13/12/2008 RAP/RCha/Bulgaria/6(2008)1

REVISED EUROPEAN SOCIAL CHARTER

6th report on the implementation of
the Revised European Social Charter

submitted by

THE GOVERNMENT OF BULGARIA

(FOR THE PERIOD 1ST JANUARY 2005 – 31ST DECEMBER 2006

:

Articles 1, 18, 20, 24, 25)

_____

Report registered at the Secretariat on 13/02/2008

CYCLE 2008

R E P U B L I C O F BULGARIA

MINISTRY OF LABOUR AND SOCIAL POLICY

2, Triaditza str. 1051 Sofia, tel.: +359 2 8119 443, fax: +359 2 986 13 18, e-mail: mlsp@mlsp.government.bg

Approved
Minister

NATIONAL REPORT

For the period from 1st January 2005 to 31st December 2006 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.

TABLE OF CONTENTS

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 following provisions of the ESC (r): Art. 1&1-4, Art.18&4, Art.20, Art.24 and Art. 25.

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).

Bulgaria is at disposal for any supplementary questions and clarifications, which may appear in the process of examination of the present Report.

Article 1 – THE RIGHT TO WORK

Article 1, Paragraph 1

Question A

In the 2005-2006 period, Bulgaria has been conducting an employment policy in conformity with the European Employment Strategy guidelines and the European Commission reports and recommendations in the field of employment. The goals set and the results achieved are in implementation of the government programme, the National Employment Strategy and the recommendations and evaluations of the Joint Assessment Report on the priorities of Bulgarian employment policy.

The main instrument through which policies for increasing employment and decreasing unemployment are carried out is the National Employment Action Plan. This is developed and implemented on yearly basis. It sets out:

- the main goals, priorities and actions of employment policy;
- target groups which employment policy is to be aimed at;
- main labour market challenges based on the analysis of the results achieved in previous years;
- projects, programmes and measures that are to be implemented, kinds and amounts of incentives.

In 2005 the national employment policy reached a higher step – from a policy aimed at overcoming mass unemployment, to a policy aimed at achieving higher and better employment. In order to increase growth speed, the main focus was placed on the conditions needed to create more jobs in the real sector and sustainability of the newly created jobs, satisfying the need for highly qualified specialists on the labour market as well as the integration of discouraged persons.

The goal of labour market policy in 2005 is to **increase employment and further the decrease of unemployment through the implementation of actions for improving the socio-economic environment and carrying out active labour market programmes and measures.** Active employment policy is aimed with a priority at the following target groups: long-term unemployed, youth without previous working experience or without education and vocation, unemployed persons with low or no education and qualification, persons with disabilities, elderly unemployed persons (over 50 years old).

In 2005 previously achieved results were not only maintained but also improved which ensured **sustainability and development of good practices**. Positive labour market trends are being developed with the aid of specific measures aimed at:

- increasing the efficiency of the preferences system of the National Employment Action Plan 2005 based on the results and conclusions of the implementation of labour market policy in previous years;
- including more private employers in national programmes and priority subsidising of private sector employment;
- inclusion of new activities (in the field of agriculture, processing, etc.) in the most large-scale employment and social integration programme "From Social Assistance towards Provision of Employment" for implementation from private employers;

- carrying out new employment programmes designed or implemented in pilot stage in 2004 – for youths who have dropped out of the education system and others;
- awareness raising on programmes and preferences under the Employment Promotion Act that are subject to a more limited employer interest as well as possibilities for training of young entrepreneurs;
- shortening and easing the procedures for receiving preferences from employers and the documents needed for this purpose;
- improving control over the implementation of the Employment Promotion Act and the Labour Code as well as over the implementation of contracts for carrying out programmes and measures;
- improving the system for objectification of employers' access to subsidies for hiring unemployed persons and training organisations for observing the requirements of the State Aid Act;
- improving the control over the quality of training of employed and unemployed persons.

In 2005, the implementation of active programmes with a different scope and target groups aimed at increasing employment and decreasing unemployment was continued. The implementation of programmes and measures creates jobs for sustainable employment, apprenticeship and traineeship. In order to decrease unemployment, the following programmes and measures are implemented:

- giving incentives to employers who create new jobs and hire under a labour contract persons who have been long-term unemployed and youths under 29 years, create positions for internships and apprenticeships, provide hired personnel with training, hire unemployed persons whom they provide with employment and on-the-job training, provide part-time employment;

- promoting the territorial mobility of unemployed persons hired to work outside the settlement they reside permanently by paying for transportation expenses;

- increasing the quality of intermediary services provided by Employment Office Directorates by:

  - applying an individual approach towards every jobseeker and active offering of intermediary services for the employers;
  - implementing systematic contacts with employers and developing an activating approach towards them in order to create new positions for employment and internship;
  - individual consulting and psychological assistance for unemployed persons and guidance towards suitable programmes and measures of active policy;
  - developing of individual action plans for every unemployed person that covers their participation in measures and programmes of employment and other activities for finding a job. The individual plan is developed for every unemployed person in case they have not been offered a job one month after their registration.

In 2005, efforts to strengthen the competitiveness of Bulgarian economy were aimed at two main directions:

- improvement of the business environment as a key factor for the development and prosperity of the private sector;

- preparation of the entrepreneurs to fulfil the requirements of the EU and make use of the advantages offered by the single European market.

The improvement of the business environment is carried out by improving the legal framework and the regulatory regimes, and drawing the business circles to the development and implementation of economic policies.

The measures for fostering entrepreneurship include:

- access to financial resources through the Micro Credit Guarantee Fund, covering the interest expenses of persons with decreased ability to work that use a credit resource;
- giving incentives to employers through consultation, training with the right to a qualification credit in the field of economic activity, use of outside consultancy services and/or accompanying services;
- providing a broad range of information and technical services, consultancy and marketing services, a financial leasing scheme, trainings, internet access, market information, business contacts and renting of premises at preferential rates for starting micro and small businesses;
- improvement of the services package offered by Employment Office Directorates to persons willing to start their own economic activity;
- training of entrepreneurs in introduction to international standards of quality and safety;
- adopting fiscal measures and incentives for small and medium sized enterprises (SMEs) that function within the territory of certain technology park based on realised investments and created jobs;
- carrying out active state policy on awareness raising, introducing and making use of information technology, especially by SMEs;
- development of IT infrastructure for effective use of information resources by the population and the business;
- improving the conditions for development of e-trade, including by legislative changes;
- provision of high quality, economically efficient and accessible administrative e-services to citizens and business, and others

In 2005, the **promotion of labour market adaptiveness and mobility** was a special priority in the employment policy with view of their immediate influence on the employment of the labour force and the competitiveness of enterprises. In correspondence with the European Employment Strategy, in 2005 we supported the diversity of contractual and labour organisation and the achievement of a better balance between labour force flexibility and security on the labour market. The actions in the field of improving working conditions, including workplace health and safety and decreasing workplace accidents and vocational illnesses are aimed at:

- updating and broadening the concept of labour security (provision of employment and creation of possibilities for the employed persons to preserve their employment and to develop professionally);

- increasing financial resources for improving the safe and healthy working conditions;

- encouraging employers who introduce better equipment and technology in terms of work safety;

- carrying out efficient control on the activity of labour medicine services in order to improve the quality of services they offer to employers;

- holding regular trainings for employers, trade unions, different committees and groups in the field of working conditions and specialists in health and safety at work in enterprises;

- implementing measures for the prevention of workplace accidents and vocational illnesses by improving the information and consultation of workers through a system of continuing training as well as constant monitoring.

The directions and the actions in 2005 in the field of **human resources development and lifelong learning** include increasing the educational level, the qualification level and the employability of the labour force in order to reach the goal that has been set in the European Employment Strategy which is by 2010 to reach a level of at least 85% of 22-year olds who have graduated from high school.

In order to ensure a correspondence between the vocational education and training with the needs of the labour market, the vocational consultancy, information and guidance was improved. In the field of lifelong learning, actions were directed at achieving a greater purposefulness and a systematic implementation of measures for broadening the scope and quality of learning.

The **National Employment Action Plan 2006** introduces in employment policy the **European Commission Employment Guidelines**, which are part of the EU Integrated Growth and Employment Guidelines 2005-2008. The employment guidelines include requirements for the introduction of economic policies aimed at achieving full employment and improving the quality and productivity of labour. The goal is to achieve social and territorial cohesion, development of labour markets that will provide inclusion for those who seek jobs and the groups in a disadvantaged situation, improvement of the labour market supply and demand. The sixth National Employment Action Plan is aimed at increasing employment, improving the labour quality and productivity, increasing social cohesion and decreasing territorial discrepancies.

Active labour market policy in Bulgaria continues to be aimed with a priority at the following target groups: unemployed youths; unemployed persons with a low level of education and without vocation; discouraged persons; long-term unemployed persons; unemployed persons with disabilities; unemployed persons over the age of 50. In 2006 Bulgaria carried out preparations for the full implementation of the European Employment Strategy. The main directions are related to efforts to improve the economic activity, reform the education system in order to better reflect the actual needs of the labour market, increase labour quality and productivity, decreasing regional discrepancies, increasing human resource capacity in the employment system in terms of improving the effectiveness and efficiency of the services provided.

In 2006, actions in the field of employment policy were aimed at the following directions:

- **Increasing labour force employability**. This is related to the need to secure correspondence between vocational education and training and labour market necessities. This is a condition to increase labour productivity and quality.
- **Creation of new jobs and preservation of existing ones.** Employment is the most effective way to provide income, social contacts and fulfilment of personal potential. There are funds designated to create new jobs for groups in a disadvantaged labour market situation through subsidised employment in the private sector.
- **Fostering entrepreneurship.** The development of the possibilities of the private sector to generate jobs is also supported by specialised programmes and measures for fostering entrepreneurship among unemployed persons and members of their families.
- **Employment for social integration**. The employment provided under this direction is aimed at categories of unemployed persons who have little chances of finding a job at the primary labour market. In this case, subsidised employment is a stage of the transition from social assistance towards employment at the primary labour market.

The 2006 National Employment Action Plan sets out the following goals:

- reaching a level of employment of 58% (for persons aged 15 to 64);
- decreasing registered unemployment under 11% (year average);
- decreasing the share of unemployed youths by 10%;
- provision of subsidised employment to 109 413 persons and training of 40 790 persons;
- increasing and improving investments in human resources by facilitating access to vocational education and training and development of lifelong learning and training for adults;
- increasing labour market flexibility by broader application of more flexible forms of employment as a result of common efforts by the state, the social partners and civil society;
- concluding the preparation for the inclusion of the Employment Agency in the EURES network starting 1 January 2007;
- concluding the changes in national legislation in order to fully transpose EU law in the field of free movement of workers and integration into the common European labour market.

The improved health status is an important factor for reaching sustainable ability to work and maintain employment. In 2006, actions in this field include improving the culture of prevention among the workers and further development of the prevention system by developing legislation, training and education, social dialogue and partnership.

The access to information and the quality of services are important conditions for activating unemployed persons, including the persons who are farthest from the labour market. A differentiated approach is applied towards persons in a disadvantaged situation which takes into account the specific needs and particularities of each separate group. Unemployed persons are provided with individual services in the form of information and consultation, information materials, guidance courses and new job opportunities. Employment is provided to those persons who receive social assistance in order to decrease their number and provide them with incomes from labour. The implementation of the most large-scale labour market initiative – the National Programme "From Social Assistance towards Provision of Employment", continues securing employment to persons in working age who receive monthly assistance. The priority groups under the programme are:

- registered unemployed persons who receive social assistance and have not worked under the programme – long-term unemployed persons who have been unemployed for over 24 months and receive social assistance for more than 18 months; members of families with children in which both parents are unemployed and the family receives social assistance; single parents (adopters) who receive social assistance; and others;
- registered unemployed persons who are subject to monthly social assistance and have worked under the programme – unemployed persons who receive social assistance who have worked under the programme for up to 12 months and persons who have worked under the programme for up to 24 months.

In 2006, under the programme, employment has been provided to 82 550 persons. The share of women who have started working under the programme is 45.8%.

In 2006, the implementation of the project Micro Credit Guarantee Fund is continuing for investment projects, credits for small companies and development of direct employment. The project provides credit resources to small and medium sized enterprises, unemployed persons, cooperatives and agricultural producers in an amount of up to 20 000 BGN; up to a 100% guarantee of the value of the credit and an accelerated procedure for

credit approval of up to 20 days. The project continues to subsidise the interests on credits of persons with decreased ability to work who have defended successfully business projects and have received credits. Under the terms and conditions of the Employment Promotion Act, the application of measures for encouraging employers to hire unemployed persons under 29 years of age with permanent disabilities and young persons from social institutions who have completed their education, is continuing. Employers who create jobs for unemployed persons with permanent disabilities receive subsidies for their salary and social security expenses.

Vocational qualification is of key importance for the adaptation and mobility of the labour force in modern market conditions. In correspondence with the Employment Promotion Act, training is provided for acquiring vocational qualification characteristics of the labour force that meet the requirements of the employers. In order to assist persons in choosing a profession and the right training in order to acquire suitable qualification, vocational orientation and consultation of unemployed, employed and studying persons is carried out. Special attention is paid to persons without a vocation who are not competitive at the labour market and most of whom remain unemployed as well as to young persons who graduate from the secondary education system.

Please indicate the active policy measures taken in order to favour access to employment of groups most exposed to or affected by unemployment (eg. women, the young, older workers, the long-term unemployed,2 the disabled, immigrants and/or ethnic minorities). Please give indications on the number of beneficiaries from these measures and information, if possible, on their impact on employment.

For 2005

In 2005, there have been active and preventive measures on unemployed and economically inactive persons in order to prevent the increase in long-term unemployment and promote the integration of these persons. The improvement of employability of unemployed persons is carried out through training in correspondence with the labour market needs in basic qualification, increasing qualification and re-qualification, through motivation and inclusion in computer training.

The implementation of active programmes continued in 2005 with certain changes, depending on the labour market needs: there was an increase in the length of subsidies period as well as an increase in the salaries of certain specialists with university degree included in the programmes, etc.

In 2005, the implementation of the National Programme “From Social Assistance towards Provision of Employment” continued and was aimed at the employment and social integration of unemployed persons receiving monthly social assistance and increasing their employability. The programme is carried out on a project principle. In 2005, 92 510 persons were employed under the programmes. The share of women included was 46.6%.

618 persons took part in the National Programme “Career Start”, which provides young people with an opportunity of employment in state and local administration.

In 2005 measures of increasing labour supply were based on the actual needs and were directed towards the integration of inactive persons through individual services provided at an early stage in the form of information and consultation, information materials, training courses and new job opportunities. Actions for achieving higher standards of employment for workers in the age group 50-64 (especially the subgroup 55-64) include providing employers with incentives to hire and keep at work elder workers through:

- increasing employment opportunities suitable for persons in a more mature age through flexible employment forms – part-time work, hour work, work from home, self-employment;

- assistance in creating jobs suitable for elderly workers in the field of social services for the population; agriculture, ecologic measures;

- encouraging the creation of jobs suitable for high-qualified workers in a more mature age.

The policy for prolonging the labour life of elderly workers is implemented through the creation of favourable conditions for remaining at work and providing access to continuous education. Such conditions also include the provision of healthy and safe working conditions. Actions are taken to form positive attitudes in society towards the process of elderly persons remaining in employment for longer and awareness is raised regarding the positive practices in other European countries in maintaining the age diversity in enterprises.

The National Programme "Assistance for Retirement" provides jobs to persons in pre-retirement age who have failed to retire and would hardly be able to find jobs on their own. In 2005, the programme provided 1 952 persons with jobs.

The 2005 National Employment Action Plan lays down actions for increasing **women's labour market participation**. Measures were taken in order to improve their competitiveness through inclusion in trainings and subsidised employment as well as encouraging entrepreneurial skills. The most effective measure is related to the creation of opportunities to raise small children and improve the reconciliation between family and professional life.

In 2005, the implementation of projects programmes and measures whose main goal is **to integrate groups at risk** continued. Priority actions include: provision of subsidised employment; fostering entrepreneurship and assistance for starting own business; inclusion in vocational qualification training of persons with disabilities; development of accessible working environment and adaptation and equipment of working spaces for persons with disabilities. The National Programme "Assistants for Persons with Disabilities" provides employment to unemployed persons as personal or social assistants to persons with permanent disabilities or alone persons with severe illnesses. The "personal assistant" activity provides unemployed persons with the opportunity to ease the situation of families with persons with permanent disabilities in need of constant care. The "personal assistant" activity also implements the social inclusion and satisfaction of the everyday needs as well as free time organisation of persons with disabilities or lonely persons with severe illnesses. In 2005 the programme provided 18 282 persons with employment.

Amongst the group of long-term unemployed persons, the representatives of the Roma community are those in the most disadvantaged labour market situation due to their low education status and lack of labour habits. There are measures and actions aimed at their literacy and vocational qualification in order to achieve their labour market integration.

For 2006

In 2006 a new approach to work was introduced into national policy based on the '**lifecycle'** that includes three priorities: effective actions of supporting the transitions between different life stages for young persons and adults; achievement of balance between generations; overcoming the negative influence of demographic processes on employment. Actions and measures of integration and retention of young persons in the labour market include support of their career development and transition from school to work. Special emphasis is placed on increasing the economic activity of women and

elderly persons through investment in human resources in order to achieve higher productivity.

Youth employment at the labour market in 2006 is supported through inclusion in different programmes and projects. In order to prevent the de-qualification of unemployed young persons with university education, the implementation of the "Career Start" programme is continuing. In 2006 470 unemployed young persons took part in the programme. The National Programme "Computer Training for Young Persons" assists the access of young persons to information and communication technology through providing them with knowledge and skills in the field. In 2006, 1 649 young persons took part in it and 180 of them received the opportunity to apply the acquired skills in practice through internships with employers. A vocational training project is carried out in support of youths who have dropped out of school.

One of the key directions in the policy for **equal opportunities for women and men** is the better reconciliation of work and family life. In support of the career realisation of parents, 2006 saw the continuation of the "Family Centres for Children" project. The project encourages the employment of women in providing services in raising children. In implementation of the Employment Promotion Act, employers who create jobs for unemployed persons – single parents (adopters) and/or mothers (adopters) of children under the age of 3, receive incentives.

In 2006, the employment policy placed special emphasis on actions for increasing **elderly people's labour market participation**. Such actions include the creation of favourable conditions for maintaining their employment through improving access to vocational training, implementation of innovative and flexible forms of labour organisations as well as appropriate motivation instruments for employers to hire elderly workers. The support for inclusion in and preservation of employment of elderly workers is carried out through specific programmes and measures. In implementation of the provisions of the Employment Promotion Act, employers who hire unemployed women over the age of 50 and unemployed men over the age of 55 receive incentives. This incentive measure ensures average monthly employment of 3 161 persons of this group. The state continues to subsidise employers who hire persons in pre-retirement age under the National Programme "Assistance for Retirement". In 2006 the average monthly amount of persons to receive work under this programme is 4 497.

The implementation of the National Programme "Assistants for Persons with Disabilities" also continues and bares a great social effect for persons with permanent disabilities. Over the year 16 793 unemployed persons took part in the programme, most of them being women (65.2%).

The National Programme for Employment and Vocational Training for Persons with Permanent Disabilities also continued to run in 2006. It is aimed at overcoming the social isolation and achieving full social integration of these persons. Within the framework of the programme, the financing of employers who provide accessible environment and improvement of working conditions through adaptation and/or equipment of working spaces for persons with disabilities continues. In 2006, the period of subsidised employment was increased from 12 to 24 months. 530 unemployed persons took part in the programme, 260 of whom were women.

Starting in 2006, persons receiving social assistance who find jobs on their own are entitled to monetary payments. The so called "bonuses" are provided for a period of up to 12 months. The aim is to encourage the active labour market behaviour of such persons. Over the year 220 persons made use of this measure.

In 2006, the implementation of the National Programme for Roma Literacy and Qualification started. The main goal is to increase the employability of illiterate and low-literate unemployed persons by including them in literacy and vocational training courses.

Subject to the programme are registered unemployed persons who have self-determined themselves as having Roma descent. In 2006, 2 720 persons took part in literacy courses under this programme.

Question B

Over the years there has been a steady trend of increasing the number of **employed persons** in the country. In 2006, the total number of employed aged 15 and over was an average of 3 110 000, which represents an increase of 4.4% (130 000) compared to 2005. This trend is preserved also in the first six months of 2007 when the number of employed persons increased by further 2.7% (84 2000 persons). The high growth rate of employment which is noted over the last few years is mainly dues to the consistent taxation policy and the decrease of the socio-security burden.

The employment rate for the age group 15-64 in 2006 was 58.6% - 2.8% more than in 2005. This trend also continues over the first six months of 2007, with the employment rate further growing by approximately 2% to reach 60.7%. Despite the increase of the last few years the employment rate remains about 6% under the average for the European Union (EU-27) which is 64.4% for the first quarter of 2007. Despite the fact **women's** employment rate (54.6% for 2006) is traditionally lower than **men's** (62.8% for 2006) it has noted a proportionally larger increase compared to 2005: women's – 3%; men's 2.8%.

The **youth** (15-24 years) employment rate in 2006 was 23.2%, while in the second quarter of 2007 it is 24.5%. The increase in youth employment compared to 2005 is 1.6%. A significant increase is noted in the **elderly people's** (55-64 years) employment rate. For the relevant period, their employment rate has increased by 4.9% from 34.7% in 2005 to 39.6% in 2006.

The ongoing restructuring of the economy and the reform in state administration contributed to a decrease in the number of **persons hired in the public sector** by 0.6% in 2006 compared to 2005. Despite the steady increase in employment over recent years there has been a negative trend of a decrease in the number of **self-employed persons** in Bulgaria. According to data from the National Statistical Institute (NSI), in 2006 the number of self-employed persons was 246 100, which is 4.6% less than in 2005. Over the relevant period only 7.9% of all employed persons were self-employed, while the EU average is 15%. Over the 2005-2006 period the greatest increase of almost 8.8% (149 700 persons) was noted in the number of **persons hired in private enterprises**. The number of **employers** has grown for the same period by 7.1% to reach some 122 700.

The structure of employed persons according to **economic sectors** remains relatively stable over recent years. In 2006, the greatest number of people were employed in the service sector (1 785 700), which makes up the overwhelming share (57.4%) of all employed in the country. That is followed by the industry sector – 1 072 100 employed persons (34.5%); and the "Agriculture, hunting, forestry and fishery" sector – 252 200 persons (8.1%). Over the last years there has been a decreasing trend in the number of persons employed in agriculture the profit of which is borne by the services and the industry.

For the 2005-2006 period the only sectors that have suffered a decrease in the number of employed persons were "Agriculture, hunting, forestry and fishery" (by 5.3%) and electricity, gas and water supply (by 7.9%). The sharpest rise for one year was noted in the construction sector – 20.7% (39 500 persons); and the sector of trade, automobile repairs, personal belongings and domestic goods – 10.5% (46 800 persons). The lowest rise was noted in healthcare and social activities – 2.8%; and the processing sector – 2.2%.

The regional analysis shows that the greatest number of employed is in the Southeast Planning Region – 974 100 or 31.3% of all employed persons[1] in the country; while the lowest number of employed is in the Northwest Region – 158 300 or just 5.1% of all employed. In the 2005-2006 period the greatest increase in the number of employed persons was in the Southwest region – by some 6% or 54 400 persons. This region also has the highest employment rate (52.7%) in 2006. The lowest employment rate is in the Northwest region - 37.1%, while the country average for the 15 year olds and over is 46.7%.

Please give the trend of the figures and percentages of unemployed in your country, including the proportion of unemployed to the total labour force. Please give a breakdown of the unemployed by region, category, sex, age and by length of unemployment.

According to NSI data for 2006, the number of **unemployed** persons is 305 700 and the unemployment rate is 9%. Within one year the number of unemployed persons has decreased by 8.5% while the unemployment share has dropped by 1.1%. In the 2005-2006 period there is a drop in the number of unemployed persons in all age groups with the exception of the unemployed persons over 55 years of age where there is an insignificant increase (1 900 persons). The greatest decrease was noted in the number of unemployed persons aged between 45 and 54 – 9.63% or 12 400 persons. That is followed by the young persons aged 15 to 24 where the decrease is 10.7%. The number of unemployed in the age groups 25-34 and 35-44 has decreased by about 8%.

In 2006, the unemployment rate for the men was 8.6%, while for the women it was 9.3%. Within one year, the decrease in the share of unemployment amongst men is significantly higher (1.7%) than amongst women (0.5%). Despite this, the trend of the recent years to have a lower number of unemployed women (149 300) than men (156 400) is preserved. This is one of the reasons for the higher rate of decreasing the share of men's unemployment than that of women's.

A positive trend is noticed regarding the duration of unemployment. Within one year, the number of long-term unemployed[2] has decreased by 14% or 28 800 persons. For the same period the rate of long-term unemployment has decreased by 1 percent point reaching 5%.

The regional unemployment analysis shows that in 2006, the lowest unemployment rate has been noted in the South-Western Region – 6.5% and the South-Central Region – 7.5%. The highest unemployment rate was in the North-Eastern Region – 12.5%, and the North-Western Region – 12%.

Question C

According to preliminary NSI data, the average yearly number of **available jobs** in 2006 was 19 748 which is 1 913 less than in 2005. Despite this, in the economy overall there have been 15 103 new positions[3] created over the relevant period. The decrease in the number of available jobs is due to the **private sector**. The number of announced positions is 1 966 less than in the previous year while the **public sector** records a slight increase by 53.

By economic sectors, there is an increase in the number of available positions in the **extracting and processing sector**. In all other economic sectors there is a decrease. The sharpest decrease was recorded in the **construction** sector where the number of available

[1] The regional employment analysis is for the age group over 15.
[2] Persons who are unemployed for a period longer than 1 year.
[3] Total of available and taken positions.

jobs has dropped by 53% for one year. The decrease in the service sector is mainly due to the decrease in hotels and restaurants by 1 038, or 63% in one year. A slight increase in the number of available positions was noted in activities servicing the society and the person (98) and the transport, warehousing and communications sector (30).

The division according to **vocational classes** shows that within one year, an increase has been noted only in available positions in operators of machines and devices and assembly workers – 497; as well as agriculture, forestry, fisheries and hunting – 3. Accordingly, a decrease is noted in all other vocational classes, with the sharpest drop noted in vocations that do not require any vocational qualification – 906; and qualified production workers and similar to them craftsmen – 617.

The **public sector** records a slight decrease amongst analysis specialists and technicians while administrative staff and staff occupied with services for the population, security and trade shows a slight increase in the yearly average number of available positions. Respectively, the **private sector** shows the biggest drop in vocations that do not require vocational qualification – 872; and qualified production workers and similar to them craftsmen – 663, with the biggest increase in operators of machines and devices and assembly workers – 448.

Questions by the European Committee of Social Rights

Employment situation

The Committee requests that the next report includes information with regard to the unemployment rate among persons with disabilities, immigrants or ethnic minorities (in particular, the Roma and Turkish minorities).

Along with the increase of employment over the last five years, there has also been a steady decrease in the level of unemployment. The yearly average level for 2006 reached 9% (3.1% lower than in 2004) and is close to the EU average unemployment (7.9% for EU-27 in 2006). In 2007, the level of unemployment is continuing to drop and reached 6.8% in the second quarter of the year. A main factor for this positive trend is the economic development and the investment activity of entrepreneurs. The unemployment rate for persons with established degree of lost ability to work aged between 15 and 64 is 14% in 2005 and 12.2% in 2006. Over recent years there has also been a steady trend of decreasing the **registered unemployment**[4] rate which in 2006 was 9.61%, which is 1.85% lower than in 2005. By the end of September 2007, the number of registered unemployed was 251 245 or 6.78%, which is the lowest unemployment level recorded since August 1991.

Unemployment is also decreasing among all target groups of active labour market policy. For the 2004-2006 period the yearly average of **long-term unemployed persons** registered with the employment offices has dropped by 17.9% to 163 177 in 2006 which to a great extent is due to the active policy carried out in that field above all with the implementation of the National Programme "From Social Assistance towards Provision of Employment". A positive dynamics is also noted regarding the number of **unemployed persons over the age of 50** who have decreased in comparison to 2004 by 11.2% to reach 110 161 persons in 2006.

The decrease of **youth unemployment** is one of the strategic priorities of employment policy. As a result of active measures encouraging and assisting the realisation of young persons, youth unemployment (up to 29 years of age) has decreased

[4] According to data from the administrative statistics of the Employment Agency regarding registered unemployed persons.

by 33.8% in comparison to 2004 to reach 82 004 in 2006. The unemployment rate of young persons aged up to 29 has also marked a decrease in the same period – from 26.4% in 2004, to 23% in 2006. This positive trend is due to the extended opportunities for increasing employability, the facilitation of the transition from education towards employment and the placement of young persons within the frameworks of training programmes and subsidised employment.

