure established by the Minister of Labour and Social Policy and by the Minister of Finance.

- The Committee also asks whether employers who have breached the health and safety regulations are liable to criminal prosecution.

Whenever inspectors of the Executive Agency “General Labour Inspectorate” find infringements containing evidence of committed crime or other delinquencies, they shall inform the competent prosecution authorities who hold the powers to initiate criminal proceedings.

- The Committee asks for the next report to indicate, with appropriate figures, what steps have been taken to encourage the development of occupational health services and the results obtained.

See the information provided above under Paragraph 4 of the form of Report.

Article 4 – Right to a fair remuneration

Article 4, Paragraph 2

Question A

In comparison to the previous report the legislative framework has been changed in the following way:

Labour Code

The new revision of Article 150 of the Labour Code is as follows:

Article 150. (Amended - State Gazette, Issue 100 of 1992, Issue 52 of 2004) For overtime work a labour remuneration in an increased amount shall be paid pursuant to Article 262.

Paragraph 2 of Article 150 of the Labour Code concerning the prohibition of compensation for overtime work with rest was repealed.

Civil Service Act

The provision of Article 70 concerning remuneration for work during weekends and official public holidays was repealed (State Gazette, Issue 95/2003).

Ministry of Interior Act

The amendments to the Ministry of Interior Act are as follows:

Service performance

Article 211. (Amended - State Gazette, Issue 17 of 2003) (1) The normal duration of the working time of the civil servants of the Ministry of Interior shall be 8 hours daily and 40 hours weekly at 5-days working week.

(2) For civil servants who fulfill their official duties in harmful, dangerous or specific conditions of work shall be established reduced working time.

(3) The working time of the civil servants shall be calculated in working days - daily, and for those working in 8-, 12- or 24-hour shifts - as a sum for a three-month period.

(4) For civil servants of the Ministry of Interior, without those under paragraph 2 and those working in shifts shall be established working hours not fixed. They shall be obliged, where necessary, to fulfill their official duties after the expiration of the regular working time as well.

(5) The work in excess of the regular working time shall be compensated by:

1. extra paid annual leave for the work in working days and by remuneration for extra work for the work on days off and holidays - for the employees under paragraph 4;

2. remuneration for extra work for up to 50 hours of the period of account and an extra leave for the working time over 50 hours - for the civil servants under paragraph 3.

(6) The extra work under paragraph 5 shall be paid by 50 percent increase of the basic monthly remuneration.

(7) The order of distribution of the working time, of its accounting and the compensation of the work of the civil servants for work in excess of the working time shall be determined by an instruction of the Minister of Interior.

Questions of the European Committee of Social Rights:

The Committee takes note of the provisions of the Civil Servants Act of 1997, related to twelve days per year of compensation leave for overtime work during ordinary working days, and the double amount of their basic wage where the overtime falls during rest days and public holidays. The Committee recalls that when compensatory leave is granted in lieu of an increased rate of remuneration, it shall be longer than the time actually worked. Since, in the case of civil servants, the compensatory leave cannot be more than twelve days per year, it asks how many hours of overtime work a one-day compensatory leave is meant to compensate and how many hours of overtime work may be performed during a year.

Furthermore, the Committee needs to assess what is the impact of working time flexibility measures on compensation of overtime work. Therefore it requests that the next report provide appropriate information on this particular issue.

In comparison to the previous report the legislative framework has been changed in the following way:

The provision of Article 70 of the Civil Service Act regulating higher remuneration for work at weekends and official public holidays was repealed (State Gazette, Issue 95/2003).

1. In relation to making up the execution of official duties after the end of working hours with additional annual paid leave, we would like to provide additional information as follows:

In pursuance of the provision of Article 50 of the Civil Service Act, the terms of performing duties overtime and the manner of fixing the number of days for additional leave under paragraph 2 shall be defined by **the employment body**.

2. Concerning the hours of overtime work after the end of regular working hours, within a year, the same are limited by the legally fixed rest of civil servants between the days and between the weeks.

In pursuance of Article 53 and Article 54 of the Civil Service Act, the civil servant shall have the right to a continuous rest between the days, which cannot be less than 12 hours, and to a weekly rest of 2 consecutive days, Saturday and Sunday, in principle. The civil servant shall be provided with at least 48 hours continuous weekly rest.

3. In relation to flexible working time and its impact on the compensation of overtime work, Bulgaria has the following actual legislative framework:

For workers or employees, employed under employment relation (under the Labour Code):

By virtue of Article 152 of the Labour Code, the worker or employee shall be entitled to increased remuneration for overtime work not less than (as indicated in the previous report):

1. *50 percent – for work during working days;*
2. *75 percent – for work during weekends;*
3. *100 percent - for work during working days of official holidays;*
4. *50 percent - for work at summarized calculation of working days.*

For workers or employees, working at the terms of open-ended working days:

By virtue of Article 263 of the Labour Code, **no additional labour remuneration** shall be paid for overtime work on working days to workers or employees with open-ended working time. By virtue of Article 139, Paragraph 4, the overtime on working days shall be compensated by an additional annual paid leave.

The overtime on **weekend days** and in **official holidays** an increased remuneration shall be payable in the size as set forth herein above – in Item 2 and Item 3.

By virtue of Article 264 of the Labour Code, work on official holidays, irrespective of whether it represents overtime work or not, shall be remunerated pursuant to the agreement, but not less than the double amount of the labour remuneration.

For workers and employees, to which the employer applies extension of the working time:

By virtue of Article 136a of the Labour Code, for production-related reasons the employer may **extend**, by a written order, the working time during some working days and compensate it through its respective reduction during others upon preliminary consultations with the representatives of the workers and employees, unless a collective agreement does not provide otherwise. The employer shall be obligated, for the extension of the working time, to inform in advance the labour inspectorate. In case of terminating the employment relationship before the compensation under paragraph 4 the difference up to the normal working day shall be **paid** as an overtime work.

For workers and employees, working at reduced working time:

For these categories of workers no overtime work is being allowed (except from the workers, as set forth in Article 137, Paragraph 1, item 1, and in the cases under Article 144, Item 1 - 3 of the Labour Code).

For workers and employees, working at part-time:

The general regime is applicable.

For workers and employees, who are engaged under allocated working time or who are engaged to be at the employer's disposal:

The categories of workers or employees, the maximum duration of the hours, and the terms and conditions of calculating shall be determined by the Minister of Labour and Social Policy.

Under *Ordinance № 2 of 22.04.1994 on the terms of establishing allocated working time or obligation to be at the employer's disposal,* the time during which the worker or the employee shall be at disposal shall not be taken into account and accounted for, and shall be paid in pursuance of the Ordinance on additional and other types of work remuneration. The work completed during the time of being at disposal shall be accounted for and paid as overtime work. In case of overtime work under Paragraph 4, the worker or the employee shall be provided for with the minimal duration of an uninterrupted rest between working days and working weeks.

Article 4, Paragraph 3

Question A

In comparison to the previous report no amendments were made to the actual legislative framework.

Question B

The principle of equal remuneration for equal work and work of equal value is laid down in the Protection Against Discrimination Act adopted in 2003.

By virtue of 14 (1) of the Protection Against Discrimination Act, the employer shall ensure equal remuneration for equal work and work of equal value, while by virtue of Article 14 (2) this principle shall be applicable for *"all remuneration, paid directly or indirectly, in cash or in kind"*.

The term "all remuneration" includes the basic remuneration and any additional payments deriving from the employment relation. Under the provisions of Article 14, Paragraph 3 of the Protection Against Discrimination Act:*" The assessment criteria in determining the labour remuneration and the assessment of the work performance shall be equal for all employees and shall be determined by collective labour agreements or by the internal administrative rules regarding the salaries, or by the legal condition and order for assessment of the servants in the state administration with no reference to the grounds under Article 4, paragraph 1."* In this way the legislation has laid down the principle of equality in terms of payment.

In relation to the practical implementation of the principle of equality in terms of payment for men and women we would like to inform the Committee that the National Action Plan on Emloyment 2005, Part Two, Section 6 was dedicated to the equality between men and women. Through the National Action Plan on Employment 2005 the government undertakes immediate actions to fulfill the European Council's guidelines for 2005, which are based on the report of the 2003 European Employment Strategy. Under the European Employment Strategy, with the help of an integrated approach matching the gender-mainstreaming and specific political activities, the EU Member states are meant to promote the participation of women on the labour market and to achieve substantial reduction in the divergence between the levels of employment unemployment and payment with men and women until 2010. To this end a key role is attributed to the social partners. Until 2010 the policy of employment shall be directed towards reduction of this divergence in each EU Member state by means of a complex approach. It includes the factors influencing the difference in payment, including in sectoral and occupational distribution, education and training, classification of professions and systems of payment, transparency.

Special attention shall be attributed to the reconciliation of work and family life, by securing care for children and other dependant family members, by promoting share of family and professional responsibilities and facilitating the return to work. The EU member states shall remove motivation-draining factors for women's participation on the labour market, by taking into account the need to provide care for children.

The adoption of measures aimed to increase the participation of women on the labour market and the opportunity to use their potential is both an issue of gender equality and economic effectiveness.

To the end of overcoming the hurdles on the path of realization of women on the labour market, the governmental policy is aimed towards the adoption of measures for:

- Limitation of the factors influencing the characteristic low economic activity of women and their capacity for employment;
- Implementation of a system of indicators tracing the state and trends in view with equality of the various social groups;
- Improvement of competitiveness on the labour market for a group of women in disadvantaged position on the labour market by means of improving their occupational qualification in accordance with the changing requirements to the workforce;
- Training of an attitude with women towards entrepreneurship;
- Encouragement of mobility among the economic sectors and subsectors and the professions for the purpose of limiting the sectoral distribution per sex, to the end of reducing the difference in labour payment for men and women;
- overcoming gender stereotypes on the labour market and removal of any negative bias with employers towards women's workforce;
- increase of the share of flexible forms of employment for the encouragement of compliance of family and occupational responsibilities.

To the end of implementing these specific measures, the social dialogue and the direct and active participation of the social partners are key for establishing sustainable gender equality. In support thereof a process is under way to define the employees in central, regional and local administrations (so-called focal points), responsible for the implementation of the equality policy between men and women, having in mind the latter must be trained to this end.

In 2004 the basics were laid down for the introduction of general measures, reflected in the gender mainstreaming approach. Relevant administrative capacity and resource basis were established for the development and implementation of the national policy for equal opportunities of women on the labour market.

In 2005 the first National Action Plan on the encouragement of equality between men and women was completed. Its measures were aimed for improved economic activity of women and the provision of equal opportunities for access to economic activities and employment. Certain actions were adopted for a more dynamic participation of women on the labour market by improving their employment capacity, as well as measures, including legislative, for the promotion of labour realization of parents with children and compliance of family and occupational responsibilities.

The newly established National Council on Equality of Women and Men with the Council of Ministers, together with the National Consultative Council on Gender Equality and on Labour Disadvantaged Groups at the Ministry of Labour and Social Policy shall consult the policy for encouragement of women's economic activity to achieve the following purposes:

- enhanced accessibility and quality of care for children and dependent family members to facilitate the return of parents on the workplace after long absence due to children raising;
- encouragement of the social partners to apply flexible forms of employment, to improve the condition at work and to create conditions for the employees to make a career at work;

- strict observation of the labour legislation and avoidance of any possible forms of discrimination on the grounds of sex, for the implementation of the principle of equal payment for equal work.

Question C

In 2003 the Protection Against Discrimination Act was adopted, on 16.09.2003, (Promulgated in the State Gazette, Issue 86/30.09.2003), as an expression of the governmental efforts to bring the national legislation in line with the international standards. The Protection Against Discrimination Act provides for prohibition of discrimination covering all fields of public life, including the domain of employment. (Chapter 2, Section 1).

By virtue of the same law a Commission for protection against discrimination was established as an independent specialised state body for prevention of discrimination, protection against discrimination and ensuring equal opportunities to exert control over the implementation and to sanction any occurrence of discrimination. The Commission for protection against discrimination is entitled to find out violations of the Protection Against Discrimination Act, which regulate the equality of treatment, the offender and the affected person; state prevention from and termination of the violation and restoration of the initial situation; impose the provided sanctions and enforce administrative compulsory measures. A person who commit discrimination, within the meaning of this Law, shall be punished with a fine of BGN 250 to BGN 20,000. The Comission for protection against discrimination is already constituted and performs its tasks, which will provide for another opportunity of adequate protection of the workers and the employees in case of violation of their rights.

Under the Protection Against Discrimination Act, concerned parties dispose of the legal option to choose also from the court protection, besides the administrative proceedings carried out with the Comission for protection against discrimination the established court proceedings provide for adequate measures to terminate the infringements, restore the pre-infringement situation or pay compensation for incurred losses.

Please indicate the procedures applied to implement this protection.

In comparison to the previous report the legislative framework has been changed in the following way:

Labour Code

Article 221. (Amended - State Gazette, Issue 100 of 1992) (1) (Amended - State Gazette, Issue 52 of 2004) In case of termination of the employment relationship by a worker or an employee without notice in the cases of Article 327, paragraphs 2, 3 and **3a**, the employer shall owe compensation in the amount of the gross labour remuneration for the notice period in case of an employment contract for an indefinite period; and to the amount of the actual damages in case of an employment contract for a fixed term.

Article 327. (Supplemented - State Gazette, Issue 100 of 1992) A worker or an employee may terminate his/her employment contract in writing without notice, in the following circumstances:

...

3a. (New - State Gazette, Issue 52 of 2004) should a significant deterioration of the working conditions with the new employer occur as a result of a change under Article 123, paragraph 1;

See also the Protection Against Discrimination Act (enclosed), Chapter Four, Section 1 "Proceedings before the Commission for protection against discrimination" and Section Two "Judicial proceedings".

Questions of the European Committee of Social Rights:

In order to reach a decision on the conformity of the situation, the Committee requires more information. It accordingly requests that the next report state:

– what comparison criteria are used to determine whether work is of equal value, and also if the work and pay comparisons include comparisons outside the firm. Where applicable, this information should concern job evaluation in connection with the fixing of wages by collective agreements as well as post evaluation when requested in the course of legal proceedings;

As it was already stated herein above, in the process of assessment of work to the end of defining work remunerations, equal criteria for men and women shall be applied. Those are defined in the collective labour agreements or the internal rules on work salary or under the legally established terms and conditions for attestation of the employees in the state administration.

Ordinance on negotiating work remuneration

Article 7. The collective negotiation of work salaries in enterprises or organizations comprises:

1. the size of the minimal hourly, daily or monthly work salary for the enterprise or organization;

2. initial work salaries differentiated as per categories of personnel, job position names requiring for certain level of qualification or another indicator, as well as the grounds for any changes thereof;

3. the manners to assess job places of the workers and the employees and to define the size of work salary;

4. the manner to assess the results of labour and to define salaries compliant with these results;

5. the types and sizes of additional remunerations and payments to the work salary;

6. the changes to the work salary depending on the rate of inflation or other economic factors;

7. the mechanism for distribution of funds for work salaries as per structural units in the enterprises and organizations;

8. the system of matching the conditions at work in the work salary;

9. the regularity of payment of work salary;

10. other issues as defined in the process of negotiations.

Herein you can find enclosed a template of the collective labour agreement (Appendix 1), and it is necessary to pay special attention to Chapter V "Work remuneration and compensations" and Article 2 of Section One concerning the non-allowance of discrimination.

The terms of payment of the categories of persons engaged in the civil service sector, having status of civil servants, the provisions of the Civil Service Act shall be applied. Under Article 67 of the Civil Service Act:

"The gross salary consists of basic salary and additional payments.

(2) The amount of the basic salary for a job position shall be defined by the Council of Ministers. The employment body shall define the individual size of the basic salary of the state servant, by taking into account the rank of job position and the assessment of individual behavior obtained during the latest attestation, under terms and conditions as specified by the Council of Ministers

(3) Additional payments shall be defined for:

1. work experience;

2. work at weekends and public holidays;

3. overtime work;

4. night work;

5. disposable time;

6. achieved results under terms and conditions as set forth with a normative act or under respective internal rules on work salary;

7. other cases as specified under a normative act.

(4) The size and terms of payment of additional remuneration shall be defined under an act of the Council of Ministers and shall not be less than the size as set forth under the actual labour legislation.

It is evident that the definition of salaries for civil servants is being executed on the grounds of objective criteria, irrespectively of sex.

By virtue of Article 2 of The Ordinance on the terms and conditions for attestation of the employees in the state administration:

"The attestation of the employees in the state administration shall be carried out on the grounds of regular assessment of job performance, whereas taking into account:

1. the professional qualification as a set of knowledge and skills necessary for the qualitative implementation of obligations;

2. the work experience for state civil servants, by taking into account the work experience under civil employment;

3. the requirements for the execution of direct obligations as defined under the job description of the respective position."

- where the burden of proof lies in equal pay disputes;

In pursuance of the Protection Against Discrimination Act adopted in 2003 (information thereof was provided to the attention of the European Committee for Social Rights) there is a relocation of the burden of proof. In proceedings for protection against

discrimination, after the party, claiming to be a victim of discrimination, proves facts, sustaining the assumption of occurred discrimination, the defendant party must prove that the right to equal treatment has not been infringed. (Article 9).

- what protection is provided against retaliatory measures other than dismissal;

The Protection Against Discrimination Act provides for mechanisms for protection against discriminative measures on the side of employers to the workers or the employees.

- whether employers found guilty of wage discrimination are liable to other sanctions in addition to the compensation they are required to pay under Section 344 of the Labour Code.

The Labour Code:

Article 344**.** (1) A worker or an employee shall be entitled to contest the lawfulness of dismissal before the employer or in a court and demand:

1. Recognition of dismissal as unlawful and its repeal;

2. Reinstatement to his previous position;

3. Compensation for the period of unemployment due to dismissal;

4. Revision of the grounds for dismissal, entered in his service record book or other documents.

Protection Against Discrimination Act

For prevention and termination of the violations of this or other laws regulating the equal treatment, as well as for prevention and removal of the harmful consequences of such violations, the Commission, on its own initiative or after a proposal of trade unions, natural or legal persons may apply the following coercive administrative measures: (Article 76, Paragraph 1):

1. to give obligatory prescriptions to the employers and the officials to remove violations of the legislation for prevention of discrimination;
2. to stop the execution of illegal decisions or orders of employers or officials, which lead or may lead to discrimination;

In cases of detected discrimination, the Commission is entitled to impose administrative sanctions in the form of fines varying from BGN 250 to BGN 20,000.

When concerned persons choose to lodge a claim before a Court through, they can demand: (Article 71)

1. the violation to be ascertained;
2. the defendant to be sentenced to terminate the violation and to restore the status quo as it was before the violation, as well as to restrain in future from further violations;
3. compensations for damages.

The Commission also requests that the next report contain statistical information on differences in pay between men and women in the different economic sectors.

Average annual work salary of emloyed persons under labour and civil employment per sectors and sex

Year 2004								
Total for the country			Public sector			Private sector		
Total	Women	Men	Total	Women	Men	Total	Women	Men
3509	3177	3857	4400	3974	5000	3049	2669	3392

Year 2005 *								
Total for the country			Public sector			Private sector		
Total	Women	Men	Total	Women	Men	Total	Women	Men
3834	3534	4132	4773	4314	5450	3391	3049	3674

* Provisional data

Article 4, Paragraph 4

Question A

In comparison to the previous report no amendments were made to the actual legislative framework.

Please indicate whether the periods of notice established by legislation can bederogated by collective agreements.

In comparison to the previous report no amendments were made to the actual legislative framework.

Please indicate the periods of notice applicable to part-time workers and to home workers.

In comparison to the previous report no amendments were made to the actual legislative framework.

Please indicate in which cases a worker may not be given a notice period.

In comparison to the previous report the legislative framework has been changed in the following way:

Article 330 of the Labour Code.

...

3. (New - State Gazette, Issue 83 of 1998, Supplemented , Issue 46 of 2005, Amended , Issue 76 of 2005) The employee has been deleted from the registers of the professional organisations pursuant to the Law on Professional Organisations of Medical Doctors and Dental Medicine Doctors, or from the register of the Bulgarian Association of Healthcare Professionals pursuant to the Law on Professional Organisations of Nurses, Midwives and Associated Medical Specialists;

4. (Previous Item 4 - State Gazette, Issue 100 of 1992, Previous Item 3, Issue 83 of 1998, repealed , Issue 52 of 2004);

5. (Previous Item 5 - State Gazette, Issue 100 of 1992, Previous Item 4, Issue 83 of 1998) Whenever a worker or an employee refuses to take a suitable job offered to him/her in case of reassignment;

6. (Previous Item 6 - State Gazette, Issue 100 of 1992, Previous Item 5, Issue 83 of 1998) In case of disciplinary dismissal;

7. (New - State Gazette, Issue 95 of 2003) the worker or employee fails to notify as required by the provisions of Article 126, item 12;

8. (New - State Gazette, Issue 95 of 2003) mismatch with cases under Article 107a, paragraph 1.

Please indicate whether provision is made for notice periods in the case of fixed-term contracts which are not renewed.

In comparison to the previous report no amendments were made to the actual legislative framework.

Question B

In comparison to the previous report the legislative framework has been changed in the following way:

Article 363 of the Labour Code concerning decisions of the court not subject to cassation appeal was repealed (State Gazette, Issue 105/2002).

Questions of the European Committee of Social Rights:

The Committee considers that a period of notice of one month is not reasonable for workers with five or more years of service.

