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REVISED EUROPEAN SOCIAL CHARTER

8th National Report on the implementation of
the European Social Charter (revised)

submitted by

THE GOVERNMENT OF BULGARIA

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

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Report registered by the Secretariat on 16 March 2010

CYCLE 2010

R E P U B L I C O F BULGARIA

MINISTRY OF LABOUR AND SOCIAL POLICY

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NATIONAL REPORT

Made by the Government of Republic of Bulgaria in accordance with Article C of the European Social Charter, on the measures taken to give effect to the accepted provisions of the Revised European Social Charter.

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PREFACE

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

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

The present Report contains information for the following provisions of the ESC (r): Art. 2&2-7, Art.4&2-5, Art.5, Art.6&1-4, Art.21, Art. 22, Art. 26& 1 and 2, Art. 28 and Art. 29.

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

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

II. PROVISIONS OF THE EUROPEAN SOCIAL CHARTER (revised)

Article 2 – All workers have the right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

2. to provide for public holidays with pay;

3. to provide for a minimum of four weeks' annual holiday with pay;

4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;

5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;

6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the

contract or employment relationship;

7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Appendix to Article 2§6

Parties may provide that this provision shall not apply:

a. to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;

b. where the contract or employment relationship is of a casual and/or specific nature, provided, in

these cases, that its non-application is justified by objective considerations.

Information to be submitted

Article 2§2

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

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

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

There are no amendments to the legislation as to the number of official holidays if compared to the last report.

According to Art. 154, para. 2 of the LC, it was provided that the Council of Ministers may „also announce, on single occasions, other days to be official holidays, or days of celebration dedicated to certain occupations, and to rearrange off days over the year"

Decisions of the Council of Ministers during the reference period on rearrangements of the off days, according to Art. 154, para. 2:

- DECISION No. 4 of the Council of Ministers of 10.01.2008 on the rearrangement of off days in 2008 promulgated in SG, No. 6 of 18.01.2008

1. Announces that 2 May (Friday) and 5 May (Monday) shall be off days, while 10 May (Saturday) and 17 May (Saturday) shall be working days.
2. Announces that 31 December (Wednesday) shall be an off day, while 20 December (Saturday) shall be an working day.

- DECISION No. 94 of the Council of Ministers of 15.02.2007 on the rearrangement of off days in 2007, as promulgated in SG, No. 17 of 23.02.2007, amended, No. 36 от 4.05.2007.

1. Announces that 30 April (Monday) shall be an off day, while 21 April (Saturday) shall be an working day.
2. (Amended, - SG, No. 36 of 2007) Announces that 25 May (Friday) shall be an off day, while 2 June (Saturday) shall be an working day.
3. Announces that 7 September (Friday) shall be an off day, while 15 September (Saturday) shall be an working day.
4. Announces that 31 December (Monday) shall be an off day, while 15 December (Saturday) shall be an working day.

- DECISION No. 921 of the Council of Ministers of 2.12.2005 on the rearrangement of off days in 2006, as promulgated in SG, No. 100 of 13.12.2005, amended, No. 1 of 3.01.2006 .

(Amended, - SG, No. 1 of 2006) Announces that 2 January 2006 shall be an off day, while 28 January 2006 shall be an working day

- DECISION No. 102 of the Council of Ministers of 17.02.2005 on the rearrangement of off days in 2005, as promulgated in SG, No. 16 of 18.02.2005 .

1. Announces that 4 March 2005 shall be an off day, while 12 March 2005 shall be an working day
2. Announces that 23 May 2005 shall be an off day, while 28 May 2005 shall be an working day
3. Announces that 5 September 2005 shall be an off day, while 10 September 2005 shall be an working day
4. Announces that 23 September 2005 shall be an off day, while 17 September 2005 shall be an working day

Explanations on this practice – see question of ECSR on para. 5 of Art. 2.

As to the labour remuneration against work over official holidays, the labour Code contains no amendments.

According to the Bulgarian legislation, work during the days in question as announced to be official holidays shall, in some cases, be considered as working extra hours within the meaning of Art. 143 (1) of the LC:

Definition and prohibition
Art. 143. (1) (Amended, - SG, No. 100 of 1992, No. 25 of 2001) Overtime/extra hours shall be the hours worked, under the arrangement or with the approval of, and with no opposition of the employer or the relevant supervisor, by the worker or the employee beyond the regulated hours applicable to him.
(2) Overtime/extra hours are prohibited.

Some of the cases where extra hours are admissible, by way of exception:
Admissibility, by way of exception
Art. 144. Extra hours are admissible, by way of exception, in the following cases only:
1. in case of efforts made to contribute to the defence of the country;
2. (Supplemented, - SG, No. 100 of 1992, amended, No. 19 of 2005, suppl., No. 102 of 2006, amended, No. 35 of 2009, in force as of 12.05.2009) on prevention, setting control over and overcoming of implications of calamities;
3. (amended, - SG, No. 100 of 1992) on implementing emergency works of public need on restoration of water supplies, electric power supply, heating power supply, sewerage, transport and telecommunications and providing medical assistance;
4. (amended, - SG, No. 100 of 1992) on implementing rescue and recovery operations and repairs in operational premises, machinery or other equipment;
5. (amended, - SG, No. 100 of 1992, No. 108 of 2008) on bringing already started work to an end, which may not be completed within regular working hours;
6. (New, - SG, No. 100 of 1992) on performing intense seasonal assignments.

<u>Questions of the European Committee of Social Rights (ECSR)</u>

The report confirms that work on a public holiday may be compensated by time off in lieu. The Committee asks for information on wages paid to workers who work on a public holiday.

According to Art. 264 of the Labour Code, against jobs assigned during the official holidays, whether these are extra hours or not, the worker or the employee shall be paid to as pre-concerted, however not less than the double amount of his labour remuneration.