In the implementation of rights and the obligations under the Employment Promotion Act, no direct or indirect discrimination is allowed, nor privileges or limitations based on ethnicity, origin, sex, sexual orientation, race, skin colour, age, political and religious convictions, membership of trade union or other social organisations and movements, family, social and material situations and presence of psychological and physical disabilities.

In correspondence with this provision, the administrative statistics of the Employment Agency does not contain information regarding the ethnic origin of unemployed persons and therefore no exact data can be presented on the unemployment level of persons of Roma origin.

The Ministry of Labour and Social Policy is implementing a number of programmes and projects aimed at increasing the employment and decreasing the unemployment among ethnic groups at the labour market.

Project "Jobs through Business Support" – JOBS is an initiative by the Ministry of Labour and Social Policy and is carried out with the support of UNDP. The project supports the creation and strengthening of micro and small businesses and encourages sustainable jobs in municipalities with high unemployment rate.

Two of the project's components (in 2005 and 2006) are aimed specifically at increasing the employment among minority communities by fostering the development of own business and increasing qualification.

"Employment for the Roma" is a component financed by the Swedish International Development Cooperation Agency. Two business centres were developed under this component in the Romani neighbourhoods of Pobeda in Bourgas and Iztok in Pazardjik. Local community teams and their activity are aimed at increasing the employability of persons of the Roma community and the support of Roma entrepreneurs. They provide the standard service package under the project – qualification and motivation trainings, business consultancy and access to financial leasing.

"Creation of Sustainable Employment through Business Support" Component was part of the "Urbanisation and Social Development of Regions with Overwhelming Minority Population" Project by the National Council for Cooperation on Ethnic and Demographic Issues under the Council of Ministers. The project is financed under the European Union PHARE Programme and co-financed by the Bulgarian Government. Activities are carried out with the support of UNDP. Six JOBS Project business centres serve the target beneficiaries in the municipalities or Pazardjik, Stara Zagora, Lom, Omourtag, Dulovo and Venets, where they provide:

– "Start Your Own Business" training, consultations and information

– Cooperation for receiving microcrediting and financial leasing

By the end of December 2005 the JOBS Project has provided 171 persons of Roma origin with employment, the self-employed are 31, 747 Roma have been trained and 22 enterprises have received financial leasing. In 2006, employment has been provided to 286 persons of Roma origin, the self-employed were 65, 883 Roma have been trained and 16 enterprises have received financial leasing.

The "**Beautiful Bulgaria" Project** is implemented with financing from the Ministry of Labour and Social Policy, UNDP and the municipalities. The project provides

temporary employment in the field of construction and tourism as well as vocational qualification training for unemployed persons in tourism and construction skills. According to summarised information by the end of 2005, 5 497 persons have worked under the Project, while by the end of December 2006 their total number was 3 879 persons. The share of Roma hired under the project is 33%.

The MLSP is also carrying out **regional literacy, vocational training and employment programmes**. These are aimed mainly at unemployed persons from ethnic labour market groups with low or without education and lacking qualification. According to summarised information towards the end of December 2005, 426 persons were included in literacy, vocational training and employment programmes.

In 2006, the National Programme for Literacy and Qualification of Roma was implemented and by the end of the year 161 unemployed persons took part in it.

In connection to the goals of the 2005 National Employment Action Plan that were indicated in the previous report, the Committee requests information on the results achieved.

See the information regarding 2005 above.

The Committee requests detailed information regarding the measures aimed at long-term unemployed persons.

In order to decrease the **duration of unemployment**, there are programmes and measures encouraging employers to hire long-term unemployed persons (including long-term unemployed who receive social assistance) as well as to include them in trainings for acquiring vocational qualification and literacy. The most large-scale initiatives in support of long-term unemployed persons are the National Programme "From Social Assistance towards Provision of Employment" under which 59 134 persons have worked in 2005 and 45 572 in 2006 and the National Programme "Assistants for Persons with Disabilities" which employed 10 927 persons in 2005 and 13 577 in 2006.

Under the conditions of article 37 of the Employment Promotion Act, employers receive subsidies when hiring a long-term unemployed person for a period up to12 months and they must preserve the person in employment for a period equal to that of receiving subsidies. In 2005 and 2006 3 362 persons have worked under this measure at a cost of 894 412 BGL.

The increase in labour supply is one of the main directions at which actions in Bulgaria are oriented, given that the country is experiencing deteriorated demographic indicators, including population decrease and aging.

Every unemployed person has **an individual action plan** prepared for them which covers mutually agreed actions between the labour mediator and the unemployed person. In 2006, the Employment Agency started organising the so called **job fairs** at which direct contact is realised between jobseekers (who often are not registered with the Employment Offices) and employers. From 22 job fairs carried out in 2006, 10 took place in regions with compact Roma population and 2 were under the auspices of EURES. As a result of the job fairs of 2006, 3 000 jobseekers have started working. Over the first six months of 2007 there have been 3 common and 11 specialised job fairs. Two of the specialised job fairs took place in regions with compact Roma population, one was within the EURES network, with the rest being in the field of tourism, construction, clothing, etc. As a result of the direct contacts between employers and jobseekers, in the first half of 2007, 2 473 persons started a new job.

The Committee asks what measures have been taken in order to overcome differences in employment between different regions and what are the results achieved.

All actions under the Employment Promotion Act dedicated to increasing the employability of unemployed persons and providing them with employment, are aimed at overcoming regional employment differences. Funds are distributed according to the Criteria for the Distribution on National Programmes and Measures for Training and Employment Promotion under the EPA under regions: level of unemployment; share of the target group from the total number of unemployed persons and needs stated by the Employment Office Directorates. The regional approach is applied to the whole active labour market policy.

The Committee requests information on the average number of participants in active measures and on the average time before an unemployed person is offered participation in an active measure.

162 900 persons have been included in employment and 39 097 persons have received training under different employment projects and programmes of active labour market policy. In 2006, under projects and measures implemented with active labour market policy funds, 137 820 persons were included in employment, with a monthly average of 94 018 persons working, whilst 45 742 persons took part in training.

The Committee also asks that the next report contain information on total expenditure for both passive and active measures as a proportion of GDP.

In 2005, the amount of expenditure on active labour market measures was 195 million leva (0.46% of GDP), while in 2006 the amount was 201 million leva (0.41% of GDP).

In 2005, passive labour market measures have cost 0.22% of GDP.

Article 1, Paragraph 2

Question A

SOCIAL SECURITY CODE
Prohibition of Discrimination

Article 231. (New, SG 67/03) (1) The insurer may not refuse additional voluntary pension insurance to workers and employees on the grounds of nationality, origin, sex, sexual orientation, race, colour of skin, age, political or other convictions, religious or belief, membership in trade unions and other public organisations and movements, marital, public and civil status and in case of mental and physical disabilities.

(2) (New, SG 56/06, in force since 1 January 2007) In compliance with the provision of paragraph 1 in ensuring a professional scheme, also prohibited is all discrimination, both direct and indirect, based on sex, especially in relation to marital of family situation, and more specifically related to:

1. the application field of schemes and the conditions for access to them;

2. the obligation of making insurance payments and the calculation of payments;

3. the calculation of pension payments, including the increases due to spouses and persons entitled to support and the conditions that establish the duration and preservation of the right to pension payment.

...

Prohibition of discrimination (New, SG 67/03)

Article 283. (New, SG 67/03) The insurer may not refuse additional voluntary insurance for unemployment or professional qualification to workers and employees on the grounds of nationality, origin, sex, sexual orientation, race, colour of skin, age, political or other convictions, religious or belief, membership in trade unions and other public organisations and movements, marital, public and civil status and existence of metal and physical disabilities.

CIVIL SERVICE ACT
Terms of appointment

Article 7. (4) When taking civil service, discrimination, privileges or restrictions based on race, nationality, ethnic origin, sex, origin, religion, membership in political, professional and other public organisations or movements, personal, public and proprietary status shall not be admitted.

INTERIOR MINISTRY ACT

Article 168. Starting state service in the Interior Ministry and career development of servants is based on the following principles:

...

4. prohibition of discrimination;

Prohibition of forced labour
Questionc D
Question E
Question F

CONSTITUTION OF THE REPUBLIC OF BULGARIA

Article 48. (1) Citizens shall have the right to work. The state shall take care to provide conditions for the exercising of this right.

(2) The state shall create conditions conducive to the exercise of the right to work by the physically or mentally disabled persons.

(3) Everyone shall be free to choose an occupation and place of work.

(4) No one shall be compelled to do forced labour.

(5) Workers and employees shall be entitled to healthy and safe working conditions, to guaranteed minimum payment and remuneration for the actual work performed, and to rest and leave, in accordance with conditions and procedures established by a law.

PENAL CODE

Article 159a**.** Art. 159a. (New, SG 92/02) (1) Person who gathers, transports, hides or receives individuals or groups of people in order to be used for vicious practice, forced labour, seizure of body organs or to be kept under compulsory submission regardless of their consent, shall be punished by imprisonment of one to eight years and a fine of up to eight thousand levs.

Question G

Execution of Penalties Act
Legal status of the deprived from liberty

Art. 23. The deprived from liberty can exercise all the rights, established with the laws, except:

a) the rights, from which they are deprived with a sentence;

b) the rights, which are divested or restricted explicitly with a law or other normative act, and

c) the rights, which exercising is incompatible with the execution of the penalty.

Art. 24. (1) The deprived from liberty shall have the right to get appropriate job according to the requirements of art. 64.

Art. 25. (1) (amend. SG 62/02) For each work the deprived from liberty shall receive certain part, but not less than 30 percent of the remuneration for the worked out.

(2) (amend. SG 84/77, SG 21/90, SG 73/98) The part of the remuneration of the previous para shall be determined with an order by the Minister of Justice in co-ordination with the Minister of Finance.

(3) Deductions can be made to the deprived from liberty according to the laws in effect in the country, but not more than two thirds of the remuneration due to them. This restriction shall not refer to the deductions for liabilities for alimony.

Art. 26. (amend. SG 84/77, SG 21/90) (1) The duration of the working day of the deprived from liberty shall be determined according to the respective provisions of the labour legislation. The deprived from liberty shall enjoy reduced working day equally with the respective categories of workers and employees.

(2) (amend. SG 73/98) The extra work shall be admitted with a permission by the Minister of Justice up to the limits, established for the workers and the employees.

(3) The deprived from liberty shall have right to continuous rest not less than 12 hours and continuous weekly rest not less than 38 hours, and at production with permanent work and change of the shifts – not less than 24 hours.

(4) The deprived from liberty shall not work on holidays.

Art. 27. (1) During the days of the classes the deprived from liberty students shall be liberated from work one hour earlier.

(2) (amend. SG 103/04) For preparation and attending of exams and for preparation of diploma works the chief of the prison or the reformatory can liberate from work the students in the education establishments for a term of 30 days.

(3) During the time the deprived from liberty are liberated from work according to the previous paras, they shall enjoy the rights of the working, but do not receive remuneration.

Art. 28. (1) The deprived from liberty, who during the last ten months have worked at least eight months, shall have right to not paid annual rest in extent of fourteen working days. Those, employed in particular harmful and dangerous production, shall have right to additional not paid rest in extent, established for the respective categories of workers and employees.

(2) From the annual rest shall be deducted the time, during which the deprived from liberty has refused to work without good reasons, but not more than ten days.

(3) Within the term, necessary for receiving annual rest, shall be included the time, during which the deprived from liberty has terminated work due to illness, pregnancy or childbirth.

(4) The time during the annual rest of the deprived from liberty shall be considered as working days.

Art. 29. (amend. SG 28/82) (1) The time, during which the deprived from liberty do not work due to labour accident or professional disease, shall be considered as working days.

(2) The provision of the previous para shall not be applied with regard to these, who have intentionally caused disorder of their health.

(3) The women, deprived from liberty, shall have right to rest in case of pregnancy and childbirth in the extent, established for the paid leave of the workers and the employees. The time during the rest shall be considered as working days.

...

Community work of persons deprived of liberty

Art. 59. (amend. SG 62/02) The community work of persons deprived from liberty shall have as objective first of all their improvement and reforming, as well as acquisition and increase of their professional qualification.

Art. 60. (1) (suppl. SG 103/04) The deprived from liberty shall work primarily in enterprises, farms and workshops on the territory of the prisons and the reformatories.

(2) The work at the places for deprivation from liberty shall be organised at modern technical level and in a way most close to this in the other enterprises from the respective sector.

Art. 61. (1) (amend. SG 73/98) The deprived from liberty can work in commercial companies, other corporate bodies and sole entrepreneurs under conditions and by order, determined by the Minister of Justice.

(2) (amend. SG 28/82, SG 73/98, SG 62/02) The corporate bodies and sole entrepreneurs shall be obliged to insure for their account healthy and safe working conditions, the necessary hygienic living conditions and conditions for guarding of the persons deprived from liberty.

(3) (new – SG 28/82, amend. SG 73/98) The persons deprived from liberty shall be sent to work only if the requirements of the previous paragraph are met. If later these requirements are breached, the head of the prison or the reformatory shall stop the prisoners from work untill the removal of the breach.

Art. 62. (amend. SG 73/98) In the cases of art. 61, para. 1 the corporate bodies and the sole entrepreneurs shall pay to the prison or the reformatory the remuneration according to the systems for payment of labour in effect, together with all additional payments in force for the workers.

Art. 63. The working conditions of the deprived from liberty shall be determined by the labour legislation.

Art. 64. (amend. SG 62/02) The work, which must be fulfilled by the deprived from liberty, shall be determined by the administration according to the existing possibilities, taking into account the age, sex, health status and ability to work, the needs of the improvement and reforming, the requirements of the guarding and the regime, the professional qualification and his interests.

Questions of the European Committee of Social Rights

1. Prohibition of discrimination in employment

The Committee considers that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

Labour Code

Exercise of Labour Rights and Duties

Article 8. (3) (Amend. - SG, No. N52/2004). By implementing the labour rights and obligations, it shall be not admitted direct and indirect discrimination, based on nationality, origin, gender, sexual orientation, race, colour of skin, age, political and religious believes, membership in syndicate and other social organizations and movements, family and material situation, existence of psychic or physical disorders, as well as differences in the contract term and duration of working time.

The Committee asks whether exceptions to the general prohibition on discrimination are made for genuine occupation requirements, and in other cases to permit positive action measures.

The legislation allows the adoption of positive action measures in relation to the promotion of the labour market integration of younger and elder workers.

Protection Against Discrimination Act

Art. 7. (1) The following shall not constitute discrimination:

1. different treatment of persons on grounds of their nationality, or lack of nationality where provided for by law or international treaty the Republic of Bulgaria is a party to;

2. different treatment of persons based on a characteristic related to the grounds under Art.

4 (1) where, by reason of the nature of a particular occupation or activity, or of the conditions it is carried out in, such a characteristic constitutes an essential and determining occupational requirement, the aim is legitimate and the requirement does not exceed what is necessary to accomplish it;
3. different treatment of persons on grounds of religion, faith or gender with respect to an occupation carried out in religious institutions or organisations where, by reason of the nature of the occupation, or of the conditions it is carried out in, religion, faith or gender constitutes an essential and determining professional requirement in view of the nature of the institution or organisation, where the aim is legitimate and the requirement does not exceed the necessary to accomplish it;
4. different treatment of persons on the basis of religion, faith or gender in religious education or training, including training or education for the purposes of carrying out an occupation under subsection 3 above;
5. the fixing of requirements for minimum age, professional experience or length of service for recruitment or for access to certain advantages linked to employment, provided that it is objectively justified by a legitimate aim and the means to accomplish it do not exceed the necessary;
6. the fixing of maximum age requirements for recruitment linked to the training requirements of the position in question, or the need for a reasonable period of employment before retirement, provided that it is objectively justified by a legitimate aim and the means to accomplish it do not exceed the necessary;
7. special protection measures benefiting pregnant women and mothers provided for by law, unless a pregnant woman or mother wishes not to benefit from such measures, having so advised her employer in writing;
8. requirements for age and length of service provided for by law for purposes of retirement;
9. measures provided for under the Promotion of Employment Act;
10. different treatment of persons with disabilities in training or education aimed at meeting their special educational needs in order to equalise their opportunities;
11. the fixing of requirements for minimum and maximum age for access to training or education provided that it is objectively justified by a legitimate aim in view of the nature of the training or education, or the conditions it is carried out in, and the means to accomplish such aim do not exceed the necessary;
12. measures in the fields of training and education aimed at guaranteeing the proportionate participation of women and men, as far and as long as such measures are necessary;
13. special measures benefiting disadvantaged persons or groups on the grounds under Art. 4 (1) aimed at equalising their opportunities, as far and as long as such measures are necessary;
14. special protection measures provided for by law benefiting children without parents, minors, single parents and persons with disabilities;
15. measures aimed at protecting the specific identity of persons belonging to ethnic, religious and linguistic minorities, and their right, alone or with other members of their groups, to preserve and develop their culture, to profess and exercise their religion, and to use their language;
16. measures in the fields of training or education aimed at guaranteeing the participation of persons belonging to ethnic minorities, as far and as long as such measures are necessary.
17. (new – SG 100/07) different treatment of persons in provision of services intended exclusively or mainly for representatives of one sex that is based on a legal goal and the means of achieving it are appropriate and necessary.

(2) The list of occupational activities for which gender is an essential and determining professional requirement within the meaning of section (1), subsection 2 shall be determined by:
1. ordinance of the Minister of Labour and Social Policy in coordination with the Minister of Internal Affairs. This list shall be brought into line with emerging transformations of the labour market by being revised at least once every three years;
2. ordinance of the Minister of Defense, regarding professional military service activities and posts.

The Committee seeks information on how discrimination on grounds of age has been interpreted.
The Committee asks if the Commission for Protection against Discrimination has been established and if so, it asks for information on the number of cases dealt with by the Commission for the next reference period as well as the sanctions imposed.

According to the 2006 annual report for the activity of the Commission for Protection against Discrimination there is a trend of progressive increase in the number of proceedings brought before it, compared to 2005. There is a number of factors for this, but the main is the social purpose of the procedure under Chapter Four of the Protection against Discrimination Act. It represents the exemption of those who submit complaints of signals from state fees for their submissions. Expenses incurred in the process of the procedure are borne according to the law by the budget of the Commission.

Given the low social status of most persons affected by discriminatory practices and suffering unequal treatment, in most cases residing far away from the Commission seat, it turns out that the Bulgarian legislator was justified in introducing this provision.

In the reporting period (2006), the Commission for Protection against Discrimination /CPD/ office has registered and process a total of 389 complaints and signals. The Chairperson of the Commission has started proceedings on 220 of the complaints and signals submitted, with the rest receiving a refusal of consideration.

Started proceedings are distributed in specialised permanent chambers (SPC) of the CPD as follows:

I SPC – 48 proceedings in total, as follows:
- based on “ethnic and race origin” – 48 proceedings;

II SPC – 42 proceedings in total, as follows:
- based on “sex” – 3 proceedings;
- regarding exercising the right to work – 17 proceedings;
- based on “harassment” in exercising the right to work – 4 proceedings;
- regarding exercising the right to work – 9 proceedings;
- regarding the exercise of trade union activity – 8 proceedings;
- regarding trade union activity in exercising the right to work – 1 proceeding.

III SPC – 11 proceedings in total, as follows:
- based on “citizenship” – 7 proceedings;
- based on “faith and religion” – 4 proceedings

IV SPC – 21 proceedings in total, as follows:
- based on “education” – 8 proceedings;
- based on “political affiliation” – 2 proceedings
- based on “personal and social status” – 6 proceedings;
- based on “personal status” – 3 proceedings;
- based on “social status” – 2 proceedings

V SPC – 42 proceedings in total, as follows:
- based on “disability” – 25 proceedings;

- based on “age” – 7 proceedings;
- based on “sexual orientation” – 7 proceedings;
- based on “sexual harassment” – 2 proceedings;
- based on “health condition” – 1 proceeding

VI SPC – 4 proceedings in total, as follows:

- based on “family status” – 2 proceedings;
- based on “material status” – 2 proceedings.

ad hoc chamber (for specific cases) – 9 proceedings in total, as follows:

- exercising the right to access to own property – 1 proceeding;
- violation of the right to respect for personal dignity at the work place – 1 proceeding;
- harassment during the exercise of work – 1 proceeding;
- age based unfavourable treatment – 1 proceeding;
- unfavourable treatment related to the provision of goods and services – 1 proceeding;
- establishment of the inaugural payment– 1 proceeding;
- different pricing of goods and services /water supply/ - 1 proceeding;
- based on “personal and social status” – 1 proceeding;
- in the exercise of trade union activity – 1 proceeding.

Five-member chamber – 43 proceedings in total

Such chambers are formed in case of complaints or signals relating to discrimination on more than one basis (“*multiple discrimination*”).

The Commission for Protection against Discrimination has come out with decisions on the merits providing decisions and definitions to a total of 62 proceedings. Six mandatory instructions have been issued.

The Committee had earlier noted that the protection means against violations of antidiscrimination legislation are not applicable to foreign nationals working in Bulgaria for foreign employers even if the latter are registered within the jurisdiction, i.e. foreign workers working for foreign enterprises are excluded from the jurisdiction of the Bulgarian courts. The Committee finds that this situation is not in correspondence with article 1, paragraph 2 of the Revised Charter (Conclusions 2004, page 27). It does, however, note that article 20 of the Labour Code prohibits nationality based discrimination, and therefore asks whether this has affected/changed the situation.

Article 20 of the Labour Code has been repealed.

The provision of article 4 of the Protection against Discrimination Act is also applied to labour relations.

Art. 4. (1) (Supplemented – SG 70/2004) All direct or indirect discrimination on the grounds of sex, race, extraction, ethnicity, human genome, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or public status, disability, age, sexual orientation, family status, property status, or any other ground provided for by law or international treaty the Republic of Bulgaria is a party to, shall be prohibited.

(2) Direct discrimination shall be treating a person on grounds provided for under Art. 4 (1) less favourably than another person is treated, has been treated, or would be treated in comparable circumstances.

(3) Indirect discrimination shall be putting a person on the grounds under Art. 4 (1), through an apparently neutral provision, criterion or practice, at a disadvantage compared

with other persons, unless such provision, criterion or practice is objectively justified by a legitimate aim and the means for achieving that aim are appropriate and necessary.

Labour Code

Jurisdiction over Labour Disputes with Foreign Nationals

Art. 361. (1) (Amend., SG No 100/1992; prev. text of art. 361 - 48/06, in force from 01.07.2006) Labour disputes between employees who are foreign citizens and employers who are foreign nationals or joint ventures with a domicile in the Republic of Bulgaria, when the work has been performed in this country, shall fall under the jurisdiction of the respective court of domicile of the employer, unless otherwise agreed between the parties.

(2) (new - SG 48/06, in force from 01.07.2006) Under the jurisdiction of the court under par. 1 shall also fall the disputes for provision of minimum conditions of work, guaranteed to workers and employees, sent on a business trip in the Republic of Bulgaria within the framework of the provision of services by the order of art. 70, par. 4 of the Employment Promotion Act.

The provision of paragraph 1 is aimed at establishing the applicable law for labour dispute with an international element. The international element appears with the subjects of the labour relation. These provisions are applied with the general condition for the work to be carried out by foreign citizens in Bulgaria. This means that the place of work according to the labour contracts must be set out within the territory of the Republic of Bulgaria.

The provisions quoted provide two possibilities: the first one is the jurisdiction in labour disputes between workers who are foreign nationals and employers who are foreign nationals or joint ventures with a seat in the Republic of Bulgaria, when the work is carried out inside the country, to be the same as that for workers who are Bulgarian nationals; the second possibility is what Bulgarian legislation refers to as contractual jurisdiction. This is agreed upon by the parties under the labour relation. If no such arrangement exists, the provision in question is applied.

Article 17 of the International Private Law Code /IPLC/, in force since 21 May 2005, established a new common codification arrangement on the competence in labour disputes stemming from labour relation with an international element in the meaning of article 1, paragraph 2 of the IPLC.

INTERNATIONAL PRIVATE LAW CODE

Jurisdiction over labour disputes

Art. 17. (1) The cases on labour disputes shall be subordinated to the jurisdiction of the Bulgarian Courts, if the worker customary performs labour in the Republic of Bulgaria, as well as in the cases of Art. 4.

(2) An agreement on choice of court shall be admissible only if it is concluded after the dispute arose.

The Committee reminds that under article 1, paragraph 2 of the Revised Charter, means available to the victims of discrimination must be adequate, proportionate and dissuasive. Therefore, it considers that the preliminary imposition of a maximum amount of compensation that may be awarded is not in correspondence with the Revised Charter, as in some cases this could prevent the

awarding of compensations that are comparable with the losses and are not dissuasive enough.

Earlier the Committee noted that persons who suffer discharge based on discrimination are entitled to be restored to their previous position (article 345 of the Labour Code) and are entitled to compensation from the employer in the amount of their gross monthly wage for no more than 6 months (article 225 of the Labour Code). Because of this, previously the Committee established that this restriction is not in correspondence with article 1, paragraph 2 of the Revised Charter (Conclusions 2004, page 22-29). The report states that article 225 of the Labour Code is still applicable. Therefore, the legal situation has not changed.

The Committee requests additional information on the existence of restrictions of compensations in case the worker has been discriminated against but has not been fired.

Bulgarian legislation provides no restrictions of the amount of compensation which a person who has been a victim of discrimination could request in front of a court. The basis for legal protection is article 71 of the Protection against Discrimination Act.

Protection Against Discrimination Act

Art. 71. (1) In cases other than those governed by Title I, any person whose rights under this or other laws governing equal treatment are breached may file a case with the district court, claiming:
1. establishment of a breach;
2. order on the respondent to terminate the breach and restore the status quo ante, and to abstain from further commission of the breach;
3. order of compensation of damages.
(2) Trade unions and their divisions, as well as non-profit public interest legal entities may file a claim on behalf of persons whose rights are breached upon their request. Such entities may also join proceedings brought under section (1) in an interested party capacity.
(3) (Amend. SG 59/2007) In cases of discrimination breaching the rights of many persons, entities under section (2) may also file a claim on their own behalf. Persons whose rights are breached may join the proceedings as an assisting party capacity within the meaning of Art. 218 of the Civil Procedure Code.

As far as discrimination based on nationality is concerned, the Committee reminds that under article 1, paragraph 2 of the Revised Charter, even though countries may provide access to work to foreign nationals subject to receiving a work permit, they may not deprive foreign nationals of countries members of the Charter as a whole from the right to take up employment for reasons different from those listed in article G; restrictions of these rights granted by the Revised Charter, are admissible only if they are provided for by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and liberties of the others or for the protection of public interest, national security, public health and moral.

Foreigners in the Republic of Bulgaria Act

Article 33. (1) Foreigners who have been allowed permanent residence in the Republic of Bulgaria shall be allowed to seek employment under the terms and procedures established for Bulgarian citizens.

(2) Foreigners who have been allowed short-term or continued stay in the Republic of Bulgaria's territory shall only be allowed to carry out activities under an employment agreement following the receipt of permission from the competent bodies of the Ministry of Labour and Social Policy.

(3) Foreigners who have been granted a work permit shall only be allowed to work for the employer and for the period of time specified in their work permit.

The only job that foreigners may be denied is one that is directly linked to the protection of public interest or national security and includes the implementation/exercise of public authority.

The Committee requests additional clarification of the situation, for example, can a foreign national of another country member of the Charter, be appointed to a state service, local government and other posts that are not linked to national security, exercise of public authority for the guarantee of public order and security.

Yes, when observing the provision of article 33 of the Foreigners in the Republic of Bulgaria Act.

Foreigners in the Republic of Bulgaria Act
Article 33

(1) Foreigners who have been allowed permanent residence in the Republic of Bulgaria shall be allowed to seek employment under the terms and procedures established for Bulgarian citizens.

(2) Foreigners who have been allowed short-term or continued stay in the Republic of Bulgaria's territory shall only be allowed to carry out activities under an employment agreement following the receipt of permission from the competent bodies of the Ministry of Labour and Social Policy.

(3) Foreigners who have been granted a work permit shall only be allowed to work for the employer and for the period of time specified in their work permit.

In order to occupy a position as a civil servant, there is a requirement for Bulgarian citizenship under article 7, paragraph 1 of the Civil Service Act.

CIVIL SERVICE ACT
Article 7. (1) In order to be appointed as a civil servant, a person must::
1. be a Bulgarian citizen;

See the answer to Question A.

2. Prohibition of forced labour

Previously, the Committee requested additional information on the rules regulating the management of personnel working in the railway sector that may be required to perform labour without their consent. As no information has been provided on this matter, the Committee reiterates its request for such information.

Railway Transport Act
Art. 117. (1) (amend. - SG 92/06, in force from 14.11.2006) The Executive Agency "Railway Administration" shall control the work of the stuff of the infrastructure manager and of the carriers, as well as the activities of the construction and repair enterprises and of

the internal railway transport of the Ministries, departments, companies and enterprises for traffic safety.