Furthermore, it notes that Section 328 of the Labour Code provides for the statutory termination of employment without period of notice, inter alia, in a number of cases:

We would like to clarify that obviously there is a mistake. Article 328 of the Labour Code provides for the cases when employer may terminate a contract of employment by giving **a notice in writing** to the worker or the employee:

Article 328. (Amended - State Gazette, Issue 21 of 1990, Issue 100 of 1992) (1) An employer may terminate a contract of employment by giving a notice in writing to the worker or employee within the terms specified in Article 326, paragraph 2, in the following cases:

1. Closing down the undertaking;
2. Partial closing down of the undertaking or staff reduction;
3. Reduction of the volume of work;

4. (Amended - State Gazette, Issue 25 of 2001) Work stoppage for more than 15 working days;

5. Where a worker or an employee does not possess the qualities for efficient work performance;

6. Where a worker or an employee does not have the necessary education or vocational training for the assigned work;

7. Where a worker or an employee refuses to follow an undertaking or a subsidiary thereof, in which he is employed, where it is relocated to another community or locality;

8. Where the position occupied by the worker or employee should be vacated for reinstatement of an unlawfully dismissed worker or employee, who had previously occupied the same position;

9. Should the occupied position be vacated due to the return of a worker or an employee, who has been released ahead of schedule or postponed from regular military service, and had previously occupied the same position;

10. (Amended - State Gazette, Issue 2 of 1996, Supplemented, Issue 28 of 1996, Amended, Issue 25 of 2001) Where a worker or an employee has acquired the right to pension for period of insurance and age, and for professors, associate professors, senior researchers I and II degree and doctors of science - upon completion of 65 years of age;

11. Where the requirements for the job have been changed and the worker or employee does not qualify for it;

12. Where it is objectively impossible to implement the employment contract.

(2) (Supplemented - State Gazette, Issue 25 of 2001) In addition to the cases under paragraph 1 undertaking management officials may be dismissed by prior notice as per the terms under Article 326, paragraph 2, and due to the conclusion of an undertaking

management contract. The dismissal may be completed after the commencement of the performance under the contract for management but not later than 9 months.

The cases of termination of employment contract by employer without notice are provided for in Article 330 of the Labour Code:

Article 330. (1) (Amended - State Gazette, Issue 100 of 1992) An employer may terminate without notice an employment contract of a worker or an employee who has been detained for execution of a sentence.

(2) (Amended - State Gazette, Issue 100 of 1992) An employer may terminate an employment contract without notice in the following cases:

1. (repealed , Previous Item 2 - State Gazette, Issue 100 of 1992) Whenever a worker or an employee has been divested by sentence of the court or by an administrative order of the right to practice a profession or to occupy the position to which he has been appointed;

2. (Previous Item 3 - State Gazette, Issue 100 of 1992) Whenever a worker or an employee is divested of his/her academic title or academic degree, if the contract of employment has been concluded in view of his holding the respective title or degree;

3. (New - State Gazette, Issue 83 of 1998, Supplemented , Issue 46 of 2005, Amended , Issue 76 of 2005) The employee has been deleted from the registers of the professional organisations pursuant to the Law on Professional Organisations of Medical Doctors and Dental Medicine Doctors, or from the register of the Bulgarian Association of Healthcare Professionals pursuant to the Law on Professional Organisations of Nurses, Midwives and Associated Medical Specialists;

4. (Previous Item 4 - State Gazette, Issue 100 of 1992, Previous Item 3, Issue 83 of 1998, repealed , Issue 52 of 2004);

5. (Previous Item 5 - State Gazette, Issue 100 of 1992, Previous Item 4, Issue 83 of 1998) Whenever a worker or an employee refuses to take a suitable job offered to him/her in case of reassignment;

6. (Previous Item 6 - State Gazette, Issue 100 of 1992, Previous Item 5, Issue 83 of 1998) In case of disciplinary dismissal;

7. (New - State Gazette, Issue 95 of 2003) the worker or employee fails to notify as required by the provisions of Article 126, item 12;

8. (New - State Gazette, Issue 95 of 2003) mismatch with cases under Article 107a, paragraph 1.

We consider that the cases provided for under this provision are in line with the European Social Charter (Revised) and believe that this discrepancy will be settled right in the future.

With regard to legal remedies, the Committee asks whether workers may challenge the legality of the notice of termination before a court.

The First National Report of Bulgaria provided information about the opportunities to appeal an order of dismissal at court (Article 357-363 of the Labour Code). We should stress once again that it is not about appeal of the notice itself, but appeal of the act objecting the notice therein.

The legal amendments during the relevant period are related to the repeal of Article 363 of the Labour Code envisioning that certain categories of labour disputes shall be

heard at two court instances alone. (Amended - State Gazette, Issue 25 of 2001, repealed , Issue 105 of 2002).

The Committee concludes that the situation in Bulgaria is not in conformity with Article 4§4 of the Revised Charter because workers may face termination of employment without notice in cases that are not provided for by the Revised Charter and workers with five or more years of service are not granted a reasonable period of notice for termination of employment.

Concerning the first conclusion of the Committee on Social Rights we have already stated herein above that the issue is about confusion of the provisions of Article 328 and 330 of the Labour Code.

Concerning the second conclusion on lack of conformity, the Bulgarian government will review in detail the findings made therein in view with their further rectification.

Article 4, Paragraph 5

Question A

In comparison to the previous report no amendments were made to the actual legislative framework.

Please indicate whether legislation, regulations or collective agreements provide for the non-seizability of a part of the wage.

In comparison to the previous report the legislative framework has been changed in the following way:

Labour Code

Obligation Obligation of the Employer to calculate and Pay the Labour Remuneration

Article 128. (Amended - State Gazette, Issue 52 of 2004) The employer is obliged, within the specified time limits:

1. to charge in payrolls for salaries the labour remuneration of the workers and employees for the work done by them;

2. to pay the specified labour remuneration for the work done;

3. to issue upon request by the worker or employee an abstract from the pay-rolls for salaries for the paid and unpaid labour remuneration and compensations.

...

Article 245. (Amended - State Gazette, Issue 100 of 1992, Issue 52 of 2004) (1) In case of bona fide performance of his/her employment obligations the employee shall be guaranteed a monthly payment of a labour remuneration equal to 60 per cent of his/her gross labour remuneration, but not less than the minimum monthly labour salary decreed for the country.

(2) The difference to the full amount of the labour remuneration shall remain executable and shall be paid additionally together with the legal interest.

In 2004 the ***Protected claims of the workers and the employees in case of insolvency of the employer Act*** (Promulgated in the State Gazette, Issue 37 of 4.05.2004), which provides for the establishment of a specialized fund "Protected claims for the workers and the employees in case insolvency of the employer" with the National Social Security Institute. Eligible persons are the workers and the employees employed under employment relation and the protected claims are at the size of accumulated and paid work remunerations payable under individual and collective labour agreements and pecuniary compensations owed by the employer under a legislative act or regulation.

The entitlement to protected claims covers the workers and the employees for whom social security contributions were paid or are pending for payment for all insurable social security risks and with whom the employer has not terminated the employment relation as of the date of promulgation of the decision to open an insolvency procedure of the employer or such was terminated in the last three months before the date of promulgation of the decision.

Failure to contribute the due deposits to the Fund the employer does not deprive eligible workers and employees of protected claims.

Protected claims for the workers and the employees are at the size of (Article 23, Paragraph 1 and 4 of the Protected claims for the workers and the employees in case of insolvency of the employer Act):

a) work remuneration and pecuniary compensations, that are accumulated but not paid out during the last three calendar months before the date of termination of the employment relation, but monthly not to exceed the maximum size defined for protected claims as defined in such cases, if they were in employment relations with the employer for not less than three months.

b) accumulated but pending for payment work remuneration and pecuniary compensations, but not to exceed one minimal work salary as set of the date of promulgation of the court sentence, if they had employment relations with the employer for less than three months.

The maximum size of protected claims shall be defined on an annual basis under the State Public Social Security Budget Act and cannot be less than two and a half minimal work salaries as set for the country of the date of promulgation of the court sentence (Article 22, Paragraph 2 of the Protected claims for the workers and the employees in case of insolvency of the employer Act). The maximum size of protected claims for 2006 is set at BGN 450 (Article 16, Paragraph 3 of the State Public Social Security Budget Act).

The establishment of a specialized fund aims to speed up the procedure of payment of the claims for the workers and the employees, deriving from the employment relation and also to provide additional opportunity, besides the one under Article 722, Paragraph 2 of the Trade Act, as its establishment comes in line with the harmonization of the national legislation with the requirements of Article 25 of the European Social Charter (Revised) and Convention 173 Protection of Workers' Claims (Employer's Insolvency) Convention, 1992, (ratified by Bulgaria and promulgated in the State Gazette, Issue 58 of 6.07.2004).

Question B

The above quoted provisions of the Labour Code shall be applicable to all categories of workers.

In relation to the scope of persons protected under the Protected claims for the workers and the employees in case of insolvency of the employer Act, please refer to the information provided to question A.

Convention № 173 of the International Labour Organisation (ILO) was ratified by the Republic of Bulgaria with following declaration:

"The Republic of Bulgaria declares that it shall refrain from applying part III of the Convention concerning the workers and the employees who at the moment of initial date of insolvency, respectively overdebtness, as stated in the court sentence for opening proceedings of insolvency of the employer:

1. are partners in the company;

2. are members of the bodies of management and control of the commercial agent;

3. are spouses and relatives at direct line of the commercial agent – natural person, or to persons under Item 1 and 2."

Questions of the European Committee of Social Rights:

The Committee takes note of the information provided in the Bulgarian report. Pending receipt of the information requested, the Committee defers its conclusion.

The Committee also takes note of the provisions pursuant to Sections 272, 267 and 268 of the Labour Code and Section 341 of the Code of Civil Procedure concerning deductions from wages.

The Committee asks whether, on the basis of this system, workers are always guaranteed at least their very means of subsistence.

The Bulgarian labour legislation guarantees remuneration to the workers. The Labour Code outlined in detail the cases when without the explicit consent on the side of the worker wage deductions can be made. In any case, however, monthly wage deductions cannot exceed the sizes as set forth in the Civil Procedings Code, where those are identified as per family and material status.

The Committee also wishes to know what are the procedures applying in cases of wage deductions.

Civil Proceedings Code

Article 395. (Supplemented - Not., Issue 90 of 1961, State Gazette, Issue 28 of 1983) (1) Distraint against employment remuneration is valid not only with regard to the remuneration set out in the distraint notice, but for all other remunerations of the debtor received with regard to the same work in the same institution or enterprise.

(2) If the debtor changes employment into another institution or enterprise, the distraint notice is sent to the new employer by the person who has initially received it and is regarded as having been sent by the court executive. The third party debtor informs the court executive as to the new place of employment of the debtor and as to the volume of the sum received until the change of employment.

(3) The person who pays out remuneration to the debtor regardless of the distraint levied, without subtracting the sum as set out in the distraint, is personally responsible to the claimant jointly with the third party debtor.

(4) (Amended - State Gazette, Issue 41 of 1985, Issue 124 of 1997, Issue 105 of 2002) The distraint notices with regard to claims for support shall be noted in the employment record and the passport of the debtor, by the person who pays out remuneration. When the debtor changes employment to another institution or employer, the subtractions from his/her remuneration continue on the basis of this entry, even though a fresh distraint notice has not been received.

(5) The entry is struck out on the order of the state or private court executive who has levied the distraint.

(6) (Amended - State Gazette, Issue 124 of 1997) If after the levying of distraint with regard to employment remuneration, the debtor leaves his/her job of work and within a month does not notify the state or private court executive as to his/her new place of employment, the state or private court executive serves him with a fine of up to BGN 20.

Article 21 - Right of workers to be informed and consulted

Question A

Labour Code - amendments

Tripartite cooperation

Article 3

(Amended, SG No. 100/1992, amended and supplemented, SG No. 2/1996, amended, SG No. 25/2001)

(1) (Supplemented, SG No. 120/2002) The State shall carry out the regulation of labour relations and the immediately related relations, the social security relations, as well as the living standard issues, in cooperation and after consultations with the employees' and the employers' representative organizations. The living standard issues, subject of consultations, shall be determined by an act of the Council of Ministers, based on a proposal by the National Council for Tripartite Cooperation.

(2) (Amended, SG No. 120/2002) Cooperation and consultations shall be conducted as mandatory in the process of passing legislation in the sphere of relations issues, indicated in para. 1.

Article 3a

(4) (New, SG No. 120/2002) The National Council for Tripartite Cooperation shall elect among the persons, who lawfully represent the organizations of workers and employees and of employers, vice-chairmen of the Council from each for a term of one year, based on the principle of rotation.

(5) (New, SG No. 120/2002) In the absence of the head of the National Council for Tripartite Cooperation, the meetings shall be conducted by a vice-chairman, designated by him/her.

Work Pattern and Taking Decisions by the Councils for Tripartite Cooperation

Article 3e

(New, SG No. 25/2001)

(1) The chairpersons of the councils for tripartite cooperation shall chair the meetings, organize and guide the work of the councils in the spirit of cooperation, mutual compromise and respect for the interests of each of the parties.

(2) (Amended, SG No. 120/2002) Meetings of the councils shall be deemed regularly held, provided they are attended by representatives of all the three participating parties.

(3) (New, SG No. 120/2002) Meetings of the councils shall also be deemed regularly held even when not attended by authorized representatives of any of the participating organizations of workers and employees and of employers, provided they have been duly notified.

(4) (Renumbered from Paragraph 3, SG No. 120/2002) The councils shall take decisions by consensus.

(5) (Renumbered from Paragraph 4, SG No. 120/2002) The decisions taken by the councils for tripartite cooperation shall be submitted to the relevant bodies, as following:

1. decisions of the National Council for Tripartite Cooperation - to the Prime Minister or the relevant minister or head of another department;

2. decisions of industry and branch councils for tripartite cooperation - to the relevant minister or head of another department;

3. decisions of municipal councils for tripartite cooperation - to the mayor of the relevant municipality or the chairperson of the municipal council, according to their competence for adopting a final act on the issues discussed.

(6) (Renumbered from Paragraph 5, SG No. 120/2002) The Government and municipal bodies that have received opinions from councils for tripartite cooperation, shall be obliged to discuss them in the process of taking decision within their competence.

Organization and Financing for the Activities of the Councils for Tripartite Cooperation

Article 3f

(New, SG No. 25/2001)

(1) The organization and the activities of the councils for tripartite cooperation shall be governed by Rules adopted by the National Council for Tripartite Cooperation.

(2) The expenses for the activities of the councils for tripartite cooperation shall be on the account of the relevant Government and municipal bodies participating in such councils.

Workers' Participation in the Management of the Enterprise

Article 7…

(3) (New, SG No. 52/2004) In the cases of Article 123, if the company, activity or a part of the company or activity preserve their autonomy, representatives of the workerss under para. 2 shall retain their status and functions for a term of up to one year. If the company, activity or a part of the company or activity fail to preserve their autonomy, the interests of workers, who have been transferred to the new employer, shall be defended by representatives of the workers in the company, at which they have been re-hired.

Article 130…

(3) (New, SG No. 52/2004) Employers shall provide at suitable locations in companies timely written information to workers in regard to vacant full- and part-time jobs and positions at all levels of the company, including in regard to positions, requiring particular qualification and to managerial positions.

(4) (New, SG No. 52/2004) Any information under para. (3) shall contain data of the education and qualifications, required for filling each of the positions.

(5) (New, SG No. 52/2004) Any information under para. 3 and 4 shall also be provided to representatives of the workers.

(6) (Renumbered from Paragraph 3, SG No. 52/2004) Workers shall be entitled to request from the employers objective and fair characteristics of their professional qualities and the results of their labour activities, or objective and fair recommendations when applying for a job with another employer.

Ordinance № 6 of 15 August 2005 concerning the minimal requirements for securing the health and safety of persons working under threats related to explosions to noise

(issued by the Ministry of Labour and Social Policy and the Ministry of Health, entered into force on 15 February 2006, State Gazette 70, 26 August 2005)

Article 12

Employers shall have the obligation in correspondence with the Safe and Healthy Working Conditions Act to have consultations with the workers and/or their representatives and to create opportunities for their participation in all matters concerning the application of this Ordinance, including:

1. risk assessment and identification of measures shall be made in correspondence with the requirements of articles 4, 5 and 6;

2. actions, aimed at eliminating or decreasing the risks ensuing from exposure to noise related to article 7;

3. the choice of personal hearing protection means, related to article 8, paragraph 1.

Question B

Employment Promotion Act
Chapter Five

Notifying procedure upon collective dismissals

Article 24. (1) (Supplemented, SG No. 26/2003, amended, SG No. 52/2004) Any employer shall notify in writing the competent division of the National Employment Agency and the workers' representatives at the enterprise of any contemplated collective dismissals not later than 45 days prior to the dismissal date.

(2) (Amended, SG No. 26/2003) The division of the National Employment Agency shall transmit copies of the notification referred to in Paragraph (1) to:

1. the municipal administration;
2. the local division of the National Social Security Institute;
3. the local division of the General Labour Inspectorate Executive Agency.

(3) (Amended, SG No. 52/2004) The notification referred to in Paragraph (1) must include all the relevant information covered under Article 130a (2) of the Labour Code regarding the contemplated collective dismissals, as well as regarding the advance consultations held with the workers' representatives.

Article 25. (1) Upon receipt of the notification referred to in Article 24 herein, teams shall be formed, consisting of a representative of the employer, representatives of the workers' organizations at the enterprise concerned, a representative of the competent division of the National Employment Agency, and a representative of the municipal administration.

(2) The teams referred to in Paragraph (1) shall draft the necessary measures aimed at:

1. employment placement intermediation;
2. training for attainment of vocational qualification;
3. own business start-up;
4. alternative employment programmes.

(3) The drafts covered under Paragraph (2) shall be submitted for approval to the Regional Employment Commission, with applications for financing submitted on the basis of the said drafts under terms and according to a procedure established by the Regulations for Application of this Act.

Ordinance on the Application of the Employment Promotion Act

Chapter Six

Notifying procedure upon collective dismissals

Article 18. (1) In order to certify a planned collective dismissal, the employer shall present a notification under article 24 of the Employment Promotion Act and a decision of a management body or another competent body and a certificate of actual state, issued by the respective district court, to the Employment Bureau Directorate.

(2) The employer may present a request for the necessity of training to the personnel that retains its employment with the enterprise to the Employment Bureau Directorate.

Article 19. (1) Teams under article 25, paragraph 1 of the Employment Promotion Act shall be established under the initiative of the employer, the representatives of the workers' organizations in the enterprise or the director of an Employment Bureau Directorate, and shall act during the time of submission of the notification until the collective dismissal is completed.

(2) Teams under paragraph 1:

1. shall study the workers' needs of employment mediation and training for the acquisition of vocational qualification and shall cooperate with the respective Employment Bureau Directorate for the provision of employment services;

2. shall, together with the respective Employment Bureau Directorate, determine the kinds of services and secure the conditions for their provision in the enterprise;

3. shall establish timetables and deadlines for the use of the National Employment agency's mediation services by the workers;

4. shall offer projects for additional vocational qualification and prequalification training bound with employment opportunities;

5. shall provide assistance to workers for their inclusion in appropriate vocational qualification training courses in order to preserve their employment or to find new employment;

6. shall direct workers to vacancies, provide them with consultancy regarding the possibilities to start independent economic activities and the inclusion in other alternative forms of employment.

(3) Alternative programmes for employment shall be developed under the procedure set in article 24 on a proposal by the employer, the representatives of workers' organizations and the National Employment Agency based on market research, differentiation of separate parts of the enterprise, the implementation of branch programmes, etc.

Ordinance concerning the procedure and ways of notifying workers and paying protected claims in case of employer's insolvency

(adopted with Decree № 362 of 29 December 2004, in force since 1 January 2005, State Gazette 3, 11 January 2005, amended State Gazette 1, 3 January 2006)

Chapter Two.

Notifying the workers

Article 3. (1) Within three days after the promulgation in State Gazette of the court verdict on opening an insolvency procedure, the employer shall have the obligation to notify the workers of the promulgation date and the procedure for receiving guaranteed claims under the Protection of Workers' Claims in Case of Employer's Insolvency Act.

(2) Notification shall be executed as follows:

1. for workers under article 4, paragraph 1, item 1 of the Act, through written notification by the representatives of workers' organizations and through notice of an appropriate position within the enterprise;

2. for workers under article 4, paragraph 1, item 2 of the Act, through sending a notification with a return receipt to each individual worker.

Question E

Safe and Healthy Working Conditions Act (Promulgated SG 124/23.121997; amended, SG 86/1.10.1999, SG 64/4.08.2000, in force from 4.08.2000, SG 92/10.11.2000, in force from 1.01.2001, SG 25/16.03.2001, in force from 31.03.2001, SG 111/ 28.12.2001, amended and supplemented, SG 18/25.02.2003, amended and supplemented SG 70/10.08.2004, in force from 1.01.2005, SG 76/20.09.2005)

Article 27. (1) A working conditions committee shall be established at any enterprise, trade company or establishment which has more than 50 employees. The Committee shall consist of equal number of employees' and employer's representatives but no more than ten members.

Article 28. (1) (Amended SG 18 from 2003 г., amended, SG 76 from 2005) Working conditions groups shall be established at companies and in other undertakings and organisations with between 5 and 50 employees, as well as in the separate structural units of the companies, undertakings and organisations referred to in article 27 paragraph (1).

Question G

Labour Code – amendments

Article 414
(Amended, SG 100/1992, SG 2/1996, SG 25/2001, SG 120/2002)

(1) Any employer or official who violates provisions of labour legislation, unless liable to a heavier sanction beyond the rules for ensuring safe and healthy conditions of work, shall be penalized by fine of BGN 250 to 1000.

Safe and Healthy Working Conditions Act

Article 54
(1) The overall control for the implementation of this act shall be carried out by the Ministry of labour and Social policy
(2) The General Labour Inspectorate with its network shall carry out specialized control on the implementation of this and other acts.
(3) The Council of Ministers will approve the rules for composition and activities of the General Labour Inspectorate.

Article 55

The persons who have violated the provisions or have not complied with their obligations under this Act shall be liable according articles 413, 414, 415 and 416 of the Labour Code as well as according other acts particular for the respective activities or other legal instruments.

Questions of the European Committee of Social Rights:

The Committee asks whether these provisions also apply to undertakings managed by public authorities.

Bulgarian legislation does not differentiate types of enterprises. It does not make any difference whether a worker is employed in the private or the public sector, rather whether he/she is a party to an employment agreement or not. If he/she is a party to an employment agreement then he/she she may benefit from all the rights provided for in legislation.

The Committee notes that Section 7 and 37 of the Labour Code do not specify what are the decisions on which employees' representatives must be consulted, nor do they state whether the consultation must be done in good time. Therefore, the Committee requests that the next report provide all relevant information with regard to these two particular issues.