Supplemental information:

- job assignments during days announced to be official holidays shall be performed in the cases of uninterruptible or continuous production process (in such cases, jobs shall be performed as per a work-schedule, subject to the employer's prior consent, by the workers or employees, where the work performed shall not be deemed as extra hours within the meaning of the Labour Code);
- any need to perform jobs during days announced to be official holidays may also be associated with performing extra hours within the meaning of the Labour Code.

Article 2§3

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

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

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

The Republic of Bulgaria ratified Art. 2, para. 3 of the European Social Charter (revised) by a Law, as promulgated in SG, No. 12 of 6.02.2007 upon preparation of The Report on the Non-ratified Provisions of ESC (r).

Under the Law on the Amendments to the Labour Code, as promulgated in SG, No. 52 of 2004, as of 01.08.2004, the provisions of Articles 155 and 156 are amended. The main purpose of such amendments is to improve the legislation by explicitly regulating a worker or an employee' right to a paid annual leave, as well as his right a compensation, when his employment relationship was terminated prior to completion of 8 months of length of service.

Labour Code

Types of leaves

Regular and extended paid annual leave

(Title amended, - SG, No. 100 of 1992)

Art. 155. (As amended, - SG, No. 100 of 1992) (1) (Amended, - SG, No. 52 of 2004) Each worker or employee has the right to a paid annual leave.

(2) (New, - SG, No. 52 of 2004) In the case of a first job assignment, a worker or an employee may use his paid annual leave, when he completes at least 8 months length of service.

(3) (New, - SG, No. 52 of 2004) In the case of termination of the employment relationship prior to completion of 8 months length of service, a worker or an employee has the right to compensation for the unused paid annual leave, as calculated pursuant to the provisions of Art. 224, para. 1.

(4) (Amended, - SG, No. 25 of 2001, former para. 2, No. 52 of 2004) The size of the regular paid annual leave shall be at least 20 working days.

(5) (Amended, - SG, No. 25 of 2001, former para. 3, as amended, No. 52 of 2004) Some categories of workers or employees, in function of the special nature of the job assigned, have the right to an extended paid annual leave, which should include the leave under para. 4. The categories of workers or employees and the minimum size of this leave shall be determined by the Council of Ministers.

Additional paid annual leave

Art. 156. (Amended, - SG, No. 100 of 1992, No. 52 of 2004) Under the terms as stipulated by Art. 155, para. 2, a worker or an employee has the right to additional paid annual leave:

1. for work in conditions harmful to human health or for work in specific conditions - at least 5 working days;

2. for work in the conditions of an open-ended working hours - at least 5 working days.

The labour legislation in force guarantees the right of workers or employees to a paid annual leave. Two basic types of paid annual leave are regulated: regular and additional. All workers or employees working under an employment relationship have the right to a regular paid annual leave. The right to an additional paid annual leave shall be provided to workers or employees, who work in working conditions in deviation of the normal; therefore a lengthier annual leave is needed to compensate any such unfavourable conditions.

For its part, the regular paid annual leave comprehends two types: regular and extended.

- The size of the regular paid annual leave is at least 20 working days, where the right to this type of leave is granted to all workers or employees, who perform their assigned jobs in normal working conditions.
- Right to an extended paid annual leave is granted to some categories of workers or employees, whose work has a specific nature. The categories of workers or employees and the minimum size of the extended paid annual leave are stipulated by a legal regulation: the Ordinance on Working Hours, Breaks and Leaves (right to this type of leave is granted to those employed in the sphere of public education, sciences, culture, health care and social services, the flying crew of the civil aviation, leadership officials in the executive authorities and in the Administration of the President of the Republic of Bulgaria, etc. The minimum sizes of the extended paid annual leave for different categories of workers or employees vary from 26 to 48 working days).

The additional paid annual leave shall be granted against work under the two following hypotheses:

- to workers or employees, against work in working conditions that are harmful to human health or for work or in specific working conditions (all criteria and conditions for making benefit of this type of leave are regulated in a legal regulation – Ordinance No. 3 on the terms and requirements for determining the right на additional paid annual leave for work in conditions harmful to human health or for work in specific conditions).
- against work in the conditions of an open-ended working hours (right to this type of leave is granted to those employed under the terms as stipulated by open-ended working hours as established under the relevant rules. The purpose of such a leave is to compensate the work efforts of a specific category of workers or employees who, as a result of the specific nature of their labour functions, are required to perform their working duties even upon the end of their regular working hours).

Each worker or employee, who performs his job in the above conditions, has the right to an additional paid annual leave amounting to at least 5 working days.

Basic characteristics of both types of paid annual leaves, i.e. the regular and the additional, are:

- their length shall be calculated in working days;
- the legislation guarantees their minimum size, and the legal possibility to arrange for larger sizes in either an individual employment contract or a collective agreement is regulated (Art. 156a of the Labour Code,);
- a sine qua non for using leaves is the presence of 8 months of length of service, and such a condition shall only be enforced once, i.e. within the meaning of the initial work assignment of an individual;
- the legislation guarantees a worker or an employee' right to compensation in the case of termination of his employment relationship, where by the date of the termination he has not made benefit of his due paid annual leave, whether due to the circumstance that he has not completed the legally required 8 months of length of service, or due to any other reasons.

Labour legislation contains a special regulation guaranteeing a higher minimum size of the regular paid annual leave to workers or employees with lost capacity of 50 + per cent. Workers or employees pertaining to this category have the right to a paid annual leave as long as at least 26 working days (Art. 319 of the Labour Code,).

Article 2§4

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

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

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

The Republic of Bulgaria made a presentation of its policies on health and safety conditions in the Seventh National Report regarding the provisions of Art. 3 of ESCh(r).