(2) The employees of Executive Agency "Railway Administration" shall be entitled to:

6. (amend. - SG 92/06, in force from 14.11.2006) dismiss from work the persons from the infrastructure manager staff who are under the influence of alcohol or other intoxicating substances, who are asleep at their work place, work over the established office hours or without taking the necessary rest between the shifts, or do not present their competency documents;

Art. 127. (amend. SG 47/02; amend. - SG 92/06, in force from 14.11.2006) A fine of BGL 50 to BGL 100, if not subject to a graver sanction, shall be imposed to a person from the staff of the manager of the railway infrastructure or of the carrier, who:

5. admits to work a worker with no ensured rest between the shifts, as well as a person, who works without having used such a rest;

Ordinance № 50 from 28 December 2001 regarding the working hours of management and executive staff engaged in the safety of passengers and freight in the railway transport (Application 2).

Article 1. (1) This Ordinance regulates the specific issues of working hours and rest of management and executive staff engaged in the safety of the transportation of passengers and freight in the railway transport, which are not regulated by the Labour Code and the secondary legislation on its application or with view of the specifics of the activity of the railway transport that make it necessary to be regulated differently from the general labour legislation.

(2) (Amend. SG 99/2006) The Ordinance shall be applied by the employers – managers of the infrastructure and railway carters.

Article 1, paragraph 3

Question A

The Employment Agency /EA/ through its territorial units "Regional Employment Service" Directorates /RESD/ and "Employment Office" Directorates /EOD/ as well as their branches provide employment services to all natural and legal persons. Services are provided according to the permanent and present address of jobseekers and the address of employers.

Employment services provided to jobseekers:

Intermediary services provided by the Employment Agency are free for all Bulgarian citizens as well as for all citizens of other European Union member states or another European Economic Area Agreement member state who is an active job seeker and is registered with the territorial division of the Employment Agency. Services are also provided free of charge to foreign nationals with a permanent residence permit for the Republic of Bulgaria; to persons who have been granted asylum, refugee status or humanitarian status; to persons for whom this is provided for under an international treaty to which the Republic of Bulgaria is a party.

Active jobseekers are registered in one of the following groups: unemployed; employed persons willing to change their job; persons who are studying and would like to work in their spare time; persons who have been granted the right to and persons who are receiving a pension for old age or professional pension for early retirement.

Unemployed persons receive information about available jobs; information about programmes and measures for employment promotion and preservation; mediation in information and recruitment; vocational information, consultation and orientation; vocational and motivational training; inclusion in employment programmes and measures; scholarship for vocational qualification training.

Employed persons who want to change their job and students who want to work in their spare time receive information about announced available jobs, mediation on information and recruitment, and vocational information, consultation and orientation. Persons who are entitled to and persons who receive a pension for old age or professional pension for early retirement may receive information about available jobs and mediation in information and recruitment.

Employment services provided to employers

Employers may use the following employment services provided free of charge by the territorial divisions of the Employment Agency: information about active jobseekers; information about programmes and measures for job preservation and promotion; mediation in employment; inclusion in employment programmes and measures; preferences and bonuses for maintaining and/or increasing employment; bonuses for vocational qualification training and traineeship.

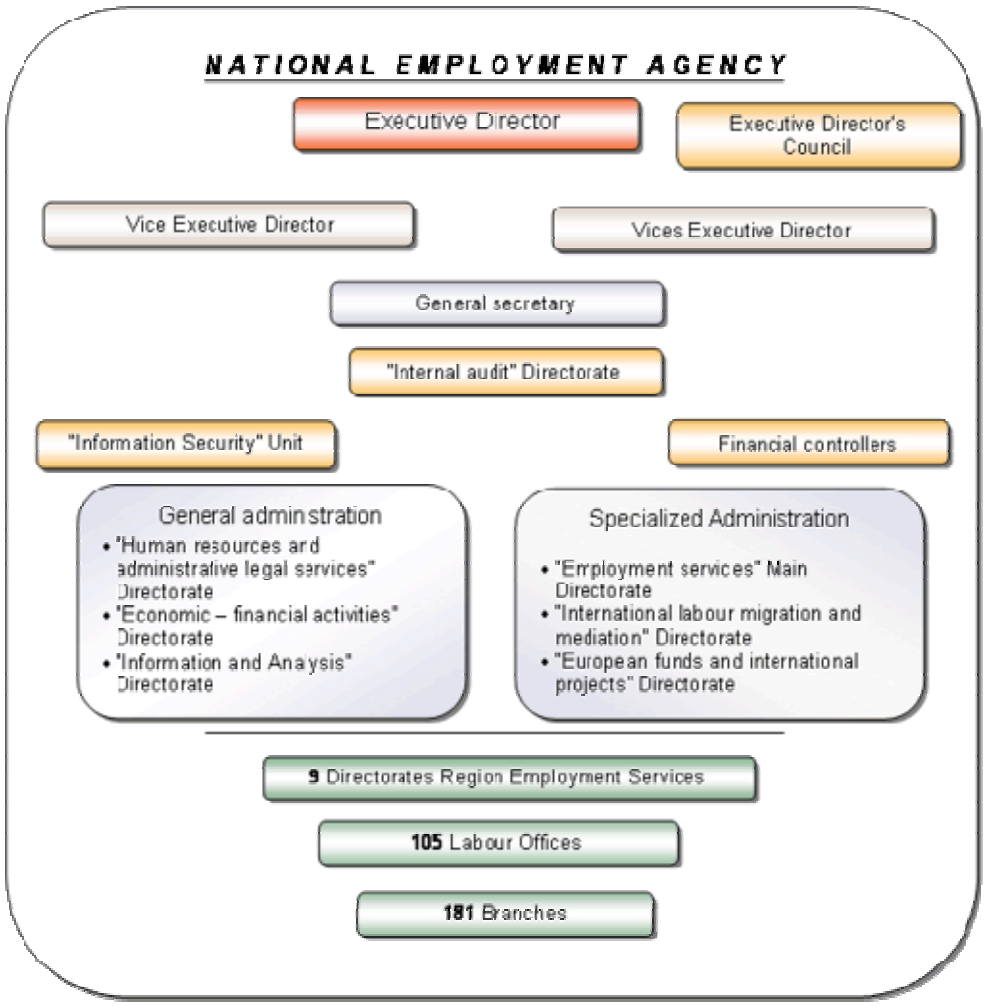
Employers are afforded the possibility to use free of charge on-line database of jobseekers with access to the profiles of jobseekers registered with the Employment Office Directorate. Employers may advertise available positions on the Employment Agency website. The Employment Office-organised local job fairs provide an opportunity for

employers to come into a direct contact and carry out selection and negotiation with suitable job candidates.

The average number of unemployed persons per year for 2005 and 2006 as well as the sex, age and vocational profile structure are provided in Appendix 1.

Question B

The activity, structure, organisation of work and staffing, the number and territorial scope of the divisions of the Employment Agency as a public employment service are provided for in the Employment Agency Structural Regulation.



The Employment Agency /EA/ is an executive agency under the Minister of Labour and Social Policy charged with the implementation of state policy on promoting employment, labour market protection, vocational information and consultation, vocational and motivational training of unemployed and employed persons as well as implementation of mediator activities in information and employment. The EA is a second degree manager of budget credits under the Minister of Labour and Social Policy. It carries out on its own or in cooperation with other bodies or organisations projects and programmes in the field of employment, vocational training and qualification, social integration and equal treatment, financed by the European Union accession funds or other international sources, including such in which the Bulgarian state takes part in with its own resources, while observing the regulated terms and conditions.

The Employment Agency administration is organised in 6 directorates structured into common and specialised administration and Internal Audit Directorate which is under the direct orders of the Executive Director.

Regional Employment Service Directorates /RESD/ and Employment Office Directorates /EOD/ are territorial divisions of the Employment Agency under Directorate General for Employment Services.

RESDs coordinate, support and summarise the EOD activities and carry out activities on:

- Development and implementation of regional development strategies as well as the development and implementation of the regional employment action plans;
- coordination and implementation of and control over programmes and projects in the field of employment financed by international sources;
- analysis and forecasts on the condition and development of the regional labour market;
- financing, management of personnel and real estate management.

EODs carry out the immediate services related to: registration of jobseekers; employment promotion and assistance; vocational information and consultation; entrepreneurship training for acquiring vocational qualification for unemployed and employed persons; mediation on information and hiring Bulgarian citizens in other countries and foreign citizens in the Republic of Bulgaria; application of legislation on the employment of foreign nationals.

In order to facilitate the service of jobseekers and employers most of the Employment Office Directorates have opened **180 branches**. Since June 2006 there are out-of-office positions with the EODs that are staffed by mobile EOD teams. The opening of out-of-office positions was done under criteria approved by the Minister of Labour and Social Policy – number of registered unemployed persons; remoteness of the settlement from the respective EOD or its nearest branch and availability of regular transportation. As of 1 October 2007, there are **93 out-of-office positions** aimed at providing quality service to jobseekers and employers in their own communities. All 109 EODs apply the **process model of work technology** and 30 of them also apply the **one-stop-shop** principle. The main points of the process model of work are the differentiated offering of services to clients depending on their needs; improved quality of labour mediation; more efficient vocational orientation, training, qualification and re-qualification for jobseekers with a focus on the lack of competences; better development and implementation of employment programmes and training through timely provision of information and methodology.

Differentiated offering of services is carried out through:

- separation (phasing) of jobseekers in separate groups from the moment of registration, depending on their opportunities for finding a job. This assists in the creation of individual action plans for unemployed persons;
- identification of candidates with a potential for a quick labour market realisation among all registered persons.

The quality of labour mediation is increased through more effective selection of jobseekers according to advertised available positions by the employers, taking into account not only the formal but also the specific requirements for them. In this connection, new toolkit is applied – “portrait”, “profile”, “application-specification” for free positions.

The broadened one-stop-shop principle of work complements and further develops the basic process model regarding the better information of clients, servicing employers through creating independent teams of employment mediators to work with them, management of the process of servicing requests and complaints.

The number of personnel of the Employment Agency is established by the Employment Agency Structural Regulation, the number being distributed in the directorates.

The change in the number, organisational structure and respectively the change in the position structure of the EA is regulated with amendments and supplements of Council of Ministers and other legislation. The EA Executive Director approves the organisation structures of the Regional Employment Service Directorates and the Employment Office Directorates. The EA Executive Director approves the staff number in the directorates along with the job descriptions.

Improvement of the number of EA directorates

The improvement of the Employment Agency structure through decreasing the number of EODs and their territorial scope as well as the change in the number of directorates while preserving the total staff number of the Agency is enforced due to:

1. a decrease in the unemployment level and the number of EOD-registered unemployed persons;

2. a need to offer effective and high-quality services to EOD clients.

The dynamic labour market development also supposes flexible offering of services to clients by EOD officials. Therefore, the Employment Agency needs to have possibilities to redirect personnel from one Employment Office Directorate to another according to the labour market priorities and needs in a given moment.

When closing down Employment Office Directorates a low level of services of unemployed persons is observed by 1 EOD official, which presumes ineffective use of human resources. The monthly average of served unemployed persons is way below the average level for the EA system.

The aim of shutting down structures with low efficiency is:

- a balance in the norm of service by 1 EOD official and nearing it to the average norm of service by 1 official in the EA system;
- better distribution of the flow of clients in terms of territorial EA units;
- more equal workload and more efficient use of human and material resources;
- better management of activities and cooperation with social partners.

As a result of the review made, the territorial scope, the socio-economic specifics of settlements served by EODs, the registered jobseekers and the efficiency of active structural units, the number of Employment Office Directorates was optimised. The optimisation includes a change in the organisation and functionary structure of EODs in correspondence with the new process model of service for clients. EODs that have an "Employment Services" unit with two sectors – "Work with Clients" and "Programmes, Measures, Qualification and Contracts" have two new units added – "Mediation Services" and "Active Labour Market Policy", while observing the requirements of the Administration Act (for a minimal number of 4 officials per unit). Units apply team organisation in carrying out activities.

In order to carry out functions related to the activities under European and international funds, projects and programmes, a new directorate named "European Funds and International Projects" was established as well as an "Internal Audit" Directorate under articles 12 and 14 of the Internal Audit in the Public Sector Act.

Indicators that account for the number of EOD staff under the approved methodology:

	Indigacor	*Relative weight*
EAP	Economically active population	T1 = 0.05
RJ	Average monthly number of registered	T2 = 0.1

	jobseekers	
NS	Number of settlements	T3 = 0.05
NRJ	Newly registered jobseekers	T4 = 0.1
PJEMPM	Persons who found a job through employment mediation at the primary market	T5 = 0.13
PIEP	Persons included in employment programmes	T6 = 0.15
PIEM	Persons included in employment measures	T7 = 0.15
PIVQ	Persons included in vocational qualification training	T8 = 0.12
VPA	Vacant positions announced	T9 = 0.1
NVE	Number of visited employers	T10 = 0.05

The internal statistics information under the selected criteria is used to carry out monitoring of EODs in correspondence with the matrix for redistribution of staff numbers in correspondence with the executive indicators of EOD for the relevant period. The research on staff numbers under this methodology is in direct relation with the active conduct of officials when carrying out the main EOD activities. This provides an opportunity to offer solutions for the adjustment of staff numbers in the EODs; to give positions on occupying available positions and initiate open competitions in EODs – based on the norm for servicing registered jobseekers by one EOD official; gives information about the workload of EOD officials in the relevant period.

Question C

The Employment Agency carries out the activity on registering natural and legal persons who are willing to carry out mediation activity in the field of recruitment as employment mediators as well as the contracts negotiated by them with a foreign employer for recruitment of Bulgarian citizens for work abroad.

In the 2005-2006 period the terms and order for carrying out mediatory activity in recruitment are regulated by the Employment Promotion Act /articles 26 to 29/ and the Ordinance for the Conditions and Order of Carrying Out Intermediary Activity on Information and Employment of Workers /Prom. SG 49/27.05.2003, Amend. and supplemented SG 52/27.06.2006/. The regime is a registration one, and certificates are issued to natural and/or legal persons with more than 50% Bulgarian participation who are registered under Bulgarian legislation and have specifically stated as their main activity "carrying out intermediary activity on information and hiring Bulgarian citizens in the Republic of Bulgaria and/or abroad and/or sailors". Under article 30, paragraph 1 of the Ordinance, the intermediary registers with the Employment Agency each intermediation contract concluded with a foreign employer, including shipwoner.

The Minister of Labour and Social Policy issues a certificate of registration for carrying out intermediary activity on employment for a term of three years /until 27 June 2006/ and five years /after 27 June 2006/. Intermediary contracts may have duration no longer than the duration of the issued certificate.

Under article 2, paragraph 1 of the Ordinance, employment mediators have the right to provide a package of or separately the following intermediary services, subject to them being inscribed in the certificate of registration:

1. Information and consultation of jobseekers and employers;
2. Psychological assistance for jobseekers;
3. Redirecting towards vocational and/or motivational training;

4. Redirecting and assistance for starting a job, including in another settlement within the country or abroad.

The intermediary services mentioned in points 1, 2 and 3 are free of charge for jobseekers from the country and abroad, while the compensation for the intermediary service in point 4 may not be higher than 25% of the first salary received at the newly taken job. The compensation for the received intermediation is due upon receiving the first salary and not in advance.

Under the Act for Amendment and Supplement of the Employment Promotion Act /SG 18/28.02.2006/, **in force since 3 March 2006, intermediary activity for starting a job is carried out free of charge, without collecting a direct or indirect, wholly of partially, fees or other payments on behalf of jobseekers.**

The Employment Agency keeps registers of issued certificates for carrying out intermediary activity for employment and of concluded contracts with foreign employers, including shipowners. Employment Office Directorates and the official EA internet website each month publish updated lists of:

- registered intermediaries for carrying out intermediary activity;
- intermediaries who have registered intermediary contracts with foreign employers, including shipowners;
- intermediaries whose registration for carrying out intermediary activity has expired.

Under the acting legislation, at the end of each quarter the intermediary provides the EA with information regarding persons registered and who have started work differentiated in forms and indicators that are approved by the EA Executive Director. The information contains data on jobseekers /total number, sex, age, education/; persons who have started working /total number, sex, age, education/; as well as employers who use the intermediary's services; openings announced by employers.

In terms of **cooperation** with state employment services, registered intermediary agencies can use EA information on labour market supply and demand which is available for all Employment Office clients. More specifically, this is the information on all free positions that is shown on information boards at Employment Office Directorates and the information published on the EA internet website: www.az.government.bg.

The provision and use of information regarding employers data, vacancies and jobseekers is carried out in correspondence with the Personal Data Protection Act and the Access to Public Information Act. The General Labour Inspectorate Executive Agency, under the Minister of Labour, has the power to carry out specialised control by inspections on signals for illegal intermediary activity of natural and/or legal persons. The Employment Agency cooperates with the General Labour Inspectorate EA with information and copies of documents for establishment of illegal intermediary activity.

Question D

Tripartite cooperation is a basic principle in the regulation of social labour market relations at a national, regional and local level. Cooperation between employment bodies and workers' and employers' representatives is carried out at all levels when developing and implementing active labour market policy measures. Tripartite cooperation in the field of employment is regulated with the Employment Promotion Act and the Regulation for Implementation of the Employment Promotion Act.

National level

Representative organisations of workers and employers take part in the development and implementation of state employment policy through:

- participation in the development and implementation of the National Employment Action Plan. Each year employment bodies and social partners provide the Minister of Labour and Social Policy with projects related to the priorities of employment promotion policy, which are to be included in the National Employment Action Plan;

- participation in a Council under the Employment Agency Executive Director that is composed of representatives of the employers' and workers' organisations that are representative at a national level;

- participation in the National Council for Employment Promotion under the Minister of Labour and Social Policy as a permanently active body of cooperation and consultation in the development of employment policy. The National Council for Employment Promotion is composed of equal number of representatives appointed by the Council of Ministers, the employers' and workers' organisations that are representative at a national level.

- participation in a National Consultative Council on Labour Force Vocational Qualification that includes representatives of ministries, agencies, commissions, employers' and workers' organisations that are representative at a national level and NGOs.

Regional level

At regional level, workers' representatives take part in the implementation of state policy by forming and implementing regional employment policy.

According to a Regional Development Council (under the Council of Ministers) decision and following a decision by the respective regional development council, permanent or temporary employment commissions may be established.

Employment Commissions carry out the following functions:

1. establish the priorities of regional employment promotion policy and develop regional employment programmes in correspondence to the national priorities;

2. discuss drafts of regional employment programmes within one month of receiving them and forward them to the Minister of Labour and Social Policy for approval and financing;

3. provide the conditions for the implementation of regional employment promotion policy;

4. carry out oversight and control over the active policy expenditure.

Employment Commissions under local councils for regional development organise the implementation of short and medium term employment development programmes; carry out assessment of projects under the National Programme "From Social Assistance towards Provision of Employment" for correspondence with regional priorities and take part at the stage of identification of municipalities needs of this kind of service for projects under the Active Labour Market Services Project – second cycle.

Local level

At local level, workers' representatives take part in the implementation of employment policy through participation in the Cooperation Councils under each territorial unit of the EA – Employment Office Directorate. The Cooperation Council carries out direct oversight and control over implemented employment policy. It consists of equal number of representatives of the state authorities and representative workers' and employer's representatives.

The Cooperation Council carries out the following functions:

1. carries out oversight of the implementation of programmes and measures;

2. carries out control over the observation of provisions in the selection of respective programmes and measures;

3. discusses priority programmes and measures for financing.

The Cooperation Council carries out assessment of projects under the National Programme "From Social Assistance towards Provision of Employment" for correspondence with local priorities and carries selection and assessment of received requests from employers for using encouragement measures for employment and training. Cooperation councils take part at the stage of identification of needs/necessities of municipalities of this kind of service for projects under the Active Labour Market Services Project – second cycle.

Questions of the European Committee of Social Rights:

The Committee requests information on the placement rate, i.e. vacancies filled by the public employment services as a proportion of registered vacancies.

We provide data from the EA administrative statistics:

COMPARATIVE DATA ON THE LABOUR MARKET FOR THE NINE MONTHS OF 2004 AND 2003

INDICATORS	9 months 2004	9 months 2003	Growth	
			number	%
Unemployment level (monthly average - %)	**12,91**	**14,61**		**-1,70 points**
Unemployed persons registered with the employment offices (monthly average)	**478064**	**541098**	**-63034**	**-11,6**
Of which:				
- women	261448	291726	-30278	-10,4
- young persons up to 29 years	126676	152987	-26311	-17,2
- persons over the age of 50 years	125491	130242	-4751	-3,6
- long-term unemployed persons (over 1 year)	251281	287452	-36171	-12,6
- persons with disabilities	19054	15579	3475	22,3
Vacancies announced	**290313**	**249426**	**40887**	**16,4**
Including – at the primary market	156408	128097	28311	22,1
of which: in the private sector	123910	95020	28890	30,4
- under employment programmes	133905	121329	12576	10,4
Vacancies taken	273637	222171	51466	23,2
Unemployed persons who started a job with the assistance of the Employment Office	**219967**	**198167**	**21800**	**11**
Including – at the primary market	113123	89109	24014	26,9
- under employment programmes	106844	109058	-2214	-2
Persons included in employment and training programmes and measures	**155876**	**135776**	**20100**	**14,8**
Including – in employment programmes	136971	128375	8596	6,7
of which: in NP "From Social Assistance towards Provision of Employment"	122019	**103505**	18514	17,9
- in encouragement measures	18905	7401	11504	155,4

Persons who have worked under employment programmes and measures (monthly average)	**116410**	**89841**	**26569**	**29,6**
Including – in employment programmes	98600	80415	18185	22,6
of which: in NP "From Social Assistance towards Provision of Employment"	94619	76134	18485	24,3
- in encouragement measures	17810	9426	8384	88,9
Persons included in vocational qualification training	**23397**	**18911**	**4486**	**23,7**
of which: - unemployed persons	16044	17695	-1651	-9,3
- employed persons	7353	1216	6137	504,7

Over the whole 2006, employment offices have announced 279 603 vacancies – 175 886 at the primary labour market and 103 717 under employment programmes. Announced vacancies are 44 188 less than in 2005, with the decrease visible in both the primary and secondary markets. Over the whole 2006, 286 286 unemployed persons found a job, with a significant portion of them having found their job through the employment office (258 411 unemployed persons or 90.3%).

The Committee also asks to be informed of average time required to fill a vacancy.

According to EA statistics, 2005 is the third successive in which the number of long-term unemployed persons that spend over one year as unemployed is decreasing. The average yearly number of unemployed persons for over one year is 237 390. In comparison to 2004, there is a decrease by 10 762 persons.

In 2006, the trend is also a decreasing one. In comparison to 2005 there is a significant decrease – 33 578 persons or 14.4%.

The report states that the total number of violations of employment agency regulations (e.g. imperfections in job contracts, lack of register of persons who have been offered employment or offering paid job services to jobseekers) almost doubled in the first nine months of 2004, compared to the same period of 2003. The Committee asks what are the reasons for this development are and wishes to know what steps were taken in order to remedy the situation.
The Committee reiterates its question as regards supervision of private employment agencies.

General Labour Inspectorate Executive Agency /GLI/ has the power to exercise specialised control by carrying out inspections on the lawfulness of the intermediary activity of natural and/or legal persons in employment. The Employment Agency cooperates with the GLI with information and copies of documents for establishing the lawfulness of intermediary activity.

According to the findings of the 2004 GLI Activity Report, the main cause for breaches in intermediary activity is the conscious failure to observe legal requirements in order to create conditions suitable to defrauding jobseekers or to realise quick profits for the intermediary enterprise. Other reasons lie in the insufficient knowledge of the legal base from jobseekers as well as deficiencies in the legal base that make violations hard to prove.

In 2004 good results can be noted regarding violations related to the exercise of intermediary activity without the appropriate Employment Agency registration. This is due to the reinforced control on the part of the Local Labour Inspectorate Directorates /LLI/ in this field as well as to introduced amendments in the legal base regarding sanctions for

such violations. The good cooperation with the Ministry of Interior bodies in carrying out inspections also helped for their effectiveness and results.

In 2005, specialised control on the observation of the Employment Promotion Act /EPA/ was directed towards the implementation of the National Priority "Observation of the Employment Promotion Act by natural and legal persons in carrying out intermediary activity in employment and in the correct spending of employment measures and programmes funding provided to employers and training organisations".

A highlight in the specialised control on the observation of the EPA in 2005 was the May national campaign "Control over the lawfulness of the intermediary activity in employment carried out by natural and legal persons".

In 2005 there were 413 established violations in the exercise of intermediary activity in employment (83.77% of revealed EPA violations), of which 281 violations – during the national campaign. These results are due to the national campaign on one hand, and the increased exactingness of inspectors in implementing specialised control on the EPA, on the other.

The 2005 inspections in enterprises carrying out intermediary activity in employment confirmed the downward trend in the number of violations related to the exercise of such activity without due Employment Agency registration.

The establishment of such violations is made harder by the difficulties in proving that there has been a provision of intermediary services – the activities are not documented or are covered up through activities in the field of translation and legalisation of documents and/or transport services. As far as violations related to the provision of intermediary services with EA registration is concerned, one of the main reasons for violations is that intermediaries are not familiar enough with the relevant legal requirements.

In 2006, specialised control on the observation of EPA provisions was directed towards the implementation of the National Priority "Observation of the Employment Promotion Act by natural and legal persons in carrying out intermediary activity in employment and in hiring foreign nationals to work in the Republic of Bulgaria" and was carried out in the following directions:

- hiring of foreign nationals;
- lawful exercise of intermediary activity in employment;

Accents in the specialised control were:

- the specialised reviews in the first and third quarter of 206 on the lawfulness of employment of foreigners on the territory of the Republic of Bulgaria;
- the national reviews in the second and third quarters of 2006 on the legal exercising of intermediary activity in employment by natural and legal persons.

Over the year 614 compulsory administrative measures were enforced under article 78, paragraph 1, point 1 of the EPA. 171 deeds were issued for established administrative violations of the Employment Promotion Act.

The consecutive control on the observation of the EPA shows that issued directions are complied with. In 2006 there were only 6 unfulfilled directions issued because of violations of the terms and order for intermediary services in employment. Consecutive inspections also show that as a result of the given data and advise as well as of enforced mandatory administrative measures and sought-after administrative-penal responsibility, there usually is motivation for observing the controlled legislation, including the EPA.

In 2006 the legal base regulating the exercise of intermediary activity in employment was amended significantly. In February, the Employment Promotion Act was amended and Council of Ministers Decree 144 of 15 June 2006 amended and supplemented the Ordinance for the Conditions and Order of Carrying Out Intermediary Activity on Information and Employment of Workers.

The amendments were aimed at aligning the legal base with the European Union *acquis communautaire* regarding the right to settle and the free movement of services, and to fulfil the provisions of International Labour Organisation Convention 181 on Private Employment Agencies, 1997, as well as to improve the business environment for providing intermediary employment services.

As it was already stated above, a provision regarding the free provision of services for employment was introduced – with no collection of direct or indirect, whole or partial fees or other payments from jobseekers of hired persons, including seafarers.

The regime for provision of intermediary employment services was lightened by prolonging the validity of the registration certificates from 3 to 5 years. Lighter conditions were also introduced for carrying out intermediary activity by reducing the number of documents required.

The requirement was introduced to keep a register not only of persons who have started a job but also of jobseekers as well as the requirement for the intermediary to advertise and/or publish job announcements only on request by an employer; new basis for discontinuing the registration for carrying out intermediary employment were also introduced. Documents due upon registration are kept in correspondence with carried out amendments and supplements in other legislative acts.

The amendments that were made in the Ordinance for the Conditions and Order of Carrying Out Intermediary Activity on Information and Employment of Workers are aimed at improving the business environment by introducing lighter conditions for carrying out intermediary activity, increasing the effectiveness of the control activity carried out by the General Labour Inspectorate Executive Agency as well as guaranteeing greater transparency in the work of private intermediaries.

With view of organising and carrying out inspections, the Legal Directorate and the Regional Labour Inspection Directorates of the GLI keep registers of natural and legal persons who have received registrations for carrying out intermediary activity in employment, while newly registered intermediaries are distributed for control in good time to the GLI inspectors who specialise in control on the EPA.

Inspections conducted over the year in enterprises that exercise intermediary activity in employment have confirmed the decreasing trend in the number of violations related to the exercise of such activity without due Employment Agency registration. One of the reasons for the decrease in the number of intermediaries exercising such activity without due Employment Agency registration is the lightened registration procedure for exercising this activity. On the other hand, the big amount of that is provided for by the law as a sanction and the tightened control on intermediary enterprises carried out by the GLI, has forced many intermediaries to legalise their intermediary activity in employment.

Article 1, Paragraph 4

A.

Employment Office Directorates, through their activities in vocational orientation and organisation of vocational qualification and motivation training, provide specialised services to clients by informing them about the opportunities to acquire vocational qualification and the rights and obligations they have during and after concluding the training, about the labour market conditions and trends, about the possibility, requirements for acquiring and exercising professions and taking part in a specific training. The provision of such services is aimed at increasing the labour market adaptability and competitiveness.