In some instances the law also charges the general assembly with specific functions that are different from those of trade unions: adoption of a draft collective employment agreement in case the trade unions were unable to negotiate between themselves such a common draft (article 51a, paragraph 3), usage of social funds (article 299, paragraph 3 and article 300).

Labour Code – amendments

Article 51a (New, SG No. 25/2001)

.....

(3) Where within the enterprise the trade union organizations fail to submit a common draft, the employer shall conclude the collective agreement with that trade union organization the draft of which has been approved by the general meeting of the employees (the meeting of proxies) by majority of more than half of the members thereof.

Article 299.

.....

(3) The social funds and the forms of social services shall be used also by the employee's families upon decision of the general meeting (meeting of proxies) and in conformity with the collective agreement.

Article 300. (Amended, SG No. 100/1992) Upon the decision of the general meeting of the employees the social funds and the forms of social services shall be used also by pensioners having worked with the same employer

Employers must provide information regarding their economic and financial situation in good time. They provide such information not only during the process of immediate bargaining but also during the preparation of the draft collective agreement by the trade union management.

The Committee asks whether employee's representatives, elected within the general assembly, but who are not members of trade unions enjoy the entitlements provided by Section 37 of the Labour Code to trade unions.

The provision of article 37 of the Labour Code applies only to trade unions. It gives them rights in the regulation of labour relations, which is to be implemented within the enterprise and the provisions of which are only applied to the workers of the enterprise.

This right is given to the bodies of all trade unions in the respective enterprise. "The trade union body in the enterprise" under the meaning of article 37 is above all the trade union committee of the respective organization. No obstacle exists, depending on the matters, for the trade union committee to assign another person as its representative or others of its members – workers in the enterprises who exclusively or together with the members of the trade union committee take part in the development of drafts for the respective internal regulation acts (regulation or ordinance).

The purpose of this provision is to attract the trade union bodies who with their experience, knowledge, views and positions could contribute to the development of more precise, more just and more thorough drafts that would take account also of the interests of workers. This participation is only in the development of drafts whose adoption remains the power of the employer.

It is an obligation of the employer to invite the trade union bodies to take part in the development of drafts for these acts by notifying them in advance and indicating the nature and the subject of the act, whose draft is to de developed, the place, date and hour of the discussion, etc. Failure to meet this obligation by the employer damages the spirit of cooperation between the trade unions and the employer. That spirit is of interest to both parties and its damaging might lead to social tension and labour conflicts. This is raised to a legal obligation for the employer and the purposeful failure to meet it could be sanctioned with an administrative penalty under article 414 of the Labour Code.

The Committee asks whether non-unionised members of the PA may nominate candidates or be elected as workers' delegates.

Under Bulgarian legislation membership in a trade union organization is not a precondition for the election of representatives in the enterprise personnel assembly. All Assembly members have equal rights.

Workers may go to the personnel assembly (representatives' assembly) when there is no trade union in the enterprise, when there is one or several trade unions in the enterprise with an insignificant number of members or when even with trade unions existing in the enterprise, the workers' common issues remain without the appropriate protection. The personnel assembly (representatives' assembly) fills vacuum of protection of the common interests of workers in the field of labour and security relations that may appear in certain and important cases.

The Committee also asks whether employees who are nationals of States Parties to the Revised Charter or the Charter of 1961 may participate in the votes and be elected as workers' delegates.

Bulgarian legislation does not include any provisions that put workers' citizenship as a precondition for their exercise of active or passive right to vote regarding the representatives' assembly.

The Committee notes that those employers who infringe their obligations under the above-mentioned provisions may incur criminal sanctions. It asks whether all employees or their representatives have a legal capacity to sue the employers before competent courts.

Failure on behalf of the employer to supply information as a whole, supplying incomplete, inaccurate or untrue information or presenting the information with a big delay may cause the trade unions to raise erroneous claims during the course of bargaining and to ill-timed satisfaction of requests in the draft collective employment agreement. These are the damages that workers may suffer when their rights and interests are protected through a collective employment agreement. It is necessary that the infringement on behalf of the employer be on purpose (deliberate, conscious) or by negligence (oversight, ignorance, carelessness). Disputes regarding this sort of infringements are from the field of civil law and are decided by a court of law following the common dispute procedure – a convictional process of claim. The trade union that leads the collective bargaining acts as a plaintiff in such suits, while the respective employer of whom it is claimed that has failed to fulfill his obligations under article 52, paragraph 1 of the Labour Code and this failure has caused damages, is the defendant.

Article 52, paragraph 3, examines employer's responsibility in case of delay, i.e. untimely performance of obligations under paragraph 1. The delayed implementation of these obligations causes damages for the workers: the collective employment agreement is not signed on time, thus the respective benefits from it start to apply from a later date and so on. The delay starts to run after the passing of 15 days from the date of receiving the incitation to supply information regarding the economic situation of the enterprise. Damages caused from the purposeful failure to meet these obligations start to be calculated from this moment on.

Labour Code

Actions in Case of Default

Article 59
(Amended, SG No. 25/2001)
In the event of default on the obligations under the collective agreement actions in court may be instigated by the parties to the agreement, as well as by any employee who is subject to the application of the agreement.

Claim for Invalidation

Article 60
(Repealed, SG No. 100/1992, new, SG No. 25/2001)
Any party to the collective agreement, as well as any employee who is subject to the application of the agreement, may submit a claim to the court requesting the invalidation of

the collective agreement or individual clauses thereof, provided such clauses are contrary to or evading the law.

Article 22 - Right of workers to take part in the determination and improvement of the working conditions and working environment

Question A

Safe and Healthy Working Conditions Act

Article 26

(1) Employers shall consult employees or their representatives and associations and shall enable their participation in:

1. discussion and approval of all measures related to the safety and health of employees at work;
2. designation of the employees who shall carry out the activities related to the provision of healthy and safe working conditions, first aid, fire-fighting and evacuation of employees;
3. planning and organization of the training of employees in the field of health and safety at work.

Article 27

(1) A working conditions committee shall be established at any enterprise, trade company or establishment which has more than 50 employees. The Committee shall consist of equal number of employees' and employer's representatives but no more than ten members.

(2) Employees' representatives shall be elected according to the rules set up in Article 6 of the Labour Code.

(3) Employees' representatives shall be elected for 4-year term which may be suspended if so requested by at least one-third of the total number of employees in the undertaking and if voted by a qualified majority of those attending the general assembly.

(4) The employer shall be the chairman of the committee and an employees' representative shall be its vice-chairman.

(5) The working conditions committee shall also include the functionaries designated to deal with safety at work as employer's representatives and a physician from the occupational health service.

(6) The committee may ad hoc invite external experts and representatives of the control authorities.

Article 28

(1) (amended - SG, No. 18/2003) Working conditions groups shall be established at companies and in other undertakings and organisations with less than 50 employees, as well as in the structural units of the companies, undertakings and organisations referred to in Article 27 paragraph (1).

(2) The working conditions groups shall consist of the employer or the manager of the respective structural units and of one employees' representative.

(3) Employees' representatives shall be elected in the line with the procedure laid down in Article 27 paragraphs (2) and (3); their term of office shall be determined by the general assembly.

(4) Undertaking with a considerable number of employees, complex structure and several locations shall be allowed to create working conditions committees on the level of the enterprise itself and on the level of its structural units as well.

Article 29

The working conditions committees and groups shall:

1. discuss once a trimester the whole range of activities related to the safety and health of employees and adopt measures to improve it;
2. discuss the results of the occupational risk assessment and the analyses of the health status of employees, the reports of specialized safety and occupational health services as well as other issues concerning the safety and health protection of employees;
3. discuss the planning and introduction of new technologies, work organization and fitting-out of work places and propose solutions ensuring that the safety and health protection of employees are respected;
4. carry out inspections on the status of implementation of occupational health and safety provisions;
5. keep watch on work accidents and occupational morbidity at the undertaking;
6. take part in the elaboration of information and training programs on issues concerning healthy and safe working conditions.

Article 30

(1) Employees' representatives at the working conditions committees and groups shall receive training according to curricula, procedure and conditions defined with an executive ordinance of the Minister of Labour and Social Policy and the Minister of Health.

(2) Employees' representatives at the working conditions committees and groups shall be entitled to:

1. have access to the existing information concerning working conditions, the analyses of work accidents and occupational morbidity, the findings and the prescriptions of the control authorities;
2. require of the employer to undertake appropriate measures and submit proposals to mitigate hazards and remove sources of danger to their safety and health;
3. appeal to the control authorities if they consider that the measures taken by the employer are inadequate for the purposes of ensuring safety and health at work;
4. participate in the inspection visits rendered by the control authorities.

(3) The employer shall provide the employees' representatives with all necessary conditions and means to enable them to exercise their rights and functions and shall ensure that they receive adequate training and qualification during working hours without loss of pay.

(4) Employees' representatives in working conditions committees and groups shall not be put in unfavourable position as a result of their activities for providing healthy and safe working conditions.

Article 31

(1) The working conditions committees and groups shall closely cooperate with the specialized services and departments of the undertaking that have specific responsibilities for the planning and introduction of healthy and safe working conditions.

(2) A common working conditions committee or group shall be established where the activities of several undertakings are carried out simultaneously at the same facility, premise or work place.

Article 32 (amended - SG, No. 18/2003)

(1) In cooperative societies with 50 and more than 50 members, as well in cooperative societies with less than 50 members there shall be established respectively committee or group on working conditions.

(2) The representatives of the committees and groups on working conditions shall be elected by the General Assembly of the cooperative society. The chairperson of the cooperative society shall be chairperson of the committee or group on working conditions.

Article 39

(1) The National Working Conditions Council shall be a permanent body at a national level entitled to coordinate, consult and integrate efforts in the process of development and implementation of the policy for providing healthy and safe working conditions.

(2) The members of the National Working Conditions Council shall not be salaried and shall be nominated as representatives of following organizations:

1. Council of Ministers;
2. National Social Security Institute;
3. nationally recognized employers' associations;
4. nationally recognized workers' associations;
5. (repealed – SG 18/2003).

(3) Chairman of the National Working Conditions Council shall be the Minister of Labour and Social Policy.

(4) The representatives of the workers' and employers' associations appointed at the National Working Conditions Council shall elect among them two vice chairmen.

(5) The members of the National Working Conditions Council will adopt internal rules for its activities.

(6) The organization of activities, the technical and administrative assistance of the National Working Conditions Council shall be provided by the Ministry of Labour and Social Affairs.

Article 40

National Working Conditions Council shall:

1. discuss the status of working conditions and propose measures for their improvement;
2. discuss and submit opinions on draft legal acts concerning working conditions and submit proposals for amendments and supplements;
3. take decisions on establishing branch and trade structures of tripartite collaboration concerning working conditions;
4. establish relief structures under the Council for solving particular problems;
5. coordinate the activities of the control authorities assigned to supervise working conditions;
6. examine and make popular local and foreign experience, organize national competitions, workshops and campaigns, and lay on other forms for promoting the activities;
7. assign, by tender or competition, feasibility studies and drafting of projects for solving health and safety problems to be funded by the Fund "Working Conditions".

Article 41

(1) The branch and trade councils on working conditions shall consist of representatives of the national branch and trade federations, unions or trade unions of the representative employees' associations, of the branch and trade structures of the representative bodies of the employers and equal number representatives of the respective ministries or governmental agencies.

(2) The branch and trade councils on working conditions shall elect among their members a chairman and approve rules for activities.

Article 42

(1) The branch and trade working conditions councils shall:

1. evaluate the status of implementation of measures aimed at ensuring healthy and safe working conditions;
2. organize working out and discussion drafts of rules and requirements aimed at ensuring healthy and safe working conditions in each specific area;
3. examine and make popular experiences, organize national competitions, workshops , campaigns, etc.
4. organize and carry out training in the rules, norms and methods that are aimed to guarantee healthy and safe working conditions with the participation of employers, functionaries and employees' representatives;

(2) Upon decision of the branch or trade working conditions councils interim structures may be established to resolve specific problems.

Article 43

(1) The regional (county or municipal) working conditions councils shall consist of representatives of the existing regional employees' and employers' unions or associations recognized as being representative and equal number of representatives of local administration or the local self-governing authorities.

(2) The regional councils on working conditions shall:

1. approve regional programmes for investigation and preparation of project for improving working conditions and submit them for funding to the Fund "Working Conditions"
2. discuss the situation of the activities for providing healthy and safe working conditions in the region or in the enterprises;
3. coordinate the activities of the regional control authorities on working conditions;
4. render assistance to the employers in solving concrete problems including initiatives for joint actions.

Question D

Safe and Healthy Working Conditions Act

Article 27

(1) A working conditions committee shall be established at any enterprise, trade company or establishment which has more than 50 employees. The Committee shall consist of equal number of employees' and employer's representatives but no more than ten members.

Article 28

(1) (amended - SG18/2003, SG 75/2005) Working conditions groups shall be established at companies and in other undertakings and organisations with 5 to 50 employees, as well as in the structural units of the companies, undertakings and organisations referred to in Article 27 paragraph (1).

Questions of the European Committee of Social Rights:

The Committee asks confirmation that these provisions of the ESC(r) also apply to workers employed in undertakings managed by public authorities.

Bulgarian legislation does not differentiate types of enterprises. It does not make any difference whether a worker is employed in the private or the public sector, rather whether he/she is a party to an employment agreement or not. If he is a party to an employment agreement then he or she may benefit from all the rights provided for in legislation.

The Committee asks for information regarding the selection of representatives to working conditions groups.

Safe and Healthy Working Conditions Act

Article 27

(1) A working conditions committee shall be established at any enterprise, trade company or establishment which has more than 50 employees. The Committee shall consist of equal number of employees' and employer's representatives but no more than ten members.

(2) Employees' representatives shall be elected according to the rules set up in Article 6 of the Labour Code.

(3) (amended – SG 76/2005) Employees' representatives shall be elected for 4-year term which may be suspended if so requested by at least one-third of the total number of employees in the undertaking and if voted by a simple majority of those attending the general assembly.

(4) The employer shall be the chairman of the committee and a employees' representative shall be its vice-chairman.

(5) The working conditions committee shall also include the functionaries designated to deal with safety at work as employer's representatives and a physician from the occupational health service.

(6) The committee may ad hoc invite external experts and representatives of the control authorities.

Article 28

(1) (amended - SG 18/2003, SG 76/2005) Working conditions groups shall be established at companies and in other undertakings and organisations with 5 to 50 employees, as well as in the structural units of the companies, undertakings and organisations referred to in Article 27 paragraph (1).

(2) The working conditions groups shall consist of the employer or the manager of the respective structural units and of one employees' representative.

(3) Employees' representatives shall be elected in the line with the procedure laid down in Article 27 paragraphs (2) and (3); their term of office shall be determined by the general assembly.

(4) Undertaking with a considerable number of employees, complex structure and several locations shall be allowed to create working conditions committees on the level of the enterprise itself and on the level of its structural units as well.

Article 29

The working conditions committees and groups shall:

7. discuss once a trimester the whole range of activities related to the safety and health of employees and adopt measures to improve it;
8. discuss the results of the occupational risk assessment and the analyses of the health status of employees, the reports of specialized safety and occupational health services as well as other issues concerning the safety and health protection of employees;
9. discuss the planning and introduction of new technologies, work organization and fitting-out of work places and propose solutions ensuring that the safety and health protection of employees are respected;
10. carry out inspections on the status of implementation of occupational health and safety provisions;
11. keep watch on work accidents and occupational morbidity at the undertaking;
12. take part in the elaboration of information and training programs on issues concerning healthy and safe working conditions.

Article 30

(1) Employees' representatives at the working conditions committees and groups shall receive training according to curricula, procedure and conditions defined with an executive ordinance of the Minister of Labour and Social Policy and the Minister of Health.

(2) Employees' representatives at the working conditions committees and groups shall be entitled to:

5. have access to the existing information concerning working conditions, the analyses of work accidents and occupational morbidity, the findings and the prescriptions of the control authorities;
6. require of the employer to undertake appropriate measures and submit proposals to him/her to mitigate hazards and remove sources of danger to their safety and health;
7. appeal to the control authorities if they consider that the measures taken by the employer are inadequate for the purposes of ensuring safety and health at work;
8. participate in the inspection visits rendered by the control authorities.

(3) The employer shall provide the employees' representatives with all necessary conditions and means to enable them to exercise their rights and functions and shall ensure that they receive adequate training and qualification during working hours without loss of pay.

(4) Employees' representatives in working conditions committees and groups shall not be put in unfavourable position as a result of their activities for providing healthy and safe working conditions.

Article 31

(1) The working conditions committees and groups shall closely cooperate with the specialized services and departments of the undertaking that have specific responsibilities for the planning and introduction of healthy and safe working conditions.

(2) A common working conditions committee or group shall be established where the activities of several undertakings are carried out simultaneously at the same facility, premise or work place.

Article 32 (amended – SG 18/2003, SG 76/2005)

(1) In cooperative societies with more than 5 members groups on working conditions shall be established, and in cooperative societies with more than 50 members – committees on working conditions.

(2) The representatives of the committees and groups on working conditions shall be elected by the General Assembly of the cooperative society. The chairperson of the cooperative society shall be chairperson of the committee or group on working conditions.

The Committee asks whether non-unionised members of the PA may nominate candidates or be elected as workers' delegates.

Under Bulgarian legislation membership in a trade union organization is not a precondition for the election of representatives in the enterprise personnel assembly. All Assembly members have equal rights.

The Committee asks whether employees who are nationals of States Parties to the Revised Charter or the Charter of 1961 may participate in the votes and be elected as workers' delegates.

Bulgarian legislation does not include any provisions that put workers' citizenship as a precondition for their exercise of active or passive right to vote regarding the representatives' assembly.

The Committee asks that the next report provide more specific information on which topics in respect of Article 22 of the Charter that fall within the ambit of the PA.

Workers may go to the personnel assembly (representatives' assembly) when there is no trade union in the enterprise, when there is one or several trade unions in the enterprise with an insignificant number of members or when even with trade unions existing in the enterprise, the workers' common issues remain without the appropriate protection. The personnel assembly (representatives' assembly) fills vacuum of protection of the common interests of workers in the field of labour and security relations that may appear in certain and important cases.

The Committee asks whether these provisions imply that non-unionised workers are precluded from nominating candidates to the election, and also whether non-unionised workers may or may not be elected as representatives to CWCs and GWCs.

No preclusions exist on nonunionised workers nominating or being elected as members of the CWCs and GWCs.

Art. 26 of the Labour Code provides for consultation and participation in the adoption of all measures relating to health and safety, including those relating to the appointment of competent personnel and the training of employees. As Art. 26 states that the employer is obliged in this regard *vis-à-vis* employees "or" their representatives and organisations, the Committee asks whether this entails participation rights for individual employees beyond, or in addition to, those provided for through CWCs and GWCs.

The provisions of article 26 of the Labour Code have been revoked (SG 100/1992).

Consultations regarding safe and healthy working conditions are to be carried out according the provisions of the Safe and Healthy Working Conditions Act (see above).

The Committee asks that the next report provide more detailed information on the proportion of workers actually covered by bodies that are established, and on what measures the Bulgarian government has undertaken to remedy the problems currently prevailing.

Takeouts from the year reports of the Execytive Agency General Labour Inspection for 2002, 2003 and 2004.

Out of the 27 081 enterprises inspected in 2002, labour inspectors have established the existence of 5 620 committees/groups on working conditions (CWC/GWC), set up according to the provisions of article 28, paragraph 1 of the SHWCA. It is estimated that less than half of the existing CWCs/GWCs are functioning well and to different extent fulfill their obligations, as set out in the SHWCA.

The most common failures established in the activity of the CWCs/GWCs are the following:

- failure to discuss the working stations at risk and to propose measures for decreasing and eliminating risk to the employer;
- lack in interest on part of the employer to set up CWCs/GWCs and to develop activities with representatives of the workers. Employers in micro and small enterprises consider the provision of article 28, paragraph 1 of the SHWCA to be inapplicable;
- weakening interest on part of the trade unions in vitalizing the activity of the CWCs/GWCs, as well as in the participation of workers in managing activities on health and safety at work.

Out of the 30 190 enterprises inspected in 2003, labour inspectors have established the existence of 11 710 committees/groups on working conditions (CWC/GWC), set up according to the provisions of article 28, paragraph 1 of the SHWCA, 2 212 of these have been set up during the respective year. There is a change in positive direction from previous years – 1 of each 2.6 inspected enterprises have established committees or groups on working conditions, as opposed to one in five.

All enterprises from the economic activities “Production of non-metal materials and raw materials” and “Waste recycling” have set up CWCs/GWCs and their share in enterprises in the economic activities “Collection and treatment of waste, cleaning and rehabilitation” and “Production of products from other non-metal mineral raw materials” is also very high.

Summarized findings can be expressed as lack of interest in bilateral cooperation and constructive dialogue between employers and workers’ representatives in analyzing bodies. Employers continue their trend of not being an active party in bilateral dialogue and not taking into account the worker’s personal interest in improving working conditions.

Out of the total number of enterprises inspected the country in 2004, 47.2% have established committees/groups on working conditions (12.2% of these were set up during the respective year).

It has to be noted that in comparison to the previous year, the setting up of CWCs/GWCs in inspected enterprises has increased by some 8.4%.

Data from the inspections in 2004 indicates that the process of setting up of CWCs/GWCs in the enterprises from the following economic activities has finished overall throughout the country: chemical products manufacturing; production of machinery, equipment and household appliances; radio, television and communication technology; supply of electricity, gaseous fuels and heating energy; post offices and communication services, as well as research and development activities.

There are many examples from the General Labour Inspection Directorate reports that establish over and over again weaknesses and failures in their work, especially in enterprises without trade union representation and with an unprepared health and safety at work body. Control bodies have long known of the features of an existing CWC/GWC and in the same time, a lack of interest in bilateral cooperation on working conditions between the employer and the workers' representatives in the enterprise. Not for the first time, employers in micro-enterprises have refused to implement the provision of article 28, paragraph 1 of the SHWCA, and have branded it inappropriate and inapplicable to their conditions.