Additionally, we may provide the following information:

The amendments made to Healthy and Safe Working Conditions Act during the reference period are:

Art. 1. (Amended, - SG, No. 40 of 2007) (1) This law regulates the rights and liabilities of the State, the employers, those employed, the representatives of those employed in terms of safety and health at work, of the individuals who, at their own account, work either alone or in partnership, and of other organisations and legal entities for ensuring health and safety conditions.

Art. 2. (1) (Amended, - SG, No. 40 of 2007) This law is enforced in all undertakings and places where work activities are performed or where training is conducted, irrespective of the

form of organisation, the type of property and the grounds any such work activities or trainings take place.

(2) (Amended, - SG, No. 18 of 2003, No. 102 of 2006, No. 40 of 2007) This law is enforced and:

1. in cases of peacetime activities within the system of the Ministry of Defence, the Ministry of Defence, the Ministry of Interior and the Ministry of Emergency Situations;

2. for Bulgarian undertakings abroad, unless the laws of the relevant State or an international contract, where the Republic of Bulgaria is a party to, provide otherwise.

(3) (Amended, - SG, No. 40 of 2007) This law shall not be enforced, when the special nature of some specific activities within the systems of the Ministry of Defence, The Ministry of Interior and the Ministry of Emergency Situations should inevitably enter a conflict with the requirements of the law. For such activities, safety and health of those employed shall be ensured to the highest possible standards in accordance with the purposes of this law.

.....

Art. 4. (Amended, - SG, No. 40 of 2007) (1) An employer undertakes to provide for health and safety conditions to those employed, by applying all relevant measures thereto, including:

1. job-related risk prevention;

2. provision of information and training;

3. providing for relevant organisation and financing.

(2) An employer conforms the measures under para. 1 to the changing circumstances to improve existing situation.

(3) An employer applies the measures under para. 1, by ensuring the basic prevention principles:

1. risk evasion;

2. assessment of risk, which may not be evaded;

3. limitation of risks to the source of their occurrence;

4. adapting work to the worker, especially when designing workplaces, or selecting work equipment, or work methods, to facilitate or eliminate monotonous work, or imposed rhythm assignments, and to reduce the impact of the above on a worker’s health;

5. updating to the state of the art in technology;

6. replacing anything hazardous for either safe or less hazardous;

7. designation of existing hazards and sources of factors that are harmful to human health and safety;

8. application of consistent integral prevention policy encompassing technology, work management and logistics, working conditions, social interrelations and the impact of any components pertaining to working environment or work process;

9. giving priority to using collective protection equipment rather than personal protection equipment;

10. giving relevant instructions to those employed.

Art. 12. (1) (Supplemented, - SG, No. 48 of 2006) In case of work involving high levels of mental and nervous pressure, imposed rhythm, monotony or compulsory work posture, or in conditions of a fixed assignment norm to achieve, or in shift work, physiological regimes of work and breaks are introduced that contribute to protection of health and working capacity of those employed.

(2) The terms and conditions, and the requirements for developing any physiological regimes of work and breaks shall be determined by an ordinance by the Minister of Health Care and the Minister of Labour and Social Policy.

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Chapter three

LIABILITIES FOR ENSURING HEALTH AND SAFETY CONDITIONS

Art. 14. (1) (Supplemented, - SG, No. 76 of 2005, as amended and suppl., No. 40 of 2007) Legal entities and natural persons who hire labour on an independent basis, legal entities and natural persons who use labour provided to them by an undertaking ensuring temporary employment, as well as persons who, at their own account, work either alone or in partnership with other persons, must injure health and safety conditions in all work-related cases both to those employed and to all other persons who have any other grounds to be located either in or close to working premises, sites or places.

(2) (Amended, - SG, No. 40 of 2007) All persons under para. 1 incur liability for ensuring health and safety conditions irrespective of the liabilities of those employed under this law, as well as whether such activity is performed by their bodies or is assigned to other competent services or persons.

(3) The liabilities under para. 1 are also valid in cases of providing and conducting trainings in all types of educational institutions, organisations and units for providing enhanced professional skills and knowledge.

Art. 15. (As amended, - SG, No. 18 of 2003, amended, No. 108 of 2008) (1) The persons under Art. 14, para. 1 submit annual declarations at the Territorial Directorate of the Labour Inspectorate in localities of undertakings' registration by 30 April of the subsequent year.

(2) The form, the contents, the procedure and the method of submitting and storage of a declaration under para. 1 shall be stipulated by an ordinance of the Minister of Labour and Social Policy.

(3) When there is no change in the circumstances subject of declaring, no annual declaration shall be submitted and, therefore, the persons under Art. 14, para. 1 shall notify the Labour Inspectorate Territorial Directorate thereof in writing within the term under para. 1.

Art. 16. (1) When providing the activities aimed at ensuring health and safety conditions, the employer must:

1. (amended, - SG, No. 40 of 2007) assess the risks to the safety and health of those employed, by covering the selection of work equipment, use of chemicals and preparations and the organisation of workplaces;

2. (amended, - SG, No. 40 of 2007) in accordance with the risk assessment and in case of need, plan and apply any prevention measures and work methods and production methods, which should:

а) ensure improvements in the level of defence of those employed;

б) be integrated in all activities and structural units of an undertaking;

2a. (New, - SG, No. 40 of 2007) assign to those employed tasks matching their competences, experience and possibilities, as well as their readiness in respect of safety and health at work;

.....

(2) (New, - SG, No. 76 of 2005, suppl., No. 48 of 2006) When implementing his liabilities under para. 1, the employer must ensure health and safety conditions and equal levels of protection against production risks to all labour, irrespective of the period of their contracts or the length of their working hours, including in the case of shift labour and in the case of night shift labour.