Apart from this, vocational consultation is carried out with unemployed persons in order to assist them in making a choice about a vocation (specialty), level of qualification, ways of acquiring the desired qualification. During information and consultation, jobseekers receive a lot of information about the kinds of professions that are demanded at the labour market, the ways of acquiring a new vocation or updating their skills in relation to their present vocation. They are informed about the labour market condition and trends, about qualification services, use specialised information materials (brief descriptions of vocations published on the EA internet website, leaflets and folders about vocations, films and multimedia products, computer programmes, ets.

Indicators	2005	2006	Total for the period 2005-2006
Received individual vocational consultations	104 873	103 106	207 979
Self-informed persons	21 453	17 186	38 639
Persons who took part in group activities	58 720	58 300	117 020

A main factor in this aspect is the vocational qualification training. Due to the specifics of the target group it is preceded by motivational training in order to provide them with skills of active labour market behaviour, labour realisation as well as choice of adequate qualification training.

B. Vocational Training

(C. Vocational re-qualification – under article 65 of the Employment Promotion Act it is included in kinds of vocational training)

Under the Employment Promotion Act, the Employment Agency organises and finances training of unemployed persons in correspondence with labour market needs. The training is carried out:

- upon request by an employer in order to take concrete positions;
- following a Minister of Labour and Social Policy approved list of vocations that is prepared every year based on established needs of qualified labour force after labour market researches. In this case, training is without a previously secured vacancy;
- in Vocational Training Centres under the Ministry of Labour and Social Policy.

Vocational qualification training is organised in correspondence with identified employers' needs and individual characteristics of unemployed persons, including the health condition of persons with disabilities. During the training period, the unemployed person receives a scholarship as well as has transportation and housing expenses covered in case the training takes place outside his/her settlement. As a result of the training taken and subsequent internship with employers, opportunities arise for long-term employment of trained persons, including those in disadvantaged situation as well as for development of own business.

In implementation of state employment promotion policy and vocational qualification training, the Employment Agency assists persons in disadvantaged situation in receiving equal opportunities for labour and personal realisation through including unemployed persons in vocational qualification training. In 2005 and 2006, 41 871 persons received vocational qualification training (under the conditions of article 63, paragraph 1 of the EPA). Of those, 31 925 are unemployed persons included in vocational qualification training without a secured position, and 9 946 are unemployed and employed persons included upon the request of an employer with a secured job.

Indicators	2005	2006	Total for the period 2005-2006
Unemployed persons trained without a secured job	14 415	17 510	31 925
Persons trained with a secured job – upon employer request, including:	4 956	4 990	9 946
Unemployed	1 107	2 359	3 466
Employed	3 849	2 631	6 480
Total	19 371	22 500	41 871

Questions by the European Committee of Social Rights:

The Committee requests information on whether vocational orientation has been offered free of charge.

As it was state above, this kind of employment services are free of charge for jobseekers. According to the Act for Amendment and Supplement of the Employment Promotion Act /SG 18/28.02.2006/, in force since 3 March 2006, intermediary activity in employment is carried out "free of charge – without collecting directly or indirectly, wholly or partially, fees or other payments on behalf of jobseekers."

The Committee requests information on measures taken in order to increase the share of persons aged between 25 and 64 included in continuous training and qualification.

As stated above, one of the goals of the National Employment Action Plans for 2005 and 2006 is the increase in human capital investment through facilitating access to vocational training and education and development of lifelong learning and training for adults. Employment policy, including regarding continuous training and qualification, are coordinated with the guidelines of the European Employment Strategy and the European Commission recommendations in the field of employment.

According to EA data quoted above, in 2005 and 2006 the number of persons that took part in training was 41 871 (under the conditions of article 63, paragraph 1 of the EPA).

A 2005-2010 National Continuous Vocational Training Strategy was adopted. Topic of the Strategy is the training process of persons over the age of 16 in acquiring, broadening and improving their vocational qualification in order to improve their employability, career advancement assistance and individual development. The goal of the Strategy is to draw up national priorities for development of continuous vocational training in the context of lifelong learning as well as to designate responsible institutions for their implementation. The Strategy identifies the following main priorities:

1. Improvement of conditions for access to vocational qualification;
2. Achieving effective cooperation between institutions involved in continuous vocational training;
3. Provision of high-quality continuous vocational training;
4. Increasing investments in continuous vocational training;
5. Scientific provision of continuous vocational training.

In pursuing the Strategy goals, MLSP structural units for organisation and carrying out vocational training – the Bulgarian-German vocational training centres in Pazardzhik, Stara Zagora and Pleven as well as the National Vocational Development Centre provide: vocational qualification training for unemployed and employed persons under the conditions of the EPA; vocational consultation and information; development and adaptation of study programmes, improvement of methodology for adults training, etc.

With the support of the International Labour Organisation, the National Vocational Development Centre /NVDC/ is establishing itself as an effective study, methodological and logistic centre. A Strategy and Working Plan have been approved and a new Structural Regulation has been prepared. The NVDC is offering a broad range of trainings for officials of the Ministry and the agencies under the Minister as well as courses for increasing the vocational qualification in professions that are especially sought after at the labour market.

National and European vocational training and employment projects are carried out, amongst which PHARE Programme projects: BG2004/016-711.11.01 – Human Resource Development and Employment Promotion; BG2004/006-070.01.01 – Development of a Network of Adults Training Centres; BG2003/004-937.05.02 – National Labour Market and European Social Fund Database; etc.

The Committee requests information about the number of training centres as well as the number of vocational qualification courses and the persons (above all unemployed) who have taken advantage of the training measures within the framework of services provided by associations, state vocational schools and higher schools.

Under the Vocational Education and Training Act, the National Agency for Vocational Education and Training /NAVET/ under the Council of Ministers issues and takes away vocational training and professional orientation licences. According to the NAVET register, there are currently some 490 licensed vocational training centres nationwide.

According to 2005 EA administrative statistics, in that year 27 859 unemployed persons have started vocational qualification (including 12 070 persons under programmes with a training module). 36 344 unemployed persons have graduated from vocational

qualification (including persons who have started training towards the end of 2004). After vocational qualification, 26 832 unemployed persons have found a job at the labour market (including persons that have graduated in a transitional period).

In 2006, 31 153 persons have been included in vocational qualification courses, that is 11.8% more than in 2005.

The Committee notes the provided information on the functions of the Persons with Disability Agency in the field of vocational training of persons with disabilities and requests information on this activity as well as the number of specialised enterprises for persons with disabilities and NGOs that have received PDA financing for projects with social character.

Cooperation between the Persons with Disabilities Agency /PDA/ with nongovernmental organisations in the field of vocational training and orientation of persons with disabilities is in the form of financing projects under a methodology for distribution of state aid based on article 2, paragraph 2, point 6 of the PDA Structural Regulation, in relation to article 8, point 5 of the Integration of Persons with Disabilities Act.

In 2005, the PDA financed 16 projects aimed at vocational training in the following specialties:

- beautician;
- attendant;
- waiter-bartender;
- cashier-accountant;
- office manager;
- training in preparation of documents for job application skills;
- training in social skills and jobseeking skills;
- enterprise registration.

In 2006, Persons with Disabilities Agency-financed projects aimed at vocational orientation and training of persons with disabilities were 18. The specialties in which persons with disabilities were trained were:

- masseur;
- knitter;
- tailor;
- upholsterer;
- driver;
- English language skills;
- computer training;
- training in preparation of documents for job application skills;
- training in social skills and jobseeking skills.

We attach information regarding the projects financed under different PDA programmes in 2005 and 2006.

The Committee asks for information on the number of disabled persons taking part in training or retraining programmes.

The implementation of the National Programme for Employment and Vocational Training of Persons with Permanent Disabilities continued in 2005 and 2006. The Programme's main goal is to increase the employability and to provide employment to persons with permanent disabilities with an Employment Office Directorate registration or persons who have passed successfully a healing course for drug substance dependency and

are in working age, as a precondition for overcoming their social isolation and achieving their full social integration. The immediate goals of the Programme are:

1. Creation of conditions for employment of unemployed persons with disabilities who are registered in Employment Office Directorates;
2. Increasing employability and the ability to gain salaries from employment by provision of motivation and vocational training to the persons targeted by the Programme;
3. Raising public awareness on the problems and possibilities of persons from the Programme target groups in order to change public attitudes and do away with existing stereotypes;
4. Encouragement of employers to hire unemployed persons from the Programme target groups;
5. Development of partnerships at all levels of implementation of the Programme;
6. Creation of conditions for decent and independent life of persons from the Programme target groups.

In 2005, under the National Programme for Employment and Vocational Training of Persons with Permanent Disabilities, 25 persons took part in training, and 189 were included in employment.

In 2006, 20 persons were trained, and 517 started a job.

Within the framework of the Programme, the financing for employers who provide accessible environment and improve working conditions by adapting and/or equipping working places for persons with disabilities continues. In 2006, the period of subsidised employment was extended from 12 to 24 months. In 2006, the Programme financed employment and integration of persons with disabilities projects at a total worth of 3.7 million leva, 0.7 million more than in 2005. The number of financed projects has increased by 20% compared to 2005 and the number of direct users reached has increased by almost 15%.

In answer to the Committee, the report says that nationals of other states party residing or working lawfully in Bulgaria enjoy equal treatment regarding all the aspects considered under Article 1§4, so long as they hold a permanent residence permit. The Committee asks what are the conditions governing the issuing of such permits.

From the date of entering into force of the Treaty of Accession of Bulgaria to the EU, each Bulgarian citizen and each citizen of another EU member-state, and other European Economic Area Agreement member-state, who is an active jobseeker may register with the territorial division of the Employment Agency and thus make use of the services on offer, including vocational training.

These rights may be also exercised by foreign nationals with a permanent residence permit in the Republic of Bulgaria.

Under Article 25 of the Foreigners in the Republic of Bulgaria Act, permanent residence permit may be issued to foreign nationals:

1. of Bulgarian nationality;
2. (Amended, SG No. 29/2007) five years after concluding a civil marriage with a foreign citizen who resides permanently in the country;
3. (Amended, SG No. 29/2007) minor or under aged children of a foreign citizen who have not concluded marriage;
4. (Amended, SG No. 42/2001) who are parents of a Bulgarian citizen, when they provide him with the alimony due under the law, and in cases of recognition or adoption, after the expiration of three (3) years of the recognition or adoption;

5. (Amended, SG No. 29/2007) who have resided lawfully without interruption on the territory of the country for the last five years, while in the cases under article 24, paragraph 1, point 1, only half of the residence time shall be counted;

6. (Amended, SG No. 11/2005) who have invested in this country over five hundred thousand US dollars ($ 500,000) in compliance with the legally established terms and procedures;

7. (New, SG No. 42/2001) who are not persons of Bulgarian origin born on the territory of the Republic of Bulgaria, have lost their Bulgarian citizenship pursuant to emigrant treaties or upon their own will, and wish to settle permanently on the territory of this country;

8. (New, SG No. 37/2003) who, prior to 27 December 1998, have entered, have been staying or were born on the territory of the Republic of Bulgaria and whose parent has married a Bulgarian citizen under a civil matrimony procedure;

9. (New, SG No. 29/2007) members of the family of a Bulgarian citizen who have resided on the territory of the Republic of Bulgaria for five years without interruption.

ARTICLE 18 – RIGHT TO ENGAGE IN A GAINFUL OCCUPATION IN THE TERRITORY OF OTHER PARTIES

Article 18, Paragraph 4

Questions of the European Committee of Social Rights

The Committee recalls that Article 48 paragraph 3 of the Bulgarian Constitution guarantees the right of Bulgarian citizens to freely choose their occupation and their place of work. The Committee further recalls that Bulgarian law provides for "job brokers" for the placement of national workers in jobs abroad. The Committee asked in this respect whether Bulgarian citizens may seek employment in the territory of a State Party to the Revised Charter or of a Contracting Party to the Charter of 1961 without the intervention of a job broker. The report states that the use of "job brokers" or other intermediaries is optional.

Pursuant to the Bulgarian legislation in force and particularly under the Employment Promotion Act there is a provision giving **an opportunity** to citizens seeking employment to resort to the services of a job broker. It is at the discretion of the jobseeker alone to decide whether he/she wants to use these services or not. The job brokerage option has been introduced to make it easier to jobseekers to find employment. Job brokers can be natural persons and/or legal entities who have been granted a certificate as issued by the Minister of Labour and Social Policy or a person duly authorized thereof. The list of job brokers holding valid certificates is accessible via Internet as it is published on the web site of the Employment Agency.

In this sense, there is no legal impediment or limitation hindering the Bulgarian citizens from seeking employment in the territory of a State Party to the Revised Charter or of a Contracting Party to the Charter of 1961 without the intervention of a job broker.

The report states that Bulgarian nationals may be prevented from leaving the country on the following grounds as stipulated under the Penal Procedures Code, the Tax Procedures Code and the Bulgarian Identity Documents Act:

– the person is accused of a crime punishable by imprisonment and is prohibited by the prosecutor from leaving the country or the person has been convicted of a criminal offence and must serve a prison sentence;

– the person has tax debts of a large amount, no sufficient security has been presented and upon request of the tax authorities the Ministry of Interior denies permission to the debtor to leave the country;

– the person has considerable financial debts as determined by a court procedure vis-à-vis Bulgarian physical persons or legal entities and no sufficient security can be provided;

– the person has been ordered to pay allowance and has previously failed to observe this obligation during a period of residence abroad;

– the person would endanger national security by leaving the country;

– the person has previously violated the law of the country he or she wants to travel to;

– minors who do not have the consent of their parents or guardians to leave the country;

– the person has repeatedly violated Bulgarian customs, tax or foreign exchange legislation;

– the person has provided incorrect data when applying for issuance of a passport or uses a passport document which was declared lost, stolen or destroyed.

The Committee wishes the next report to specify which is the exact content and scope of the restrictions for leaving the country set out above.

During the reference period a new Penal Procedures Code has been adopted effective as from 29 April 2006, which features amendments to the provisions (as set out herein above) **concerning the restrictions for leaving the country.**

In reference to the restrictions for leaving the country as set forth under the Penal Procedures Code:

The prohibition to leave the country is a compulsory procedural measure applicable to the accused party or the defendant aims to secure the participation of the accused party or the defendant in the penal proceedings, respectively to prevent him/her from absconding from criminal prosecution.

Pursuant to Article 68, Paragraph 1 of the Penal Procedures Code, in pre-trial proceedings, in the event where the accused party has been constituted in this capacity because of a serious intentional criminal offence punishable by deprivation of liberty or a heavier punishment, the prosecutor may prohibit the accused party from leaving the boundaries of the Republic of Bulgaria, ***unless he/she has given authorisation to this effect***.

The prohibition as provided for under Article 68 of the Penal Procedures Code is not imposable in the case of whatsoever kind of crime, but only in the case of a serious intentional criminal offence punishable by deprivation of liberty or a heavier punishment. The legal grounds for the imposition of such prohibition are defined under Article 68, Paragraph 5 of the Penal Procedures Code as a risk for the accused party to abscond outside this country.

The imposition of this prohibition has never been set forth as mandatory. The prosecutor shall immediately notify the border control - about the imposed prohibition. The imposition of this prohibition presupposes that there is already a case for offences allegedly committed by the accused party.

In case when the defendant is imposed a prohibition and if he/she wants to leave the country, the defendant shall submit a written request for authorisation to leave the country and the prosecutor shall rule within three days on the request for authorisation (Article 68, Paragraph 2 of the Penal Procedures Code).

The substantial part here concerns the fact that the control is beyond the powers of the pre-trial proceedings, while the purpose is to seek a ruling on the particular case as fast as possible. In order to avoid that the prohibition for leaving the territory of the country interrupts the normal pace of life of the defendant and his family, his/her work, etc., the lawmaker has vested the power of control on this compulsory procedural measure into the court (Article 68, Paragraph 3 of the Penal Procedures Code: "The refusal of the prosecutor shall be subject to appeal before the competent court of first instance".)

The court shall consider forthwith the appeal deliberating privately. To launch the court proceedings the defendant or his/her counsel of the defence shall submit a written appeal thereof. Should the appeal is well grounded and containing reasonable

factual grounds to be regarded, the appeal filing via the prosecutor would contribute for a faster motion to resolve the case provided that the prosecutor himself/herself is given the power to repeal his/her refusal to leave the country. When the appeal is accompanied by all necessary documents, the court shall consider it immediately.

The refusal of the prosecutor would be unlawful in the case when the defendant must travel abroad due to urgent circumstances such as medical treatment, participation in international venues, business affairs, etc. and given that, at the same time, there are enough objective indications that he/she poses no risk of avoiding criminal prosecution or committing a crime.

The court shall consider the appeal and shall make pronouncement by a motivated ruling, thus confirming the refusal of the prosecutor or allowing the accused party to leave the territory of the Republic of Bulgaria for a set period. The ruling of the court shall not be subject to further appeal or protest. It shall be final and immediately enforceable.

Pursuant to Article 68, Paragraph 5 of the Penal Procedures Code, at the request of the accused party or his/her counsel of the defence, the court may repeal the prohibition under paragraph 1 (for leaving the boundaries of the Republic of Bulgaria), where there is no risk for the accused party to abscond outside this country.

Where the necessity to impose a prohibition for leaving the country occurs ***in judicial proceedings*** the powers to impose such a prohibition shall be exercised by the court examining the case (Article 68, Paragraph 6 of the Penal Procedures Code). This court is the competent authority to rule on the request of a defendant to be given an authorization for leaving the country.

In reference to the restrictions for leaving the country as set forth under the Bulgarian Identity Documents Act:

The provisions as set forth under Article 75 of the Bulgarian Identity Documents Act are imperative. The compulsory administrative measure shall be applicable obligatorily wherever there is the hypothesis of the legal norm.

The lawmaker has vested the competent administrative authority the power of making checks in each and any particular case in order to decide whether to impose on a Bulgarian citizen a temporary restriction on the issuance of an international passport or not. Pursuant to the Bulgarian legislation in force, administrative deeds are subject to control via court proceedings only with regard to the scope of their lawfulness. The final decision made at own discretion is an expression of the free will and the conviction of the administrative authority within its competences and operational independence.

The purpose of the Bulgarian Identity Documents Act, as provided for under Article 75, Item 4 and Item 5 of the Bulgarian Identity Documents Act, is to secure the right of authorized creditors to receive their due gatherings.

It is in the interest of the person with such an imposed temporary restriction to pay out his/her pending liabilities or to provide for a viable guarantee covering the full sum of such pending tax liabilities to the authority competent at the respective stage of execution in order hat the order imposing this compulsory administrative measure is repealed.

Having in mind the above, the term "viable guarantee" shall mean a guarantee secured by the liable person, which covers the whole sum of the pending tax liabilities.

The Bulgarian Ministry of Interior is competent to make a motion of repealing this compulsory measure after receiving a notice from the respective tax authority on whose request this measure has been imposed, and also to consider the evidence enclosed to the request showing that there are respectable circumstances to repeal this compulsory administrative measure.

The Committee would also like to know whether Bulgarian nationals may be prevented from leaving the country on any other grounds than those mentioned in the report.

BULGARIAN IDENTITY DOCUMENTS ACT

...

Article 76(a). (New – SG, issue 71 of 2005, in force as from 31 October 2005)

(1) Leaving the country shall be prohibited, passports and substituting documents shall not be issued and the issued shall be taken away from under the adulthood age persons, about which persons incoming data from a Bulgarian or a foreign competent body is available that during the stay abroad he/she has been involved in and used for the activities under Article 11 of the Protection of the Child Act.

(2) The measures as set forth under Paragraph 1 shall be with the purpose to protect the child and shall be for a period up to two years from the issue of the order of their enforcement.

(3) As an exception, in case of evidenced health reasons or under any other urgent circumstances, the measures as set forth under Paragraph 1 shall not be applicable.

(4) The Minister of Interior, the Chairperson of the State Agency for Protection of the Child and the Minister of Foreign Affairs shall issue a joint instruction on the enforcement of the measures as set forth under Paragraph 1.

Pursuant to this provision and in connection with Article 11 of the Protection of the Child Act, Instruction № IZ-207 of 15 February 2006 was issued on the enforcement of the measures as set forth under Article 76(a) of the Bulgarian Identity Documents Act (SG, issue 20 of 7 March 2006) jointly by the Ministry of Interior, the Ministry of Foreign Affairs and the State Agency for Protection of the Child.

/Information note: Protection of the Child Act

Protection against violence

Article 11. (1) Every child has the right to protection against involvement in activities that are harmful to his or her physical, mental, moral and educational development.

(2) Every child has the right to protection against all methods of upbringing, that undermine his or her dignity; against physical, psychical or other types of violence; against all forms of influence, which go against his or her interests.

(3) Every child has the right to protection against the use of children for purposes of begging, prostitution, dissemination of pornographic material, receipt of unlawful pecuniary income, as well as protection against sexual abuse.

(4) Every child has the right to protection against forcible involvement in political, religious and trade union activities./

The Committee also notes that in the event a prosecutor prohibits a Bulgarian national subject to criminal prosecution from leaving the country, the accused person may lodge an appeal against this decision with the competent court. The Committee wishes to know whether a person whose freedom of movement is denied on one of the other grounds stated in the report has similar legal remedies to challenge the decisions in question.

BULGARIAN IDENTITY DOCUMENTS ACT

...

Article 78. (1) (Supplemented – SG, issue 42 of 2001, in force as from 27 April 2001, Prev. text of Article 78 – SG, issue 45 of 2002) The compulsory administrative measures shall apply by a motivated order of the Minister of Interior or by officials duly authorised thereby to exercise the authorities under this section.

(2) (New – SG, issue 45 of 2002 г.) The compulsory administrative measure under Article 75, Item 2 shall apply by a motivated order issued by the Chairperson of the State Commission for the Security of the Information or by the chiefs of the security services and the public order services.

(3) (New – SG, issue 71 of 2005, in force as from 31 October 2005) The measure as set forth under Article 76(a) shall be applied by a motivated order issued by the Minister of Interior or by officials duly authorised thereby upon a proposal or after submission of a statement from the Chairperson of the State Agency for Protection of the Child.

Article 78(a). (New – SG, issue 105 of 2006, in force as from 01 January 2007) (1) The body issuing the act, wherein lies the grounds for application of compulsory administrative measure, shall send this act *ex officio* to the body competent to apply it or to repeal it.

(2) The compulsory administrative measure shall be applied or repealed after the act under Paragraph 1 is received.

Article 79. (1) (Amended – SG, issue 29 of 2003, Amended – SG, issue 30 of 2006, in force as from 12 July 2006) The issuance of the orders as set forth under Article 78 and the proceedings to appeal them shall be carried out in pursuance of the provisions as set forth under the Administrative Procedures Code.

(2) (New – SG, issue 42 of 2001, in force as from 27 April 2001, Amended – SG, issue 45 of 2002, Amended – SG, issue 30 of 2006, in force as from 12 July 2006) In issuing the orders as set forth under Article 75, Items (1) - (3), the provisions as set forth under Article 26 and Article 35 the Administrative Procedures Code shall not apply.

(3) (New – SG, issue 42 of 2001, in force as from 27.04.2001 г., Amended – SG, issue 30 of 2006 г., in force as from 12.07.2006 г.) The orders under Paragraph 2 shall be subject to immediate enforcement and can be appealed in pursuance of the provisions as set forth under the Administrative Procedures Code.

(4) (New – SG, issue 42 of 2001, in force as from 27.04.2001, Amended – SG, issue 29 of 2003) The complaint filed against an order under Paragraph 1 shall not suspend the enforcement of this order.

TAX AND SOCIAL SECURITY PROCEDURES CODE

With regard to the refusal to permit a debtor or members of his controlling or managing bodies to leave the country and not to be issued passports and any substituting documents required to leave the boundaries of the Republic of Bulgaria, this refusal shall be within issued by the Ministry of Interior.

In pursuance of the provisions as set forth under the Ministry of Interior Act, the orders, refusals to give authorisation and issue personal identification documents, as well as the orders imposing compulsory administrative measures shall be subject to appeal in pursuance of the provisions as set forth under the Administrative Procedures Code.

In relation thereto the Minister of Finance and the Minister of Interior have issued jointly Instruction №3 dated 17 November 2000 on the cooperation among the competent authorities of the Ministry of Interior and the tax administration to the Ministry of Finance.

ARTICLE 20 - THE RIGHT TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT IN MATTERS OF EMPLOYMENT AND OCCUPATION WITHOUT DISCRIMINATION ON THE GROUNDS OF SEX

The Protection against Discrimination Act (PDA) was adopted in 2003 and has been in force as from 01 January 2004 in compliance with the international engagements of the Republic of Bulgaria to adopt a legal ban on the discrimination under various indicators and to establish a national mechanism for prevention and protection against discrimination. The national and international mechanisms thereof include state bodies competent with the protection against discrimination and procedures of control on meeting and applying the anti-discrimination legislation and regulations, as well as procedures for protection of victims to discrimination.

The adoption and implementation of the Protection against Discrimination Act (PDA) has attained the purpose to approximate the Bulgarian legislation with the directives of the European Union (EU) in the field of anti-discrimination, equal opportunities and equal treatment. The issue of equal treatment of citizens has been particularly important in the process of creation and establishment of the civil society. The fundamentals of this society are represented actually by the citizen with his/her civil rights and legal interests.

The Protection against Discrimination Act (PDA) is **a codifying law with large scope**, providing for the establishment of **a special body to ensure its implementation**. **Hence is the need to start the creation of a brand new practice from the scratch, a factor that faced the Commission for Protection against Discrimination with serious challenges.**

The Protection against Discrimination Act (PDA) awards the Commission for Protection against Discrimination, which was established in pursuance thereof, a broad range of powers, while engaging it with serious social responsibilities. While acting for the implementation of the anti-discrimination legal framework, the Commission for Protection against Discrimination has implemented an effective partnership with the non-governmental sector in drafting gender equality and equal treatment policies. In early 2007 the Commission for Protection against Discrimination and the Confederation of Independent Trade Unions in Bulgaria (CITUB) signed framework agreement for cooperation.

The Commission for Protection against Discrimination has risen to an independent specialized state body in charge of prevention, control and protection against discrimination. Thanks to these effective measures and the overall pro-active initiatives in 2005 it was possible to overcome the difficulties that initially stood on the way of full capacity implementation of the CPD.

In 2006, the CPD continued to implement the initiated and implemented National Information Campaign across the country. It extended the practice of organizing open reception hours for citizens in various cities across the country.

In view with improving the coordination with the national institutions, in compliance with the state anti-discrimination policy, the Commission for Protection against Discrimination has established active cooperation with The Commission for Human Rights and Confessions with the National Assembly, the Ministry of Labour and Social Policy, the Ministry of Education, the Ministry of Regional Development and Public Works, the National Ombudsman, the National Council for Cooperation on Ethnic and Demographic Issues with the Council of Ministers, district administrations and local authorities represented by the municipalities and the municipal councils. Partnership relations are established also with the Confederation of Independent Trade Unions in Bulgaria (CITUB) and other trade union organizations aimed to establish equal treatment in the development of the employment relationships.

In 2006, the Commission for Protection against Discrimination became aware of the strong necessity to exercise, with priority, its preventive functions. With regard thereto the CPD adopted a long-term Action Plan outlining measures to prevent acts of discrimination.

Question A

Legislative changes with a view of improving CPD's activity and implementation of antidiscrimination legislation.

In 2006, in response to the strong need to update the applicable legislation and regulations in the field of discrimination and optimize the work of the Commission for Protection against Discrimination a series of legal amendments took place – under the Protection against Discrimination Act, under the Structural Regulation for the Activity of the Commission for Protection against Discrimination (SRACPD) and under the Rules of Proceedings at the Commission for Protection against Discrimination (RPCPD). The amendment to Article 39 of the Protection against Discrimination Act and the introduction of the criteria related to the personality of the candidates for a position in the administration from the sex represented in majority in accordance with the definition under Item 15 of §1 of the Additional Provisions to the Protection against Discrimination Act about "the specific circumstances" that do not result in discrimination on the grounds of sex, has introduced legal safeguards that upon appointment to a position in the administration women and men are ensured "the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment" – Article 11, Paragraph 1, letter "b" of the Convention on the Elimination of All Forms of Discrimination against Women.

The legal amendments concerning the proceedings in front of the Commission for Protection against Discrimination have created prerequisites for procedural economies and observance of shorter terms for investigation of the complaints.

The new Paragraph 4 under Article 40 of the Protection against Discrimination Act provides for the option to appoint regional representatives of the Commission for Protection against Discrimination, as it was subsequently reflected into the SRACPD. The legal delegation as set forth under Article 46 of the Protection against Discrimination Act grants the Commission for Protection against Discrimination the powers to adopt and promulgate Rules of Proceedings at the Commission for Protection against Discrimination. The practice concerning the establishment of administration to assist the Commission for Protection against Discrimination in its work and in the implementation of the Protection against Discrimination Act has made it necessary to make amendments also to the RPCPD, whereby some of the organizations changes in this administration were also vested into the legal texts.