There are employers who fail to provide workers' representatives with training. In fact, the failure to implement article 30, paragraph 3 of the SHWCA is one of the breaches that bear the worst consequences for bilateral cooperation and working conditions dialogue in enterprises. Structural changes, work force dismissals and fluctuation also predetermine the irregular manning of CWCs/GWCs staff. Fears of some workers' representatives from possible reprisals on behalf of the employer for them in case of cooperation with labour inspectors also deter them from participating in dialogue. Nevertheless, the part of all General Labour Inspection Directorates continues to be vital for the development of bilateral cooperation in enterprises, as they are the ones who invite and insist on the participation in inspections of workers' representatives and labour inspectors are the most common initiators of discussions, during the CWC meetings, on inspections results, as well as on increasing workers' representatives awareness.

The Committee notes from the report that pursuant to Art. 294, 297, and 299 of the Labour Code, a series of social and socio-cultural services and facilities may be set up within the undertaking. However, it notes that there is no information on how workers or workers' representatives may participate in the organisation of these services and facilities where they exist. Therefore, it requests that relevant information be provided in the next report.

Labour Code – amendments

Article 299.

.....

(3) The social funds and the forms of social services shall be used also by the employee's families upon decision of the general meeting (meeting of proxies) and in conformity with the collective agreement.

Field /branch/ collective employment agreement in the branch of exploration, extraction and processing of mineral materials. Sofia, December 2004.

VIII. Social and live service. Social security and assistance.

Article 43

/1/ Employers, independently or jointly with other organizations shall provide canteen food and in cases when specific conditions do not allow this, other appropriate way, specified with the respective trade unions, parties to the agreement and with the collective employment agreement in trading companies

/2/ Depending on the financial capabilities, the employer shall provide:

a. means of cheapening the food;

b. means of supporting own holiday base and shall bargain the usage of rented holiday and tourism houses or pay a percentage of the expenses made by employees, set out in the collective employment agreement in the enterprise and following the requirements of article 293 of the Labour Code.

c. transport service for the workers from the place of their residence to the workplace and back.

/3/ the distribution of vacation allocations in departmental holiday houses shall be done by a commission composed on the principle of parity between the trade unions who are a party to this treaty and the employer.

Article 44

In case of availability of finances, the employer may pay additional remuneration to workers for official holidays, as well as finance workers' trips for rest and rehabilitation during their yearly paid leave, under the observation of the requirements of article 293 of the Labour Code.

Article 45

/1/ In case of death of a worker, following a workplace accident, the employer shall pay the respective family a financial aid in the amount of 4 average for the enterprise gross monthly wages.

/2/ In case of death of a worker, the employer shall pay his or her family a financial aid in the amount of 2 average for the enterprise gross monthly wages.

/3/ The gross monthly wage for the month superseding the event is considered average for the enterprise gross monthly wage.

The Committee asks whether workers or their representatives have a right to lodge a complaint or file suit before competent courts where their rights have been infringed.

(See the information regarding article 21)

Article 24 – The right to protection in cases of termination of employment

The Committee considers with regard to Article 24 of the Revised Charter that when a dismissal is ruled to be null and void and an employee's reinstatement is ordered, or the employment relationship is held to have been uninterrupted, such decisions must at a minimum be accompanied by an entitlement to receive the wage that would have been payable between the date of the dismissal and that of the court decision or effective reinstatement. The Committee therefore considers that in Bulgaria, the maximum compensatory payment of six months' wages cannot be considered as adequate with respect to Article 24.

The Committee concludes that the situation in Bulgaria is not in conformity with Article 24 of the Revised Charter since the compensatory payment for termination of employment for non-valid reasons is subject to a maximum of six months' wages.

Question A

Labour Code – amendments

Article 327

3a. (New, SG No. 52/2004) as a result of the change, conducted under Article 123 (1) the work conditions under the new employer have deteriorated considerably;

This provision is to be applied:

1. in case of a merger of enterprises;
2. in case of a merger of one enterprise into another;
3. in case of splitting the activities of one enterprise between several enterprises;
4. in case of an acquisition of an autonomous part by one enterprise from another;
5. in case of a change of the proprietor of the enterprise or of an autonomous part of the enterprise;
6. in case of leasing, renting or giving the enterprise or an autonomous part of it under concession.

Article 330, paragraph 2.

An employer shall terminate an employment contract without notice in the following cases:

.....

3. (New, SG No. 83/1998, supplemented, SG No. 46/2005, amended, SG No. 76/2005) The employee has been deleted from the registers of the professional organizations pursuant to the Professional Organizations of Medical Doctors and Dentists Act , or of the Register of the Bulgarian Association of Health Care Professionals under the Professional Organizations of Medical Nurses, Midwives and Associated Medical Specialists Act.

4. (repealed., SG No 52/2004);

.....

7. (New, SG No. 95/2003) workers or employees fail to fulfill the notification obligation pursuant to Article 126, item 12;

/Article 126, item 12 (new, SG No. 95/2003) notify the employer of any of incompatibility with job, if in the course of the work performed any of the grounds for incompatibility under Article 107a (1) become a fact/

8. (New, SG No. 95/2003) in case of incompatibility under Article 107a (1).

Article 107a. (New, SG No. 95/2003)

(1) Contracts for employment in the state administration shall not be executed with persons, who:

1. would thus enter into a hierarchical line of management or control with a spouse, with next-of-kin without restrictions, with members of lateral branches of the family to the fourth link included or with in-laws up to the fourth link included;

2. are sole traders, unlimited liability partners in commercial companies, managers or executive members, commercial agents, commercial representatives (procurators), liquidators or trustees in bankruptcy;

3. are members of the National Assembly;

4. are councilors in municipal councils - only for the respective municipal administrations;

5. (amended, SG No. 24/2006) occupy leading or control positions at national level in political parties; this ban shall not apply to members of political cabinets, and the advisors and experts thereto./

Article 333. (Amended, SG No. 100/1992)

(1) (Amended, SG No. 110/1999 - effective 17.12.1999, SG No. 25/2001) In the cases under Article 328, para 1, items 2, 3, 5 and 11 and Article 330, para 2, item 6, an employer may dismiss only with prior consent of the labour inspectorate for each specific case:

1. (Amended, SG No. 52/2004) Employees, mothers of children younger than 3 years of age, or spouses of persons who are undergoing regular military service;

.....

(5) (New, SG No. 52/2004) A pregnant employee may be dismissed by prior notice only on the grounds of Article 328 (1), items 1, 7, 8, 9 and 12, as well as without notice on the grounds of Article 330 (1) and (2) item 6. In the cases under Article 330 (2) item 6, dismissal may take place only with the prior consent of the labour inspectorate.

(6) (New, SG No. 25/2001, renumbered from Paragraph 5, SG No. 52/2004) An employee, who is on pregnancy or child-birth leave, may be dismissed only on the grounds Article 328 (1), item 1.

(7) (Renumbered from Paragraph 5, SG No. 25/2001, renumbered from Paragraph 6, SG No. 52/2004) Protection under this article shall be valid as at the moment of serving the order of dismissal.

Civil Servants Act - amendments

Article 103 (1) Any civil-service relationship may be terminated on any of the following generally applicable grounds:

2. (amended, SG No. 95/2003) should an order on termination of the civil-service relationship of the civil servant be revoked by the appointing authority or by the court of law, and the said civil servant fails to report for assumption of the previous position within the time limit established under Article 122 (1) herein;

....

6. (new, SG No. 95/2003) by reason of expiration of the period for which the civil servant has been appointed;

7. (new, SG No. 95/2003) by reason of return of the civil servant substituted;

8. (renumbered from Item 6, SG No. 95/2003) by the death of the civil servant.

(2) (Repealed, SG No. 95/2003).

Unilateral Termination by the Appointing Authority with Notice

Article 106 (1) The appointing authority may terminate the civil-service relationship, giving the civil servant one month's notice, in any of the following instances:

1. upon closure of the administration wherein the civil servant has been appointed;

2. upon elimination of the position;

3. (repealed, SG No. 95/2003);

4. (repealed, SG No. 95/2003);

5. (amended, SG No. 95/2003) upon acquisition of entitlement to contributory-service and retirement-age pension.

....

(3) (Amended, SG No. 95/2003) In the instances referred to in Item 5 of Paragraph (1), the respective civil servant shall be entitled to compensation equivalent to as many gross monthly salaries, fixed at the time of termination of the civil-service relationship, as is the number of years worked in civil service but not exceeding twenty. Should the civil servant have worked at the same administration during the last preceding ten years, the said servant shall be entitled to receive six gross monthly salaries, and where the said servant has worked during less than ten years, the said servant shall be entitled to receive two gross monthly salaries, should this be a more favorable option. Such a compensation shall be available on a single occasion. Compensation shall furthermore be due where the civil service relationship is terminated unilaterally by the civil servant or by mutual consent and at the time of termination the said civil servant has acquired entitlement to contributory service and retirement-age pension.

(4) (Amended, SG No. 95/2003) For non-compliance with the notice period by the appointing authority, compensation equivalent to the gross salary for the notice period as non-complied with shall be due to the civil servant.

Unilateral Termination by the Appointing Authority without Notice

Article 107 (Previous Article 107, SG No. 95/2003) The appointing authority shall terminate the civil-service relationship without notice where:

.....

5. (new, SG No. 95/2003) the civil servant is objectively unable to execute the official duties thereof in cases other than the cases referred to in Item 3 of Article 103 (1) herein;

6. (new, SG No. 95/2003) the position occupied by the civil servant must be vacated for reinstatement of an unlawfully discharged civil servant who previously occupied the same position;

7. (new, SG No. 95/2003) the civil servant has been appointed in non-compliance with the terms under Article 7 herein, and the breach continues to exist at the time of termination of the legal relationship.

(2) (New, SG No. 95/2003, supplemented, SG No. 24/2006) The appointing authority may terminate without notice the civil-service relationship with a civil servant who has received the lowest possible grade upon certification, within one month from receipt of the final grade.

(3) (New, SG No. 95/2003) In the cases referred to in Item 6 of Paragraph (1), the civil servant released shall be entitled to compensation for the shorter of the time during which the said servant remained unemployed and two months. Compensation for a longer period may be provided for by an act of the Council of Ministers. Should the said civil servant have entered another civil service carrying a lower salary during the said period, the said servant shall be entitled to the balance for the same period.

Termination of Civil-Service Relationship on the Appointing Authority's Initiative for Agreed Compensation

Article 107a (New, SG No. 95/2003)

(1) The appointing authority may propose to the civil servant termination of the civil-service relationship for a compensation equivalent to not more than the sextuple amount of the last gross monthly salary received. Should the servant do not react in writing to any such proposal within seven days, refusal of the said offer shall be presumed.

(2) Should the civil servant accept the proposal referred to in Paragraph (1), the appointing authority shall be obliged to pay the said servant the agreed compensation upon service of the order on termination of the civil-service relationship.

Protection upon Termination of Civil-Service Relationship

Article 107b (New, SG No. 95/2003, amended, SG No. 24/2006)

(1) The appointing authority may terminate the employment of a female civil servant who is on pregnancy or maternity leave only in cases as per Article 106, paragraph (1), item 1.

(2) The appointing authority cannot terminate on the grounds of Article 106, paragraph (1), item 2 the employment of a female civil servant who is pregnant. Termination is allowed in case where there is a suitable alternative position available for said civil servant in the same administration but she refuses to fill it.

Suspension from Service

Article 100

(1) (Amended, SG No. 95/2003) Any civil servant may be suspended by the appointing authority where:

…..

3. (amended, SG No. 95/2003) the said civil servant reports for work in a condition which does not allow him or her to execute the official duties thereof; in such a case, the suspension may be ordered by the immediate superior and shall continue until the civil servant recovers the ability to execute he official duties thereof.

(3) (New, SG No. 95/2003) A civil servant shall not receive a salary for the period of suspension.

(4) (Renumbered from Paragraph (3), SG No. 95/2003) Any civil servant, who has been wrongfully suspended, shall be entitled to compensation under the terms and according to the procedure established by the Act on the Liability of the State for Detriment Inflicted on Citizens.

Republic of Bulgaria Defense and Armed Forces Act – amendments

Article 128b (New, SG No. 122/1997) (1) The Minister of Defense can terminate the regular military service contract by 6-month advance notice to the regular serviceman in the following cases:

.....

2. (supplemented, SG No. 40/2002) on organizational and personnel changes, on total or partial liquidation, on a reduction of the number of servicemen within one military rank on the basis of an act of the Council of Ministers or on a reduction of the strength of the armed forces or their individual formations by a decision of the National Assembly, unless this decision determines another advance notice term

.....

4. (new, SG No. 40/2002) on acquiring pension rights for social insurance time and age under the provisions of the Social Security Code

(2) (Repealed, SG 40/2002).

Article 128c. (New, SG 122/1997) The Minister of Defense terminates the regular military service contract without obligation of an advance notice in the following cases:

1. when the grounds for admission to regular military service under Article 116, paragraph 1, item 7 have dropped out

....

4. (Repealed, SG No. 40/2002).

Article 128d. (New - SG No. 122/1997) (1) Pursuant to article 128b, paragraph 1, item 2 the Minister shall have the right of selection and may terminate, in the interest of the service, regular military service contracts of servicemen whose posts are not being cut so that servicemen with a higher qualification and a better assessment grade should remain in military service.

(2) (Amended, SG No. 40/2002) In making the selection the regular servicemen who have acquired pension rights for social insurance time and age under the Social Security Code shall be discharged from regular military service before all the others.

(3) (New, SG No. 40/2002) The terms and procedures for making the selection under paragraph 1 shall be specified in the Regulations for the Regular Military Service.

Article 129 (Amended, SG No. 40/2002) The officers and the non commissioned officers, and for the Naval Forces - also the petty officers, who have acquired pension rights for social insurance time and age under the Social Security Code may be discharged also at their request because of retirement with a decision of the Minister of Defense

Article 130 (Amended, SG No. 40/2002) (1) The discharge from regular military service of the senior command personnel shall be done with a decree of the President of the Republic of Bulgaria on a proposal of the Council of Ministers. The decree shall be countersigned by the Prime Minister. The termination of the regular military service contract shall be done by the Minister of Defense.

(2) The discharge from regular military service of the remaining officers and the termination of the regular military service contract shall be done with an order of the Minister of Defense on a proposal of the Chief of the General Staff.

(3) The discharge from regular military service of the non commissioned officers, and for the Naval Forces of the petty officers, and the soldiers shall be done by the officials authorized by the Minister of Defense.

Ministry of the Interior Act – amendments

Release from Service

Article 253 (1) (Amended and supplemented - SG No. 29/2000, amended SG No. 17/2003) The civil servants of MoI shall be released from service:

1. On reaching the age limit for service in MoI as an officer or sergeant - 55 years for women and 60 years for men;

2. At the employee's request upon acquiring the right to pension based on retirement insurance and age limit;

3. For health reasons;

4. Voluntarily;

5. For reasons rendering the person unfit to fulfill his/her official duties;

6. For redundancy;

7. When the employee fails or refuses to occupy the position to which he/she has been reinstated within 14 days of enactment of the court decision revoking the illegal discharge order, unless this term is not complied with for valid reasons;

8. Due to dismissal as a disciplinary penalty.

9. (Amended - SG No. 103/2003) On the initiative of the administrative body, upon acquiring the right to pension under the conditions of Article 69 of the Compulsory Public Insurance Code.

10. Upon transfer to an elected position;

11. Upon termination of a contract or reduction of the number of personnel employed under a contract concluded pursuant to Article 81a or 120a.

12. (New - SG No. 103/2003) For objective inability to fulfill official duties.

(2) The circumstances in paragraph 1 (3) shall be verified by the central expert medical committee, and the circumstances under paragraph 1 (5) shall be verified by this act and regulations.

(3) (New - SG No. 29/2000, repealed - SG No. 17/2003)

Question B

Civil Servants Act - amendments

Chapter Eight

Protection against Unlawful Termination of Civil Service Relations

Challenging of Lawfulness of Termination

Article 121 (1) Any civil servant shall have the right to challenge the lawfulness of the termination of the civil-service relationship before the appointing authority or before a court of law care of the appointing authority and to seek:

.....

2. (repealed, SG No. 95/2003);

Article 122

(1) (Amended, SG No. 95/2003) Upon revocation of an order on termination of the civil-service relationship by the appointing authority or by a court of law, the civil servant affected shall be reinstated to the previous position provided the said servant reports to the relevant administration within two weeks after the entry into effect of the administrative act or of the judgment of court.

(2) (Amended, SG No. 95/2003) Any civil servant whereof the civil service relationship has been terminated according to the procedure of Item 1 of Article 107 (1) herein, shall likewise be reinstated to the previous position by reason of effective acquittal according to the procedure established by Paragraph (1).

(3) (New, SG No. 95/2003) Should any civil servant reinstated according to the procedure established by Paragraph (1) be not suffered to execute the relevant office, the said servant shall furthermore be entitled to compensation equivalent to the gross salary thereof as from the day of reporting for work until the actual sufferance of the said servant to execute the official duties thereof.

Entry of Modifications of Termination

Article 123

(1) Should any act of termination of a civil-service relationship be revoked by the appointing authority or by a court of law, or should the grounds for termination of the civil-service relationship be modified, the said modification shall be entered in the civil-service record of the civil servant concerned.

(2) Entry in the civil-service record shall be effected proprio motu.

Republic of Bulgaria Defense and Armed Forces Act – amendmenets

Article 131. (Amended, SG No. 40/2002, SG No. 30/2006) Regular servicemen shall be entitled to appeal the order on discharge under an administrative procedure within Article seven days under the Administrative Procedure Code.

Article 132. (Amended, SG No. 122/1997; SG No. 49/2000) (1) (Amended, SG No. 30/2006, effective 1.03.2007 in reference to the replacement of "district" with "administrative") The order on discharge from regular military service may be appealed under a judicial procedure through the body that has issued it. Any disputes shall be subject to the jurisdiction of the administrative courts or the Supreme Administrative Court in accordance with the relevant procedures as per the Administrative Procedure Code.

(2) The appeal of the acts under paragraph 1 shall not stop their implementation.
(3) No state fees shall be collected for the proceedings under paragraph 1.

Article 133. (Repealed, SG No. 49/2000).

Article 134. (1) On repealing the discharge by the court the regular serviceman shall have the right to an compensation amounting to his monthly salary for the time during which he was left without a job, but for not more than 6 months. When during this time he has worked at a lower paid job, he shall have the right to receive the difference of the salaries.

(2) (Amended, SG No. 49/2000) When the order on discharge has been repealed, the serviceman shall be restored to the previous or to another position corresponding to the military rank and professional qualification he/she has if he/she reports to the respective military unit within two weeks after the enactment of the court decision.

Ministry of Interior Act – amendments

Article 192 (1) (Amended - SG No. 29/2000) The personnel of MoI shall consist of:
….

(3) (New - SG No. 29/2000, amended - SG No. 17/2003) The civilian civil servants' terms of employment (recruitment, content and termination) at MoI shall be governed by this Act, and for the unsettled issues shall apply the Civil Servants Act.

Article 263 (1) (Amended - SG No. 29/2000) The employees under Article 192, paragraph 1 (1) who have been dismissed unlawfully shall have the right of compensation amounting at their gross remuneration prior to dismissal, for the time of unemployment. When this during this time they have occupied lower paid job, they shall have the right to the difference in these payments.

(2) The provision of Para (1) shall be also applicable in case of suspension from employment under the procedures of the Criminal proceedings Code, when the criminal investigation for the suspended employees is terminated or they are discharged, or when the reason for suspension drops out.

Quesion C

a)

The right to compensation is available to all workers and employees, irrespectively of the type of enterprise.

b)

Labour Code – no amendments have been made

Ministry of Interior Act

Chapter Twenty-Five

Compensations

Article 263 (1) (Amended - SG No. 29/2000) The employees under Article 192, paragraph 1 (1) who have been dismissed unlawfully shall have the right of compensation amounting at their gross remuneration prior to dismissal, for the time of unemployment. When this during this time they have occupied lower paid job, they shall have the right to the difference in these payments.

(2) The provision of Para (1) shall be also applicable in case of suspension from employment under the procedures of the Criminal proceedings Code, when the criminal investigation for the suspended employees is terminated or they are discharged, or when the reason for suspension drops out.

c)

Civil Servants Act

Right to Compensation

Article 39. Each civil servant shall be entitled to compensation where so provided for by the law.

Article 61 (1) (Previous Article 61, SG No. 95/2003) It shall be prohibited to pay a cash compensation in lieu of any paid annual leave except upon termination of the civil-service relationship.

(2) (New, SG No. 95/2003) Upon termination of the civil-service relationship, the amount of cash compensation for the unused days of paid annual leave shall be determined conforming to the amount of the gross salary fixed to the civil servant at the date of termination of the civil- service relationship.

.

.....

Article 100 (4) (Renumbered from Paragraph (3), SG No. 95/2003) Any civil servant, who has been wrongfully suspended, shall be entitled to compensation under the terms and according to the procedure established by the Act on the Liability of the State for Detriment Inflicted on Citizens.

Compensations upon Termination on Generally Applicable Grounds

Article 104

(1) (Amended, SG No. 95/2003) Where the order on termination of the civil-service relationship is revoked by the appointing authority or by the court of law, the civil servant affected shall be entitled to compensation equivalent to the gross salary thereof for the entire period of exclusion from civil service but not exceeding ten months. Should the said civil servant have been appointed to another civil service with a lower salary or has received remuneration of a lower amount for another work, the said civil servant shall be entitled to the difference between the salaries or to the difference between the salary and the remuneration. For the purposes of determination of the compensation, the gross salary shall be the gross salary as fixed to the civil servant at the time of pronouncement of the discharge as unlawful or of the failure to report for assumption of service.

(2) In the case referred to in the second sentence of Item 4 of Article 103 (1) herein, the civil servant affected shall be entitled to compensation equivalent to the triple amount

of the gross salary thereof as fixed at the time of termination of the civil-service relationship.

(3) In the case referred to in Item 3 of Article 103 (1) herein, the civil servant shall be entitled to compensation equivalent to six gross salaries, as fixed at the time of termination of the civil-service relationship.