(3) (New, - SG, No. 76 of 2005) Legal entities and natural persons, who use labour provided to them by an undertaking ensuring temporary employment must:

1. implement the activities under para. 1;

2. notify the undertaking ensuring temporary employment on the specific characteristic of the workplace, job-related risks and relevant professional qualifications.

(4) (New, - SG, No. 76 of 2005) The undertaking ensuring temporary employment shall provide information under para. 3 to interested labour.
(5) (Former para. 2 - SG, No. 76 of 2005) Persons who at their own account, work either alone or in partnership with other persons must make a health and safety risk assessment of those employed and undertake relevant measures to prevent or reduce the risk.
(6) (Former para. 3 - SG, No. 76 of 2005) All expenditure relevant to provision of health and safety conditions to those employed shall be entirely at the employer's account.
.....
Art. 19. (1) (Supplemented, - SG, No. 76 of 2005) An employer provides to those employed and to those employed under term-limited labour contracts or under the terms as stipulated by temporary employment under Art. 14, para. 1, or to their representatives all relevant information on the risks for their health and safety as well as on the measures undertaken to the end of elimination, reduction or setting control on such risks.
(2) (New, - SG, No. 48 of 2006) The information under para. 1 shall be provided to those employed who either take shifts or night shifts.
(3) (Former para. 2 - SG, No. 48 of 2006) The information under para. 1 shall be provided to those employed by other undertakings operating in the area/on the premises of the relevant undertaking.
Art. 20. (1) For prevention of harmful consequences in case of extraordinary circumstances or in function with the specificity of the activities and the size of the undertaking, the employer:
1. ensures logistics comprising hazard liquidation activities, first aid provision, fire protection and conditions for evacuation of those employed, as well as contacts with the civil defence units, the fire department squads and emergency aid units;
2. (amended, - SG, No. 40 of 2007) identifies those employed who will implement the hazard liquidation measures, first aid measures, fire fighting measures and evacuation of those employed where the number, the training and the equipment provided to them for any such purpose must meet the specific risks and the size of the undertaking.
(2) (Amended, - SG, No. 18 of 2003, No. 102 of 2006) The measures and rules to provide first aid, fire protection squads and emergency aid units in cases of accidents at the undertakings and organisations, and the training of those employed under para. 1, i. 2 are set out by an ordinance of the Minister of Interior, the Minister of Health Care and the Minister of Emergency Situations.
Art. 21. (Supplemented, - SG, No. 40 of 2007) In case of or under threat of occurrence of a serious and close hazard for health and lives, the employer shall as soon as possible inform all threatened labour on any action that is undertaken in respect of their defence, ensure operation halt and their evacuation to a safe place and shall not admit any operation resume until the hazard has been dealt with.
.....
Art. 23. (1) (Amended, - SG, No. 40 of 2007) An employer must establish, investigate and record each labour accident and all cases that he is aware of of occupational disease under the procedure stipulated by the Code of Social Insurance.
(2) (Amended, - SG, No. 40 of 2007) In the cases under para. 1, representatives of those employed in terms of safety and health at work and of trade organisations shall be invited.
Art. 24. (1) (Amended, - SG, No. 76 of 2005) To organise and implement the activities relative to the protection against job-related risks and prevention of such risks the employer, in function of the business scope and nature and the nature of the job-related risk, shall assign or point out one or more officials having appropriate education and qualifications levels or shall establish a specialised service.

(2) Functions and tasks of the officials and specialised services under para. 1 shall be stipulated by an ordinance of the Minister of Labour and Social Policy. On the grounds of such an ordinance, the employer shall regulate their functions and tasks in conformity with the specific conditions.
(3) (Amended, - SG, No. 64 of 2000, suppl., No. 76 of 2005) At the employer's discretion, implementing the activities under para. 1 may be assigned, by a contract, to other legal entities and natural persons or may be performed by the employer in the cases when he a natural person.
(4) (New, - SG, No. 40 of 2007) When the employer assigns the implementation of the activities under para. 1 to other legal entities or natural persons, he must provide them the information under Art. 19, para. 1.
(5) (New, - SG, No. 40 of 2007) An employer shall provide to the persons under para. 1, as well as to the representatives of those employed in terms of safety and health at work, access to:
1. the risk assessment and the protection measures as laid down in Art. 16, para. 1, i. 1 and 2;
2. the information relative to the activities under Art. 23;
3. the information received as a result of implementing protection and prevention measures;
4. the information received from the findings and prescriptions and of supervising agencies on safety and health at work.
Art. 25. (1) (Amended, - SG, No. 40 of 2007) Employers ensure servicing of those employed by labour medicine registered services.
(2) (Amended, - SG, No. 40 of 2007) Labour medicine registered services are units having mostly prevention functions. They consult and support the employers, committees and groups on working conditions to plan and organise the activities for:
1. providing and maintaining health and safety conditions;
2. (amended, - SG, No. 18 of 2003) strengthening health working capacity of those employed in respect of the jobs assigned to them;
3. (New, - SG, No. 40 of 2007) adaptation of work to labour capacities by accounting his physical and mental health.
(3) (Amended, - SG, No. 40 of 2007) Labour medicine registered services are established by:
1. the employers, either independently or in partnership with other employers;
2. legal entities or natural persons registered under the Trade Law, under the Law on Cooperatives or under the Law on Non-profit Legal Entities, aimed at servicing labour.
(4) (New, - SG, No. 40 of 2007) To service labour, medical treatment establishments may establish labour medicine services established as independent legal entities.
(5) (Amended, - SG, No. 18 of 2003, Rep., former para. 4, No. 40 of 2007) When an employer finds it virtually impossible to, either alone or in partnership, establish labour medicine services he shall enter a contract with a registered labour medicine service.
(6) (New, - SG, No. 70 of 2004, Rep., No. 40 of 2007).
Art. 25a. (New - SG, No. 40 of 2007) (1) The basic activities of labour medicine services are:
1. providing assistance to the employers to create the appropriate logistics for safety and health at work;
2. assessment of job-related risks and analysis of health statuses of those employed;
3. provision of measures to eliminate and reduce any established risks;
4. monitoring the health statuses of those employed;
5. providing training to labour and officials on health and safety at work protection rules.
(2) Labour medicine service makes and stores records as stipulated by the ordinance under Art. 25b, para. 4.
(3) Labour medicine service operates in accordance with the requirements of legal regulations on provision of health and safety at work.