In compliance with the National Action Plan on Promotion of Equality between Men and Women a series of measures are put in place to build up the administrative capacity on national, regional and local level, as well as to strengthen the relations between the institutions and the civil society in support of the policy for equality of men and women.

The draft of Equal Opportunities for Men and Women Act was submitted for debate in the National Assembly in 2006. After a decision by the sub-committee on women's rights and the equal opportunities for men and women with the Commission for Human Rights and Confessions with the National Assembly, this draft law will be

Amend. and re-submitted by a group of Parliament members as a draft of Women and Men Equality Act.

The National Council on the Equality of Women and Men (NCEWM) established with the Council of Ministers consults the implementation of policy in this field. Regular sessions are being held pursuant to the Rules of Structure and Activities of the NCEWM.

At this stage, due to the consultative nature of the NCEWM and the lack of legal independence and own budget, its functions are rather limited.

Question B

In relation with the enforcement of the Administrative Procedures Code in 2006 and the reference provision under Article 70 of the Protection against Discrimination Act, amendments were adopted to the Rules of Proceedings at the Commission for Protection against Discrimination in compliance with Article 13 of the Administrative Procedures Code concerning the timely public announcement of the criteria for the Commission for Protection against Discrimination to enact its operational independence in terms of implementation of the PDA.

Since the enforcement of the Administrative Procedures Code on 12.07.2006, issues which are not regulated by protection against discrimination proceedings, the Commission for Protection against Discrimination shall implement, in subsidiary, the provisions of the Administrative Procedures Code. The enforcement of the Administrative Procedures Code introduced new principles and a new structure of administrative proceedings relevant to the specifics of the Bulgarian public relations and the good practice of the European Union administration. Hence certain amendments and supplements were undertaken to the PDA, namely:

• Article 39 – about the equality of men and women in view of the requirements for occupying the position, the state and public bodies and the bodies of local self-government, whereas the additional provisions under this law define also the term "special circumstances" that do not lead to discrimination on the grounds of sex;

• Article 40 – the important amendment here provides that the Commission for Protection against Discrimination may have its regional representatives and depending on the gravity of issues to be prevented and solved under this law and in front of the Commission - protection of human rights and freedoms, the Commission has become a legal person with independent budget;

• Article 52 – the amendment and supplement to this article regulates the negative procedural prerequisites to open proceedings when the Commission does not initiate, or cancels proceeding opened therein whenever the lawmakers have explicitly concluded that the filing of a negative material claim by defendant in front of the Commission shall not be an option for proceedings, moreover while taking into account that it shall be interpreted within the sense of the provisions as set forth under Article 71 of the Protection against Discrimination Act;

• Article 59 – a new Paragraph 2 was supplemented to provide for an exception when the short term of 30 days is suspended to award more time for investigation under the Protection against Discrimination Act – only if the rapporteur to the case is objectively impeded to do it by state or local authorities and it poses an impediment to clarify the factual evidence under the case.

Question C

THE LABOUR CODE

Article 8.

(3) (Amend. – SG, issue 100 of 1992, Amend. – SG, issue 25 of 2001, in force as from 31.03.2001, Amend. – SG, issue 52 of 2004, in force as from 01.08.2004) 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.

Paragraph 3 under Article 8 of the Labour Code provides for equal treatment of the workers and the employees in exercising their rights and duties under the employment relationship. This provision prohibits discrimination, privileges or limitations in the rights and duties, on the grounds of criteria basically unrelated to the nature of work and the required qualifications, but to grounds far beyond the employment relationship, in the sense of the provisions under this law. The grounds as set forth share a common idea: ban on discrimination in employment relationships, in line with Convention № 111 from 1958 of the International Labour Organization, ratified by Bulgaria.

THE LABOUR CODE

Nullity

Article 74. (1) (Amend. – SG, issue 100 of 1992) An employment contract which contradicts the law or a collective agreement, or circumvents them, shall be null and void.

(2) (Amend. – SG, issue 100 of 1992) The employment contract shall be declared null and void by the court pursuant to chapter eighteen. In case the employment contract is null and void due to the appointment of a worker or an employee who has not reached the age required under this Code, the nullity shall be declared by the labour inspection.

(3) (Amend. – SG, issue 100 of 1992) Wherever a control or another competent body considers that the employment contract is null and void on one of the grounds laid down in paragraph 1, it shall immediately inform the Court to deliver a judgment on the validity of the employment contract.

(4) Individual provisions of the employment contract may be declared null and void pursuant to the first sentence of paragraph 2. The relevant mandatory provisions of the law or the terms and conditions as set forth under the collective agreement shall apply instead.

(5) The parties shall not refer to nullity of the employment contract or individual provisions thereof prior to its declaration and the delivery of the decision to the parties.

(6) (Amend. – SG, issue 100 of 1992) The nullity shall not be declared if the defect in the employment contract is invalidated or is removed. The employer shall not refer to a defect in the employment contract that may be removed.

(7) (Amend. – SG, issue 100 of 1992) Wherever the nullity of an employment contract has been declared the provisions as set forth under Article 333 shall not apply.

Relationship between the parties in case of a null and void employment contract

Article 75. (1) Wherever the employment contract is declared null and void and the worker or the employee has acted in *bona fide* when concluding it, the relationship between the parties to the contract until the declaration of its nullity shall be regulated in the same manner as in the case of a valid employment contract.

(2) The preceding paragraph shall also apply where individual provisions of the employment contract are declared null and void.

Applicability of the provisions to nullity of an employment contract

Article 76. The rules on nullity of an employment contract shall apply mutatis mutandis to the other grounds for establishment of an employment relationship as well.

Claim for declaration of nullity

Article 60. (Repealed – SG, issue 100 of 1992, new, issue 25 of 2001) Any of the parties to the collective agreement, as well as any worker or employee to whom the collective agreement is applied, shall have the right of filing a claim to the court for declaration of nullity of the collective agreement or of single provisions if they contradict the law or circumvent it.

Question D

PROTECTION AGAINST DISCRIMINATION ACT

Article 50. Proceedings before the Commission for Protection against Discrimination shall be instituted:

1. upon a complaint filed by the affected persons;

2. upon initiative of the Commission;

3. upon signals from natural or legal persons, state and local self-government bodies.

...

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 prevention of discrimination;

2. to suspend the execution of illegal decisions or orders of employers or officials, which lead or may lead to discrimination.

The values and principles of the democratic society, in particular the principle of equality and non-discrimination, as well as the international standards in the field of human rights, protection of children and protection of minorities, lay in the foundations of the Bulgarian legislation and regulations adopted in recent years. The Protection against Discrimination Act defines the various forms thereof and the lawmaker envisages it as a means of prevention of any acts of discrimination. An important factor for succeeding in the continuous fight against the discrimination is **the prevention**.

In relation thereto, as well as in response to the necessity to undertake a set of measures to conduct a policy of prevention and protection against discrimination, the Commission for Protection against Discrimination adopted **its long-term Strategy and Action Plan against Discrimination 2006-2010**, defining the following priorities:

1. Conduction of a research and analysis on the indications of discrimination;

2. Organization and conduction of an information awareness campaign for the application of anti-discrimination legislative framework;

3. Creation of a database in assistance of the Bulgarian anti-discrimination enforcement agencies;

4. Establishment of partnerships with non-governmental organizations, enforcement bodies and official authorities;

5. Introduction of a sustainable practice to enforce effectively the anti-discrimination legislation and regulations;

6. Conduction of topical monitoring;

7. Participation in international initiatives organized by the European Union (EU) and organization of the *Year of Equal Opportunities for All,* upon the initiative of the European Commission;

8. Involvement of media as partners in the activities against the discrimination, establishment of active cooperation with national and international media as partners in the prevention and the fight against the discrimination.

Question E

There has been no change in comparison to the previous report.

Question F

Amendments to THE LABOUR CODE

Leave due to pregnancy, childbirth and adoption

Article 163. (1) (Amend. – SG, issue 100 of 1992, Amend. – SG, issue 110 of 1999, in force as from 1.01.2000, Amend. – SG, issue 52 of 2004, in force as from 01.08.2004, Amend. – SG, issue 68 of 2006, in force as from 01.01.2007) The worker or the employee shall be entitled to a leave for pregnancy and childbirth amounting to 315 days for each child, including 45 days that shall be used mandatory before the childbirth.

...

(6) (Amend. – SG, issue 100 of 1992, Amend. – SG, issue 48 of 2006, in force as from 01.07.2006) A worker or an employee who adopts a child shall be entitled to a leave under paragraph 1 in an amount equal to the difference between the child's age on the day when it was given up for adoption until the expiration of the period of the leave due for childbirth.

...

(8) (New – SG, issue 68 of 2006, in force as from 01.01.2007) The terms and conditions to use a leave under Paragraph 1 shall be set forth under a decree of the Council of Ministers.

Protection against dismissal

Article 333.

(5) (New – SG, issue 52 of 2004, in force as from 01.08.2004, Amend. – SG, issue 46 of 2007, in force as from 01.01.2008) A pregnant female worker or employee may be dismissed with a notice only pursuant to Article 328, Paragraph 1, Item 1, Item 7, Item 8 and Item 12, and without a notice pursuant to Article 330, Paragraph 1 and Paragraph 2, Item 6. In the cases under Article 330, Paragraph 2, Item 6 the dismissal could be effected only with prior consent of the labour inspectorate.

Question G

Ordinance № 4 dated 30 March 2004 on the types of occupations or activities due to the nature or conditions at work thereof the sex is substantial and definitive occupational requirement in the sense of Article 7, Paragraph 1, Item 2 of the Protection against Discrimination Act

List of the types of occupations or activities due to which nature or conditions at work the sex is substantial and definitive occupational requirement

I. Types of occupations:

1. Actors
2. Dancing partners
3. Demonstrators
4. Models
5. Singers
6. Professional sportsmen
7. Dancers
8. Bath attendants
9. Photo models

II. Types of activities:

1. Posing for pictures, photographs, sculptures or any other type of activity related to posing for a piece of art.
2. Conducting of a police search or raid.

Ordinance № 14 dated 18 October 2005 on the types of activities under regular military service at the Armed Forces due to the nature or conditions at work thereof the sex is substantial and definitive occupational requirement in the sense of Article 7, Paragraph 1, Item 2 of the Protection against Discrimination Act

List of the activities under regular military service at the Armed Forces due to the nature or conditions at work thereof the sex is substantial and definitive occupational requirement

1. Conducting of a police search or raid.
2. Managing and servicing of underwater boats.
3. Presenting arms by the honorary guard paying honors by the units of the National Guard Forces.

Question H

PROTECTION AGAINST DISCRIMINATION ACT

Article 24. (1) The employer must, at the beginning of the employment, whenever 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 shall be obliged, under 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 job or position.

...

Article 39. (1) (Amend. – SG, issue 68 of 2006) If the candidates for a position in the administration are equal in view of the requirements for occupying the position, the state and public bodies and the bodies of local self-government shall employ the candidate of the under represented sex.

(2) (New – SG, issue 68 of 2006) Upon appearance of specific circumstances in view of the equal candidate of the over-represented sex, beyond the requirements for the respective job position, this candidate shall be appointed only provided that it is not an act of discrimination in view of the candidate of the under represented sex.

(3) (Previous Paragraph 2, Amend. and suppl. – SG, issue 68 of 2006) Paragraph 1 and Paragraph 2 shall apply also in the selection of participants or board members, expert

working groups, governing, counselor or other bodies, unless those participants are determined my means of election and competition.

...

Additional provisions

§ 1. For the purpose of this Law:

15. (New – SG, issue 68 of 2006) "Special circumstances" are circumstances related to a specific social, health and family status, age and other similar circumstances that do not lead to discrimination on the grounds of sex.

Question I

a.

MAIN RESULTS FROM THE MONITORING ON THE LABOUR FORCE IN 2006

Labour force and rates of economic activity, employment and unemployment in 2006 by place of residence and by sex (average annual data)

Place of residence / Sex	Labour force			Persons not in labour force	Economic activity rate	Employ-ment rate	Unemploy-ment rate
	Total	Employed	Unemployed				
	thousands				%		
Total	**3 415.7**	**3 110.0**	**305.7**	**3 243.5**	**51.3**	**46.7**	**9.0**
Men	1 809.2	1 652.8	156.4	1 383.7	56.7	51.8	8.6
Women	1 606.5	1 457.2	149.3	1 859.7	46.3	42.0	9.3
Urban	**2 604.7**	**2 409.4**	**195.3**	**2 065.2**	**55.8**	**51.6**	**7.5**
Men	1 350.5	1 253.3	97.2	870.4	60.8	56.4	7.2
Women	1 254.2	1 156.1	98.1	1 194.8	51.2	47.2	7.8
Rural	**811.0**	**700.6**	**110.4**	**1 178.3**	**40.8**	**35.2**	**13.6**
Men	458.6	399.5	59.2	513.3	47.2	41.1	12.9
Women	352.4	301.1	51.2	664.9	34.6	29.6	14.5

Main labour force indicators and rates of economic activity among the population aged 15 and more years in 2005 and 2006 (average annual data)

Indicators	2005	2006	Changes 2006 – 2005
Labour force - thousands	**3 314.2**	**3 415.7**	**101.5**
Men	1 773.9	1 809.2	35.3
Women	1 540.3	1 606.5	66.2
Economic activity rate - %	**49.7**	**51.3**	**1.6**
Men	55.4	56.7	1.3
Women	44.4	46.3	1.9
Employed - thousands	**2 980.0**	**3 110.0**	**130.0**
Men	1 591.4	1 652.8	61.4
Women	1 388.7	1 457.2	68.5
Employment rate - %	**44.7**	**46.7**	**2.0**
Men	49.7	51.8	2.1
Women	40.0	42.0	2.0

Number of unemployed - thousands	**334.2**	**305.7**	**-28.5**
Men	182.5	156.4	-26.1
Women	151.6	149.3	-2.3
Youth unemployment (from 15 to 24 years of age)	65.3	58.3	-7.0
Unemployment rate - %	**10.1**	**9.0**	**-1.1**
Men	10.3	8.6	-1.7
Women	9.8	9.3	-0.5
Youth unemployment (from 15 to 24 years of age)	22.3	19.5	-2.8
Long term unemployed - % of total unemployment- %	**59.7**	**55.8**	**-3.9**
Discouraged - thousands	**344.5**	**270.5**	**-74.0**

MAIN RESULTS FROM THE MONITORING ON THE LABOUR FORCE IN THE FIRST QUARTER OF 2007

I. Main indicators of the labour force during the first quarter of 2007

According to the results from the regular monitoring conducted by the National Statistics Institute (NSI) on the labour force during the first quarter of 2007 **the economically active population (the labour force) in the country amounts to 3,408,100, including 1,805,900 men and 1,602,200 women. The percentage of the economically active population at the age of 15 and more years stands at 51.3%, respectively 56.8% for men and 46.4% for women.**

The economically active population at the age from 15 to 64 years amounts to 3,370,500, including 1,779,300 men and 1,591,200 women. The economic activity rate for this age group stands at 64.9%, respectively 69.4% for men and 60.5% for women.

During the first quarter of 2007 the employed persons accounted for 3,135,400, which is 47.2% of the population at the age of 15 and more years. This rate includes 1,667,400 men (53.2%) and 1,467,900 women (46.8%). The employment rates by sex stand respectively at 52.4% and 42.5%. The urban share of employment among the population at the age of 15 and more years (52.4%) is higher by 17.7% than the rural share of employment (34.7%).

The employed persons at the age from 15 to 64 years account for 3,099,200, including 1,642,000 men and 1,457,200 women. The employment rate for this age group stands at 59.7%, whereby with men (64.1%) this rate is higher by 8.7 than the same rate with women (55.4%).

The total number of employment engaged persons includes 121,900 (3.9%) employers, 218,800 (7.0%) self-employed (not employers), 2,762,300 (88.1%) employed persons and 32,400 (1.0%) unpaid household workers. The total number of employed persons includes 840,600 (30.4%) in the public sector and 1,921,700 (69.6%) in the private sector.

The services sector gives employment to a total of 1,800,100 persons (57.4% of the employed individuals), the industry sector gives employment to 1,125,500 persons (35.9%), while the sectors of agriculture and forestry give employment to 209,900 persons (6.7%).

During the first quarter of 2007 the unemployed persons accounted for 272,700 or 8.0% of the economically active population. The unemployed men account for 138,500 and the unemployed women account for 134,200. The rates of unemployment as per sex stand at respectively 7.7% for men and 8.4% for women. The unemployment is considerably higher in the rural areas (13.3%) in comparison to urban areas (6.4%).

The unemployed persons at the age from 15 to 64 years account for 271,300 and the unemployment rate as per this age group stands at 8.0%. The unemployed persons at the age from 15 to 24 years account for 45,700, whereas the youth unemployment rate reaches 16.0%.

With regard to the unemployed persons 8.9% have higher education, 47.0% have secondary education and 44.1% have elementary or lower education.

The total number of unemployed persons includes 151,700 or 55.6%, with period of unemployment of at least one or more years, whereby in rural areas this share reaches 60.6%. The rate of long-term unemployment (the percentage share of long-term unemployed persons pertaining to the economically active population) stands at 4.5%, whereby in urban areas it reaches 3.4% and in rural areas – 8.1%.

Previous labour experience is found with 221,500 or 81.2% of the unemployed individuals, while 51,200 or 18.8% have no labour experience.

In seeking jobs a total of 173,700 (63.7%) of the unemployed persons seek assistance from relatives and friends, 125,700 (46.1%) contact the labour offices, 117,500 (43.1%) seek direct contact with an employer, 94,200 (34.5%) search job announcements and other sources informing of job vacancies. (The data herein imply the use of only one method of job seeking per person.)

During the first quarter of 2007, the persons who are not part of the labour force (economically inactive population) at the age of 15 and more years account for 3,230,100 or 48.7% of the population at this age group. They include 1,375,700 men and 1,854,400 women.

The economically inactive population at the age from 15 to 64 years accounts for 1,821,300 or 35.1% of the population at this age group.

The total number of job-seeking discouraged individuals (people willing to work, but not seeking actively job) stands at 227,400, including 119,200 men and 108,200 women. The job-seeking discouraged individuals have lower education than the unemployed individuals - 55.3% of them have elementary or lower education and only 5.7% have higher education.

Labour force and rates of economic activity, employment and unemployment during the first quarter of 2007 by place of residence and by sex (average annual data)

Place of residence Sex	Labour force			Persons not in labour force	Economic activity rate	Employ-ment rate	Unemploy-ment rate
	Total	Employed	Unemployed				
	thousands				%		
Total	**3 408.1**	**3 135.4**	**272.7**	**3 230.1**	**51.3**	**47.2**	**8.0**
Men	1 805.9	1 667.4	138.5	1 375.7	56.8	52.4	7.7
Women	1 602.2	1 467.9	134.2	1 854.4	46.4	42.5	8.4
Urban	**2 625.5**	**2 457.3**	**168.3**	**2 061.0**	**56.0**	**52.4**	**6.4**
Men	1 364.3	1 280.3	84.0	864.6	61.2	57.4	6.2
Women	1 261.2	1 176.9	84.3	1 196.4	51.3	47.9	6.7
Rural	**782.6**	**678.1**	**104.4**	**1 169.1**	**40.1**	**34.7**	**13.3**
Men	441.6	387.1	54.5	511.1	46.4	40.6	12.3
Women	340.9	291.0	49.9	658.0	34.1	29.1	14.6

II. Comparison of the main indicators from the monitoring on the labour force during the first quarter of 2006 and the first quarter of 2007

The year-on-year period comprising the first quarter of 2006 and the first quarter of 2007 is specific with considerable rise in the rate of employment. The number of the employed persons increased by 194,900, while the employment rate rose by 3.0%. The highest increase in employment is seen in the construction sector.

The unemployed persons decreased by 42,500 and the unemployment rate shrank by 1.7%.

The job-seeking discouraged persons accounted for 97,600 less year-on-year basis (first quarter of 2006 / first quarter of 2007).

Main indicators on economically active population at the age of 15 and more years during the first quarter of 2006 and the first quarter of 2007

Indicators	First quarter 2006	First quarter 2007	Change (First quarter 2007 - First quarter 2006)
Labour force - thousands	**3 255.7**	**3 408.1**	**152.4**
Men	1 727.9	1 805.9	78.0
Women	1 527.8	1 602.2	74.4
Rate of economically active population - %	**48.9**	**51.3**	**2.4**
Men	54.1	56.8	2.7
Women	44.1	46.4	2.3
Employed - thousands	**2 940.5**	**3 135.4**	**194.9**
Men	1 563.2	1 667.4	104.2
Women	1 377.2	1 467.9	90.7
Employment rate - %	**44.2**	**47.2**	**3.0**
Men	49.0	52.4	3.4
Women	39.7	42.5	2.8
Unemployed - thousands	**315.2**	**272.7**	**-42.5**
Men	164.7	138.5	-26.2
Women	150.6	134.2	-16.4
Youth unemployment (from 15 to 24 years of age)	57.0	45.7	-11.3
Unemployment rate - %	**9.7**	**8.0**	**-1.7**
Men	9.5	7.7	-1.8
Women	9.9	8.4	-1.5
Youth unemployment (from 15 to 24 years of age)	20.9	16.0	-4.9
Long term unemployed - % of total unemployment- %	**57.0**	**55.6**	**-1.4**
Discouraged - thousands	**325.0**	**227.4**	**-97.6**

b.

There has been no change in comparison to the previous report.

Please refer to the reply to the supplementary questions of the European Committee of Social Rights under Article 24 of the ESC (revised) – Article 68 of the Labour Code.

d.

Appendix 2: Table № 1 and Table № 2.

Question J

Projects and programmes on the labour market aimed to strengthen the equality between men and women

The sustainable economic growth observed over the last few years and the stable macroeconomic environment benefit the development of the national labour market. In 2006, the largest conceivable increase in the employment has been observed for the last half a decade both in terms of absolute and in percentage figures. The average annual number of employed stands at 3,110,000 or by 130,000 (4.4%) more in comparison to 2005, according to the data from the Labour Force Monitoring conducted regularly by the National Statistics Institute. Particular factors affecting the rising rate of employment include the increased economic activity, the reduction in the social security burden on the employers and the opening of new workplaces in the private sector. The employment rate with women (aged 15-64) is also on the rise reaching 54.6% in 2006. It has increased by 8.3% compared to 2000. The difference in the structure of employment as per sex in 2006 compared to previous years stands at 8.2%. The employment rate with men (aged 15-64) stood at 62.8% in 2006.

The National Action Plan on Employment 2007 envisages projects and programmes aimed to achieve a better balance between the private and professional life of the population. 2007 is marked with the launch of the **National Programme "In Support of Motherhood"**. The new programme aims to promote the professional development of mothers by providing good care to their babies within the period of allowed leave pursuant to Article 164, Paragraph 1 of the Labour Code. The implementation of the programme creates conditions for return of the mothers into employment environment by employing jobless people to take care after the children. On one hand, this is a way to achieve better harmonization of the professional and personal life of women and to ensure a smooth transition between the period of birth and employment, and on the other hand it opens new job places to be filled in by unemployed jobseekers.

The programme comprises mothers / adopting mothers entitled to a leave for raising a small child as set forth under Article 164, Paragraph 1 of the Labour Code, and those entitled to compensation under Article 53, Paragraph 1 or under Article 54, Paragraph 1 of the Social Security Code, as well as self-insurers insured against the risk "motherhood". Babysitters under this programme can be unemployed persons registered at a labour office. The term of the employment contracts shall cover the duration of the leave for raising a small child, i.e. within the period matching the age of the child – from 10 months to 2 years. In compliance with the amendments to the Social Security Code (SG, issue 68 of 2006) mothers included in the programme "In Support of Motherhood" shall not be entitled to receive one-off indemnities for raising a small child and one-off indemnities upon using the supplementary paid leave for raising a small child. The economized funds are redirected to finance the remuneration of the unemployed people engaged with babysitting of small children of such mothers.

The programme "In Support of Motherhood" forms part of the National Employment Action Plan 2007 and its implementation is financially secured. Pursuant to the State Social Security Budget Act 2007, the National Social Security Institute shall submit via bank transfer to the budget of the Ministry of Labour and Social Policy, up to every 10th day of the calendar month following the respective quarter, the required finances from the Fund "General Illness and Motherhood" to the amount of the cash benefit for raising a small child as set forth pursuant to Article 53 of the Social Security Code for each person actually employed under this programme. By the budget of the Ministry of Labour and Social Policy allotted to finance active policies are funded any supplementary payments due under the actual labour and social security legislation and regulations. According to data by the Employment Agency, as of 30.06.2007, the programme has created employment for 255 unemployed persons and their number is expected yet to increase.

In 2007, the project **"Family Centers for Children"** continues to be implemented as it is aimed to provide employment for jobless women engaged in raising the children of working parents in an environment as close to the family climate as possible. The target group under the project includes unemployed nurses, jobless teachers (pre-school and elementary pedagogy), as well as women experienced in the delivery of social services. These family centers for children are opened at the homes of the unemployed women, which have to meet basic requirements of being suitable to raise children aged 1-3 years and aged 3-5 years. The state allots the funds necessary to pay out the remunerations and social security contributions of babysitters from the budget of the Ministry of Labour and Social Policy allotted to finance active policies. Partners under this project are municipalities engaged with assistance in equipping the family centers and delivering at least one meal a day.

The National Employment Action Plan 2007 provides financial resources to implement the project. The state allots the funds necessary to pay out the remunerations and social security contributions of babysitters from the budget of the Ministry of Labour and Social Policy allotted to finance active policies. As of 30.06.2007 a total of nine family centers have been opened and are functioning, including in the cities of Vidin – 1 centre, Vratsa – 2 centers, Dobritch – 1 centre, Pazardzhik – 3 centers, Sliven – 1 centre and Shumen – 1 centre.

The participation of women on the labour market is promoted by inclusion of women in programmes for employment and occupational qualifications. For the period January-June 2007 the employment projects and programmes under implementation involved a total of 38,505 women and 3,384 women took part in occupational qualification trainings.

Questions of the European Committee of Social Rights

The Committee wishes to receive information on the number of cases concerning sex discrimination dealt with by the Commission for the next reference period as well as the sanctions imposed.

The proceedings in protection against discrimination in front of the Commission for Protection against Discrimination reveal a trend towards progressive increase of these cases compared to 2005. The factors affecting this trend are numerous, but the most important among them is the social direction of the proceedings applied under Chapter Four, Section First of the Protection against Discrimination Act. It provides for exemption of the complainants from payment of state fees upon opening of the proceedings. The

expenses incurred during the proceedings shall be covered by the budget of the Commission for Protection against Discrimination.

Given the low social status of the majority of people affected by acts of discrimination and victims to unequal treatment, in the general case when the complainant's domicile is located far from the headquarters of the Commission for Protection against Discrimination, the decision of the Bulgarian lawmaker to provide for such exemption proves quite reasonable. The combination of these and other reasons has increased the public expectations towards the work of the Commission for Protection against Discrimination and it is now perceived as an official public institution providing for a real, effective and almost immediate mechanism to solve civil claims within shortest terms possible.

The trend towards progressive increase of the proceeding cases is explicit evidence in the strengthened trust in this institution, which seeks now the accomplishment of the strategic purpose to become a key gear within the national mechanism for fight and prevention of the discrimination to become eventually part of the European Community mechanism for fight against unequal treatment.

During the reference period (2006) the records' office of the Commission for Protection against Discrimination received and processed a total of 389 complaints and signals. In response the Chairman of the Commission for Protection against Discrimination has order to start investigation under 220 of all filed complaints and signals, while the rest are refused to be processed .

The cases are distributed among the *special permanent panels* of the Commission for Protection against Discrimination, as follows:

• First Special Permanent Panel – on the grounds of: "ethnic origin and race";

• Second Special Permanent Panel – on the grounds of: "sex", "human genome" and protection of the right to work;

• Third Special Permanent Panel – on the grounds of: "nationality", "citizneship", "origin" and „"religion or belief";

• Fourth Special Permanent Panel – on the grounds of: "education", "opinions", "political belonging", "personal or public status" and "property status";

• Fifth Special Permanent Panel – on the grounds of: "disability", "age", "sexual orientation" and "marital status".

The Commission for Protection against Discrimination has ruled on the merits by adopting decisions and orders on a total of **62 (sixty two)** cases. A total of **6 (six)** mandatory prescriptions have been issued.

In relation with the work on the cases in particular the various panels at the Commission for Protection against Discrimination have held **126** open-door and **4** closed-door sessions.

The final ruling of the Commission for Protection against Discrimination shall always include a conclusion on whether the right to equal treatment was violated or not. The final acts and the acts impeding further actions under the proceedings can be appealed before the Supreme Administrative Court. In this aspect during the reference period the Commission for Protection against Discrimination has ruled via the following acts in the cases provided for under Article 20 of the European Social Charter:

• **Decision № 1 dated 27.02.2006 of Third Special Permanent Panel – no direct discrimination is found** as deriving from violation of the provisions under Article 13, Article 14, Article 21 and Article 26 **(Protection of the labour rights)**, there is no direct discrimination in relation with the introduced contribution to join to the Collective Labour Agreement; **unequal treatment was found** in relation with violation of Article 57,

Paragraph 2 of the Labour Code upon filing a written request on behalf of the workers and the employees expressing their will to join the Collective Labour Agreement, **there is violation of a right** leading to **direct discrimination** in view of the workers and the employees who are not members of trade union organizations, as well as the workers and the employees who are not members of trade union organizations, but have joined the Collective Labour Agreement pursuant to Article 57, Paragraph 2 of the Labour Code, due to absence of their representatives in the distribution of collected contributions for social activities.