(4) (Amended, SG No. 95/2003) In the case referred to in Item 8 of Article 103 (1) herein, the relevant administration shall assume the customary expenses on the funeral of the civil servant and shall pay a compensation equivalent to as many gross salaries, fixed at the time of death, as is the number of years worked in civil service, but not exceeding twenty. The said compensation shall be paid in common to the surviving spouse, to the children of the civil servant who have not attained majority, and to the children of the civil servant who have attained majority where the latter attend secondary schools as full-time pupils and have not attained the age of 20 years, or where the latter attend higher schools and have not attained the age of 25 years.

Unilateral Termination of Civil-Service Relationship by Civil Servant

Article 105

(1) Any civil servant may unilaterally terminate the civil-service relationship by submitting a letter of resignation to the appointing authority.

(2) The civil-service relationship shall be terminated upon the lapse of a one-month period which shall begin to run from the day of submission of any such letter of resignation.

(3) The appointing authority may terminate the civil-service relationship prior to the expiration of the time limit referred to in Paragraph (2), paying the civil servant compensation equivalent to the gross salary due thereto for the remainder of the time.

Unilateral Termination by the Appointing Authority with Notice

Article 106

(1) The appointing authority may terminate the civil-service relationship, giving the civil servant one month's notice, in any of the following instances:

1. upon closure of the administration wherein the civil servant has been appointed;
2. upon elimination of the position;
3. (repealed, SG No. 95/2003);
4. (repealed, SG No. 95/2003);
5. (amended, SG No. 95/2003) upon acquisition of entitlement to contributory-service and retirement-age pension.

(2) In the instances referred to in Items 1 and 2 of Paragraph (1), the civil servant affected shall be entitled to compensation for up to two months of the time of removal from work. An act of the Council of Ministers may provide for a compensation for a longer period. Should the said civil servant enter another civil service with a lower salary during that period, the said servant shall be entitled to the difference for the actual duration of removal.

(3) (Amended, SG No. 95/2003) In the instances referred to in Item 5 of Paragraph (1), the civil servant affected shall be entitled to compensation equivalent to as many gross monthly salaries, fixed at the time of termination of the civil-service relationship, as is the number of years worked in civil service but not exceeding twenty. Should the civil servant have worked at the same administration during the last preceding ten years, the said servant shall be entitled to receive six gross monthly salaries, and where the said servant has worked during less than ten years, the said servant shall be entitled to receive two gross

monthly salaries, should this be a more favorable option. Such a compensation shall be available on a single occasion. Compensation shall furthermore be due where the civil service relationship is terminated unilaterally by the civil servant or by mutual consent and at the time of termination the said civil servant has acquired entitlement to contributory service and retirement-age pension.

(4) (Amended, SG No. 95/2003) For non-compliance with the notice period by the appointing authority, compensation equivalent to the gross salary for the notice period as non-complied with shall be due to the civil servant.

Termination of Civil-Service Relationship on the Appointing Authority's Initiative for Agreed Compensation

Article 107a

(New, SG No. 95/2003)

(1) The appointing authority may propose to the civil servant termination of the civil-service relationship for a compensation equivalent to not more than the sextuple amount of the last gross monthly salary received. Should the servant fail to react in writing to any such proposal within seven days, acceptance of the said offer shall be presumed.

(2) Should the civil servant accept the proposal referred to in Paragraph (1), the appointing authority shall be obligated to pay the said servant the agreed compensation upon service of the order on termination of the civil-service relationship.

Protection upon Termination of Civil-Service Relationship

Article 107b

(New, SG No. 95/2003, amended, SG No. 24/2006)

(1) The appointing authority may terminate the employment of a female civil servant who is on pregnancy or maternity leave only in cases as per Article 106, paragraph (1), item 1.

(2) The appointing authority cannot terminate on the grounds of Article 106, paragraph (1), item 2 the employment of a female civil servant who is pregnant. Termination is allowed in case where there is a suitable alternative position available for said civil servant in the same administration but she refuses to fill it.

Challenge of Lawfulness of the Termination

Article 121

(1) Any civil servant shall have the right to challenge the lawfulness of the termination of the civil-service relationship before the appointing authority or before a court of law care of the appointing authority and to seek:

1. revocation of the act of termination;
2. (repealed, SG No. 95/2003);
3. compensation for the time of removal from service by reason of termination;
4. modification of the grounds for termination of the civil service relationship as entered in the civil-service record or in other documents.

(2) Acting on own initiative, the appointing authority may likewise revoke the order of termination of the civil service relationship.

Reinstatement to Previous Civil Service

Article 122

(1) (Amended, SG No. 95/2003) Upon revocation of an order on termination of the civil-service relationship by the appointing authority or by a court of law, the civil servant affected shall be reinstated to the previous position provided the said servant reports to the relevant administration within two weeks after the entry into effect of the administrative act or of the judgment of court.

(2) (Amended, SG No. 95/2003) Any civil servant whereof the civil service relationship has been terminated according to the procedure of Item 1 of Article 107 (1) herein, shall likewise be reinstated to the previous position by reason of effective acquittal according to the procedure established by Paragraph (1).

(3) (New, SG No. 95/2003) Should any civil servant reinstated according to the procedure established by Paragraph (1) be not suffered to execute the relevant office, the said servant shall furthermore be entitled to compensation equivalent to the gross salary thereof as from the day of reporting for work until the actual sufferance of the said servant to execute the official duties thereof.

Entry of Modifications of Termination

Article 123

(1) Should any act of termination of a civil-service relationship be revoked by the appointing authority or by a court of law, or should the grounds for termination of the civil-service relationship be modified, the said modification shall be entered in the civil-service record of the civil servant concerned.

(2) Entry in the civil-service record shall be effected proprio motu.

Chapter Nine

Disputes

Jurisdiction

Article 124

(1) (Amended, SG No. 30/2006, effective 1.03.2007, in respect of the replacement of the word "district" by "administrative") Any dispute as may arise regarding the establishment, contents and termination of civil-service relationships, as well as regarding the enforcement of disciplinary liability, shall be cognizable in the competent administrative court or the Supreme Administrative Court according to the procedure established by the Administrative Procedure Code , depending on which authority has issued the relevant act.

(2) Appeal of any act shall not stay the execution thereof.

Property Disputes

Article 125

Any property dispute under this Act shall be actionable within three years according to the standard procedure.

Free Proceedings

Article 126

No stamp duty shall be charged on any proceedings under this Chapter.

Ministry of Interior Act

Article 255. (1) (Amended - SG No. 17/2003, SG No. 103/2003) Upon release from service under Article 253, paragraph 1 (3), (5), (6), (9) and (12) the body under Article 254 shall extend a 30-day written notice. Upon release from service without prior notification or when the term of the notice is not observed, the employees shall be paid a compensation for the period of non-compliance with the preliminary notification.

(2) (Amended - SG No. 17/2003) Upon voluntary release from service under Article 253, paragraph 1 (2) and (4) the order shall be issued within the term under paragraph 1.

(3) (Supplemented - SG No. 17/2003) Upon release from service under Article 253, paragraph 1 (1) and (11) no preliminary notification shall be required.

Article 256. (1) (Amended - SG No. 17/2003) The civil servants of MoI shall not be released from service during their leave, except in the cases under Article 253, paragraph 1 (1) and if they are sentenced to imprisonment for felony.

(2) The sick leave shall be considered valid if the medical certificate is issued by the health institutions of MoI or by other medical institutions in the country. Health certificates issued by other medical institutions shall be endorsed by CEMC or by the health services of the Ministry.

Article 257. (Amended - SG No. 29/2000) (1) (Supplemented - SG No. 17/2003) The order for release from service shall be subject to immediate execution from the day of its serving, and in the cases under Article 253, paragraph 1 (3), (7) and (10), from the date of issuance.

(2) Appealing against the order shall not stop its execution.

Article 258. The order for release from service may be contested in the court through the issuing body within the timeframes laid down in the Administrative Procedure Act.

Article 259. (Amended, SG No. 17/2003, SG No. 86/2005) The civil servants of MoI may be temporarily suspended from service under Article 69 and Article 403 of the Criminal Procedure Code.

Article 260. (Amended - SG No. 17/2003) Upon revocation of illegal discharge the civil servants of MoI shall be reinstated to the previous or another equal position in the Ministry, and they may take over the position if within two weeks of enactment of the court decision they appear at the respective service.

Republic of Bulgaria Defense and Armed Forces Act

Article 128e. (New, SG No. 122/1997) The party entitled to terminate the regular military service contract with an advance notice can terminate it also before the expiry of the term of the advance notice, and shall owe to the other party compensation amounting to the gross monthly remuneration for the period of the advance notice not complied with.

...

Article 134. (1) On repealing the discharge by the court the regular serviceman shall have the right to an compensation amounting to his/her monthly salary for the time during which he/she was left without a job, but for not more than 6 months. When during this time he has worked at a lower paid job, he/she shall have the right to receive the difference of the salaries.

(2) (Amended, SG No. 49/2000) When the order on discharge has been repealed, the serviceman shall be restored to the previous or to another position corresponding to the military rank and professional qualification he/she has if he reports to the respective military unit within two weeks after the enactment of the court decision.

...

Article 237. (1) (Supplemented, SG 153/1998; amended, SG 112/2003) On discharge from regular military service regular servicemen shall receive a one-off cash compensation in an amount of as many gross monthly salaries as are the years they have served but not more than 20.

(2) On a second discharge from regular military service the amount received under paragraph 1 shall be deducted from the compensation due.

(3) (Supplemented, SG No. 153/1998; amended, SG No. 112/2003) When the regular servicemen has served for ten years and more and has been discharged due to health reasons in connection with a condition or injury suffered during or in connection with performing service duties, the amount of the one-off cash compensation under paragraph 1 may not be less than 15 gross monthly salaries.

(4) (Supplemented, SG No. 153/1998; amended, SG No. 112/2003) In cases under paragraph 3, when the time served is less than ten years, the regular serviceman shall receive a one-off cash compensation amounting to 10 gross monthly salaries.

(5) On discharge from military service after ten or more years served the serviceman shall be entitled to a one-off gratuitous additional possessions supply.

(6) (Amended, SG No. 122/1997) Paragraphs 1 and 5 shall not apply in case of disciplinary discharge, as well as regarding regular servicemen sentenced for premeditated crime of general nature.

(7) In case of demise of the serviceman the sums of the previous paragraphs shall be paid to his inheritors.

(8) (Repealed, SG No. 153/1998)

Article 238. (1) The years served without the additional length of service made equal shall be taken into account for determining the amount of the one-off cash compensation on discharge from regular military service.

(2) On discharge of servicemen due to retirement, who have served the last 13 years and 4 months as regular servicemen the amount of the compensation shall be determined by the sum of:

1. the years of regular military service served;

2. the years of the length of service made equal to the category for regular servicemen.

(3) (Amended, SG No. 93/2004) The amount of the gross monthly salary received for the month preceding the date of discharge from regular military service shall be taken as a basis for calculating the one-off cash compensation.

Article 239. In case of reductions of the number of the armed forces under a decision of the National Assembly the compensations that are paid to the regular servicemen shall be determined in the act on the reduction independently of the sums due herein.

Questions of the European Committee of Social Rights

The Committee asks for the date of the latest amendment of the Labour Code.

The latest amendment of the Labour Code was promulgated in State Gazette 105 from 29 December 2005 and entered into force on 1 January 2006.

The Committee asks that the following report reply to the following questions:

- **in general, does immediate dismissal include a connotation of fault of the part of the worker (intentional or accidental)? ;**

Labour Code

Termination of the Employment Contract by the Employer without Notice

Article 330. (2) (Amended, SG No. 100/1992) An employer shall terminate an employment contract without notice in the following cases:

...

6. (Renumbered from item 6, SG No. 100/1992, renumbered from item 5, SG No. 83/1998) In case of disciplinary dismissal;

Types of Work Discipline Violations

Article 187. Violations of the work discipline shall be:

1. Late reporting to or early departure from work, absence from work, inefficient work during working hours;

2. (supplemented, SG No. 100/1992) Reporting to work of the employee in a state not allowing him to fulfill the assigned job;

3. Non-fulfillment of the assigned job, non-observance of the technical and technological regulations;

4. Manufacture of sub-standard products;

5. Non-observance of the safety and health work regulations;

6. (Repealed, SG No. 100/1992)

7. (amended, SG No. 100/1992) Failure to carry out the lawful orders of the employer;

8. Abuse of confidence and injury to the good name of the enterprise as well as divulging proprietary information of the enterprise;

9. (amended, SG No. 100/1992) Damage to the property of the employer and dissipation of resources, raw materials, energy and other means;

10. Non-fulfillment of other employment obligations provided by the laws and regulations, by the internal labour regulations, the collective agreement or arising from the employment relationship.

Types of Disciplinary Sanctions

Article 188. (Amended, SG No. 100/1992) Disciplinary sanctions shall be:

.....

3. Dismissal.

Criteria for Imposing and Singleness of the Disciplinary Sanction

(Title amended, SG No. 100/1992)

Article 189 (1) (Repealed, renumbered from Paragraph 2, SG No. 100/1992) The choice of the disciplinary sanction shall be determined by the gravity of the infringement, the circumstances surrounding its occurrence and the behavior of the employee.

(2) (Renumbered from Paragraph 3, SG No. 100/1992) Only one disciplinary sanction shall be imposed for each violation.

Disciplinary Dismissal

Article 190. (1) (Amended, SG No. 100/1992) A disciplinary dismissal shall be imposed after:

1. Reporting to work late or early departure on three occasions, each no less than one hour, within one calendar month;

2. Absence from work for two consecutive working days;

3. Systematic violations of the work discipline;

4. (Amended, SG No. 25/2001) Abuse of employer's confidence or divulging proprietary information of the employer;

5. Causing losses to other persons by employees in the trade and services industries by fraud in the price, the weight, the quality of the item or service;

6. (New, SG No. 51/1999) Participation in games of chance through telecommunication means of the enterprise and the costs incurred shall be reimbursed in their full amount;

7. (Renumbered from Paragraph 6, SG No. 51/1999) Other grave violations of the work discipline.

(2) (New, SG No. 25/2001) A disciplinary dismissal pursuant to paragraph (1) shall be imposed in compliance with the criteria under Article 189, paragraph (1).

Article. 191 (Repealed, SG No. 100/1992)

Employer's Obligations Prior To Imposing A Disciplinary Sanction

(Title amended, SG No. 100/1992)

Article 193. (Amended, SG No. 21/1990, amended and supplemented, SG No. 100/1992)

(1) Prior to imposing a disciplinary sanction the employer shall hear the employee or accept a written statement and shall gather and assess the indicated evidence.

(2) Should the employer fail to hear the employee or to accept his/her written report prior to the imposition of the sanction the court shall revoke the disciplinary sanction without reviewing the case on its merits.

(3) The provisions of the preceding paragraph shall not apply if the employee was not heard or his/her report not received through his/her own fault.

Period of Imposing of a Disciplinary Sanction

Article 194 (1) The disciplinary sanctions shall be imposed within two months of the discovery of the violation and no later than 1 year of its perpetration.

(2) For a disciplinary violation which is also a crime or administrative violation related to the assigned job and established with a sentence or penal enactment, the periods pursuant to the preceding paragraph shall start running on the day the sentence or the penal enactment become effective.

(3) (Supplemented, SG No. 21/1990, SG No. 100/1992, amended, SG No. 25/2001) The periods under para 1 shall not run during the lawful leave of the employee or while he takes part in a strike.

- **as concerns dismissal in case of injury:**

- isimmediate dismissal for reasons of permanent injury permitted regardless of the origin of the injury? In particular, may this occur in cases of injuries sustained in the workplace or in cases of occupational diseases?;

The inability of the worker to carry out his/her duties due to a sickness that has brought about a permanent injury or due to health contra-indications. "The inability" means that the worker is unable to carry out his duties under his employment contract. This inability in this case must be caused by one of two reasons that are strictly identified by law. The first reason is a sickness that has brought about a permanent injury (disability). This means that the worker must have a certified inability of 50% or above by the Territorial Expert Medical Commission (TEMC), established under the relevant rules. The second reason is a health contra-indication. These are the cases when the worker suffers from an illness that has not caused his/her permanent injury or when the worker, without being sick, cannot endure certain elements of the existing working environment (such as vapors, lighting, vibrations, etc.), has allergies or other sensitivities towards these, which is contraindicative to his health. The presence of these preconditions in each of the two forms (inability and health contra-indication) is to be certified with a TEMC decision. This Commission not only establishes the sickness or injury that has caused the disability (health contra-indications) but it also explicitly points out in its conclusion that this condition of the worker brings about his or her inability to carry out certain duties under his or her employment contract. This is where the second part of the provision of article 325, item 9 of the Labour Code comes in.

The aim of the legislator is to prevent the termination of the worker's employment contract when the enterprise has a job that is suitable for his or her health condition. A "suitable job" means a vacant position that corresponds to the changed health condition of the worker that he or she can carry out and for which he or she meets the applicable legal requirements and the requirements of the respective job description (vocational qualification, work experience, capacity, etc.). The circumstance that this position is suitable is to be certified by the competent health authority (TEMC), even though there is no explicit provision for this in Bulgarian legislation. The worker may take up this position only if he or she agrees to do so. If there are no suitable jobs within the enterprise or if the worker does not agree to take up the proposed suitable job, the employment contract with him or her is to be terminated based on the provision of article 325, item 9. When the aforementioned circumstances are in place, each of the parties under the employment contract may embark on the initiative for its termination under item 9.

The practice of the Supreme Court of Cassation applies strictly the requirements of item 9. The termination of the employment contract is correct in case the employer does not another vacant position or job that is (Verdict No 155-99-III, Verdict1290-99-III, Verdict No 1398-99-III, etc). This is also valid for the cases when the worker suffers temporary disability for a specified period of time of one year, but the employer does not have a suitable position for him or her. On the contrary, it is illegal to terminate an employment contract based on item 9 due to sickness or disability, including due to health contra-indications, in case the employer did have a vacant position that was suitable for the workers health condition but failed to offer it to the worker (Verdict No 243-97-III, Verdict No 269-2000-III , etc.).

- do employers pay compensation for termination in cases of immediate dismissal for reasons of permanent injury?

Labour Code

Article 222 (2) Upon termination of the employment relationship due to an illness (Article 325, para 9, and Article 327, para 1) the employee shall be entitled to a compensation from the employer in the amount of his/her gross labour remuneration for a period of two months, provided his/her length of service is at least 5 years and during the last 5 years of service he/she has not received any compensation on the same grounds.

- if the permanent injury allows the worker to carry out light work, is the employer obliged to offer a different placement? If so, if the employer is unable to do this, what alternatives may be envisaged?

(See above)

- is it possible to terminate the contract in case of a prison sentence, even if the sentence does not concern facts related to the employment or to any professional fault of the worker?

According to article 330, paragraph 1 of the Labour Code, grounds for dismissal of a worker without notice on behalf of the employer is worker's detention for the implementation of a court verdict that imposes the punishment of imprisonment with effective action. The amount of time that is to be spent imprisoned by the worker bares no significance. The dismissal in such cases is subject to the employer's judgment, i.e. despite the imprisonment of the worker for a certain period of time, the employer may chose not to dismiss him or her, if the employer decides that the amount of time of the imprisonment is small one and the worker will soon be able to come back to work or for whatever other reasons. The grounds for dismissal are at hand from the moment of the detention of the worker for the implementation of the imprisonment verdict (the grounds for imposing such punishment are comprehensively listed in the Penal Code of the Republic of Bulgaria).

The Committee asks for the next report to provide the following information:

- **how are reasons regarding the impossibility of implementing the employment contract and the reduction in staffing or the volume of work interpreted and applied in practice?**

Reduction of staffing is one of the most frequent grounds for dismissal of workers by their employers. Reduction of staffing is to be understood as the reduction, removal in future of certain numbers of the established total number of workers. Dismissal implemented based on reduction of staffing is subject of court control (Verdict No 1279 of 1992).

Item 3 of article 330, paragraph 1 foresees dismissal due to reduction of staffing. This means decrease of the manufactured and accounted for production, the decreased amount of the turnover and the overall amount of work. This may be due to different reasons – lack of sufficient materials and energy, decrease in demand and the possibilities for marketing, lessening the amount of work activities and others (Verdict № 641 of 12.11.2004 г. on Civil Case № 284 from 1994; Verdict № 982 of 25.01.1995 г. on Civil Case № 735 of 1994). In such case, the matter of lawfulness and judicial control is to what extent is the shrinking of the amount of work objective and actual, whether the effectuated dismissals are caused and justified by the shrinking in the amount of work.

- **how can reasons be linked as regards work stoppage for more than thirty days as provided for under Section 325 of the Labour Code and control of the Labour Inspectorate?**

Labour Code

Article 222. (Amended, SG No. 100/1992) (1) (Amended, SG No. 1/2002) Upon dismissal due to closing down of the enterprise or part of it, staff reduction, reduction of the volume of work and work stoppage for more than 15 work days, the employee shall be entitled to compensation from the employer. The compensation shall be in the amount of his/her gross labour remuneration for the period of unemployment but not for more than one month. A compensation for longer periods may be stipulated by an act of the Council of Ministers, by a collective agreement or by the labour contract. If within this period the employee starts work with a lower remuneration he shall be entitled to the difference for the said period.

Suspension of work means the temporary ceasing of activities within the enterprise. It may concern the whole activity of the enterprise, as well as that of a certain unit of the enterprise. The reasons for it are usually organizational and technical and are related to shortages of materials, stuffs, electricity, renovation of machinery, lack of markets for marketing the manufactured production and others. The decision to suspend work is taken by the employer and there is no specific legislative provision regarding the procedure for taking such decision.

The period of suspension must be 15 work days, excluding the days of the two-week leave, the official holidays and other non-working days.

Labour Code

Article 333 (4) When provided for in the collective agreement, and employer may dismiss an employee due to staff cuts or reduction of the volume of work after obtaining a prior consent from the respective trade union body of the enterprise.

(7) (Renumbered from Paragraph 5, SG No. 25/2001, renumbered from Paragraph 6, SG No. 52/2004) Protection under this article shall be valid as at the moment of serving the order of dismissal.