Art. 25b. (New - SG, No. 40 of 2007) (1) The minimum staff of labour medicine services shall include:
1. a person with a Master Degree in medicine having acquired labour medicine speciality;
2. a person with Master Degree in engineering and three years of professional experience in the area of safety and health at work;
3. technical executive having at least secondary educational degree.
(2) The employment contracts with those employed by labour medicine services shall be concluded, modified and terminated in conformity with the Labour Code.
(3) Staffing of the labour medicine service and in cases of specific assignments, the following may not be included:
1. persons who work in the Ministry of Health Care and the Ministry of Labour and Social Policy and their supervising agencies;
2. medical professionals who have lost their capacity within the meaning of the Health Act;
3. persons who have signed contracts with the National Health Insurance Fund and registered at the regional health care centres.
(4) The terms and conditions to implement the activities of labour medicine services shall be stipulated by an ordinance of the Minister of Health Care and the Minister of Labour and Social Policy.
(5) The period during which such medical professionals work for the labour medicine service shall be recorded as professional experience.
Art. 25c. (New - SG, No. 40 of 2007) (1) Labour medicine services are registered at the Ministry of Health Care.
(2) Registration of labour medicine services is made by the Minister of Health Care on the proposal of the Commission for registration of labour medicine services.
(3) The Commission under para. 2 shall be assigned by an order of the Minister of Health Care and shall be composed by a chairperson and 8 members.
(4) The chairman of Commission under para. 2 shall be appointed by the Minister of Health Care.
(5) The Minister of Health Care, the Minister of Labour and Social Policy, the nation-wide employers' representative organisations and the nation-wide representative organisations of those employed shall assign two representatives of theirs each to the Commission under para. 2.
Art. 25d. (New - SG, No. 40 of 2007) (1) For registering of labour medicine services, persons who established thereof shall submit an application and attach the following thereto:
1. data containing name, seat and address;
2. a copy of the court registration act or a copy of another document proving the establishment of the entities under Art. 25, para. 3;
3. contract between employers – for the cases under Art. 25, para. 3, i. 1;
4. an updated certificate proving the entry with the trade register;
5. a list of the minimum staff of the professionals from the labour medicine service;
6. copies of documents attested by a notary proving the education degrees and qualifications levels of the professionals under i. 5;
7. declaration of the persons under i. 5 proving their conformity with the requirements of Art. 25b, para. 3;
8. a certificate proving membership with the Bulgarian Doctors Union for the person under Art. 25b, para. 1, i. 1;
9. a document proving a paid fee using the rate as per the tariff under para. 7.
(2) In case the documents under para. 1 prove to be either incomplete or invalid, the Minister or any official authorised by him shall, within a 30-day term as of the date of the submitting the application, notify in writing the persons in question of findings proving incompletenesses or

irregularities of the documents and by such notification shall determine a term not less than 14 days for making them good.
(3) Within a 30-day term as of the date of submitting the application or as of the date of making good any incompleteness or irregularities found, the Minister of Health Care or any official authorised by him shall, on the proposal of the Commission for registration of labour medicine services, issue a certificate of registration by labour medicine service or make a motivated waiver of registration.
(4) A waiver of registration is applied where the incompleteness or irregularities in the documents have not been made good within the term as determined by the notification under para. 2 or in case of non-conformity with the registration requirements.
(5) The waiver under para. 4 shall be subject of appeal pursuant to the provisions of the Administrative Proceeding Code.
(6) The Ministry of Health Care maintains a Public Register of labour medicine services. Data from this Register shall be published on the Ministry of Health Care's website.
(7) for the purposes of issuing a certificate for registration of labour medicine service under para. 3 and for a new registration of labour medicine service under Art. 25e, para. 2 charges shall be collected in accordance with the rates as stipulated by the tariff under Art. 46 of the Health Act.
Art. 25e. (New - SG, No. 40 of 2007) (1) In case of changes in the circumstances under Art. 25d, para. 1, persons who have established labour medicine services shall, within a 7-day term as of the occurrence thereof, notify in writing the Minister of Health Care and attach any documents proving such a change.
(2) the Minister of Health Care or any official authorised by him shall, within a 20-day term as of the date of submitting the notification on change of circumstances under Art. 25d, para. 1, on the proposal of the Commission for registration of labour medicine services shall record the changes to the register of labour medicine services and issue a certificate for change of registration or make a motivated waiver.
(3) the Minister of Health Care or any official authorised by him shall issue an order to cancel already registered labour medicine services from the register in case of:
1. an application submitted by the persons who have established the labour medicine services, on cancellation from the register;
2. termination of activities of persons who have established a labour medicine service;
3. any non-conformities have been found with the requirements of Art. 25b, para. 1, 3 and 4;
4. violations of Art. 25a on a regular basis have been found by the supervising agencies;
5. forged instruments have been detected relative to the registration of the service.
(4) The waiver under para. 2 and the order under para. 3 are subject of appeal pursuant to the provisions of the Administrative Proceeding Code.
.....
Art. 32. (Amended, - SG, No. 18 of 2003) (1) (Amended, - SG, No. 76 of 2005) In co-operative societies having membership of more than 5 co-operative members, a labour condition group shall be established, and where the membership exceeds 50, then a labour condition committee shall be established.
(2) The representatives in the labour condition committees or groups shall be elected by the general assembly of the co-operation. The chairperson of the labour condition committee of the group shall be the chairperson of the co-operation.
.....
Art. 34. (1) Those employed in conformity with their qualifications and instructions given must:
1. use properly all machinery, apparatus, instruments, dangerous substances and materials, means of transport and all other work equipment;