• **Decision № 29 dated 04.07.2006 of Second Special Permanent Panel** concerning a request to confirm direct discrimination in the sense of Article 4, Paragraph 1 of the Protection against Discrimination Act, and a claim that the employer has violated the principle of equal treatment by failing to secure equal payment for equal work in the sense of Article 14, Paragraph1 of the Protection against Discrimination Act. **Direct discrimination was found in the sense of Article 4, Paragraph 2 of the Protection against Discrimination Act and** systematical unequal treatment in violation of Article 14, Paragraph 1 of the Protection against Discrimination Act. **The claim for payment of indemnities is rejected** as it was submitted for incurred damages due to lacking competences of the Commission for Protection against Discrimination to consider such claims pursuant to **Article 65 in relation with Article 71 of the Protection against Discrimination Act. It prescribes pursuant to Article 76, Paragraph 1, Item 2 of the Protection against Discrimination Act** that the employer undertakes all necessary steps to discontinue the unequal treatment of the workers and the employees on the grounds of **sex** so far as they contribute the same work to the same workplace and on the same job position. The Collective Labour Agreement has to be supplemented with explicit provisions guaranteeing the observation of the equal payment principle for equal work and work of equal value in the sense of Article14, Paragraph 1 and Paragraph 2 of the Protection against Discrimination Act ensuring that no act of discrimination is allowed, no matter the grounds, including on the grounds of sex.

• **Decision № 51 dated 14.11.2006 of Second Special Permanent Panel, on the grounds of "labour rights". It confirms already concluded agreement.**

• **Decision № 53 dated 14.11.2006 of Second Special Permanent Panel** upon a request to introduce, on a regular basis, at Sofia University "St. Kliment Ohridsky" the practice of quotas **on the grounds of sex** for Bulgarian Philology. It was found that the practice at Sofia University "St. Kliment Ohridsky to admit students of Bulgarian Philology on a quota principle as per sex **does not represent discrimination** in the sense of Article 4, Paragraph 1 of the Protection against Discrimination Act.

The analysis made on the activities of the Commission for Protection against Discrimination leads to the conclusion that the least number of acts adopted by the Commission for Protection against Discrimination concern claims submitted to find discrimination on the grounds of "age", "citizenship", "sex", "social status" and "education" – one on each ground thereof.

With regard to the acts adopted on claims for discrimination on the grounds of **labour rights,** this sector reveals a trend toward an increasing number of complaints and signal submitted to the Commission for Protection against Discrimination on these grounds as set forth under the Labour Code and the PDA. In relation with this trend and the adopted **Action Plan for Fight against Discrimination 2006-2010,** the Commission for Protection against Discrimination will focus in its activities on prevention. It will come in line with the EU practice of working with the representative organizations of employers and some other events in the form of educational and information seminars and meetings aimed to prevent acts of discrimination while exercising labour rights pursuant to the grounds as set

forth under Article 4 of the Protection against Discrimination Act. The partners shall then discuss the s**o-called "positive actions" referring to socially vulnerable individuals that may take the form of initiatives for education and promotion on the labour market.**

The Committee recalls from its conclusion under Article 1§2 that in Bulgaria persons who suffer discriminatory dismissal may be reinstated in their previous post and are entitled to damages up to a maximum of six months wages.
The Committee asks for information on the existence of ceilings to compensation where an employee has been discriminated.

Court proceedings are provided for claims for compensation for damages incurred in case of discriminatory dismissal under the Protection against Discrimination Act. The compensation for damages as set forth under Article 71, Paragraph 1, Item 3 of the Protection against Discrimination Act has no upper limit set.

PROTECTION AGAINST DISCRIMINATION ACT

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:

3. compensations for damages.

The Committee notes that the principle of equal pay for work of equal value is guaranteed by the Labour Code. The Committee recalls that in the General Introduction to Conclusions 2002 on the Revised Charter it indicated that "since the right to equality under Article 20 covers remuneration, the Committee will no longer examine the national situation in this respect under Article 4§3 (right to equal pay). Consequently, States which have accepted both provisions, are no longer required to submit a report on the application of Article 4§3". The Committee therefore asks the next report on Article 20 to provide detailed information on how equal treatment is guaranteed in law and practice as well as information on pay comparisons across occupational boundaries and collective agreement beyond individual firms.

The Protection against Discrimination Act regulates matters in the field of the discrimination in all its forms and activities, as well as unequal treatment concerning the labour rights in the field of all professions and also in terms of unequal treatment in payment.

The provisions under Article 4, Paragraph 1 of the Protection against Discrimination Act details explicitly 19 grounds or any other grounds as they may be set forth in a law or an international treaty the Republic of Bulgaria forms part to. The discrimination at the exercise of labour rights has been formulated independently in Chapter Two under Section I of the Protection against Discrimination Act. Discrimination in the employment relationships could be detected also in combination with other grounds, such as membership in trade unions, sex, ethnic origin, age, family status, religion or belief, citizenship, education and other grounds. In this sense, the practice the Commission for Protection against Discrimination concerning the protection of the labour rights appears in a large part of the complaints as "multiple discrimination". Apart from this, the discrimination at the exercise of labour rights could be detected also in the form of "harassment on the workplace", whereas the term "harassment" has its legal definition under § 1, Item 1 of the Additional Provisions to the Protection against Discrimination Act: "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." Hence it is inapplicable to provide a unilateral response to the issue "concerning the equality in payment" within the context of the Commission for Protection against Discrimination practice.

Examples could be given as herein below:

1. **Decision № 029 dated 04.07.2006** to file № 25 under the inventory list of the Commission for Protection against Discrimination for 2006, rule on the complaint submitted by Habibe Mustedjeb Mehmed against the employer Devnya Cement AD. The complaint refers to alleged violation of the right to equal payment for equal work in the sense of Article 14, Paragraph 1 of the Protection against Discrimination Act. The discrimination affecting the claimant concerned is on the grounds of the right to work and on the grounds of sex in the definition of lower remuneration for equal work.

2. This is also the case with the complaint submitted by Georgi Zlatev Ivanov against the employer Alcomet AD for failure to increase his remuneration as confirmed under Decision № 32 dated 17.07.2006.

3. Another case demonstrating the variety of real-life situations in the violation of the right to work and the inequality of payment, which is an element of the labour rights, is a signal submitted by thirteen citizens working under employment contracts on additional payroll at the Ministry of Defense. The complaint of discrimination on the grounds of "the exercise of the right to work" claims that the servants employed on standard payroll in the Bulgarian Army perform the same duties as they do but have no limitation in the remuneration, as such limitation has been introduced under *Decree № 66 of the Council of Ministers dated 28 March 1996 on payroll supply for certain activities in the state budget organizations,* latest amendment promulgated in the SG, issue 100 dated 13.12.2005. This Decree regulates the appointment of persons under employment contracts to meet the needs of budget organizations beyond the established annual staff payroll, which cannot exceed 10% of the established annual staff payroll of the respective authorities. For these additional servants a separate payroll is formulated. The size of remuneration shall not exceed BGN 180, considerably lower than the remuneration of servants on the main payroll list. Hence the Commission for Protection against Discrimination adopted Decision № 40 dated 07.05.2007 to file №30 under the inventory list of CPD for 2007 making a recommendation to the Council of Minister to cancel these discriminatory provisions in *Decree № 66 of the Council of Ministers dated 28 March 1996 on payroll supply for certain activities in the state budget organizations*, as well as in any subsequent regulations adopted on the basis thereof by other competent ministries by virtue of the provisions under Article 14 and Article 15 of the Protection against Discrimination Act. Pursuant to the provisions as set forth under Article 14, the employer shall pay equal remuneration for equal work or work of equal value. The criteria of labour assessment in terms of labour remuneration and the assessment of the work performance shall be equal for all workers and employees and shall be defined under the collective labour agreements or under the internal rules for salaries, or pursuant to the applicable regulations and the procedures to attest the civil servants without taking into consideration the grounds as set forth under Article 4, Paragraph 1. The provisions as set forth under Article 15 of the Protection against Discrimination Act envisage that the employer shall ensure for all workers and employees equal opportunities without taking into consideration the grounds under Article 4, Paragraph 1 about occupational education and improvement of the professional qualifications and re-qualifications, as well as for professional career and promotion in job or degree, by applying equal criteria in the assessment of their activities.

4. Another possibility is the hypothesis that the affected person on the grounds of discrimination concludes an agreement with the perpetrator of the act of discrimination as

part of the proceedings for protection against discrimination with the Commission for Protection against Discrimination. An example thereof is the complaint submitted by Dr. P. Stefanova against her employer Dr. Kouzeva on the grounds of "harassment" at the exercise of her right to work. During the open proceedings the two parties sign an agreement approved under Decision № 51 dated 14.11.2006 to file №71 under the inventory list of the Commission for Protection against Discrimination (CPD) for 2006.

5. An ultimate hypothesis of discrimination at the exercise of labour rights is a unilateral dismissal of the worker in view of the discretionary powers invested to the employer and the fact that the right to dismissal is subjective and exercised by means of a unilateral written order issued by the employer. Taking into consideration the less favorable position of the worker or the employee, there are often cases of unlawful dismissal as an expression of discrimination. Examples thereof are the complaints of two trade union leaders who worked at BTC Commerce AD and were dismissed due to their trade unionist belonging, in this way violating their labour rights. The Commission for Protection against Discrimination has found discrimination in the relationships between the claimants and the employer, in the face of the executive director of BTC Contact AD and ultimately fined him.

6. The exercise of the right to work can be combined also with the ground disability. An example thereof is the complaint submitted by N. Yanakieva against the employer, the director of a secondary school, A. Polishtuk who under a selection of staff during layoffs aimed to reduce staff, has not applied the criteria of equality as set forth under the Labour Code. In this case, the Commission for Protection against Discrimination adopted Decision № 26 dated 17.04.2007 to file №169 under the inventory list of the Commission for Protection against Discrimination for 2006 ruling that an act of discrimination was incurred under a selection of staff during teachers' layoffs, hence the director of the school was fined.

The Committee considers specific protection measures related to pregnancy and the post-natal period under Article 8 of the Revised Charter (Conclusions 2005).
According to the report there are no occupations or activities exclusively reserved for one gender or the other. However exceptions to the prohibition of discrimination may be made for genuine occupational requirements. The list of activities for which gender is a genuine and determining professional requirement is determined by an ordinance of the Minister of Labour and Social Policy, such an Ordinance was adopted in March 2004. The Committee asks for information of the content of the list.

See reply to **Question G.**

Place of the women in employment and education

According to the National Statistical Institute in 2003 45.5 % of the economically active population aged 15 or over is female. The percentage of employed persons is 42.2 % of the total population, the percentage of employed males is 46.8 % and percentage of employed females is 38.4 %. The total unemployment rate amounted to 13.7 % with male unemployment amounting to 14.1 % and female 13.2 %. In 2004 the share of the economically active population was 49.7 %. the male employment rate was 48.4 %
and female employment rate was 39.5 %. The total unemployment rate amounted to 12 % with male unemployment amounting to 12.5 % and female 11.5 %. The wage gap between men and women amounts to 26 %. This is partly explained by the fact

that women are predominantly employed in lower paid sectors, such as education, healthcare and social services. The Committee wishes to receive information on measures taken to reduce the wage gap.

The difference in remuneration with men and with women is not due to discrimination in payment, but due to the fact that women in general are employed at sectors where the rate of remuneration is lower compared to remuneration with men and that women are largely represented in sectors with lower levels of remuneration. In order to overcome the obstacles on the way of normal work experience for women, the efforts of the Ministry of Labour and Social Policy are mainstreamed to develop and implement measures guaranteeing the quality of women on the labour market (as quoted in the reply to Question J).

We would like to note the provisions as set forth under Paragraph 3 of Article 14 of the Protection against Discrimination Act, namely: "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 conditions and orders for assessment of the servants in the state administration with no reference to the grounds under Article 4, paragraph 1." In this way, the law provides for **the principle of equality in remuneration**.

In order to overcome the obstacles on the way of normal work experience for women, the policies of the Ministry of Labour and Social Policy are mainstreamed to develop and undertake measures:

- To limit the impact of the factors defining the low economic activity of women and their capacity of employment;
- To implement a system of indicators to track down the status and the trends in terms of the equality among the various social groups;
- To improve the competitiveness on the labour market for categories of women in disadvantaged position on the labour market by improving the occupational qualification in view with the changing requirements towards the labour force;
- To formulate an attitude among the women towards entrepreneurship;
- To promote the mobility among economic sectors or sub-sectors and professions in order to limit the sectoral distribution on the grounds of sex with the purpose to cut the difference in labour remuneration for women and men;
- To overcome the gender stereotypes on the labour market and to root out the negative trends among the employers towards the female labour force;
- To increase the share of flexible employment forms in order to promote the harmonization of family and occupational duties.

In order to implement these specific measures it is crucial to involve the social dialogue and to undertake common activities with the social partners for the establishment of equality among men and women. In support to these activities, special civil servants are appointed at the central, regional and local administrations (the so-called focal points) who are in charge of the policy implementation concerning the equality of men and women. To achieve this purpose these civil servants shall undergo special training.

ARTICLE 24 - THE RIGHT TO PROTECTION IN CASES OF TERMINATION OF EMPLOYMENT

Question A

Amendments to the LABOUR CODE:

Article 330. (1) (Amend. – SG, issue 100 of 1992) The employer may terminate without notice an employment contract of a worker or an employee who has been detained for execution of a sentence.

3. (New – SG, issue 83 of 1998, Amend. - SG, issue 46 of 2005, Amend. – SG, issue 76 of 2005, in force as from 01.01.2007, Amend. – SG, issue 75 of 2006) The worker or the employee is excluded form the registers of the representative sector organizations under the Representative Organizations of Physicians and Dental Specialists Act, from the Register of Master Pharmaceutical Specialists under the Representative Organization of Master Pharmaceutical Specialists Act or from the register with the Bulgarian Association of Health Care Specialists under the Representative Organizations of Nurses, Midwives and Associated Medical Specialists;

Article 333. (Amend. – SG, issue 100 of 1992) (1) (Amend. – SG, issue 110 of 1999, Amend. – SG, issue 25 of 2001, in force as from 31.03.2001) In the cases under Article 328, Paragraph 1, Item 2, Item 3, Item 5, Item 11 and Article 330, Paragraph 2, Item 6, the employer may dismiss only with prior consent of the labour inspectorate on a case by case basis:

5. (New – SG, issue 48 of 2006, in force as from 01.07.2006) a worker or an employee, who is elected to represent the workers and the employees pursuant to Article 7, Paragraph 2 and Article 7a, for the period of his/her tenure;

6. (New – SG, issue 57 of 2006, in force as from 01.01.2007) a worker or an employee, who is member of a special body set for negotiations, of a European workers' council or of a representative body in any European commercial or cooperative association, for the period of acting in his/her tenure.

...

(5) (New – SG, issue 52 of 2004, in force as from 01.08.2004, Amend. – SG, issue 46 of 2007, in force as from 01.01.2008) A pregnant female worker or employee may be dismissed with a notice only pursuant to Article 328, Paragraph 1, Item 1, Item 7, Item 8 and Item 12, and without a notice pursuant to Article 330, Paragraph 1 and Paragraph 2, Item 6. In the cases under Article 330, Paragraph 2, Item 6 the dismissal could be effected only with prior consent of the labour inspectorate.

Amendments to THE CIVIL SERVICE ACT

Article 103. (1) The civil service relationship shall be terminated upon the following general grounds:

9. (New – SG, issue 24 of 2006) due to civil service replacement in another administration on the grounds of an agreement in a written form concluded between the civil servant and the bodies of employment with the respective two organizations; in this case the civil service relationship shall be terminated with handing over to the civil servant the order appointing him/her to the recipient organization.

Article 107.

(2) (New – SG, issue 95 of 2003, Amend. - SG, issue 24 of 2006) The employment body can terminate the civil service relationship of a civil servant without notification if

the latter has received the lowest general attesting score within 1 (one) month after the receipt of the final attesting score.

Please specify whether these grounds appear in legislation or regulations or whether they are derived from court decisions or other sources and provide examples of case law on this point.

Please state whether termination of employment is notified in writing, and if so, whether the employer is required to state the reasons for dismissal in the notification.

THE LABOUR CODE

Article 335. (1) (New – SG, issue 25 of 2001) The employment contract shall be terminated in writing.

The provisions as set forth under **Article 335, Paragraph 1 of the Labour Code,** envisage the form of termination of an employment relationship irrelevant to the fact which party has undertaken such termination and regardless of whether the termination of an employment relationship is carried out with or without notification. The written form required to terminate the employment contract is a form required to confirm the validity of termination of the employment contract. No oral termination thereof shall take legal effect. In practical terms, the termination of the employment contract is usually formulated within a written order issued by the employer. It is the employer's obligation to terminate in writing the employment contract of a particular worker or employee, whereas this order and respectively the employment record book shall include *the legal grounds to terminate the employment contract.* The order terminating the employment contract shall contain data about the employer, as well as about the respective worker and employee whose employment relationship has been terminated, the legal grounds for such termination, any due for payment one-off indemnities, any other terms and conditions, the date of handing over this order and respectively the signatures of both parties under the employment contract relationship.

Contents

Article 349. (Amend. – SG, issue 100 of 1992) (1) The following data about the worker or employee shall be entered in the employment record book:

1. Name, date and place of birth;
2. Address;
3. (Amend. – SG, issue 25 of 2001, in force as from 31.03.2001) Number of the personal card or any other identification document and civil personal identification number;
4. Education, occupation, specialty;
5. Position occupied and organizational unit where employed (department, workshop, office);
6. Agreed remuneration;
7. Date of starting work;
8. **Date and grounds for termination of employment relationship (article, paragraph, item and letter under this Code)**;
9. Duration of period recognized as length of service, as well as period not recognized as length of service;
10. One-off indemnities paid upon termination of the employment relationship;
11. (Amend. – SG, issue 59 of 2007, in force as from 01.03.2008) Notices of distraint provided for under Article 512, Paragraph 4 of the Civil Procedures Code.

(2) The employer shall be obliged to enter accurately and in due time the data listed under the preceding paragraph and any changes therein.

The employment record book shall include facts and circumstances related to the employment activities of the worker or the employee. The legal grounds to terminate the employment relationship are described by the respective article, paragraph, item and letter under the Labour Code or any special law. It refers to the payment of certain one-off indemnities by the employer (Article 220 – 224), the entitlement to unemployment benefits, etc. The insertion of these data into the employment record book shall be performed on the grounds of the document terminating the employment relationship (Article 325 – 331).

Question B

THE LABOUR CODE

Article 358. (Amend. – SG, issue 100 of 1992) (1) Labour dispute actions shall be brought within the following terms:

1. (Amend. – SG, issue 48 of 2006, in force as from 01.07.2006) one month – for disputes on limited financial liability of the worker or the employee and for repeal of the administrative sanction "reprimand", as well as in the cases under Article 357, Paragraph 2.

2. (Amend. – SG, issue 25 of 2001, in force as from 31.03.2001) two months - for disputes on the repeal of the disciplinary sanction "dismissal notice", changes in the location and nature of work and termination of employment relationship;

3. three years – for all other labour disputes.

(2) The periods as set forth under the preceding paragraph shall start as follows:

1. for actions to repeal a disciplinary sanction and on changes in the location and nature of work – as from the date on which the respective order has been served on the worker or employee, and for actions on termination of an employment relationship - as from the date of termination.

2. for any other actions – as from the date on which the right subject of the action has become executable or exercisable. For claims in cash the exigibility shall be considered in effect on the date on which payment should have been properly made.

(3) The term under paragraph 1 shall not be deemed expired, provided that prior to expiry the action has been brought with a body not competent to examine it. In such case the action shall be transferred *ex officio* to the court.

Please state where the burden of proof lies.

THE LABOUR CODE

Article 344. (Amend. – SG, issue 100 of 1992) (1) The worker or the 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;

The burden of proof in court proceedings concerning unlawful dismissal lies to the employer. The claim of the worker or the employee that the dismissal is unlawful is based on the applied right of the employer to dismissal. Therefore the person entitled thereto – namely the employer – has to prove that he/she had applied it lawfully. The range of arguments and opportunities at hand to the employer are usually larger and better, as the dismissal usually takes place on the grounds of events or circumstances that affect directly the activities of the employer. Hence the employer is well aware therewith, can easily

define and prove the claimed grounds. The Supreme Cassation Court has adopted this understanding when considering such cases.

Questions of the European Committee of Social Rights

The Committee had previously asked whether employees on fixed term contracts had equal rights concerning protection against dismissal and whether in general a trial period or a minimum period of employment must be completed before protection against dismissal becomes applicable. The report is unclear in this respect and in light of the information available to the Committee, it assumes that workers on fixed term contracts have the same rights to protection against dismissal, similarly it assumes that there is no minimum period of employment required before the guarantees in the Labour Code concerning dismissal apply. However it asks for confirmation that this understanding is correct.

THE LABOUR CODE

Employment contract for a fixed term

Article 68. (1) (Amend. – SG, issue 100 of 1992, prev. text of Article 68, Amend. - SG, issue 25 of 2001, in force as from 31.03.2001) An employment contract for a fixed term shall be concluded:

1. (Amend. – SG, issue 100 of 1992) for a definite period which shall not be longer than 3 (three) years, unless otherwise is provided for in a law or in an act of the Council of Ministers;

2. (Amend. – SG, issue 100 of 1992) until completion of some specified work;

3. (Amend. – SG, issue 100 of 1992) for replacement of a worker or an employee who is absent from work;

4. (Deleted Item 4, previous Item 5 – Amend., SG, issue 100 of 1992) to perform work at a position which is to be taken through a competition, for the time until it is taken through competition;

5. (New – SG, issue 25 of 2001, in force as from 31.03.2001) for a definite term of office where such is stipulated for the relevant body.

(2) (New – SG, issue 48 of 2006, in force as from 01.07.2006) The workers and the employees working on an employment contract for a fixed term under Paragraph 1 shall be entitled to the same rights and obligations as the workers and the employees working on an employment contract for an indefinite period. These workers and the employees shall not receive, only because of the fixed-term nature of their employment contract, terms and conditions less favorable than with the workers and the employees working on an employment contract for an indefinite period, who perform the same or similar job at the company, unless the law provides for entitlement to some rights depending on certain qualification or adopted skills. Wherever the same or similar job remains vacant, the workers and the employees working on an employment contract for a fixed term shall not receive terms and conditions less favorable than with the rest of workers and employees working on an employment contract for an indefinite period.

(3) (New – SG, issue 25 of 2001, in force as from 31.03.2001, Previous Paragraph 2 – SG, issue 48 of 2006, in force as from 01.07.2006) Employment contract for a fixed term under Paragraph 1, Item 1 shall be concluded for fulfillment of temporary, seasonal or

short-term works and activities, as well as with newly employed workers and employees in undertakings declared insolvent or in liquidation.

(4) (New – SG, issue 25 of 2001, in force as from 31.03.2001, Previous Paragraph 3 – SG, issue 48 of 2006, in force as from 01.07.2006) As an exception, an employment contract for a fixed term under Paragraph 1, Item 1 for a period of no less than one year, may be concluded for work and activities which have no temporary, seasonal or short-term nature. Such an employment contract may also be concluded for a shorter term upon written request of the worker or employee. In these cases the employment contract for a fixed term according to paragraph 1, item 1 with the same worker or employee, for the same job, may be concluded repeatedly only once for a period of at least one year.

(5) (New – SG, issue 25 of 2001, in force as from 31.03.2001, Previous Paragraph 4, Amend. – SG, issue 48 of 2006, in force as from 01.07.2006) Employment contract under Paragraph 1, Item 1, concluded in breach of the provisions as set forth under Paragraph 3 and Paragraph 4, shall be considered concluded for an indefinite period.

(6) (New – SG, issue 48 of 2006, in force as from 01.07.2006) The employer shall ensure a suitable and timely access, within the company's premises, for the workers and the employees on employment contracts for fixed terms about any job and position vacancies that can be filled in on an employment contract for an indefinite period aimed to give them opportunity to take on permanent jobs. Such information shall be submitted also to the representatives of trade union organizations, as well as to the representatives of the workers and the employees under Article 7, Paragraph 2.

(7) (New – SG, issue 48 of 2006, in force as from 01.07.2006) If possible, the employer shall undertake measures to secure an easy access for the workers and the employees on employment contracts for fixed terms to occupational training aimed to improve their skills and capacities to make career and to shift to another job.

The Committee asked whether immediate dismissal requires there to be an element of fault on the part of the employee. The report refers to the provisions of the Labour Code, which permit dismissal without notice, the Committee notes that in this respect all cases provided for imply an element of fault on the part of the employee. It further notes that in case of disciplinary dismissal the employer is obliged to hear the employee and that prior authorization is required from the Labour Inspectorate in cases of disciplinary dismissal involving certain categories of employees such as women with small children, employee with recognized health problems etc.

THE LABOUR CODE

Violation of the work discipline

Article 186. The conscious failure to fulfill any employment obligation shall constitute a violation of the work discipline. The person in such violation shall be sanctioned in accordance with the provisions of this Code irrespective of any financial, administrative or penal liability, if any.

The provisions as set forth under Article 328 of the Labour Code regulate the legal options to terminate the employment contract by the employer, whereby in such cases there is no requirement to have grounds for fault / faulty performance by the worker or the employee. The grounds for the dismissal are actually facts set by law, which have appeared after the conclusion of the employment contract, and the appearance of these facts can be deemed grounds to terminate the employment contract. Each and any of the grounds provided for under Article 328 of the Labour Code are characterized with specific elements, which differ from one another. But they also share a common characteristic

unifying them under one paragraph: all refer to **grounds for dismissal without any fault**. It means that each and any excludes the presumption of faulty performance committed by the worker or the employee whose employment contract is terminated.

The grounds for termination of the employment contract by the employer without notification are set forth under Article 330. Beyond these legal grounds the employer shall not be allowed to terminate the employment contract with the worker or the employee without notification.

The grounds as set forth under Article 330 of the Labour Code are eight: one forms part of Paragraph 1, while the remaining seven form part of Paragraph 2. These grounds are all related with the personality and the behaviour of the worker or the employee. But they differ in terms of **the subjective behavior of the worker or the employee** as a party to the employment relationship. Given this classification characteristic, the grounds for dismissal without notification under Article 330 can be organized in three groups. **The first group** includes the grounds under Article 330, Paragraph 2, Item 6 and Item 7. These grounds imply faulty behavior on the part of the worker or the employee as a party to the employment relationship. **The second group** includes the grounds under Article 330, Paragraph 1 and Paragraph 2, Item 1-3. These grounds imply faulty behavior on the part of the worker or the employee who has committed a delict as a citizen: crime or administrative offence. In certain cases under these provisions it is possible that the crime or the administrative offence, sanctioned by the respective penalty, appears to be also a disciplinary offence. But dismissal on these grounds shall be effected not because of the disciplinary offence they presumably imply, but rather in effect from the criminal sentence or the administrative penalty and with the purpose of its enforcement. **The third group** includes the grounds under Article 330, Paragraph 2, Item 5 and Item 8. These grounds do not presume any fault. Under the grounds as set forth under Item 5, the worker or the employee shall be dismissed by the employer whenever he/she refuses to take a suitable job offered to him/her in case of reassignment. In this case there is no faulty behavior on the part of the worker or the employee, as he/she is entitled to accept the offered job for reassignment. The worker or the employee shall not be obliged to accept the offered job. Whenever the worker or the employee, given his/her freedom to own discretion, decides not to make use of any right, he/she commits no delict, hence it implies no fault for the worker or the employee who have refrained from the entitlement, and such behaviour cannot be classified as faulty, nor as a delict.

The grounds, as set forth under Item 8, do not imply faulty behaviour. The dismissal under Item 5 and Item 8 is a necessity deriving from the impossibility, under the current standing, for the employment relationship to continue to exist, rather than from any faulty behaviour on the part of the worker or the employee.

The Labour Code provides that the imprisonment of an employee following a sentence by a court is a ground for immediate dismissal; The Committee had asked whether this was possible even where the sentence was not concerned with facts related to the employment. The report states that the length of imprisonment is immaterial; the mere fact an employee is sentenced to a term of imprisonment is sufficient. The Committee recalls its case law in this regard; "A prison sentence delivered in court for employment-related offences can be considered a valid reason for dismissal. This is not the case with prison sentences for offences unrelated with the person's employment, which cannot be considered valid reasons unless the length of the custodial sentence prevents the person from carrying out theirwork (Conclusions 2005, Estonia, pp. 205-210)". The Committee asks for further information on the situation.