- **can transfer to another place of work apply to any part of the undertaking, even if it is situated a great distance away or indeed in another country, and, if so, what are the consequences should a worker refuse to be transferred to another place of work?**

Labour Code

Reassignment Compensation

Article 216 (Amended, SG No. 100/1992)

(1) An employee who has been reassigned to work in another community shall, by agreement with the employer, be entitled to:

1. travelling expenses for him and his family;
2. expenses for removing of his household belongings;
3. remuneration for the days of travel plus two extra days.

(2) An employee whose employment relationship has been terminated not through his fault or upon his request by notice shall, by agreement with the employer, be entitled to the expenses pursuant to subparagraphs 1 and 2 of the preceding paragraph for his and his family's return to their permanent place of residence.

(3) An employee shall be entitled to the compensation pursuant to the preceding paragraphs when, pursuant to a procedure established by law, is being or has been reassigned to a permanent position in another community not upon his own request. When the distance to the new community is over 100 km and the reassignment is for more than 1 year the employee shall be entitled to both the agreed monthly remuneration for the new job and a remuneration equal to the value of one fourth of the same amount for each member of his family dependent on the employee. The compensation shall be paid by the employer to whom the employee is assigned.

Termination of Contract of Employment by Employer with Notice

Article 328 (Amended, SG No. 21/1990, SG No. 100/1992)

(1) An employer may terminate a contract of employment by giving a notice in writing to the employee in observance of the terms of Article 326, para 2, in the following cases:

7. When an employee refuses to follow an enterprise or a division thereof, in which he/she is employed, when it is relocated to another community or locality;

The relocation under the meaning of article 328, item 7 of the Labour Code may affect the whole enterprise, as well as a division of it. It is in place when the enterprise relocates from to a settlement or location, different from the settlement or location where it

had been prior to that moment. The worker has the obligation to follow the enterprise that is moving and to which he or she is under contract. The employer must send a written invitation to the worker to follow the enterprise in its relocation. The refusal by the worker to follow the enterprise must also be in written. In such cases the employer cannot keep a worker who does not work for the enterprise in the new settlement, neither can he force the worker to follow the enterprise. Therefore, the only possibility is for the employment contract to be terminated based on article 328, item 7 of the Labour Code.

Section 335, introduced in 2001, requires employers to notify employees of their dismissal in writing. The Committee asks whether it must also notify them of the ground(s) for their dismissal.

Article 335, paragraph 1 of the Labour Code introduces a general rule regarding the form of terminating an employment contract. Regardless of which side under the employment contract takes the initiative or whether it is with or without notice, the termination must be done in writhing only.

The Appendix to Article 24 prohibits illness as a valid ground for termination of employment. The Committee notes, however, that under Bulgarian law, employee illness is a valid reason for termination of employment if it is covered by a ministerial regulation and has been authorised by the Labour Inspectorate (see above, Section 333 of the Labour Code) In order to decide whether the situation is in accordance with the appendix to Article 24, the Committee asks what criteria the Labour Inspectorate takes into account when deciding whether or not to approve dismissal on health grounds and whether the victims of employment injuries or illnesses enjoy special protection.

Article 333 of the Labour Code establishes the so called preliminary protection in case of dismissal. It makes the implementation of the dismissal subject to obtaining a preliminary permission from a certain state authority (the Labour Inspectorate) or a trade union organization. Such permission must be requested in writing by the employer and must be granted/denied in writing by the respective state authority or trade union organization. The preliminary dismissal permission under paragraph 1, article 333 of the Labour Code is granted by the respective regional Labour Inspectorate, on whose territory is the seat of the enterprise or the enterprise division, in which the worker, whose dismissal is requested, is employed. The procedure for obtaining such permission by the employer is not specifically provided for by the law and is elicited via interpretation.

First, the dismissal request is submitted by the employer in writing and is addressed to the respective Labour Inspectorate or trade union organization.

Second, the request must be justified. It must point out the circumstances and considerations, due to which the dismissal of the respective worker is requested, as well as the grounds under article 328, paragraph 1 or article 33, paragraph 2, item 5, based on which the dismissal is requested.

Third, the request must be submitted prior to handing the dismissal order.

Fourth, the competent authority reaches its decision independently, based on the data on the particular case, bearing in mind the social nature of the preliminary protection

in case of dismissal and the data on the particular case, without allowing outside interference.

Fifth, the reply of the competent authority is final and is not subject to appeal.

There are two categories of workers that are protected under item 1, article 333, paragraph 1 of the Labour Code. These are:

Labour Code

Article 333, paragraph 1, 1. (Amended, SG No. 52/2004) Employees, mothers of children younger than 3 years of age, or spouses of persons who are undergoing heir regular military service;

In the first case, the protection is for the use of biological mothers, as well as adopting mothers. The civil status of the mother (married, divorced, widow, etc.) is irrelevant.

The second case concerns those working women whose husband is performing his conscript military service duties under the Armed Forces of the Republic of Bulgaria Act.

2. Employees who have been reassigned due to reasons of health;

This item provides protection for workers who have been transferred to suitable jobs. These are those workers for whom there are instructions for transfer to a suitable job by the health authorities (article 317 of the Labour Code). Persons with certified disability (with a disability of 50% and over – article 72 of the Social Insurance Code), established with an expert TEMC decision for transfer to suitable positions under the meaning of article 333, paragraph 1, item 2.

3. Employees suffering from certain diseases, listed in a Regulation of the Minister of Health;

This provision protects those workers who suffer from a strictly identified sickness. These are sicknesses that are grave and durable and the worker faces difficulties in finding employment after the dismissal. These sicknesses are listed exhaustively in Ordinance № 5 of the Minister of Healthcare (promulgated in State Gazette 33/1987).

Article 333, paragraph 2. In the cases under items 2 and 3 of the preceding paragraph prior to dismissal the opinion of an expert medical commission should also be considered.

This paragraph of article 333 introduces additional protection for workers who have been transferred to suitable jobs, as well as for those who suffer from certain sicknesses. In such cases, the law requires consultation with the TEMC.

In such cases the employer must collect preliminary information from the worker he/she intends to release regarding whether he or she suffers from any of the sicknesses listed in Ordinance № 5, requesting a medical certificate (records of medical examinations and others). The gathered information is subsequently submitted by the employer to the TEMC. The TEMC draws up its position regarding the forthcoming release “from the point of view of the adaptation of the organism in case of a possible change of working conditions”, sends its position to the employer who then submits it to the respective Labour Inspectorate along with a motivated request for permission (article 1, paragraph 2, articles 3 and 4, paragraph 1, articles 5 and 6 of Ordinance № 5). This expert medical position assists the Labour Inspectorate in taking the decision whether to grant the permission for the dismissal of the respective worker.

Ordinance № 5 of 20.02.1987 regarding the Sicknesses that Cause Special Protection for the Workers who Suffer from Them under Article 333, Paragraph 1 of the Labour Code

(Issued by the Minister of Popular Health and the Chairperson of the Central Council of the Bulgarian Trade Unions, promulgated in State Gazette 33/28 April 1987, in force since 1 January 1987)

Article 1. (1) In case of a partial liquidation, reduction of staffing or suspending work for more than 30 days, the enterprise may only after receiving a preliminary permission by the respective local Labour Safety Inspectorate release workers, suffering from any of the following sicknesses:

1. ischemic heart disease;
2. active form of tuberculosis;
3. oenological disease;
4. professional sickness;
5. psychiatric disease;
6. diabetes.

(2) The enterprise shall gather preliminary information from the workers identified for dismissal on whether they suffer from any of the sicknesses listed in paragraph 1.

Article 2. Workers who suffer from any of the sicknesses listed in article 1, paragraph 1, shall have the obligation to present, if requested, to the enterprise medical documents (records of medical examinations, medical certificates, etc.) from the health and prevention establishments where they receive treatment or on whose medical books they are.

Article 3. The enterprise shall present the submitted medical documents under article 2 to the respective Expert Labour Medical Commission (ELMC) for judgment.

Article 4. (1) The Expert Labour Medical Commission shall come up with its expert decision based on the submitted medical documentation within seven days. In case the clarification of the medical condition of the worker requires additional medical examinations and reviews, the ELMS shall come up with its decision within seven days after these have been conducted.

(2) The expert decision under paragraph 1 shall include the sickness, from which the worker is suffering, and an assessment of his or her injury, the indicative and contra-indicative working conditions, and the expedience of the dismissal from a point of view of the adaptation of the organism to a possible change in working conditions.

(3) The ELMC shall be sent ex officio to the enterprise and the worker.

Article 5. The enterprise shall submit to the respective local Labour Safety Inspectorate a written request for permission for each separate worker, identified for release, who is suffering from any of the sicknesses listed in article 1, paragraph 1, with an attached expert decision from the ELMC.

Article 6. Based on the documents under article 5, the Labour Safety Inspectorate shall, within a seven-day period, grant or deny the enterprise permission to release each separate worker.

Excerpts from the year reports for the activity of the General Labour Inspectorate Executive Agency for 2002, 2003 and 2004

In 2002 there were 1891 requests for permission to release workers falling under the protection of article 333 of the Labour Code. 649 permissions were granted, which represents 34.3% of the total requested. In comparison to 2001, the portion of the granted requests is 12% smaller even though the permissions requested in 2002 are 343 more.

Preliminary protection against dismissal is settled in article 333 of the Labour Code and in 2004 1118 permissions for dismissal were requested under this provision. Only 478 were granted.

The increase in the number of requested permissions for dismissal of persons who are protected under article 333 of the Labour Code is due to the necessity of shrinking the workforce of the enterprises because of their deteriorated economic and financial situation. On the other hand, the decrease of the number of permissions granted by the Labour Inspectorate is due to the tightened control on labour legislation and the policy of protection of the workers' employment.

The Committee asks whether employees enjoy protection against dismissal concerning their civil liberties (freedom of expression, dignity, etc.).

The Committee notes from another source that the courts cannot review economic grounds for dismissal. The Committee wishes to emphasise that the right of appeal to an independent body, stipulated in Article 24 of the Revised Charter, implies that this body is empowered to examine at the very least the facts underlying economic measures. The Committee would like the next report to indicate whether the situation has changed in this respect.

No changes have been introduced. The grounds for dismissal are comprehensively listed and the court judges on the lawfulness of the dismissal based on these grounds.

The Committee asks whether it is possible to appeal to the courts against dismissal requiring the authorization of the Labour Inspectorate.

The Supreme Court of Cassation acknowledges that a dismissal under article 333, paragraph 1 of the Labour Code is illegal when the employer has failed to request the preliminary judgment of the ELMC (Verdict № 122-99- III) and if the dismissal has been implemented with a granted permission from the Labour Inspectorate but without consulting the opinion of the ELMC (Verdict № 1042-2000-III)

The information in the report does not enable the Committee to establish whether employees on fixed-term contracts have equal rights concerning dismissal as those with contracts of an indefinite duration, or whether a trial period or a minimum period must be completed before this protection becomes applicable. The Committee therefore asks for the next report to give more details on this subject, and

for information as to whether protection against termination of employment applies irrespective of the size of the firm.

Labour Code

Termination of the Employment Contract by the Worker with a Notice

Article 326

(2) (Amended and supplemented, SG No. 100/1992) …..

The notice period for termination of an employment contract of a definite period shall be 3 months, but not more than the remaining period of the contract.

Article 225 (Amended and supplemented, SG No. 100/1992) (1) In case of unlawful dismissal the employee shall be entitled to a compensation by the employer in the amount of his/her gross labour remuneration for the period of unemployment caused by that dismissal, but not for more than six months.

The period of the notice in case of termination of an employment contract of a definite period is of a duration strictly defined by the Labour Code. In this kind of contract it is not possible to negotiate a different period of notice with a collective or individual employment contract. The period of notice is not suspended during the time in which the worker is out on leave (paid, unpaid, due to temporary disability, etc.)

The protection provided by the Labour Code is universal and is not subject to the size or the kind of the enterprise.

Article 26 – Right to dignity at work

Article 26, Paragraph 1 – Sexual harassment

Question A

Protection Against Discrimination Act

Additional provisions

§ 1. For the purpose of this Law:

2. "Sexual harassment" shall be any unwanted conduct of sexual character expressed physically, verbally or in any other manner, which violates the dignity or honour or creates hostile, degrading, humiliating or intimidating environment and, in particular when the refusal to accept such conduct or the compulsion thereto could influence the taking of decisions, affecting the person.

Question B

In comparison to the previous report no amendments were made to the actual legislative framework.

Please indicate the role of the employer in preventing and combating sexual harassment. Please provide details with regard to training schemes, publications and infrastructures that exist and that employers put into place in order to effectively combat sexually harassing behaviour.

Protection Against Discrimination Act

Article 17. An employer who has received a complaint from an employee, considering him/her-self a victim of harassment, including sexual harassment, at the workplace must immediately carry out an investigation, take measures to stop the harassment, as well as impose disciplinary sanction in case the harassment has been committed by another worker or employee.

Please indicate any specialised infrastructures to receive and deal with complaints against such behaviour (eg. ombudsman, counselling, etc.).

Protection Against Discrimination Act

Commission for protection against discrimination

Article 40. (1) The Commission for protection against discrimination, hereinafter called "The Commission", shall be an independent specialised state body for prevention of discrimination, protection against discrimination and ensuring equal opportunities.

(2) The Commission shall exert control over the implementation and compliance with this or other laws regulating equality of treatment.

(3) The Commission is a legal person on budget support with head office in Sofia.

(4) The Commission shall report annually to the National Assembly on its activities not later than March 31 of the following year.

Article 41. (1) The Commission is a collegial body comprised of 9 persons, of which at least 4 jurists. The National Assembly selects 5 and the President of the Republic appoints 4 of the members of the Commission.

(2) The mandate of the members of the Commission is 5 years.

(3) In selection or appointment of the Commission members the principles of balanced participation of women and men and participation of persons belonging to ethnic minorities shall be respected.

Article 42. (1) A member of the Commission may be only Bulgarian citizen who has:

1. completed higher education;

2. knowledge and experience in the filed of human rights protection;

3. not been convicted of deliberate crime of general nature.

(2) Member of the Commission may not:

1. be a sole-proprietor, manager, procurator or member of executive or controlling bodies of commercial companies or co-operations, syndic or liquidator;

2. hold another paid position, except when he/she practices scientific or activities;

be a political party governing body member.

Article 43. The time, during which the person has worked as a member of the Commission, shall be acknowledged as time of service in the meaning of the Civil Service Act.

Article 44. (1) The powers of a member of the Commission shall be terminated pre-term:

1. upon the member's request;

2. in case of inability to fulfil his/her obligations for more than six months;

3. in the event of conviction for deliberate crime of general nature;

in cases incompatibility.

(2) In occurrence of the provisions under Paragraph 1, the Chair of the Commission shall make a motivated proposal for dismissal to the National Assembly or to the President of the Republic.

(3) Within one-month period from the termination of the powers under paragraph 1, the National Assembly or the President of the Republic of Bulgaria shall select, or respectively appoint, a new member of the Commission who will perform the mandate of the dismissed member.

Article 45. (1) The Chair of the Commission shall receive a basic monthly remuneration equal to three average monthly salaries of the employees working under a employment contract or civil service status in the public sector in accordance with data from the National Institute of Statistics.

(2) The Deputy of the Commission shall receive a basic monthly remuneration equal to 80 percent, and the members of the Commission - 75 percent from the remuneration of the Commission's chairperson.

Article 46. (1) The Commission shall adopt Rules of Procedure, which shall be published in the State Gazette.

(2) The Commission shall be assisted in its work by an administration. The structure and functions of the administration, as well as the number of its staff, shall be laid down in the Rules of Procedure, referred to in paragraph 1.

Article 47. (1) The Commission for protection against discrimination shall:

1. find out violations of this and other laws, which regulate the equality of treatment, the offender and the affected person;

2. state prevention from and termination of the violation and restoration of the initial situation;

3. impose the provided sanctions and enforce administrative compulsory measures;

4. issue obligatory prescriptions for compliance with this and other laws, which regulate the equality of treatment;

5. appeal against the administrative acts, which are in contravention to this and other laws, which regulate the equal treatment, initiate claims before the court and act as a concerned party in proceedings under this and other laws, which regulate the equal treatment;

6. issue proposals and recommendations to the state and local self-government bodies to terminate discrimination practices and to revoke their acts, which have been issued in contravention to this and other laws, which regulate the equal treatment;

7. maintain a public register of the adopted and entered in force decisions and obligatory prescriptions;

8. issue statements on the conformity of the legal act drafts with the legislation for prevention of discrimination, as well as recommendations for adopting, revoking, amending and supplementing legal acts;

9. provide independent assistance to the victims of discrimination in constituting complaints against discrimination;

10. conduct independent researches related to discrimination;

11. publish independent reports and provide recommendations on all issues related to discrimination;

12. carry out other competencies, provided in the Rules of Procedure.

Article 48. (1) The Commission shall consider and take decisions about the filings in panels, which shall be appointed by the Chair of the Commission.

(2) The Chair of the Commission shall appoint permanent panels, which shall be specialised in discrimination issues:

1. on ethnic and racial grounds;

2. on the grounds of gender;

3. on other grounds, referred to in Article 4, paragraph 1.

Question C

Proceedings for protection against discrimination

Article 50. Proceedings before the Commission shall be instituted after:

1. a complaint by the affected persons;

2. initiative of the Commission;

3. signals from natural or legal persons, state and local self-government bodies.

Article 51. (1) The complaint or signal to the Commission shall be in written form. In case they are written in foreign language they shall be accompanied with translation in Bulgarian.

(2) The complaint or signal should contain:

1. the name or designation of the person submitting the complaint;

2. the address or the head-office and the address of management of the person submitting the complaint;

3. statement of the reasons, on which the complaint or signal is grounded;

4. statement of what is demanded from the Commission;

5. date and signature of the person submitting the complaint or of his/her representative.

(3) Anonymous complaints or signals shall not be examined by the Commission.

Article 52. (1) Proceedings shall not be instituted, and those already instituted shall be terminated, in case of three years have past after the occurrence of the violation.

(2) In case the Commission discovers that proceedings in court have been initiated on the same case, it does not institute, or terminate the proceedings, instituted before it.

Article 53. (1) No state fees shall be collected for proceedings before the Commission.

(2) The expenses done during the proceedings shall be covered by the budget of the Commission.

Article 54. (1) After the institution of proceedings the Chair of the Commission shall transfer the claim file to respective panel, which shall appoint a rapporteur between its members.

Article 55. (1) The rapporteur shall start an investigation in which he/she shall collect written evidences, necessary for the complete and comprehensive clarification of the circumstances in which he/she shall use servants and additional experts.

(2) All persons, state and local self-government bodies shall assist the Commission in the process of the investigation and they shall be obliged to provide the required information and documents, and to give the necessary explanations.

(3) The presence of commercial, industrial or other secret information, protected by the law may not be used as a reason to refuse assistance.

(4) In case there are reasons for access to classified information, it shall be provided in accordance to the Law on the Protection of the Classified Information.

Article 56. (1) In exercising its powers the Commission shall have the right to:

1. require documents and other information, related to the investigation;
2. require explanations from the investigated persons about issues, related to the investigation;
3. examine witnesses.

(2) In case of refusal to provide information required by the Commission or a refusal to provide access to premises as well as other cases of not providing assistance to the Commission, the guilty persons shall bear responsibility under this Law.

Article 57. (1) In case there is a danger evidence to be lost or hidden or in case of extremely complicated collection of evidence, upon complainant's request, the evidence may be collected through a compulsion over the persons or the premises, where it is.

(2) The compulsory collection of evidence under Paragraph 1 shall be conducted with permission from a Sofia City Court judge upon a request from the Chair of the Commission.

(3) In the day of the entry of the request, the judge issues an order, which shall be immediately enforced.

(4) The rapporteur shall collect the evidence for the investigation in co-operation with Ministry of the Interior bodies.

(5) During compulsory collection of evidence, the Commission may:

1. examine sites for the purposes of the investigation;
2. collect means of evidence for the purposes of the investigation.

(6) The substantial evidence and the originals of the documents taken shall be returned back to the persons, which they have been taken from, after completion of the investigation.

Article 58. (1) The collected documents and information shall be used only for the purposes of the investigation.

(2) The members of the Commission as well as the servants and the additional experts shall be obliged not to communicate the information, which constitutes a secret protected by the law, which they have received during the or in relation to performing their activity.

Article 59. (1) The investigation shall be carried out in 30-days period. In cases, which present factual or legal complexity, this period may be prolonged with up to 30 additional days with an order issued by the Chairperson.

(2) After completion of the investigation the parties shall be given an opportunity to get acquainted with the materials collected during the investigation.

(3) If in the process of the investigation, evidence for a committed crime has been found, the Commission shall send the claim file to the prosecution.

Article 60. (1) The speaker shall prepare a conclusion and shall submit the claim file to the chair of the panel, who shall call a session meeting in term of 7 days.

(2) The summons of the parties and the notifying of the concerned persons shall be carried out in accordance with the provisions of the Civil Procedure Code.

Article 61. (1) The sessions of the Commission shall be open.

(2) The sessions shall be held in camera upon the reasons and under the provisions of Article 105, paragraph 3 of the Civil Procedure Code.

(3) The members of the panel may be removed upon the reasons and under the provisions of Chapter Three of the Civil Procedure Code.

Article 62. (1) At the first session the rapporteur shall invite the parties to achieve a settlement. In case of agreement, expressed by the parties, the speaker shall call settlement proceedings session.

(2) In case of achieving an agreement between the parties on the basis of equal treatment during the settlement proceedings, the Commission shall approve it by a decision and shall terminate further proceedings.

(3) If the agreement is achieved only for part of the dispute, the proceedings shall continue for the unsettled part.

(4) The settlement approved by the Commission shall be enforced and the Commission exercise control over the compliance with the settlement.

Article 63. (1) In case of deciding the circumstances of the case are clarified, the chair of the panel shall provide an opportunity to the parties to communicate a statement.

(2) After factual and legal clarification of the case, the chair of the panel shall close the session and shall announce the day for the pronouncement of the decision.