2. (Supplemented, - SG, No. 40 of 2007) use properly all personal protection equipment and special work garments given to them, and after use, return them in the appropriate place for storage;
3. (amended, - SG, No. 40 of 2007) use properly and purposefully, and to never remove, or cut, or switch off, or modify wilfully any collective protection equipment and protective devices that are part of the equipment, machinery, apparatus, instruments, the undertaking or the building;
4. inform forthwith the employer or the relevant officials of any situation occurred during operation that may be direct threat to their health, and about all deficiencies in collection protection equipment;
5. (amended, - SG, No. 40 of 2007) cooperate with the employer, with the relevant officials and/or with the representatives of those employed in terms of safety and health at work during the implementation of the activities aimed at ensuring health and safety conditions and the prescriptions given by the supervising agencies.
(2) Each labour who would temporarily remove or cancel any means of protection or any alarms during repairs, assembly, prevention sessions, etc., must return it forthwith or undertake other protection measures ensuring the same efficiency.
.....
Art. 36a. (New - SG, No. 108 of 2008) (1) Each 5 years the Minister of Labour and Social Policy shall, upon consultations with the organisations of employers and those of workers or employees confirmed as representative for national level events, lodge a consolidated report to the European Commission on the application of:
1. Directive 89/391/EEC of the Council of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work referred to hereinafter as the Directive 89/391/EEC;
2. the special directives under Art. 16, para. 1 of Directive 89/391/EEC;
3. Directive 91/383/EEC of the Council of 25 June 1991 г. supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship, Directive 92/29/EEC of the Council of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels, Directive 94/33/EC of the Council of 22 June 1994 on the protection of young people at work and Directive 83/477/EEC of the Council of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work (second individual Directive within the meaning of Article 8 of Directive 80/1107/EEC).
(2) The report under para. 1 shall be prepared in accordance with the structure and contents as set out by the European Commission.
(3) The report under para. 1 shall be presented to the European Commission within a 12-month term as of the end of the 5-year period, which it is relative to.
.....
Art. 45. (1) (Amended, - SG, No. 18 of 2003) The financing under the Working conditions Fund shall be raised and allocated under the budget of the Ministry of Labour and Social Policy.
(2) Sources for raising the financing under the Working conditions Fund are:
1. annual grant-aid from the State budget amounting to a sum which shall be determined annually under the Law on the State budget of The Republic of Bulgaria;
2. (amended, - SG, No. 18 of 2003) sums from the Work-related accident and occupational disease Fund of the State public social security provided for under the budget of the fund for financing activities to reduce the frequency and the severity of insured social risks, i.e. “labour accident and occupational disease”;

3. (New, - SG, No. 105 of 2006) sums from the Work-related accident and occupational disease Fund of the State public social security provided for under the budget of the fund for financing activities for diagnostics of occupational disease;
4. (Rep. - SG, No. 18 of 2003, former i. 3, No. 105 of 2006) voluntary contributions, endowments and writs from Bulgarian and foreign nationals and from legal entities;
5. revenues from charity events;
6. advertising activities;
7. other sources as stipulated by a Law or an act of the Council of Ministers.
Art. 46. (1) The financing under the Working conditions Fund shall be allocated on:
1. financing projects and programmes on improvement of working conditions on a branch level and applicability of results;
2. (New, - SG, No. 18 of 2003, amended, No. 76 of 2005, No. 40 of 2007) participation in financing of projects for improvements to working conditions with high social effect of the results in each undertaking as selected on a competition basis; the financial participation accounts for not more than 30 per cent of the cost of the project;
3. (New, - SG, No. 105 of 2006) diagnostics of occupational disease;
4. (former i. 2 - SG, No. 18 of 2003, former i. 3, No. 105 of 2006) development of legislation, rules, standards and requirements;
5. (former i. 3 - SG, No. 18 of 2003, former i. 4, No. 105 of 2006) promoting and conducting specialisations in the area of health and safety conditions;
6. (New, - SG, No. 40 of 2007) promoting and conducting specialised trainings, seminars and conferences in the area of health and safety conditions;
7. (New, - SG, No. 40 of 2007) monitoring working conditions and factors of working environment;
8. (former i. 4 - SG, No. 18 of 2003, former i. 5, No. 105 of 2006, former i. 6, No. 40 of 2007) development and issue of training and informational material;
9. (former i. 5 - SG, No. 18 of 2003, former i. 6, No. 105 of 2006, former i. 7, No. 40 of 2007) maintenance of the fund's activities.
(2) (Amended, - SG, No. 18 of 2003, No. 76 of 2005, suppl., No. 105 of 2006, amended, No. 40 of 2007) The financing under para. 1, i. 1, 2, 4, 5, 6, 7, 8 and 9 shall be provided gratuitously in conformity with the terms and conditions as stipulated by an ordinance of the Minister of Labour and Social Policy.
(3) (New, - SG, No. 105 of 2006) The financing under para. 1, i. 3 shall be allocated in conformity with the terms and conditions as stipulated by an ordinance of the Minister of Labour and Social Policy and of the Minister of Health Care.
.....
Art. 54a. (New - SG, No. 40 of 2007) (1) The State Health Control authorities supervise the activities of the labour medicine services in terms of:
1. registration and conformity of the data and documents under Art. 25d, para. 1 and Art. 25e, para. 1 with the actual status;
2. the implementation of the activities agreed with the employer under Art. 25a, para. 1, related to the health of those employed;
3. the documents certifying the activities of the service.
(2) All control shall be carried out continuously and in cases of any claims and notifications received.
(3) The State Health Control authorities are entitled to:
1. free access to the labour medicine services;
2. request information and documents from the labour medicine service in respect of its activities;