THE LABOUR CODE

Article 330. (1) (Amend. – SG, issue 100 of 1992) employer may terminate without notice an employment contract of a worker or an employee who has been **detained for execution of a sentence.**

This paragraph provides for as grounds for dismissal of the worker or the employee, who has been detained for the execution of "a sentence for imprisonment" effectively, while not on probation or on any other kind of penalty, regardless of the term of the sentence for imprisonment imposed on the worker or the employee. The right of dismissal in such a case is an entitlement to the employer, i.e. despite the detention of the worker or the employee to serve the sentence for imprisonment, the employer may not dismiss him/her if he deems that the term of the sentence is short and that the worker or the employee shall serve it and return to work in short time, or on the grounds of any other reasons the employer does not wish to dismiss this worker or employee, regardless of the term of the sentence for imprisonment. By the way, in this particular case the use of the right to dismissal also depends on the employer's own discretion.

Article 330. (2) (Amend. – SG, issue 100 of 1992) The employer shall terminate an employment contract without notice in the following cases:

1. (Repealed, previous Item 2 – SG, 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/she e has been appointed;

Under the actual legislation and regulations of the Republic of Bulgaria, the dismissal on such grounds can take place in two cases: **(a.)** by sentence of court, which aggravates the punishment under Article 37, Item 6 and Item 7 of the Penal Code within the special provisions of the penal section – revocation of the right to occupy definite state or public position; **(b).** by an administrative order for an administrative offence, the worker or the employee has received an administrative penalty "revocation of the right to practice a definite profession or activity" (Article 13, Letter. "c" and Article 16 of the Administrative Offences and Penalties Act, Article 174 of the Traffic Act), which coincides with the job position taken at the moment. The sentence, as pronounced with the court ruling, which divests the worker or the employee of the right to practice a profession or to occupy the position to which he has been appointed, must be in effect. In such cases the dismissal of the worker or the employee shall be actually an act of enforcement of the punishment imposed by the sentence or the administrative order (Article 50, Paragraph 1 of the Penal Code, Article 153 and 154 of the Enforcement of Punishments Act and Article 81 of the Administrative Offences and Penalties Act). The provisions as quoted under the Enforcement of Punishments Act and the Administrative Offences and Penalties Act in such cases provide for "immediate dismissal from the position to which he/she has been appointed" concerning the person sentenced under Article 37, Item 6 and Item 7 of the Penal Code and Article 13, Letter "c" of the Administrative Offences and Penalties Act. Hence, the employer shall be obliged to dismiss the worker or the employee. Otherwise, the employer would fail to enforce the sentence or the administrative order, which is inadmissible. In view thereof, the purpose of Item 1 shall seek to bring the effects from the sentence or the administrative order within the legal realm of the employment relationship and to establish uniformity into the permissions provided for under the Penal Code, the Enforcement of Punishments Act, the Administrative Offences and Penalties Act and the Labour Code.

As regards economic reasons for dismissal the Committee had asked for further information on dismissal on the grounds of reduction of staffing or volume of work (section 328 of the Labour Code). According to the report dismissal on these grounds is subject to judicial supervision, dismissal on these grounds must be in response to an objective and real economic necessity to reduce staff or where the volume of work is such that a reduction in staff is economically necessary. The Committee notes that collective agreements often require that in such cases prior consent must be obtained from the trade union in the enterprise, however it also notes that in such cases involving certain employees (such as women with young children persons suffering from certain recognized diseases) prior authorization is required from the Labour Inspectorate. The Committee seeks confirmation that the requirement to seek prior authorization is limited to when the dismissal concerns a particular category of employee.

THE LABOUR CODE

Protection against dismissal

Article 333. (Amend. – SG, issue 100 of 1992) (1) (Amend. – SG, issue 110 of 1999, Amend. – SG, issue 25 of 2001, in force as from 31.03.2001) In the cases under Article 328, Paragraph 1, Item 2, Item 3, Item 5, Item 11, and Article 330, Paragraph 2, Item 6 the employer may dismiss only with prior consent of the labour inspectorate on a case by case basis:

1. (Amend. – SG, issue 52 of 2004, in force as from 01.08.2004) Workers or employees who are mothers of children younger than three years of age, or spouses of persons who has entered their regular military service;

2. Workers or employees who have been reassigned;

3. Workers or employees suffering from certain diseases as listed in an ordinance of the Minister of Health;

4. Workers or employees who have commenced a period of permitted leave;

5. (New – SG, issue 48 of 2006, in force as from 01.07.2006) a worker or an employee who is elected to represent the workers and the employees pursuant to Article 7, Paragraph 2 and Article 7a for the term of his/her tenure;

6. (New – SG, issue 57 of 2006, in force as from 01.01.2007) a worker or an employee who is member of a special body set for negotiations, of a European workers' council or of a representative body in any European commercial or cooperative association, for the period of acting in his/her tenure.

(2) In the cases as provided for in Item 2 and Item 3 under the previous paragraph, the opinion of an expert medical commission shall also be considered.

(3) (Amend. – SG, issue 110 of 1999, Amend. – SG, issue 25 of 2001, in force as from 31.03.2001) In the cases under Article 328, Paragraph 1, Item 2, Item 3, Item 5, Item 11, and Article 330, Paragraph 2, Item 6 the employer may dismiss a worker or an employee who is a member of the undertaking trade union management belonging to a territorial, sectoral or national elected trade union body, throughout the period of occupation of the trade union position and not earlier than 6 months after that, only with prior consent of the trade union body, specified by decision of the central management of the respective trade union organisation.

(4) Wherever it is provided for in the collective agreement, the employer may dismiss a worker or an employee due to staff reduction or reduction of the volume of work after obtaining a prior consent from the respective trade union body of the enterprise.

(5) (New – SG, issue 52 of 2004, in force as from 01.08.2004, Amend. – SG, issue 46 of 2007, in force as from 01.01.2008) A pregnant female worker or employee may be dismissed with a notification only pursuant to Article 328, Paragraph 1, Item 1, Item 7, Item 8 and Item 12, and without notification pursuant to Article 330, Paragraph 1 and Paragraph 2, Item 6. In the cases under Article 330, Paragraph 2, Item 6 the dismissal can be effected only with prior consent of the labour inspectorate.

(6) (New – SG, issue 25 of 2001, in force as from 31.03.2001, Previous Paragraph 5 – SG, issue 52 of 2004, in force as from 01.08.2004) A female worker or a employee using pregnancy and childbirth leave may be dismissed only pursuant to Article 328, Paragraph 1, Item 1.

(7) (Previous Paragraph 5 – SG, issue 25 of 2001, in force as from 31.03.2001, Previous Paragraph 6 – SG, issue 52 of 2004, in force as from 01.08.2004) The protection under this article shall refer to the moment of serving the order of dismissal.

Article 333 provides for the so-called **preliminary protection against dismissal**. Its preliminary nature comes as preceding to the dismissal. One of the fields of application of the preliminary protection against dismissal refers to **the categories of workers and employees** it applies to. These categories of workers and employees described in detail in Item 1-6 under Paragraph 1 and their scope cannot be enlarged with the collective labour agreement. For other categories of workers and employees it is inapplicable. The common line they share is that the preliminary protection against dismissal is applicable to workers and employees who are socially vulnerable (Item 1-3 under Paragraph 1), or need strengthened protection due to the rights they are entitled to (Item 4 under Paragraph 1), or due to the functional roles they are assigned to (Paragraph 1, Item 5-6, Paragraph 3). The preliminary protection against dismissal continues while the worker or the employee still pertains to the respective category of workers and employees.

Section 328 of the Labour Code also permits dismissals where there has been a "work stoppage for more than 15 days". According to the report this situation arises where the enterprise has been closed down or part of it temporarily due to economic reasons.

The Committee also previously requested further information on transfers to other parts of anenterprise as an employee may be dismissed where he/she refuses to be relocated.

According to the report an employee is expected to follow an enterprise where it or part of it is relocated, if not he may be dismissed. A worker who refuses to relocate may be dismissed (Section 328§7). Employees who do transfer are entitled to compensation. The Committee asks whether where an employee's refusal to relocate with the enterprise is based on reasonable grounds what provision is the employee entitled to compensation?

The termination of the employment pursuant to Article 328, Item 7 of the Labour Code is composed of two elements: relocation of the undertaking to another community or locality and refusal of the worker or the employee to follow an undertaking or a subsidiary thereof where he/she is working. The process of relocation itself involves various inconveniences and affects important interests of the worker or the employee – particularly his/her home and domicile, the interest of his/her family, his/her personal, family and professional environment, etc. Therefore the lawmaker has provided for the right to compensation of the worker or the employee upon relocation. Whereas the refusal of the worker or the employee expresses his/her free will to follow the relocation of an undertaking or a subsidiary thereof. The personal reasons of the worker or the employee have no meaning thereto. The worker or the employee is not obliged to quote such reasons,

nor to motivate his/her refusal. Under this hypothesis – refusal of the worker or the employee to follow the relocation of an undertaking or a subsidiary thereof – the law does not provide for any right of compensation to the worker or the employee.

The Committee notes that an employee may be dismissed on the grounds he/she has reached the retirement age (Section 328§10). The Committee considers that dismissal on grounds of age will not constitute a valid reason for termination of employment except in accordance with a valid retirement age justified by the operational requirements of the undertaking, establishment or service.

THE LABOUR CODE

Article 328. (Amend. – SG, issue 21 of 1990 г., issue 100 of 1992) (1) The employer may terminate an employment contract by giving a notice in writing to the worker or employee within the terms specified under Article 326, Paragraph 2, in the following cases:

...

10. (Amend. – SG, issue 2 of 1996, Amend. - SG, issue 28 of 1996, Amend. – SG, issue 25 of 2001, in force as from 31.03.2001) Wherever a worker or an employee has acquired the right to pension for period of social security length and age;

The provision under Item 10 envisages that the worker or the employee has acquired the right to pension for period of social security length and age pursuant to Article 68 of the Social Security Code. Meanwhile, pursuant to Article 68 of the Social Security Code, the right to pension for social security length and age shall appear on **two prerequisites**: **(a).** Turning of a particular **age**; **(b).** total duration of **the period of social security** and the age. Hence the acquisition of the right to pension for period of social security length and age depends on the factor of turning a pre-defined age and a minimum total of the age and social security length, whereas the persons must meet both prerequisites simultaneously.

States should take adequate measures to ensure protection for all workers against dismissal on grounds of age. In order to assess the conformity of the ground relating to retirement age, the Committee asks the next report to provide the following information:
– is it for contracts of employment, collective agreements and/or legislation to fix the retirement age mentioned by this provision?

The pension age is defined under the Social Security Code and the Ordinance on Pensions and Social Security Length.

THE SOCIAL SECURITY CODE

Acquisition of the right to pension

Article 68. (1) The right to pension for social security length and age shall be acquired when turning 60 years and 6 months for men and 55 years and 6 months for women provided that the sum of the social security length and the age is not less than 98 for the men and 88 for the women.

(2) As from 31 December 2000 the age referred to under Paragraph 1 shall be increased from the first day of each following calendar year with 6 months for men and women until reaching 63 years for men and 60 years for the women and the sum of the social security length and the age shall be increased with 1 until reaching 100 for men and 90 for women.

(3) As from 31 December 2004 the sum of the social security length and the age for the women referred to under paragraph 2 shall be increased from the first day of each following calendar year with 1 until reaching 94.

(4) In case the sum of the social security length and the age is less than the one laid down in paragraphs 1 to 3, the right to pension shall be acquired in case of 15 years of period of insurance, out of which 12 years actual length of service and turning 65 years of age for men and women.

ORDINANCE ON PENSIONS AND SOCIAL SECURITY LENGH

Article 15. (1) The right to pension for social security length and age, from 1 January 2000 for both men and women to 1 January 2005 for men and to 1 January 2009 for women shall be acquired:

1. from 1 January 2000 – at the age of 60 years and 6 months for men and 55 years and 6 months for women and the sum of the social security length and the age 98 for men and 88 for women;

2. from 1 January 2001 – at the age of 61 years for men and 56 years for women and the sum of the social security length and the age 99 for men and 89 for women;

3. from 1 January 2002 – at the age of 61 years and 6 months for men and 56 years and 6 months for women and the sum of the social security length and the age 100 for men and 90 for women;

4. from 1 January 2003 – at the age of 62 years for men and 57 years for women and the sum of the social security length and the age 100 for men and 90 for women;

5. from 1 January 2004 – at the age of 62 years and 6 months for men and 57 years and 6 months for women and the sum of the social security length and the age 100 for men and 90 for women;

6. from 1 January 2005 – at the age of 63 years for men and 58 years for women and the sum of the social security length and the age 100 for men and 91 for women;

7. from 1 January 2006 – at the age of 58 years and 6 months and the sum of the social security length and the age 92 for women;

8. from 1 January 2007 – at the age of 59 years and the sum of the social security length and the age 93 for women;

9. from 1 January 2008 - at the age of 59 years and 6 months and the sum of the social security length and the age 94 for women;

10. from 1 January 2009 – at the age of 60 years and the sum of the social security length and the age 94 for women.

(2) In case that the sum of the social security length and the age is less than the sum as set forth under Paragraph 1, the right to pension shall be acquired upon turning 15 years of social security length, including 12 years of actual period of experience, and upon turning of 65 years of age for men and women.

(3) Upon considering the right to pension and the definition of the size of pension for period of social security length and age, the period of social security length shall be converted into third category.

– is the employee automatically retired once he or she has reached the retirement age? If not, are there additional conditions to fulfill or specific procedures to follow?

Article 328 of the Labour Code provides for the termination of the employment contract upon initiative of the employer. This provision provides for the employer's right to dismiss, i.e. the employer's subjective conversion employment entitlement to terminate unilaterally the employment contract. Whether the employer shall use this right he/she is entitled to by law to terminate the employment relationship pursuant to Article 328, Item 10 or not, the discretion is entirely with the employer.

In pursuance of the provisions as set forth under the Social Security Code, the right to pension for period social security length and age is given to persons meeting the prerequisites for pension. "Acquisition of the right to pension" means that the person is entitled to express his/her will to use this right by submitting a request to receive pension, along with any required documents, at the respective territorial department of the National Social Security Institute (NSSI) and no matter how long the acceptance thereof could delay these individual motions (after the acquisition of the right to pension for period of period social security length and age), the insured person shall in no way lose his/her material right to pension and shall be entitled to use it at any moment later on.

The report confirms that termination of employment must always be done in writing however the Committee asks again whether the employer is obliged to state the reasons for the dismissal.

See reply to Question A – Article 335, Paragraph 1 and Article 349, Paragraph 1, Item 8 of the Labour Code.

Prohibited dismissals

The Committee previously highlighted that it would concentrate under Article 24 on particular protection against dismissal on grounds of:

– "the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities";

Pursuant to **Article 19 of the Settlement of Collective Labour Disputes Act** the worker shall not be responsible, in terms of discipline and property, for participation in a strike allowable by law. On the contrary, for participation in an unlawful strike, the worker shall be responsible, in terms of discipline and property, in pursuance of the provisions as set forth under the Labour Code and any other applicable laws (Paragraph 2 of Article 19 of the Settlement of Collective Labour Disputes Act).

– "temporary absence from work due to illness or injury".

Section 325 of the Labour Code permits the dismissal of an employee on the grounds the employee is suffering from a disability which prevents him/her from carrying out the job and where the employer cannot offer alternative suitable employment. The Committee had asked whether this was regardless of the origin of the injury (i.e. was this also the case for injuries/disabilities resulting from accidents in the workplace) and whether compensation was payable in such circumstances. The report states that dismissal on this ground is only permitted in strict circumstances; where a territorial Expert Medical Commission has certified that the employee has a disability of at least 50 % which prevents him/her from carrying out his assigned occupation and where the employer is unable to offer an alternative job. It further states that the case law of the Supreme Court of Cassation applies these requirements strictly.

Upon termination of the employment contract pursuant to Article 325, Item 9 of the Labour Code, it shall be irrelevant whether the incapacity to perform the assigned work is due to disease (general disease), work accident or occupational disease. It is required that the disease or the work accident is certified under the procedures as set forth in the actual legislation and regulations and that the disease or the work accident has led to **permanent lack of working capacity (disability)** of the insured person.

THE LABOUR CODE

Property liability of the employer in case of death or damages to a worker's or employee's health

Article 200. (Amend. – SG, issue 100 of 1992) (1) (Amend. – SG, issue 25 of 2001, in force as from 31.03.2001, Amend. – SG, issue 52 of 2004, in force as from 01.08.2004) In case of damages resulting from an accident at work or occupational disease which have caused temporary incapacity for work, permanent incapacity for work over 50 percent or death of the worker or employee the employer shall bear financial liability regardless of whether the occurrence thereof is through the fault of a body under his authority or another worker or employee.

(2) (Amend. – SG, issue 100 of 1992) The employer shall also be liable in cases where the accident at work has been caused by force majeure during or in connection with the performance of the work assigned, or of any other work performed even without order which, nevertheless, is in the employer's interest, as well as during a break spent within the undertaking.

(3) (Amend. – SG, issue 100 of 1992) The employer shall be liable for compensation for the difference between the damage caused whether material or non-material, including loss of profit, and the social security benefit and/or pension.

(4) (New – SG, issue 83 of 2005) The compensation due for payment pursuant to paragraph 3 shall be reduced with the amounts received under insurance contracts concluded on behalf of the workers and the employees.

(5) (New – SG, issue 100 of 1992, Amend. – SG, issue 25 of 2001, in force as from 31.03.2001, Previous Paragraph 4 – SG, issue 83 of 2005) The receipt of compensation pursuant to the preceding paragraphs by the survivors of a worker or an employee who has died as a result of an accident at work or disease shall not be deemed acceptance of the inheritance.

Exclusion or reduction of liability

Article 201. (Amend. – SG, issue 100 of 1992) (1) The employer shall not be liable pursuant to the preceding article if the injured caused the injury intentionally.

(2) The liability of the employer shall be subject to reduction if the injured has contributed towards the accident at work by major negligence.

Recourse action

Article 202. (Amend. – SG, issue 100 of 1992) The employer shall be entitled to an action against the workers or employees at fault, in pursuance of the provisions as set forth under Section II of this Chapter.

THE SOCIAL SECURITY CODE

Term of benefit payment

Article 42. (1) The cash benefit for temporary incapacity for work due to general disease, accident at work and occupational disease shall be paid from the first day of occurrence until the recovery of the capacity for work or the establishing of disability.

...

Cash benefit in case of reassignment

Article 47. (1) In case of a reassignment due to temporary reduced work capacity as a result of a general disease, accident at work or occupational disease, the insured person shall be entitled to receive payment of cash benefit, provided that the remuneration at the new work place is reduced in size.

(2) (Amend. and supplemented – SG, issue 105 of 2006, in force as from 01.01.2007) The daily cash benefit shall be in the amount of the difference between the received average daily remuneration during all 6 calendar months preceding the month of the

reassignment and the average daily remuneration received after the reassignment, but not more than the average daily amount of the maximum monthly social security income and the received average daily gross remuneration after the reassignment. Whenever the insured person has worked for less than 6 months until the day of reassignment, the benefit shall be determined as a difference between the average daily remuneration, as set forth under Article 41, and the received average daily gross remuneration after the reassignment.

(3) (Amend. – SG, issue 105 of 2006, in force as from 01.01.2007) The cash benefit referred to under Paragraph 1 and Paragraph 2 shall be payable for the time of reassignment but for not more than 6 months.

...

The right to disability pension

Article 71. The insured persons shall have right to disability pension whenever they have lost fully or partially their work capacity forever or for a long period of time.

Determination of the disability pension

Article 72. The disability pension shall be determined for persons with 50 percent and with more than 50 percent lost work capacity.

Initial date and term of the disability pension

Article 73. (1) (Amend. – SG, issue 64 of 2000) The right to disability pension shall be effective as from the date of disability, while for the ill-sighted by birth and for those struck with ill-sightedness before assuming work – from the date of the application referred to under Article 94.

(2) The disability pension shall be granted for the term of the disability.

(3) (Amend. – SG, issue 1 of 2002, in force as from 01.01.2002) The disability pensions of the persons, who have turned the age referred to under Article 68 shall be granted for life.

However, the report provides no information on the protection of workers who are temporarily absent due to illness. The Committee notes that temporary absence from work due to illness is not a permitted ground for termination in the Labour Code, but again seeks further information on the protection against dismissal on grounds of illness, in particular employees not suffering from a longterm condition but who have been absent from work due to illness. For example is there a time limit placed on protection in such cases? The Committee notes that the report states elsewhere that it is legal to dismiss an employee where the employee is suffering from a temporary disability for a period of a year and the employer is unable to find a suitable alternative occupation for him/her. The implication is that temporary illness/ disability lasting under a year would not be a lawful ground ofdismissal. The Committee seeks confirmation that this is correct.

Firstly, we would like to make a note that the term of disability of 1 year as quoted under the previous report, is only an example under the particular case and the respective court ruling (Court Ruling № 1591-99-III c.d.). Therefore the conclusion that the incapacity for work continuing for less than 1 year shall not be legal grounds for dismissal is wrong.

The provisions as set forth under Article 325, Item 9 of the Labour Code are not bound to any duration of the incapacity for work. The termination of the employment relationship on such grounds can be initiated by either party under the employment contract without a notice.

Pursuant to Article 5, Paragraph 1 of the Ordinance on Reassignment, wherever a worker or an employee is reassigned for a definite term, within the same undertaking,

he/she shall preserve the job he/she had carried out prior to the reassignment and shall be entitled to return to work after his/her capacity for work is restored. The provisions as quoted herein above are applicable whenever the worker or the employee has been reassigned to another suitable job for a term as defined for the competent healthcare authority.

Pursuant to Article 7 of the Ordinance on Reassignment, whenever a worker or an employee, reassigned for a definite term, with permanently reduced work capacity of up to 50 percent, receives at his/her new workplace remuneration lower than the remuneration he/she had received at his previous workplace, this worker or employee shall be entitled to a benefit in cash payment to the amount as set forth under the Social Security Code. The benefit in cash payment during reassignment is provided for under Article 47 of the Social Security Code and shall be payable only when the competent healthcare authority has certified reduced work capacity of up to 50 percent. This sense is implied also in the provisions as set forth under Article 320, Paragraph 2 of the Labour Code.

Article 320, Paragraph 1 of the Labour Code envisages that a worker or an employee, who is reassigned pursuant to Section III of Chapter XV of the Labour Code, shall be entitled to receive remuneration for the performed work. This is the workplace where the worker or the employee is reassigned, or the work the worker or the employee has performed prior to the issuance of the reassignment recommendation, but under alleviated conditions at work. In such cases the worker or the employee shall receive the remuneration due for payment for this kind of work in accordance with the quality of performance. Persons with reduced work capacity of up to 50 percent and more than 50 percent shall be entitled also to receive a disability pension (Article 72 of the Social Security Code).

THE LABOUR CODE

Compensation for dismissal on other grounds

Article 222.

(2) (Amend. – SG, issue 100 of 1992) In case of termination of the employment relationship due to disease (Article 325, Item 9 and Article 327, Item 1) the worker or the employee shall be entitled to a compensation from the employer in the amount of his gross labour remuneration for a period of two months, provided his length of service is at least 5 years and during the last 5 years of service he has not received any compensation on the same grounds.

The protection as provided for under Item 4 of Paragraph 1 covers the workers and the employees, who have entered into the period of their allowed leave. Herein the type of leave is irrelevant: paid annual leave, unpaid leave, **leave due to temporary incapacity for work (Article 162 of the Labour Code),** etc. It is required that a permission is granted for the leave. The permission to leave represents an expression of will allowing its application made by the competent authority under the terms and provisions as set by law. The permission shall be granted according to the types of leave. The leave due to temporary incapacity for work shall be granted by the competent health authorities (Article 162, Paragraph 2 of the Labour Code and Article 103, Paragraph 2 of the Health Act). For the period of leave due to temporary incapacity for work, the worker or the employee shall be entitled to receive benefit of cash payment within the term and to the amount as defined under a separate law (Paragraph 3 of Article 162 of the Labour Code). The social fundamentals of this protection seek to ensure peaceful usage of the respective leave as provided for by law.

As regards reprisals the Committee refers to its previous statements on the issue (Conclusion 2003) and asks whether there is any case law of the courts clearly demonstrating that reprisal dismissals are unlawful?

The actual labour legislation and regulations of Bulgaria has adopted the principle of detailed elaboration on the grounds for termination of the employment contract. In this sense, any dismissal of a worker or an employee on grounds, which are not provided for under the Labour Code, shall be considered unlawful.

Remedies and sanctions

The Committee had previously noted that under section 344 of the Labour Code employees can
challenge the legality of their dismissal before the courts, however it had noted form another source that the courts could not review economic grounds for dismissal and asked for further information. The current report simple states that the Labour Code lists exhaustively the grounds for dismissal and the courts review the lawfulness of a dismissal based on these grounds. Therefore the Committee asks for more precise information on the powers of the courts when reviewing the legality of an employee dismissed on economic grounds; are their powers limited to reviewing the procedural rules or may they examine the facts underlying the economic reasons put forward by the employer.

The court cannot rule on the expedience of a decision to reduce staff or reduce the volume of work, but only is entitled to control the lawfulness of the decision and in this sense the court considers the facts that have resulted in the application of the economic circumstances to terminate the employment contract.

"Staff reduction" means reduction, namely future permanent cut of certain job places from the approved payroll of the workers and the employees. Upon staff reduction it is obligatory to state the name and the number of reduced job positions, which and how many of the existing job positions – jobs on the payroll – shall be cut. The reasons for such staff reduction can be versatile. The existence of these reasons shall lie upon the discretion of the employer. It is a question of feasibility consideration and effective performance of the industrial and civil service activities of the undertaking. From a legal point of view it is crucial, with regard to the lawfulness of the dismissal, that the reduction of the respective payroll jobs, i.e. the labour obligations it implies, is real. Subject to control by court shall be only the dismissal performed on the grounds of such staff reduction. On the other hand, it is necessary that the staff reduction is undertaken pursuant to the adopted terms and provisions – by the person or the competent authority entitled to make such changes in the payroll, and that such staff reduction is performed prior to the dismissal. From the point of view of these basic requirements, there is no staff reduction whenever the respective labour function is not cut effectively, while only changing its name. In these cases there is fictitious staff reduction and it cannot be considered to be grounds for dismissal of the respective worker or employee.

There is "staff reduction" only when the respective job position (labour function) is cancelled and does not exist any more, including when: the job position does not exist separately as a payroll vacancy, as it has been assigned for performance to other staff; a certain job position is cancelled and replaced by another, with different responsibilities, labour function and requirements for appointment, etc.

The court case law has continuously followed the requirement for "the real nature" of staff reduction as a basic component of the provisions under Item 2. This sense is implied also in the case law of the Supreme Cassation Court. More attention is paid also to

the requirement that at the moment of the dismissal there shall be "factual cancellation of the respective labour function".

Upon "**reduction of the volume of work"**, it shall be at the employer's discretion to decide in which part – the whole undertaking or only at separate departments and which departments – shall be affected by staff reduction in view with the reduced volume of work. These are issues at the employer's own discretion in view with attaining more reasonable and effective organization of the work process and the output, which has to be undertaken due to reduced volume of output and official business of the undertaking. It is a matter of lawfulness and court control to consider the level of reduction of the volume of work, whether any decision to reduce the staff is adopted under approved terms and provisions and by the competent authority, and ultimately whether the dismissals are caused and reasoned by the real reduction in the volume of work.

In case of partial closing down of an undertaking, as well as in case of staff reduction or reduction of the volume of work, the employer **shall be entitled to the right of selection** and in the interest of production or business may dismiss workers or employees whose positions have not been made redundant, in order to retain workers or employees of higher qualifications and better performance (Article 329, Paragraph 1 of the Labour Code).

The right to selection is a subjective right of the employer, accompanying the employer's right to dismissal. It can be applied only when the dismissal of the worker or the employee is carried out upon any of the following three grounds: upon closing of a part of the undertaking, upon staff reduction and upon reduction of the volume of work.

The nature of the right to section awarded to the employer lies in the opportunity granted by law not to dismiss the workers or the employees who have worked at the closed part of the undertaking or the job positions made redundant, whereas another or other workers or employees, who have worked at parts (subsidiaries) of the undertaking that are not closed or job positions that have not been made redundant. This legal provision increases the freedom to action awarded to the employer, by extending the scope of workers or employees onto which the employer can address his/her right to dismissal. The lawmaker has intended to extend the scope of the workers and the employees between which such selection is made by including workers and employees who perform work of close or similar nature.

The law, *inter alia*, provides for: **the criteria** on the basis of which to make such selection, **the purposes** sought after by such selection, and **the results** expected by such selection.

The criteria are two: higher qualifications and better performance of assigned work. The qualifications mean the occupational qualifications, namely education, skills, knowledge and experience, in accordance with the requirements for the respective job position. The level of job performance implies the performance in terms of meting deadlines, quality and quantity required for the assigned work.