(3) The decision shall be pronounced not later than 14 days after the holding of the session.

Article 64. (1) The decisions shall be taken with a simple majority by the members of session panel and shall be signed.

(2) A member of the panel who dissents with the decision of the majority shall sign the decision with a special opinion, which he shall motivate.

Article 65. With the stated decision the panel shall:

1. ascertain the committed violation;

2. ascertain the offender and the affected person;

3. determine the kind and the amount of the sanction;

4. enforce coercive administrative measures;

5. ascertain that no violation of the law has been committed and leave the claim without consideration.

Article 66. The decision shall be in written and shall contain:

1. the name of the authority that issued it;

2. the factual and legal grounds for its issuing;

3. operative part, in which the kind and the amount of the sanction or the coercive administrative measure, if such should be imposed;

4. the authority and the term before and within which the decision may be appealed.

Article 67. (1) The Commission shall carry out a control over the compliance with the coercive administrative measures.

(2) The person to whom the coercive administrative measure has been imposed shall be obliged to take measures to implement the obligatory prescriptions and to communicate the Commission in written in term specified in the decision, which may not be longer than 1 month.

(3) In case of not implementing by the persons in-charge the obligatory prescriptions, the Commission shall send a report containing proposals for undertaking relevant measures to the respective state and local self-government bodies.

(4) The Commission may send the decision to other authorities, which are interested in the completed investigation, for information, or to undertake relevant actions.

Article 68. (1) The decisions of the Commission are due to appeal at the Supreme Administrative Court under the terms and conditions of the Supreme Administrative Court Act within 14 days from the date of notice thereof to the concerned parties.

(2) The complaint requesting invalidity of the decision may be submitted at any time.

Article 69. The decisions of the Commission shall enter into force, if:

(1) they have not been appealed against within the term;

(2) the appeal submitted has not been taken into consideration;

(3) the achieved settlement among the parties has been proved by the decision.

Article 70. (1) On issues, which are not regulated by the provisions in this Section, the provisions of the Law on the Administrative Proceedings shall apply.

(2) (Amended - State Gazette, Issue 105 of 2005) The fines and property sanctions on the enforced decisions of the Commission shall be collected under the provisions of the Tax Procedure Code.

Section II

Judicial proceedings

Article 71. (1) Besides the cases under Section I, any person whose rights under this or other laws regulating the equal treatment have been violated may lodge a claim before the Regional Court through which to demand:

1. the violation to be ascertained;

2. the defendant to be sentenced to terminate the violation and to restore the status quo as it was before the violation, as well as to restrain in future from further violations;

3. compensations for damages.

(2) The trade unions organisations and their units, as well as the non-for-profit legal persons carrying out activities beneficial to the public may, upon request from persons whose rights have been violated, lodge a claim before the court. These organisations may step in as a concerned party into a pending legal action under Paragraph 1.

(3) In cases of discrimination when rights of many people have been violated, the organisations under Paragraph 2 may lodge an independent claim. The persons whose rights have been violated may step into the legal action as an assisting party as referred to in Article 174 from the Civil Procedure Code.

Article 72. (1) The persons referred to in Article 71, Paragraphs 1 and 2 may, within one month period from the lodging of the claim, communicate this fact to the public by means of publications or by other, chosen by them, written means through sending an invitation to other affected persons, trade unions organisations and their units, as well as non-for-profit legal persons carrying out activities beneficial to the public to, step into the proceedings

(2) The persons under Paragraph 1 may step into the proceedings not later than the completion of the oral competitions.

Article 73. (1) Any person whose rights have been violated by an administrative act issued in contravention to the provisions of this or other laws regulating the equal treatment may appeal it before the Court following the provisions of the Law on the Administrative Proceedings, accordingly under the Law on the Supreme Administrative Court.

Article 74. (1) In the cases under Section I, any person who has suffered damages from violation of rights under this or other laws regulating the equal treatment may lodge a claim for compensation following the general provisions against the persons and/or the bodies who have caused the damages.

(2) In the cases when the damages have been caused to persons by illegal acts, actions or lack of actions of state bodies and officials, the damage claim shall be lodged following the provisions of the Law on the Responsibility of the State for Damages Caused to Citizens.

Article 75. (1) On issues, which are not regulated by the provisions in this Section, the provisions of the Civil Procedure Code shall apply.

(2) No state fees shall be collected for court proceedings under this Law and the expenses shall be covered by the budget of the Court.

Please indicate the employers' liabilities in case of recorded sexual harassment at the workplace.

Protection Against Discrimination Act

Article 17. An employer who has received a complaint from an employee, considering him/her-self a victim of harassment, including sexual harassment, at the workplace must immediately carry out an investigation, take measures to stop the harassment, as well as impose disciplinary sanction in case the harassment has been committed by another worker or employee.

Article 18. The employer, in cooperation with the trade unions, must take efficient measures to prevent any form of discrimination at the workplace.

Article 20. The employer shall apply equal criteria to disciplinary sanctions notwithstanding the grounds referred to in Article 4, paragraph 1.

Article 21. The employer shall apply equal criteria in exercising his/her right to unilateral discontinuation of the employment contract as set out in Article 328, paragraph 1, points 2) - 5), 10) and 11) and Article 329 of the Labour Code, or from the civil service status under Article 106, paragraph 1, points 2), 3) and 5) of the Law on the Civil Servant notwithstanding the grounds **r**eferred to in Article 4, paragraph 1.

Article 22. The employer shall display, on a place in the enterprise accessible for the employees, the text of this Law, as well as all administrative provisions and the clauses from the collective employment agreement, related to the protection against discrimination.

Article 23. (1) The employer shall provide information to the person who claims that his/her rights have been violated under this section upon request.

(2) The information referred to in paragraph 1 must contain the justification of the decision taken by the employer, as well as other relevant data.

Article 24. (1) The employer must, at the beginning of the employment, when this is necessary to achieve the objectives of this Law, encourage persons belonging to under represented sex or ethnic group, to apply for a certain job or position.

(2) The employer is obliged, in otherwise equal conditions, to encourage the vocational development and participation of workers and employees, belonging to a certain sex or ethnic group, when the latter are under represented among the employees performing certain work or occupying definite position.

Questions of the European Committee of Social Rights:

The Committee asks whether reinstatement is also available where the employee has been pushed to resign given the unfriendly environment determined by the sexual harassment.

The judgment of lawfulness of dismissal is entirely at the discretion of the court. All the issues related to the termination of the employment relation shall be judged separately in accordance with the evidence under each separate case. The Bulgarian legislation has not explicit provisions concerning this hypothesis.

The Committee further requests additional information on the rules governing tort liability, in particular on the nature and scale of damages that may be granted to victims of sexual harassment.

The responsibility under the Protection Against Discrimination Act is not a penal one (see herein above). The size and the nature of damages shall be assessed as per each separate case.

The Committee also asks whether an employer can be held liable towards persons working for him in a capacity other than as an employee (such as independent contractors, self-employed etc.) who have suffered sexual harassment from employees under his responsibility or persons working at premises under his responsibility.

Firstly, sexual harassment is not a crime in the sense of the Penal Code of the Republic of Bulgaria. The provisions related to this kind of unlawful demeanor shall be referred to the Protection Against Discrimination Act (see herein above).

Furthermore, the Committee asks whether the obligation and liability of the employer towards workers (employees or otherwise) extend to sexual harassment suffered by persons not employed by him, such as customers, visitors, clients etc.

Article 8. Persons who have consciously assisted performing acts of discrimination shall bear responsibility under this Law.

Article 9. In proceedings for protection against discrimination, after the party, claiming to be a victim of discrimination, proves facts, sustaining the assumption of occurred discrimination, the defendant party must prove that the right to equal treatment has not been infringed.

Article 19. In case of failure to fulfil the obligation under Article 18, the employer shall bear responsibility under this Law for acts of discrimination done at the workplace by a worker or an employee, employed by him/her.

Chapter Five

Coercive administrative measures and administrative penal provisions

Section I

Coercive administrative measures

Article 76. (1) For prevention and termination of the violations of this or other laws regulating the equal treatment, as well as for prevention and removal of the harmful consequences of such violations, the Commission, on its own initiative or after a proposal of trade unions, natural or legal persons may apply the following coercive administrative measures:

1. to give obligatory prescriptions to the employers and the officials to remove violations of the legislation for preventon of discrimination;

2. to stop the execution of illegal decisions or orders of employers or officials, which lead or may lead to discrimination.

(2) Whenever in the cases under Paragraph 1 under one and the same issue has seen enforced an obligatory prescription and there is an enacted court sentence, whereas the two are contradicting, the court sentence shall be enforceable.

Article 77. The decisions of the Commission for coercive administrative measures under the present Section cannot be subject to appeal under the terms and conditions of Article 68. The appealing procedure does not suspend the execution of the coercive administrative measure, unless the court decides otherwise.

Section II

Administrative Penal Provisions

Article 78. (1) A person who commits discrimination, within the meaning of this Law, shall be punished with a fine of BGN 250 to BGN 2000, unless he/she is liable to more severe punishment.

(2) A person who does not present in term evidence or information demanded by the Commission, or impedes, or do not provide access to sites subject of examination shall be punished with a fine of BGN 500 to BGN 2,000.

Article 80. (1) A person who does not implement an obligation deriving from this Law shall be punished with a fine of 250 to 2,000 BGN, unless he/she is liable to more severe punishment.

(2) When the violation has been committed during performing the activity of a legal person, the latter shall be imposed with a material sanction of 250 to 2,500 BGN.

(3) For permission to commit violation referred to in Paragraph 1, the head of the legal person shall be punished with a fine of 200 to 2,000 BGN unless he/she is liable to more severe punishment.

Article 81. In case the violations under Articles 78 – 80 are committed for the second time, a fine, respectively a material sanction of double size of the amount of the initially imposed fine/sanction shall be imposed.

Article 82. (1) A person who does not implement the provisions of a Commission's or Court decision issued under this Law shall be punished with a fine of BGN 2,000 to BGN 10,000, unless he/she is liable to more severe punishment.

(2) In case the violation continue after three months of the entry into force of the punishment measure under Paragraph 1, a fine shall be imposed of BGN 5,000 to BGN 20,000.

Article 83. The sums collected from imposed fines or material sanctions following the provisions of this Section shall be entered into the republican budget.

Article 84. (1) The acts for ascertaining of violations shall be constituted by members of the Commission determined by the Chair of the Commission.

(2) The punishments shall be imposed by a decision of the Commission for protection against discrimination, and they may be appealed following the provisions of the Law on the Supreme Administrative Court. The appeal procedure shall stop the implementation of the decision that was appealed against.

(3) On issues, which are not regulated by the provisions in this Section, the provisions of the Law on the Administrative Violations and Punishments shall apply.

As far as criminal law is concerned, the report states that sexual harassment is a crime but it is unclear whether the criminal code explicitly qualifies sexual harassment as a crime.

Sexual harassment is not a crime in the sense of the Penal Code of the Republic of Bulgaria. The provisions related to this kind of unlawful demeanor shall be referred to the Protection Against Discrimination Act.

We believe that in certain circumstances this action is within the general scope of the provisions of Article 143 of the Penal Code:

Article 143. (Amended - State Gazette, Issue 50 of 1995) (1) (Previous wording of Article 143 - State Gazette, Issue 62 of 1997) Whoever compels somebody else to accomplish, miss or endure something against his will by using force, threat or abuse of authority shall be punished by imprisonment of up to six years.

Article 26, Paragraph 2

The Committee takes note of the information provided in the Bulgarian report. It notes that, so far, Bulgarian law does not provide for an specific instrument to combat moral harassment. In particular, it notes that the Supreme Administrative Court recognizes the moral and psychological harassment of the employee as an illegitimate behavior. Furthermore, Supreme Court distinctively considers mistreatment of employees at the work place as a criminal offence, where it qualifies as an abuse of power. The Committee also notes that particularly aggressive aspects of moral harassment may be prosecuted on account of assault, battery and slander.
However, the Committee did not have access to the quoted decisions themselves and could therefore not assess whether the notion of harassment in Bulgarian law actually matches the definition of Article 26§2. It therefore asks that the next report provide some practical cases dealt with by competent civil, administrative and criminal jurisdictions.

Finally, the Committee recalls that Article 26§2 also requires States Parties to take appropriate preventive measures in order to combat this phenomenon. In particular, they should inform workers about the nature of the illegitimate behaviours and the available remedies. It notes that the report does not provide any elements in this respect and requests that relevant information be provided in the next report.

The Committee also asks whether the law has any rule on the burden of proof facilitating the position of the victims of harassment.

Pending receipt of the information requested, the Committee defers its conclusion.

Question A

Protection Against Discrimination Act

Section I

Protection in exercising the right to work

Article 12. (1) When a vacancy is announced, the employer shall not have the right to impose requirements related to the grounds referred to in Article 4, Paragraph 1, except in the cases under Article 7.

(2) Before conclusion of an employment contract the employer shall not have the right to request from the candidate information concerning the grounds referred to in Article 4, Paragraph 1 except in the cases under Article 7, or when this is necessary for the needs of an inquiry procedure for obtaining a permit for work with classified information, subject to the arrangements of the Law on the Protection of the Classified Information.

(3) The employer shall not have the right to refuse to employ a candidate on the grounds of pregnancy, maternity or raising children.

(4) The employer shall not have the right to refuse to employ, or to employ under less favourable conditions, person on the grounds referred to in Article 4, Paragraph 1, except in the cases under Article 7.

Article 13. (1) (1) The employer shall ensure equal working conditions regardless the grounds referred to in Article 4, Paragraph 1.

(2) In the cases when it would not lead to a disproportionate burden on the employer in organising and carrying out the production, and in the cases when there exist ways to compensate the objectively possible unfavorable consequences for the general production result, the employer shall provide working conditions, in view of the working time and the

days off, complying with the requirements of the religion or belief, professed by a worker or employee.

Article 14. (1) (1) The employer shall ensure equal remuneration for equal work and work of equal value.

(2) Paragraph 1 shall apply for all remuneration, paid directly or indirectly, in cash or in kind.

(3) The assessment criteria in determining the labour remuneration and the assessment of the work performance shall be equal for all employees and shall be determined by collective labour agreements or by the internal administrative rules regarding the salaries, or by the legal condition and order for assessment of the servants in the state administration with no reference to the grounds under Article 4, paragraph 1.

Article 15. The employer shall provide equal opportunities to the employees, with no reference to the grounds under Article 4, paragraph 1, for vocational training and increasing their professional qualification and re-qualification, as well as for professional development and promotion in position or rank by applying equal performance criteria and indicators in the assessment of their activity.

Article 16. The employer is obliged to adapt the workplace to the needs of a person with disabilities when employing him/her or, when the disability occurs after the employment, unless the expenses for such adaptation are unreasonably excessive and they would impose serious burden on the employer.

Article 17. An employer who has received a complaint from an employee, considering him/her-self a victim of harassment, including sexual harassment, at the workplace must immediately carry out an investigation, take measures to stop the harassment, as well as impose disciplinary sanction in case the harassment has been committed by another worker or employee.

Article 18. The employer, in cooperation with the trade unions, must take efficient measures to prevent any form of discrimination at the workplace.

Article 19. In case of failure to fulfil the obligation under Article 18, the employer shall bear responsibility under this Law for acts of discrimination done at the workplace by a worker or an employee, employed by him/her.

Article 20. The employer shall apply equal criteria to disciplinary sanctions notwithstanding the grounds referred to in Article 4, paragraph 1.

Article 21. The employer shall apply equal criteria in exercising his/her right to unilateral discontinuation of the employment contract as set out in Article 328, paragraph 1, points 2) - 5), 10) and 11) and Article 329 of the Labour Code, or from the civil service status under Article 106, paragraph 1, points 2), 3) and 5) of the Law on the Civil Servant notwithstanding the grounds referred to in Article 4, paragraph 1.

Article 22. The employer shall display, on a place in the enterprise accessible for the employees, the text of this Law, as well as all administrative provisions and the clauses from the collective employment agreement, related to the protection against discrimination.

Article 23. (1) The employer shall provide information to the person who claims that his/her rights have been violated under this section upon request.

(2) The information referred to in paragraph 1 must contain the justification of the decision taken by the employer, as well as other relevant data.

Article 24. (1) The employer must, at the beginning of the employment, when this is necessary to achieve the objectives of this Law, encourage persons belonging to under represented sex or ethnic group, to apply for a certain job or position.

(2) The employer is obliged, in otherwise equal conditions, to encourage the vocational development and participation of workers and employees, belonging to a certain sex or ethnic group, when the latter are under represented among the employees performing certain work or occupying definite position.

Article 25. The territorial divisions of the Employment Agency must ensure equal opportunities to the unemployed persons for use and exercise of their rights, guaranteed by the Law, notwithstanding the grounds referred to in Article 4, Paragraph 1.

Article 26. The persons shall have the right to equal conditions of access to occupation or activity, to equal opportunity to their performing and development in them notwithstanding the grounds under Article 4, paragraph 1.

Article 27. The provisions under this Section shall apply also to discrimination on the grounds of sex in the regular military service of the armed forces, unless for performing activities and occupying positions where sex is determining factor.

Article 28. The provisions under this Section shall apply also *mutatis mutandis* to the civil service relationship.

Question B

Protection Against Discrimination Act

Chapter one

General provisions

Article 1. This Law shall regulate the protection against all forms of discrimination and shall contribute to its prevention.

Article 2. The purpose of this Law is to ensure for every person the right to:

1. equality before the law;
2. equality of treatment and of opportunities for participation in the public life;
3. effective protection against discrimination.

Article 3. (1) This Law shall protect against discrimination all natural persons on the territory of the Republic of Bulgaria.

(2) Associations of natural persons, as well as legal persons, shall enjoy the rights under this Law when they have been discriminated on the grounds, referred to in Article 4, Paragraph 1 regarding their members or the persons employed by them.

Article 4. (1) (Supplemented - State Gazette, Issue 70 of 2004, enforced on 01.01.2005) (1) Any direct or indirect discrimination on the grounds of sex, race, nationality, ethnic origin, citizenship, origin, religion or belief, education, opinions, political belonging, personal or public status, disability, age, sexual orientation, marital status, property status, or on any other grounds, established by the law, or by international treaties to which the Republic of Bulgaria is a party, is forbidden.

(2) Direct discrimination shall be any less favourable treatment of a person on the grounds, referred to in paragraph 1, than another person is, has been or would be treated under comparable circumstances.

(3) Indirect discrimination shall be to put a person, on the grounds referred to in Paragraph 1 in a less favourable position in comparison with other persons by means of an apparently neutral provision, criterion or practice, unless the said provision, criterion or practice have objective justification in view of achieving a lawful objective and the means for achieving this objective are appropriate and necessary.

Article 5. The harassment on the grounds referred to in Article 4, Paragraph 1, sexual harassment, instigation to discrimination, persecution (persecution) and racial segregation, as well as building and maintenance of an architectural environment hampering the access of people with disabilities to public places shall be deemed discrimination.

Article 6. The prohibition of discrimination shall act in reference to everybody, while exercising and protecting the provided by the Constitution and the laws of the Republic of Bulgaria, rights and freedoms.

Additional provisions

§ 1. For the purpose of this Law:

(1) "Harassment" shall be any unwanted conduct on the grounds referred to in Article 4, Paragraph 1, expressed in a physical, verbal or any other manner, which has the purpose or effect of violating the person's dignity or creating a hostile, degrading, humiliating or intimidating environment, attitude or practice.

Question C

(See responses under Article 26, Paragraph 1)

Article 27, Paragraph 2 – Right of workers with family responsibilities to equal opportunities and equal treatment

In comparison to the previous report the legislative framework has been changed in the following way:

Labour Code

Article 163. (1) (Amended - State Gazette, Issue 110 of 1999, Issue 52 of 2004) The worker or employee shall be entitled to a leave for pregnancy and childbirth amounting to 135 days for each child, of which 45 days shall be used **mandatory** before the childbirth.

Article 164

...

(5) (Amended and Supplemented - State Gazette, Issue 25 of 2001, Amended , Issue 1 of 2002, enforced on 1.01.2002) In case the leave under paragraph 1 is not used, or the person using such leave terminates its use, the mother (adoptive mother), if she is working under an employment relationship, shall be paid a cash benefit by the State Public Insurance.

Leave for raising a child, placed under care with relatives or in foster family

Article 164a. (New - State Gazette, Issue 52 of 2004) (1) Right to a leave for raising a child until completion of 2 years of age shall have the persons with whom a child is placed under Article 26 of the Child Protection Act.

(2) When the child is placed with spouses the leave shall be used only by one of them.

(3) During the leave under paragraphs 1 and 2 cash compensation shall be paid under conditions and in sizes determined by an separate law. The leave shall be considered as length of service.

(4) The leave under paragraphs 1 and 2 may not be used simultaneously with a leave under Article 164.

Unpaid leave for raising a child up to two years of age (Title Amended - State Gazette, Issue 25 of 2001, Issue 52 of 2004)

Article 165. (1) (Amended - State Gazette, Issue 52 of 2004) After using a leave under Article 164, paragraph 1, upon the request of the worker or employee with four and more children, she is also entitled to an unpaid leave until the child reaches 2 years of age, in case it is not placed in a child-care establishment. With the consent of the mother (adoptive mother) this leave may also be used by the persons under Article 164, paragraph 3.

(2) The time during which the leave under the preceding paragraph is used shall be recognised as length of service.

Leave for breastfeeding and feeding a young child

Leave in case of death or serious illness of a parent

...

Article 167. (1) (Amended - State Gazette, Issue 52 of 2004) Should the mother (adoptive mother) of a child under the age of 2 die or become severely ill, with resulting inability to take care of the child, the balance of the leaves for childbirth, adoption, and raising a young child may be used by the father (adoptive father). With his consent, these leaves may be used by either of his parents, or by either of the parents of the deceased or

severely ill mother (adoptive mother), should the said person work under an employment relationship.

(2) (Amended - State Gazette, Issue 52 of 2004) Should both parents of a child under the age of 2 die, and should the child not be placed in a child-care establishment, the balance of the leaves under the preceding paragraph shall be used by the child's guardian or, with his/her consent, by any parent of the child's mother or father.