3. give obligatory instructions to the labour medicine service on elimination of any detected violations;
4. make out acts against administrative violations.
(4) When implementing their liabilities, the State Health Control authorities must keep confidentiality about the facts and circumstances whereof they have become aware in the course of the inspection and which are industrial or commercial secrets of the supervised undertakings.
Art. 54b. (New - SG, No. 40 of 2007) (1) The persons who have registered a labour medicine service, and the supervisors of labour medicine services, who fail to implement their liabilities under this law, in case they are not subject of a heavier sanction, shall be penalised by penalty or fine of 1500 to 5000 BGN, while the guilty official, unless liable to a heavier sanction, shall be penalised by fine of 250 to 1000 BGN
(2) For a repeat violation, the sanction under para. 1 shall be penalty or fine of 3000 to 10 000 BGN, while the guilty official will face a fine of 500 to 2000 BGN
Art. 54c. (New - SG, No. 40 of 2007) (1) The violations under Art. 54b shall be taken formal notes of officials at the regional inspectorates for public health protection and control, explicitly authorised by the manager to supervise the activities of labour medicine services.
(2) Penal injunctions against violations under Art. 54b shall be issued by the manager of the regional inspectorate for public health protection and control.
Art. 54d. (New - SG, No. 40 of 2007) Identification of violations, awards of, appeals to and executions of penal injunctions shall be made pursuant to the provisions of the Administrative Violations and Sanctions Act.
Art. 55. Persons who violate the requirements or fail to meet their liabilities under this law, incur liability under Art. 413, 414, 415 and 416 of the Labour Code, and the other relevant laws and legal regulations.

Questions of the ECSR

The Committee asks for information on any other relevant measures taken to reduce exposure to risks.

2008 – 2012 Strategy for safety and health at work was adopted

The strategy in terms of safety and health at work is an instrument, whereby the Government of the Republic of Bulgaria determined its vision in the dominion of safety and health working conditions. The purpose was to outline the engagements and direct efforts of State authorities, employers' organisations, organisations of workers or employees, non-government organisations, etc. toward ensuring welfare at work by accounting the changes at the workplace and emergence of new job-related risks. The achievement of such a goal is reflected as an integral part of achieving the general goal in terms of this country's economic development, i.e. enhancing welfare and quality of life of all social groups within the society.

The strategy accounts for and further develops the priorities of the Guidelines for development of safety and health at work related activities as adopted by the Council of Ministers by a protocol Decision No. 34 of 29 August 2002 by following the new development guidelines to the policies of the European Union, as the European Commission outlined in the Community strategy 2007-2012 on health and safety at work. Moreover, the strategy accounts with the recommendations of the International Labour Organisation on encouraging safety and health working conditions aimed at achieving a reduction of work accidents and occupational disease.

The HSW strategy is in accordance with the basic legal instruments addressing labour, public education and occupational training: Labour Code, Code of Social Insurance, Law on Encouragement of Employment, Law on National Education, Law on Vocational Education and Training, the National 2007-2013 Development Plan of the Republic of Bulgaria and the Operative Human Resources Development Programme, etc.

The strategy includes and further develops positive practices in HSW policies during the transition period to market economy, sets out goals, priorities and action to be implemented in accordance with and subject to completion of the macroeconomic framework as laid down in the National Development Plan.

The HSW strategy appropriates the way to achieve the goals of the Lisbon strategy by putting safety and health at work in the fundament of quality of performance. This means that, admitting the fundamental contribution of safety and health working conditions for the purpose of achieving both good quality and performance, we shall boost economic growth and employment.

The strategy was tailored in accordance with the basic priorities aimed at reduction of unemployment in Bulgaria and employment provision to the largest possible circle of citizens in working age by encouraging the creation of such working environment that would provide opportunities to those employed play fulfilled roles in working life until they get old. It is devised to ensuring such working conditions, where work would stimulate health and welfare of people, boost opportunities for more stable positions at work and provide personal satisfaction from work performed.

The strategy covers the period 2008-2012, where implementation is a continuous process, which will be tracked out through a monitoring system that would measure the levels achieved vs. the goals assigned.

This strategy will serve as a fundament for the annual development of the National Programme for Safety and Health at Work and development of projects to finance from structural funds of the European Union and other international organisations and donors. The HSW strategy provides a cutting-edge front-running vision in respect of the future amendments in the legal regulations and practices promoted by the State authorities and the other organisations. It is an instrument, which consolidates a variety of intentions and action and contributes to their streamlining and synergy for the purposes of implementation of commitments assumed by the Republic of Bulgaria entailed from our country's membership the European Union and in view of the goals as set in Lisbon and in the strategy of the community for health and safety conditions for the 2007–2012 period. This is how this document will play a leading role in the harmonisation of each document, inclusive all legal regulations and programme instruments to this effect.

This strategy contains the following information on occupational disease:

Occupational diseases

Occupational diseases are diseases which occur either exclusively or most often due to the impact of harmful factors typical of the relevant working environment or the work process over the human body. These do not fall within the scope of negative prospects in respect of life, nevertheless their social significance is noticeable, due to the following reasons:

- they affect active age persons and people with significant professional experience and qualifications (typically 35 – 55);
- they occupy a defined niche in the structure morbidity;
- they often tend to acquire chronic and recurrent course;
- they may in a number of occasions switch to lengthy temporary incapacity or even disability;

- they are quite significantly present in terms of nosology in health care of developed industrial nations;
- they may generate considerable loss for employers, labour and the State.