The purposes of selection aim to protect "the interests of output and official service". It means that the selection should be conducted in a way that the workers and the employees who remain at work contribute for increased effectiveness of the undertaking's activities and better performance thereof.

The results expected by the selection seek "to retain workers or employees of higher qualifications and better performance".

The criteria as set forth under Paragraph 1 are **economic, occupational and business orientated,** and benefit mainly the interests of the employer (to protect the interests of output and official service). However, the law provides for the protection not only of the employer. The use of the right to selection as set forth under Article 329 of the Labour Code is subject to court control. The criteria for selection as set forth by law have

objective characteristics and respecting thereof forms part of the right to dismissal, which in case of dispute on general grounds shall be considered and resolved at the court's discretion. The case law of the court has followed this sense of consideration. Dismissal undertaken in breach of the criteria for selection is generally unlawful. However, the refusal of the employer to make selection as set forth under Article 329 shall not be subject to court control whenever such selection is not obligatory, but forms rather a right thereof.

The Committee previously found that the situation was not in conformity with Article 24 of the Revised Charter on the grounds that the compensatory payment for unlawful termination of employment is subject to a maximum of six months' wages. The report provides no information that the situation has changed in this respect, therefore the Committee again finds the situation not to be in conformity with Article 24 of the Revised Charter.

The maximum term is set for not more than 6 months mainly on two grounds: on one hand, because it is expected that the court dispute on claims of unlawful dismissal shall be resolved and clarified for a period of 6 months, and on the other hand because it is expected that for a period of 6 months the worker or the employee can find another suitable job. Moreover, any excess extension of this term could stimulate the worker or the employee not to seek legal protection against the dismissal relying on the right to one-off indemnity due for payment upon unlawful dismissal.

Opinion of the Confederation of Independent Trade Unions in Bulgaria

One-off indemnity is due for payment only if there is a repealing court ruling in force declaring the unlawfulness of the dismissal and the order issued to terminate the employment contract relationship. Hence, the worker or the employee cannot be encouraged not to seek legal protection provided that the one-off indemnity is larger as only court ruling can award the payment of such one-off indemnity. The Confederation of Independent Trade Unions in Bulgaria insist that the size of such one-off indemnity as set forth under Article 225, Paragraph 1 of the Labour Code, is increased, by awarding it for the whole period until the court ruling is pronounced to cancel the order terminating the employment contract relationship.

Pursuant to Article 354 of the Labour Code, periods throughout which no employment relationship existed shall be recognized as length of service wherever a worker or an employee has been unemployed as a result of dismissal which has subsequently been found to be unlawful by the competent authorities – as from the date of dismissal until the date of reinstatement to work. The recognition of the period as length of service from the date of unlawful dismissal until the date of reinstatement to work means that the worker or the employee shall be entitled to all rights arising from the labour experience, and particularly the right to paid annual leave for the same period.

The period throughout which the worker or the employee has been unemployed due to dismissal, which has been recognized as unlawful by the competent bodies – from the date of the dismissal until the reinstatement to employment, shall be recognized as an length of social security period (Article 9, Paragraph 3, Item 2 of the Social Security Code). For this period social security contributions shall be due for payment on the account of the insurer as calculated on the last gross remuneration, if the person has not been insured; if the person has been insured on another ground, the insurance contributions shall be made on the difference between the last gross remuneration and the insurance income for the period concerned, in case such income is smaller.

The amendments to the Civil Procedure Code adopted in 2001 have introduced faster proceedings under labour lawsuits, and particularly concerning claims for cash one-off indemnities under an employment contract relationship, pursuant to Article 126a, Paragraph 1, Letter "m" and "n" of the Civil Procedure Code. The initiative to file a claim and open a lawsuit pursuant to the provisions of fast proceedings shall lie with the claimant. The particulars of fast proceedings under labour lawsuits concern only the matter that the terms for consideration by court are significantly reduced. There are also some additional procedural obligations for the parties in view with securing faster proceedings. On the day of filing the claim the court shall send a copy of it, together with the enclosures, for presentation to the defendant who shall be obliged to answer in writing and to indicate and present all evidence within 7 days. Within 5 days from expiration of the deadline for reply the court shall, in a closed session, judge on the admission of the evidence as indicated and presented by the parties and shall set a hearing of the case in 15 days. The subpoena shall not apply the provision that the party should be summoned not later than seven days prior to the session, nor the requirement that upon appointment of an expert the conclusion shall be signed by the expert and shall be presented at the case at least five days prior to the court session, during which it shall be adopted. The quoted shortened deadlines shall be observed also in case of postponement of the case, as well as in the appeal instance. The court shall pronounce a ruling with its motives within 7 (seven) days after the session in which the hearing of the case was concluded. The pending cases of second instance shall have the same deadlines as the appeal proceedings under the general terms (within 14 days in the appellate instance).

Given the abovementioned and the fact that the claims in terms of termination of the employment relationship shall be filed within two months after the date of termination (Article 358 of the Labour Code), the proceedings for claims under Article 344, Paragraph 1, Item 1, Item 2 and Item 3 of the Labour Code can be concluded within a term shorter than 6 months. In this way the claimant is given the option to opt for fast proceedings, while creating incentives to good faith.

Opinion of the Confederation of Independent Trade Unions in Bulgaria

The statement presented herein above is not true. It is true that the Civil Procedure Code provides for a legal option to consider certain types of labour disputes pursuant to fast proceedings but besides that when such a dispute involves factual complexity of the case the court can adjudge it under the general terms, which in turn results in bringing the case to all court instances for a period of at least 2-3 years.

ARTICLE 25 - THE RIGHT OF WORKERS TO THE PROTECTION OF THEIR CLAIMS IN THE EVENT OF THE INSOLVENCY OF THEIR EMPLOYER

Question A

The Guaranteed Claims for Workers and Employees in Case of Insolvency of the Employer Act was SG, issue 37 of 04.05.2004. This Act provides for the establishment, functions and activities of the special fund "guaranteed claims of workers and employees in the event of insolvency of the employer" to secure the payment of part of the unsettled claims of the workers and employees, deriving from employment contracts, affected upon insolvency of the employer.

Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act

Article 2. This law shall apply to individuals who employ persons under employment relationship in companies, organizations and activities against which insolvency proceedings may be opened under the Commerce Act or under special laws.

Article 3. Guaranteed claims for workers and employees under this law shall include any due for payment and yet unpaid:

1. gross wage due under individual and collective employment contracts;

2. one-off indemnities for monetary obligations payable by the employer by virtue of a regulation.

Article 4. (Amend. – SG, issue 34 of 2006) (1) (Amend. – SG, issue 48 of 2006) Rights of protected claims under this law shall apply to workers and employees who are working or have worked under an employment relationship with the employer under Article 2 herein above, regardless of the contract's term and the working hours and provided the following:

1. the relationship has not been terminated as of the date of announcing the decision under Article 6;

2. the relationship has been terminated at least three months before the date of announcing the decision under Article 6.

(2) The workers and employees as defined under Paragraph 1 are entitled to benefits under this law provided that the employer's activity started at least six months before the date of opening of insolvency proceedings, respectively being overdraft, as defined in the decision under Article 6.

Article 5. Failure of the employer to pay due contributions as set forth under this law shall not deprive the workers and employees entitled to guaranteed claims.

Article 6. (Amend. – SG, issue 34 of 2006, issue 48 of 2006) Rights to guaranteed claims for the workers and employees as set forth under Article 4, Paragraph 1, shall become effective as of the date of promulgation in the State Gazette of a court decision about the following:

1. opening of insolvency proceedings;

2. opening of insolvency proceedings along with simultaneous announcing in insolvency;

3. opening of insolvency proceedings, announcing in insolvency and terminating of insolvency proceedings due to insufficient property as required to cover the insolvency proceedings expenses.

An **Ordinance on the terms and conditions to inform the workers and the employees and to allot and pay out the guaranteed claims in case of insolvency of the**

employer (Decree of the Council of Ministers №362 of 29.12.2004, SG, issue 3 of 11.01.2005, in force as from 01.01.2005).

In addition to the domestic legislation and regulation framework, in 2004 the Republic of Bulgaria ratified **Convention No. 173 of the International Labour Organisation (ILO) on the protection of workers' claims (employer's insolvency), 1992** (SG, issue 58 of 06.07.2004)

Question B

During the reference period under the present Report, the Commerce Act has been amended as follows:

COMMERCE ACT:

Insolvency

Article 608. (Amend. and supplemented – SG, issue 70 of 1998, Amend. – issue 84 of 2000, issue 58 of 2003, issue 38 of 2006) (1) Insolvent shall be deemed merchants who are unable to perform due and established on grounds of pecuniary obligation under a commercial transaction or public duty to the state and the municipalities related to his/her trade activity, or any obligation under private state gathering.

(2) Insolvency shall be presumed where the debtor has discontinued the payments.

(3) Insolvency can come forward also when the debtor has paid or is able to pay partially or wholly only a portion of separate creditors.

Obligation for Declaration

Article 626**.** (1) (Amend. – SG, issue 84 of 2000, Amend. – issue 38 of 2006) Any debtor who becomes insolvent or overindebted shall be obliged to request within 30 (thirty) days the initiation of insolvency proceedings.

(2) (Amend. – SG, issue 84 of 2000, Amend. – issue 38 of 2006) The request pursuant to paragraph 1 shall be submitted by the debtor, his/her heir, the management body or representative person, respectively the liquidator, of a commercial company or a partner with unlimited liability.

(3) Procurists shall be obliged to inform merchants, in a writing form within 7 days about the insolvency.

(4) Whenever the application is submitted by a proxy, then explicit power of attorney shall be required.

…

Question C

Pursuant to Article 3 of the Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act "guaranteed claims for workers and employees" shall include any due for payment and yet unpaid gross wages due under individual and collective employment contracts, as well as one-off indemnities for monetary obligations payable by the employer by virtue of a regulation.

OPINION OF THE CONFEDERATION OF INDEPENDENT TRADE UNIONS IN BULGARIA:

It is necessary to make reference to the provisions of Council Directive 80/987/EEC and Directive 2002/74/EC of the European Parliament and of the Council, as well as the provisions of Convention №173 of the International Labour Organisation (ILO) on the protection of workers' claims (employer's insolvency), 1992, concerning the scope of claims that shall be guaranteed by law. It is also necessary to quote, in comparison thereto, the protected claims as set forth under the Bulgarian law and also to draw conclusions on the extent to which the European Directives have been transposed into the Bulgarian national legislation and also the extent of application of Convention №173 of the International Labour Organisation (ILO) on the protection of workers' claims (employer's insolvency), 1992, in Bulgarian legal practice and case law.

The Confederation of Independent Trade Unions in Bulgaria insists that the report is added with the statement that the Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act has not yet transposed the provisions under Section III concerning social security – Article 8 of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer. These provisions guarantee the claims of the workers and the employees for immediate or prospective entitlement to old-age pension schemes, including survivors' benefits, under supplementary company or inter-company pension schemes outside the national statutory social security schemes.

Question D

In pursuance of the Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act, certain categories of workers or employees, even though these may work under employment contract relationship, are not entitled to guaranteed claims, as their employer cannot be subject of insolvency proceedings. Such employers include the following:

- state institutions;
- public enterprises with state monopoly on the local market;
- state enterprises established by virtue of a special law that are not commercial entities;
- non-personal entities established under the Obligations and Contracts Act
- commercial representation offices, as registered with the Bulgarian Industry and Trade Chamber, that do not have a status of independent commercial enterprise;
- national library clubs;
- unions of sectoral, artisan and other organizations;
- trade unions;
- law and notary offices;
- housing construction cooperatives.

The categories of individuals as listed herein below are also not entitled to guaranteed claims:

- workers or employees working with an employer who is a physical person without a legal status of a merchant;
- certain other categories as provided for in the Social Security Code, for example: individuals participating in the programs "From social benefits to employment" and "In support of maternity";
- civil servants;
- judges, prosecutors, investigators, state enforcement agents, registration judges and court officials;

- military servicemen under the Defense and Armed Forces of the Republic of Bulgaria Act and civil servants under the Ministry of Interior Act and The Enforcement of Punishments Act;
- members of cooperatives who are engaged in labour and receive remuneration in the cooperative;
- members of cooperatives working without employment contract relationship in the cooperative;
- contractors under contracts for management and control of commercial entities, sole proprietorship traders, syndics and liquidators, etc.

Pursuant to Article 7 of the Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act:

Article 7. The guaranteed size of the claims, as deriving from employment contract relations, shall not be payable to workers and employees, who at the time of opening insolvency proceedings, respectively being overindebted, as quoted in the decision under Article 6, provided that:

1. they are partners in the commercial entity;
2. they are members of bodies governing and controlling the commercial entity;
3. they are spouses and relatives on direct line of descent of the commercial entity as natural person, or the persons as defined under Item 1 and Item 2.

The abovementioned three categories of exceptional cases are included also in the text of the Declaration to the **Law on Ratification of Convention №173 of the International Labour Organisation (ILO)** on the protection of workers' claims (employer's insolvency), 1992 (SG, issue 58 of 06.07.2004).

Question E

Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act

SIZE OF THE GUARANTEED CLAIMS

Article 22. (1) The guaranteed claims of the workers and the employees under Article 4, Paragraph 1, Item 1, shall be equal to:

1. (Amend. – SG, issue 48 of 2006) the latest due for payment, but yet unpaid monthly labour wages and indemnities for the last six calendar months preceding the month when the decision under Article 6 is promulgated, but per month the size of protected claims may not exceed the maximum size of guaranteed claims as provided for such purposes, provided that the workers and the employees have been in contract employment relationship for at least three months;

2. the latest due for payment, but yet unpaid monthly labour wages and indemnities, but the size may not exceed the size of one minimum monthly wage as established for the country as of the date when the decision under Article 6 is promulgated, provided that the workers and the employees have been in contract employment relationship for less than three months.

(2) The maximum size of the guaranteed claims under Paragraph 1, Item 1 shall be specified on an annual basis by the Public Social Security Budget Act and may not be less than two and a half minimal labour wages as established for the country as of the date when the decision under Article 6 is promulgated.

Article 23. (1) (Amend. – SG, issue 48 of 2006) The guaranteed claims of the workers and the employees under Article 4, Paragraph 1, Item 2 shall be equal to the latest three labour wages due for payment, but yet unpaid, including any indemnities, for the last six calendar months preceding the date of employment contract termination, but per month the size of protected claims may not exceed the maximum size of guaranteed claims as provided for such purposes, provided that the workers and the employees have been in contract employment relationship for at least three months.

(2) The maximum size of the guaranteed claims under Paragraph 1, Item 1 shall be specified on an annual basis by the Public Social Security Budget Act and may not be less that two and a half minimal labour wages established for the country as of the date when the decision under Article 6 is promulgated.

(3) Wherever the claims of the workers or the employees under Article 4, Paragraph 1, Item 2 concern only due for payment, but yet unpaid indemnities on the account of the employer by virtue of a law or regulation or a collective labour agreement, the guaranteed claim shall be equal to the size of unpaid indemnities, but not to exceed the fourth times the minimal labour wage established for the country as of the date when the contract employment is terminated, provided that the workers and the employees have been in contract employment relationship for at least three months.

(4) (Amend. – SG, issue 34 of 2006) Wherever the workers or the employees under Article 4, Paragraph 1, Item 2 have been in contract employment relationship with the same employer for less than three months, the guaranteed claim shall be equal to the size of due for payment, but unpaid labour wages or indemnities, but not to exceed one minimal labour wage established for the country as of the date when the decision under Article 6 is incorporated.

COMMERCE ACT

Article 722. (2) (Amend. – SG, issue 70 of 1998, issue 38 of 2006) In case the cash funds are insufficient to fully satisfy the claims under paragraph 1, Item 3-12, the same shall be allocated among the creditors under the commensurability order.

The Public Social Security Budget Acts for 2005 and for 2006 respectively have specified the maximum size of the guaranteed claims, namely to be equal to two and a half minimal labour wages established for the country at that moment.

Questions and commentaries of the European Committee of Social Rights:

The European Committee of Social Rights does not consider that the system of privileges in this form (Article 722, Paragraph 1 of the Commerce Act) represents effective protection to the claims of the workers and employees in case of insolvency of the employer being identical to a guaranteeing institution, hence the national legislation is not compliant with the provisions of Article 25 of the European Social Charter (revised).

As it has been already mentioned above, the Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act envisages the establishment of the Fund guaranteeing the claims of workers and employees in the event of insolvency of the employer.

This Fund guaranteeing the claims of workers and employees in the event of insolvency of the employer is already set up and has been operating since 2004.

FUND GUARANTEED CLAIMS OF WORKERS AND EMPLOYEES IN THE EVENT OF INSOLVENCY OF THE EMPLOYER

Section I

Establishment, structure and governance

Article 8. This fund is established with the National Social Security Institute to secure the payment of claims of the workers and the employees under this law as a special fund “Guaranteed claims of workers and employees in the event of insolvency of the employer, called hereinafter "the Fund".

Article 9. Bodies of governance of the Fund include:

1. supervisory board;

2. director.

Article 10. (1) The supervisory board consists of eight members:

1. four representatives of nationally representative employers’ associations;

2. two representatives of nationally representative workers and employees' organizations;

3. and one representative of the Ministry of Labour and Social Policy and of the Ministry of Finance each.

(2) The representatives of the nationally representative employers’ associations and of the nationally representative workers and employees' organizations shall be appointed by their respective governing bodies at a national level, whereas the representatives of respectively the Ministry of Labour and Social Policy and of the Ministry of Finance shall be appointed by the respective ministers.

(3) In case that the nationally representative employers’ associations or the nationally representative workers and employees' organizations fail to reach mutual agreement on the manner of distributing the seats in the supervisory board under Paragraph 1, Item 1 and Item 2 within a term of 30 days from the date of the law becoming effective or after the end of tenure of the supervisory board, the Minister of Labour and Social Policy shall organize for drawing a lot among them within the tenure of the representatives of respectively the nationally representative employers’ associations and the nationally representative workers and employees' organizations.

(4) The supervisory board elects its chairman from its own constituency.

(5) The supervisory board has a term of tenure lasting three years.

(6) The supervisory board shall be convened at meetings by the chairman or upon request of one fourth of its members. The supervisory board’s first session shall be convened by the representative of the Minister of Labour and Social Policy.

(7) The meetings of the supervisory board shall be considered valid provided that they are attended by two thirds of its members. The decisions of the supervisory board shall be deemed valid provided that they are voted by more than half of the total constituency of the supervisory board.

(8) The director of the Fund shall take part in the meetings of the supervisory board only with a consultative vote.

Article 11. The supervisory board shall:

1. specify the main guidelines and the plan for financial provision of resources for the Fund;

2. exercise control on the activities of the director of the Fund;

3. approve the annual budget draft and approve the report on the implementation of the Fund;

4. vote the rules of organization and activities and approve the rules of organization and activities of the Fund;

5. approve the list of banks servicing the Fund, as specified under the terms and conditions of Article 29 of the Social Security Code;

6. make proposal to the chairman of The National Social Security Institute for the appointment and dismissal of the director of the Fund and shall define his/her remuneration;

7. adopt decisions to waive off uncollectible receivables after the completion of the insolvency proceedings concerning the employer.

Article 12. (1) The director of the Fund shall be appointed for a term of four years.

(2) The director can be dismissed also before the end of his/her tenure upon proposal made by the supervisory board of the Fund.

(3) The director shall:

1. carry out the operative management and shall administer the financial resources of the Fund;

2. submit for approval by the supervisory board:

a) the draft budget of the Fund;

b) the report on the implementation of the budget of the Fund;

c) the draft rules of organization and activities of the Fund;

d) the list of the banks to service the Fund, as specified under the terms and conditions of Article 29 of the Social Security Code;

3. submit to the supervisory board a waiver-off proposal concerning uncollectible receivables after the completion of the insolvency proceedings concerning the employer.

The Committee asks that the next report contain the following detailed information, with regard to the legislation in force during the next reference period and its implementation:
– the applicable legislative changes;

See the information concerning the provisions of the Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act presented herein above.

– confirmation that wages, as well as holiday pay and other types of paid absence are covered. It also asks for details as to the period of protection for the different types of claims;

As it was mentioned herein above, pursuant to Article 3 of the Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act, guaranteed claims of the workers and the employees under this law shall include:

- any due for payment and yet unpaid gross wages due under individual and collective employment contracts.

The term “gross wages” shall include the main labour remuneration; any additional remuneration (for example, for overtime work); allowance for used paid annual leave and other kinds of allowances.

- indemnities due for payment by the employer by virtue of a law.

The indemnities due for payment by the employer are provided for under the Labour Code, the Social Security Code and other secondary legislation – for example, Section I, Chapter Ten of the Labour Code “Financial liability of the employer”, Section III, Chapter Ten of the Labour Code “Other forms of indemnities” (compensation for non-admission to work, compensation for temporary suspension from work, business travel compensation, reassignment compensation, compensation in case of rehabilitation

reassignment, etc.; Article 40, Paragraph 4 of the Social Security Code (right to pecuniary compensation to be paid by the insurer to the insured person instead of labour remuneration for the time of leave due to temporary inability to work) etc.

As far as the term of protection under the various types of claims is concerned, pursuant to Article 4 of the Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act, the workers entitled to guaranteed claims under this law shall include those with employment contract relationship that has not been terminated as of the date when the decision for opening insolvency proceedings is promulgated, as well as workers who have had employment contract relationship at least three months prior to the date when the decision for opening insolvency proceedings is promulgated. Article 22 and Article 23 of the Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act (herein above) define the size of one-off indemnification for these two categories of workers and employees (Article 4, Paragraph 1 and Article 4, Paragraph 2), while taking into account if they have employment contract relationship with the employer for at least or less than three months.

- whether the protection would extend to situations where the insolvency has not been formally declared and bankruptcy proceedings not opened;

Pursuant to Article 4, Paragraph 1, Item 2 of the Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act, rights to guaranteed claims are granted also to the workers and the employees who have or have had employment contract relationship with the employer and whose employment contract relationship has been terminated during the last three months **prior to** the date when the decision for opening of insolvency proceedings is promulgated (or a decision promulgating simultaneously the opening of insolvency proceedings or terminating of insolvency proceedings). The workers and the employees are entitled to make use of these legal rights provided that the employer has carried out business activities at least six months prior to the date of insolvency proceedings, respectively overindebted, as indicated in the decision quoted herein above.

OPINION OF THE CONFEDERATION OF INDEPENDENT TRADE UNIONS IN BULGARIA:

This response is incorrect. The question means whether under grave financial conditions the workers and the employees can apply their entitlement to guaranteed claims. The Confederation of Independent Trade Unions in Bulgaria insists that the report is added with the explicit note that at the moment the Republic of Bulgaria lacks such legislation provisions.

– the normal or average duration of the period from which a claim is lodged until the worker is paid. The Committee asks also whether the possibility to file an appeal against rulings in insolvency proceedings or complaints related to the speed of the procedure, have lead to shorter durations, in this respect;

The Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act and the Ordinance on the terms and conditions to inform the workers and the employees and to allot and pay out the guaranteed claims in case of insolvency of the employer specify the term to settle the payment of the guaranteed claims.

The guaranteed claims under the law shall be allotted after the worker or the employee files a template request to the respective territorial department of the National

Revenues Agency, as per headquarters and seat of management of the employer, within 30 days after the date when the decision for opening insolvency proceedings is registered or the date when the workers and the employees are informed by their Bulgarian employer about the fact that insolvency proceedings are opened under the law of another country. The filed documents shall be sent to the director of the Fund within **14 days** after the template request is received.

The guaranteed claims shall be paid out or refused for payment by order of the director of the Fund, due for release within **two months** after the date when the decision for opening insolvency proceedings is promulgated and shall be forwarded to the respective territorial department of the National Revenues Agency and to the entitled worker or employee within 3 days after the date of issuing this order. Within **three days** after the date of issuing the order for payment of claims, the director of the Fund shall make a bank transfer of due sums to indemnify the guaranteed claims and the respective social security contributions, health insurance and supplementary obligatory public insurance contributions to the respective territorial department of the National Revenues Agency. Within **seven days** after the date of receiving the order for payment of the guaranteed claims and the release of due sums from the Fund, the respective territorial department of the National Revenues Agency shall pay it to the entitled person.

The law also provides for an appeal of the director's order. It can be appealed in pursuance of the provisions as set forth under the Administrative Procedures Code within 14 (fourteen) days after the receipt of the order before the administrative court as per seat of the respective territorial department of the National Revenues Agency. The apeal against the order as issued by the director of the Fund shall be considered by the respective administrative court as per seat of the respective territorial department of the National Revenues Agency within 2 months after his order is received and by the Supreme Administrative Court within 1 month after the protest has been submitted. Proceedings on cases dealing with reimbursement of guaranteed claims to workers or employees already paid by the Fund shall be free of charge.

With regard to insolvency proceedings under the Commerce Act, along with the amendments of the Commerce Act of 2003 in the section providing for insolvency, new Article 613a was inserted providing for two-instance proceedings of appealing the rulings and orders adopted throughout the insolvency proceedings.

COMMERCE ACT

Article 613a. (New – SG, issue 70 of 1998, Amend. – issue 64 of 1999, issue 84 of 2000, issue 58 of 2003) (1) (Amend. – SG, issue 38 of 2006, issue 59 of 2007) The rulings and orders concerning insolvency proceedings as enacted by the district court under Article 630, Paragraph 1 and Paragraph 2, Article 631, Article 632, Paragraph 1, Paragraph 2 and Paragraph 4, Article 701, Article 705, Paragraph 2, Article 709, Paragraph 1, Article 710, 735, Article 740, Paragraph 2, Article 744 and Article 755, Paragraph 2 shall be appealed under the general terms and conditions of the Civil Procedures Code.

(2) (Amend. – SG, issue 38 of 2006) The rulings and orders under Article 630 and Article 632 can be appealed also by third parties entitled to claims as a result from enacted court ruling or enacted order establishing any public liability.

(3) (New – SG, issue 38 of 2006, Amend. – issue 59 of 2007) Beyond the cases as provided for under Paragraph 1, the orders concerning insolvency proceedings as enacted by the district court shall be subject to appeal only before the respective Appellate Court in pursuance of the terms and regulations of Chapter Twelve "Appeal Proceedings" of the Civil Procedures Code.

(4) (Previous Paragraph 3 – SG, issue 38 of 2006) The Appeal Court shall institute the proceedings on the day of submission of the appeal or at the latest on the next working day and shall enact its order within 14 days from the day of the final hearing.

The Appeal Court shall institute the proceedings on the day of submission of the appeal or at the latest on the next working day and shall enact its order within 14 days from the day of the final hearing.

With regard to the complaint for delay, pursuant to Article 217a of the Civil Procedures Code, it shall be submitted directly to the upper court instance without handing out copies thereof to the other party under the proceedings and without payment of any state fees. The complaint for delay shall be considered immediately at a closed-door session of the court. The action guidelines to the court chairman who is the addressee under the delay complaint to be taken into consideration by the court shall be obligatory. The court ruling cannot be appealed and shall be sent immediately, along with the case, to the court against whose ruling stands the delay complaint.

There is currently no available information on the extent to how faster the proceedings would become should this legal opportunity is introduced.

– whether the protection under new law will be provided in addition to the protection of the privilege system under the Commercial Act.

The protection provided for under the Guaranteed Gatherings for Workers and Employees in Case of Insolvency of the Employer Act is not additional to the protection provided for under the Commerce Act; in fact, it is another kind of protection regulated separately in a special law.

In order to establish the entitlement to guaranteed claims of the workers and the employees under the Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act, it is required to be possible to open insolvency proceedings against the respective employer under the terms and provisions of the Commerce Act or any other special laws.

When the employer is declared into insolvency, the claims of the workers and the employees are often put at risk, because the employer may not own property assets that can be converted into cash or the property owned by the employer is not sufficient to meet the claims of the workers and the employees, who stand fourth in the list of creditors pursuant to the Commerce Act.

Therefore, the lawmaker has envisaged a safeguard clause guaranteeing the claims of the workers and the employees based on employment contract relationship and the right to indemnification, in pursuance with the provisions under the Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act. To claim their indemnities, the workers and the employees entitled to guaranteed claims under this law are required to submit a template request to the respective territorial department of the National Revenues Agency, as per headquarters and seat of management of the employer. As it was abovementioned, the guaranteed claims of the workers and the employees shall be limited as per size (Article 22 and Article 23 of the Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act). When defining the limited size of the guaranteed claims of the workers and the employees, the following commensurability order must be taken into account:

1. labour wages;

2. indemnities under the Labour Code, which are taxed with social security contributions;

3. other indemnities under the Labour Code;
4. indemnities under Article 40, Paragraph 4 of the Social Security Code.

In certain cases the guaranteed claims may not cover the sum of all claims due for payment by the employer. In this case the remainder above the guaranteed claims can be claimed via constitution of the worker or the employee as a party to the insolvency proceedings under the Commerce Act (Article 30 of the Guaranteed Claims of Workers and Employees in Case of Insolvency of the Employer Act).