Unpaid leave for raising a child up to 8 years of age

Article 167a. (New – State Gazette, Issue 52 of 2004) (1) Having used up the leaves under 164, paragraph 1 and Article 165, paragraph 1, each parent (adoptive parent), if working under an employment relationship and the child has not been fully institutionalised by the state, may use, upon request, unpaid leave of up to 6 months for raising a child up to 8 years of age.

(2) In the cases under Article 167, paragraph 2, the guardian shall be entitled to leave under paragraph 1 of up to 12 months. With the his/her consent, leave of up to 12 months or the unused part of the same leave duration may be used by one of the child's grandparents.

(3) Where both parents of a child aged above 2 years of age have died without using the leave under paragraph 1, the guardian shall be entitled to such leave of 12 months, and where the parents have used part of the leave – to the rest of the leave. Subject to the guardian's consent, the leave may be used by one of the child's grandparents.

(4) A single parent (adoptive parent) raising a child shall be entitled to leave under paragraph 1 up to 12 months in the case of:

1. the parent not being married to the other parent and not living in the same household with him/her;

2. the other parent being deprived of parental rights with enforceable judgment;

3. deceased other parent.

(5) In the cases under paragraph 4, items 1 and 2 the other parent shall not be entitled to leave under paragraph 1.

(6) The leave under paragraph 1 may be used at one time or in parts. When used in parts, it may not be shorter than 5 working days.

(7) The person willing to use a leave under paragraph 1 shall notify his/her employer at least 10 days in advance.

(8) The time of the leave under paragraph 1 shall be included in the overall length of service.

(9) The rules for using the leave under paragraphs 1 - 8 shall be arranged in an ordinance of the Council of Ministers.

The parental leave shall be used by either of parents.

Questions of the European Committee of Social Rights:

The Committee requests that the next report provide information on the maximum length of parental leave.

Labour Code

Article 164. (1) After the leave for pregnancy, childbirth or adoption has been used, in case the child is not placed in a child-care establishment, the worker or employee shall be entitled to an additional leave for raising a first, second, and third child until **they reach 2 years of age**, and 6 months for each subsequent child.

…

Article 165. (1) (Amended - State Gazette, Issue 52 of 2004) After using a leave under Article 164, paragraph 1, upon the request of the worker or employee with four and more children, she may also be granted an unpaid leave until the child reaches 2 years of age, in case it is not placed in a child-care establishment. With the consent of the mother (adoptive mother) this leave may also be used by the persons under Article 164, paragraph 3.

…

Article 167a. (New - State Gazette, Issue 52 of 2004) (1) Having used up the leaves under 164, paragraph 1 and Article 165, paragraph 1, each parent (adoptive parent), if working under an employment relationship and the child has not been fully institutionalised by the state, may use, upon request, unpaid leave of up to 6 months for raising a child up to 8 years of age.

The Committee also asks whether the above rule applies to all categories of workers. It would also like to know how many workers do actually take the leave.

The rues are applicable to all the workers.

We do not dispose of such statistical information.

Article 27, Paragraph 3

In comparison to the previous report the legislative framework has been changed in the following way:

Labour Code

Article 8

(3) (Amended - State Gazette, Issue 100 of 1992, Issue 25 of 2001, Issue 52 of 2004) In exercising labour rights and duties no direct or indirect discrimination, shall be allowed on grounds of nationality, origin, sex, race, colour of skin, age, political and religious beliefs, affiliation to trade union and other public organizations and movements, marital and proprietary status, presence of mental or physical disabilities, as well as differences in the period of the contract and the duration of the working hours.

Article 162. (1) (Supplemented - State Gazette, Issue 52 of 2004) The worker or employee shall be entitled to a leave in case of temporary incapacity for work resulting from a general or an occupational disease, accident at work, for sanatorium-spa treatment or for urgent medical examinations or tests, quarantine, suspension from work prescribed by the health authorities, for taking care of an ill or quarantined member of the family, for urgent need to accompany an ill member of the family to a medical check-up, test or treatment, and for taking care of a healthy child dismissed from a child-care facility because of quarantine imposed on that facility or on the child.

In pursuance of the **Protection Against Discrimination Act** adopted in 2003:

Article 4. (1) (Supplemented - State Gazette, Issue 70 of 2004) (1) Any direct or indirect discrimination on the grounds of sex, race, nationality, ethnic origin, citizenship, origin, religion or belief, education, opinions, political belonging, personal or public status, disability, age, sexual orientation, **marital status**, property status, or on any other grounds, established by the law, or by international treaties to which the Republic of Bulgaria is a party, is forbidden.

More information in relation to the Protection Against Discrimination Act you can find in the responses to Article 4, Paragraph 3 under the present report.

We would also like to draw the attention on the recent ratification of Workers with Family Responsibilities Convention (No 156), 1981, as a step forward in the efforts paid by the government of the Republic of Bulgaria to introduce the modern international labour standards in the field of gender equality and compliance of the family and professional life in the national legislation framework.

Questions of the European Committee of Social Rights:

The Committee requests that the next report provide information on legal measures taken in Bulgaria to ensure that an employee shall not be dismissed because of his/her obligations with respect to dependent children (also in cases where parental leave does not apply anymore) as well as other members of the immediate family (old parents, for example) that need to be taken care of.

The Committee requests that the next report provide specific information whether family responsibilities constitute a valid reason for the termination of employment.

Pending receipt of the information requested, the Committee defers its conclusion.

Labour Code

Article 8, Paragraph 3

(3) (Amended - State Gazette, Issue 100 of 1992, Issue 25 of 2001, Issue 52 of 2004) In exercising labour rights and duties no direct or indirect discrimination, shall be allowed on grounds of nationality, origin, sex, race, colour of skin, age, political and religious beliefs, affiliation to trade union and other public organisations and movements, marital and proprietary status, presence of mental or physical disabilities, as well as differences in the period of the contract and the duration of the working hours.

(4) Labour rights and obligations shall be personal. Any waiver of labour rights, as well as any transfer of labour rights and obligations shall be considered null and void.

As it was already stated herein above, the Protection Against Discrimination Act provides for prohibition of discrimination covering all fields of public life, including the domain of employment. The Protection Against Discrimination Act contains a prohibition on discrimination of a number of indicators, including marital status.

ARTICLE 28 - The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

Question A

Labour Code – amendments

Participation of workers and employees in the management of the enterprise

Article 7

(1) (Amended, SG No. 100/1992, renumbered from Article 7, SG No. 25/2001, amended, SG No. 48/2006) Workers and employees shall participate, through representative elected by the General Meeting of workers and employees, in the discussion of, and addressing of enterprise management issues only in the cases provided for by the law.

(2) (New, SG No. 25/2001) Workers and employees may elect at a General Meeting their representatives, who shall represent their common interests on issues of industrial and social-security relations before the employers or before the State bodies. Such representatives shall be elected by a majority of more than two-thirds of the members of the General Meeting.

(3) (New, SG No. 52/2004, repealed, SG No. 48/2006) .

Representatives for information and consultation of workers and employees

Article 7a

(New, SG No. 48/2006)

(1) In enterprises employing at least 50 workers and employees, as well as in organisationally and economically self-contained divisions of enterprises employing at least 20 workers and employees, the General Meeting shall elect from among its composition workers' and employees' representatives for exercising the right to information and consultation under Articles 130c and 130d.

(2) The General Meeting may delegate the functions under Paragraph (1) to representatives designated by the leaderships of the trade union organisations of to the workers' and employees' representatives under Article 7 (2) for exercising the right to information and consultation.

(3) The thresholds for the size of the workforce under Paragraph (1) shall be based on the average monthly number of workers and employees employed during the previous 12 months. It shall include all workers and employees who are or were in an employment relationship with the employer, regardless of the term of the said relationship and the duration of the working time thereof.

(4) The number of workers' and employees' representatives shall be determined in advance by the General Meeting as follows:

1. applicable to enterprises with 50 to 250 workers and employees: not fewer than three and not more than five;

2. applicable to enterprises with more than 250 workers and employees: not fewer than five and not more than nine;

3. applicable to organisationally and economically self-contained divisions: not fewer than one and not more than three.

(5) Candidates for election of workers' and employees' representatives may be nominated by individual workers or employees, by groups of workers and employees, as well as by trade union organisations.

(6) The General Meeting shall determine the procedure for the conduct of the election under Paragraph (5), including the manner of voting.

(7) The General Meeting shall pass the resolutions under Paragraphs (1), (2) and (4) by a simple majority of those present.

Workers' and Employees' Representatives Mandate

Article 7b

(New, SG No. 48/2006)

(1) The workers' and employees' representatives under Article 7 (2) and Article 7a shall be elected for a term of one to three years. They shall be removed from office prior to the expiry of the said term:

1. if convicted of a premeditated offence at public law;

2. upon systematic non-performance of the functions thereof;

3. if objectively unable to perform the functions thereof in the course of more than six months;

4. at their own request.

(2) In the cases of Article 123 (1), if the enterprise, activity or a part of an enterprise or activity preserve their self-contained nature, the workers' and employees' representatives under Article 7 (2) shall retain the status and functions thereof under the same conditions, of the same type and in the same volume as before the change until the election of new representatives but for not more than one year reckoned from the date of the change. If the enterprise, activity or part of an enterprise do not preserve their self-contained nature, the mandate of the workers' and employees' representatives shall be terminated, and the workers and employees who have transferred to the new employer shall be represented by the workers' and employees' representatives at the enterprise of their new employment.

Workers' and Employees' Representatives: Rights and Obligations

Article 7c

(New, SG No. 48/2006)

(1) The workers' and employees' representatives shall have the right:

1. to be informed by the employer in a manner enabling them to assess the possible impact of the measures envisaged by the competent authorities;

2. to require that the employer provide them with the necessary information, if this has not been done within the established time limits;

3. to participate in consultation procedures with the employer and to express the opinion thereof on the measures envisaged by the competent authorities, which shall be taken into account upon decision-making;

4. to require to meet with the employer in the cases where they have to inform the employer of the questions raised by the factory and office workers;

5. to have access to all workplaces in the enterprise or division;

6. to be enrolled in training necessary for the performance of the functions thereof.

(2) The workers' and employees' representatives shall be obliged:

1. to inform the workers and employees of the information received under Items 1 and 2 of Paragraph (1) and of the results of the consultations and meetings held under Items 3 and 4 of Paragraph (1);

2. not to disclose and not to use for their benefit and for the benefit of third parties any information under Items 1 and 2 of Paragraph (1) which has been provided thereto in confidence, until they are workers' and employees' representatives, as well as after the discontinuance of the functions thereof.

(3) The workers' and employees' representatives shall themselves determine the procedure for the work thereof. They may designate one or several persons from amongst themselves who shall conclude an agreement with the employer in the cases specified by this Code.

(4) A collective agreement or a separate agreement with the employer may provide that the workers' and employees' representatives, where this is necessary considering the obligations thereof, may enjoy an entitlement to reduced working time, additional leave and other such.

Liability for Disclosure of Confidential Information

Article 7d

(New, SG No. 48/2006

The persons whereto information has been provided in confidence shall be liable for the detriment inflicted on the employer as a result of non-performance of the obligation not to disclose the said information.

…

Article 130

(Repealed, SG No. 100/1992, new, SG No. 25/2001, amended and supplemented, SG No. 52/2004, amended, SG No. 48/2006)

(1) The employer shall be obligated to provide the information required by the law to the trade union organisations and to the workers' and employees' representatives under Articles 7 and 7a at the enterprise, as well as to consult them.

(2) The employer shall provide information, conduct consultations and co-ordination in the cases provided for by the law either with the trade union organisations only or with the representatives under Article 7 (2) only, where there are no trade union organisations or no elected representatives under Article 7 (2) at the enterprise or any of them refuses to take part in the information and/or consultation procedure.

(3) The trade union organisations and the workers' and employees' representatives under Articles 7 and 7a shall be obligated to familiarise the workers and employees with the information received from the employer, as well as to take into account the opinion thereof upon conduct of the consultations.

(4) Workers and employees shall be entitled to prompt, reliable and intelligible information about the economic and financial situation of the employer, which is relevant to their labour rights and duties.

(5) By a collective agreement or by an agreement, the employer and the workers' and employees' representatives under Article 7a may also agree on practical measures for information and consultation of the workers and employees other than those specified in the law.

Obligation to Inform upon Development of Enterprise's Activities, Economic Situation and Work Organisation

Article 130c

(New, SG No. 48/2006)

(1) In the cases under Article 7a, the employer shall be obligated to provide the elected workers' and employees' representatives with information regarding: 1. the recent and probable development of the enterprise's activities and economic situation;

2. the situation, structure and probable development of employment within the enterprise and regarding any anticipatory measures envisaged, in particular where there is a threat to employment;

3. the possible substantial changes in work organisation.

(2) After providing the information under Paragraph (1), the employer shall be obligated to hold consultations on the matters under Items 2 and 3 of Paragraph (1).

(3) Where the information under Paragraph (1) contains any data whereof the disclosure may harm the legitimate interests of the employer, the said employer shall have the right to provide the said information in confidence.

(4) In the cases under Paragraph (3), the factory workers' and employees' representatives shall not have the right to pass the information under Paragraph (1) to the rest of the workers' and employees' representatives and to third parties.

(5) The employer may refuse to communicate information or undertake consultation when the nature of that information or consultation is such that it would seriously harm the functioning of the enterprise or the legitimate interests of the employer.

(6) Upon refusal to provide information under Paragraph (5) and if a dispute arises over the justification of the said refusal, the parties may seek assistance for settlement of the dispute through mediation and/or voluntary arbitration from the National Institute of Conciliation and Arbitration.

Information and Consultation Timing

Article 130d

(New, SG No. 48/2006)

(1) The employer and the workers' and employees' representatives under Article 7a shall define in an agreement:

1. the content of the information and the time whereat the said information is to be provided to the said representatives;

2. the time whereat the workers' and employees'representatives are to formulate their opinion on the information provided;

3. the timing and the subject of consultation;

4. the employer's representatives designated to inform and to consult.

(2) In case no agreement under Paragraph (1) is reached:

1. the information on the recent and probable development of the enterprise's activities and economic situation shall be provided within the time limits for preparation of the financial statements;

2. the information regarding the situation, structure and probable development of employment within the enterprise and on any anticipatory measures envisaged shall be provided within one month before such measures are undertaken;

3. the information regarding the decisions likely to lead to substantial changes in work organisation or in the employment relationships shall be provided within one month before the relevant changes are effected;

4. the consultation under Items 2 and 3 of Article 130c (1) shall take place within two weeks after the information is provided.

(3) In the cases where the employer envisages any measures leading to a change under Article 123 or 123a or to collective dismissals, the information shall be provided and the consultations shall take place under the terms, according to the procedure and within the time limits established by Articles 130a and 130b.

(4) In case the employer fails to provide information within the time limits under Paragraphs (1) or (2), the workers' and employees' representatives shall have the right to request the said information therefrom in writing, and upon refusal to provide information, the said representatives shall have the right to alert the General Labour Inspectorate Executive Agency of a non-observance of labour legislation.

Question B

Labour Code - amendments

Co-operation for Implementation of Activities of Trade Union Organisations and of Workers' and Employees' Representatives

(Heading amended, SG No. 100/1992, SG No. 48/2006)

Article 46

(1) (Amended, SG No. 100/1992, redesignated from Article 46, SG No. 48/2006) State bodies and employers shall create conditions for, and co-operate with, trade union organisations for the pursuit of their activities. The said bodies and employers shall make available to the said organisation, for gratuitous use, movable and immovable property, buildings, premises and other facilities required for the performance of their functions.

(2) (New, SG No. 48/2006) The employer shall be obligated to co-operate with the workers' and employers' representatives in the discharge of the functions thereof and to create conditions for implementation of the activities thereof.

Questions of the European Committee of Social Rights

The 1988 Act for Healthy and Safe Labour conditions provides for "labour conditions committees" composed *inter alia,* of workers representatives. The Committee therefore asks what protection is afforded to these workers representatives.

Health and Safety at Work Act

Article 30.

(3) The employer shall provide the necessary conditions and means for the workers' representatives to exercise their rights and functions, as well as the requisite training which shall be held during work hours with no prejudice to the remuneration thereof;

(4) Workers' representatives in work conditions committees and groups shall not be placed in disadvantageous position on account of their actions for ensuring health and safety at work.

In addition, the Committee notes from the information supplied under Article 21 that information and consultation of workers within the undertaking is ensured through the employees' general assembly or their representatives elected within the Assembly. It also asks what protection is afforded to these elected representatives.

Article 333

(Amended, SG No. 100/1992)

(1) (Amended, SG No. 110/1999, effective 17.12.1999, SG No. 25/2001) In the cases under Items 2, 3, 5 of Article 328 (1) and Item 6 of Article 330 (2), an employer must mandatorily obtain an advance permission from the labour inspectorate for each particular case in order to dismiss:

5. (new - SG 48 from 2006) worker or employee who has been elected for workers' and employees' representative under art.7, para. 2 and art. 7a for the duration of such capacity.

Moreover, the Committee asks whether any other form of workers' representation, within the meaning of Article 28, exists in Bulgaria and, if so, what protection such representatives enjoy and which facilities they are afforded.

With the adoption of the Information and Consultation with Employees of Multinational (Community-Scale) Undertakings, Groups of Undertakings and Companies Act,

promulgated in SG 57 from 14.07.2006, into force from the entry in to force of the Accession Treaty of Bulgaria to the EU, the provisions of the Directive 94/45/EC concerning the establishment of European Works Councils, Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees and и Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to employee involvement have been transposed.

In the multinational enterprises of the European Community a special negotiating body shall be established (SNB), as the representatives of workers and employees shall be elected by the general assembly of workers and employees. SNB shall have the task to determine jointly with the management of the enterprise the scope, composition, functions and the term of the mandate of the European work council (EWC), which functioning the enterprise must secure with appropriate means and conditions. Workers and employees from all multinational enterprise or group of undertakings from the EC must be presented in the EWC, while its competences are in line with the EU requirements.

Under the requirements or Regulation 2157/2001/EC in every European company based in Bulgaria shall be established Representation body of the workers and employees. The requirements of the Regulation 1435/2003/EC on the Statute for the European Cooperative Society have also been transposed.

In accordance with the provisions of the Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community, requirements for consultation procedures have been established for the employers.

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

According to the most recent Labor Code amendments (SG 48/2006), when the employer intends to implement a collective dismissal of workers, he/she has the obligation to start negotiations with representatives of the respective trade unions and workers' representatives at least 45 days before implementing the dismissal. The employer should also make all efforts to reach and agreement with the trade unions in order to avoid or limit the collective dismissal and to soften its consequences (article 130a, paragraph 1 of the Labour Code).

The employer has the obligation to present the representatives of the respective trade unions and the workers' representatives with written information regarding the reasons for the intended collective dismissal; the number of workers due to be dismissed, the main economic activities, groups of occupations and positions referred to; the number of employed workers from the main economic activities, groups of occupations and positions within the enterprise; the specific criteria followed applied to chose the workers that are to be dismissed; the period during which the dismissals are to take place; the compensations due to the workers in connection to the dismissals (paragraph 2, article 130a). The employer also has the obligation to submit a copy of the abovementioned information to the respective National Employment Agency unit. After the submission of the information and in accordance with the Employment Promotion Act, the National Employment Agency forms task-forces with the participation of the employer, representatives of the workers in the enterprise, as well as representatives of the respective municipality and the National Employment Agency, in order to develop draft measures in the field of employment mediation, training for starting independent economic activity and alternative programmes for employment. These drafts are presented to the regional employment commission.

In case of the employer failing to meet the obligations under paragraph 2, article 130a, trade unions representatives and representatives of the enterprise workers have the right to alert the Executive Agency General Labour Inspection units for violation of labour legislation.

Employer's obligations under paragraph 1 and 2 of article 130a cannot be influenced by the question which body has taken the decision to implement the collective dismissal of workers.

The same Labour Code amendment also stipulates the respective procedures for information and consultation in case of changing the employer, as well as in case of changing the activity, the economic situation and the organization of work in the enterprise. The Labour Code also provides for the deadlines for implementing the information and consultation procedures (see the answer on Question A, article 28).

Employment Promotion Act

Article 24.

(1) (Supplemented, SG 26/2003, amended, SG 52/2004, SG 48/2006) Any employer shall notify in writing the competent division of the National Employment Agency of any contemplated collective dismissals not later than 30 days prior to the dismissal date.

(2) (Amended, SG 26/2003) The division of the National Employment Agency shall transmit copies of the notification referred to in Paragraph (1) to:

1. the municipal administration;

2. the local division of the National Social Security Institute;

3. the local division of the General Labour Inspectorate Executive Agency.

(3) (Amended, SG 52/2004, SG 48/2006) The notification referred to in Paragraph (1) must include all the relevant information, regarding the contemplated collective dismissals, including: the reasons for the dismissals; the number of workers to be and the main economic activities, groups of occupations and positions concerned; the number of employed workers and the main economic activities, groups of occupations and positions within the enterprise; specific indicators for the application of the selection criteria of workers under article 329 if the Labour Code that are to be dismissed; the period during which the dismissals are to take place, as well as information regarding the implemented preliminary consultations with trade union representatives and workers' representatives under article 7, paragraph 2 of the Labour Code.

(4) (New – SG 48/2006) Each employer shall have the obligation to present trade unions representatives and workers' representatives under article 7, paragraph 2 of the Labour code with a copy of the notification under paragraph 1 within three working days.

Article 25.

(1) Upon receipt of the notification referred to in Article 24 herein, teams shall be formed, consisting of a representative of the employer, representatives of the workers' organizations at the enterprise concerned, a representative of the competent division of the National Employment Agency, and a representative of the municipal administration.

(2) The teams referred to in Paragraph (1) shall draft the necessary measures aimed at:

1. employment placement intermediation;

2. training for attainment of vocational qualification;

3. own business start-up;

4. alternative employment programmes.

(3) The drafts covered under Paragraph (2) shall be submitted for approval to the Regional Employment Commission, with applications for financing submitted on the basis of the said drafts under terms and according to a procedure established by the Regulations for Application of this Act.