According to some data for the period 2004-2005 provided by the National Centre of Public Health Protection, the total number of newly registered (certified) people with occupational disease was 499, whereas 262 of those were male, while 237 were female. The highest share belonged to people with occupational disease aged 45 – 54 (207 cases) and those aged between 55 and 64, i.e. 172 cases. And, during the selected years, the most cases of occupational morbidity were detected among workers with length of service from 20 to 30 years, where in 2004 those cases were 126 and then, in 2005, they experienced a decline to 91. The next group was the cases of occupational diseases among those employed with total length of service of 30 to 40 years – 97 in 2004 and 54 in 2005. Statistics shows that in the case of length of service in the same occupation as long as 10 to 20 years, there are the most cases of occupational diseases – totalling to 183, during the reference period, while in the interval 20+ to 30 years of length of service in the same occupation, the number was 108.

Economic activities featuring the highest number of newly registered cases of occupational diseases for the period 2004-2005 are: Processing Industry – totalling 236; Extraction industry – 106 cases; Transport – 29 cases, Civil Engineering – 25 cases, State governance, compulsory social insurance – 24 cases.

The unfavourable factors of the working environment and the work process having entailed the most cases of occupational diseases throughout the period in question were: mechanical vibrations – totalling 111 cases; monotonous motion, repetitive work – 56 cases; work at high speeds – 54 cases; working postures – 46 cases; variety of movements – 40 cases; dust – 36 cases; noise – 31 cases; carrying and lifting weights – 30 cases.

When accounting occupational disease by groups of determinant occupations, a conclusion may be made that the most cases of disease are to be found among the following occupations: underground miner, underground worker, driller – a total of 93 cases; tailor, ready-made clothing worker – 64 cases; turner, locksmith, grinding-machine operator – 42 cases; conductor – 31 cases; fitter, mechanic, welder – 22 cases, weaver, knitter – 21 cases; tractor-conductor, excavator operator, bulldozer operator – 21 cases.

During the reference period, 39 cases of occupational diseases led to 50-70.99 % permanent reduced working capacity, 6 cases – 71-90 %, while those having over 90 % were 3. The cases of less than 50 % of permanent reduced working capacity were 451.

In 2004 and 2005, the people with occupational diseases certified and those repeatedly certified were 2178, where 1292 were male, and 886 – female. The most of those were in the 45-54 age interval, i.e. 931, those with total length of service 20+ to 30 – 790; those having professional payroll experience from 10 to 20– were 647 and those with permanently reduced working capacity 50-70.99 % – were 579 cases.

HSW policies provided for:

The priorities in this dominion are aimed at health protection, working capacity and life of those employed. Simultaneous action in all directions are foreseen, i.e.: employers competitiveness, good quality of living and working conditions, training and promotion of prevention standards.

Bulgaria's active social policies in respect of working conditions targets the following:

- large-scope approach to encourage provision of 'welfare at work';
- improving standards of prevention of those employed and further development of prevention system by improving legislation, training and public education, social dialogue, common social commitment, business initiatives, and partnership among all labour participants;

- development of Bulgarian employer's competitiveness on the basis of promoting purposeful social policies and implementing quality in safety and health at work oriented activities;
- encouraging and promotion of innovative and adaptive forms of labour management devised to improving quality, performance rates, and health and safety conditions;
- implementation of comprehensive and efficient integrated control over complying with labour legislation;
- ensuring targeted quality of training in safety and health working conditions;
- expanding the infrastructure of advising services and providing support to the employer and seeking quality improvements in these activities;
- development of social insurance systems and insurance activities, and effective inclusion thereof into the efforts to provide and maintain safety and health working conditions in undertakings.

The first national HSW programme has already been adopted, in accordance with the Strategy.

The Committee nevertheless asks whether the Labour Inspectorate monitors in particular whether the rules concerning dangerous and unhealthy occupations are respected.

The General Labour Inspectorate Executive Agency always, when performing inspections, assesses safety and health working conditions and this includes assessment of safety and health at work, supervising bodies, occupational risk assessment, providing servicing of workers or employees by a labour medicine service, labour safety, providing labour hygiene and occupational injury rates.

Data from reports of the General Labour Inspectorate Executive Agency by years during the reference period:

Report by the General Labour Inspectorate Executive Agency – 2006

Reported violations

As a result of 36036 inspections conducted in 2006, a total of 212116 violations was reported, of which:

− 158018 violations of standards relative to the Law on Health and Safety at Work, i.e. 74,5 %;

Large part of the undertakings accounts for problems relative to health and safety conditions (the Law on Health and Safety at Work), which come as a result of poor organisation, violation of technological and labour discipline, absence of systematic control over machinery and equipment maintenance to meet technical readiness standards, including collective protection systems and applying safety standards to production operations.

A reason for this conclusion comes from the results from the inspections conducted: 56 % of all violations relative to the Law on Health and Safety at Work were violations of standards regulating the logistics and the activities to implement the Law on Health and Safety at Work.

Report by the General Labour Inspectorate Executive Agency – 2007

The reported violations of legal regulations were allocated as follows:

- violations of standards regulating the implementation of the Law on Health and Safety at Work – 136361 (71,4 %) out of the total number;

Out of the total number of reported violations relative to ensuring health and safety conditions, the largest is the number of violations of the standards regulating the organisation of this activity – 76167, which makes 55,8 % out of the total number of this group of violations. The relative share of those violations shows no deviations compared to 2006 and a reduction by 4 percentage points if compared to 2005.

Over the year, a total of 33323 violations of standards regulating safety of operational equipment and technological processes. There is a trend toward slight rising (one percentage point) compared to their relative share in 2006 or 2005.

Hygiene of labour, contributed with a total of 26871 violations reported. The data shows that there is no explicit tendency toward either rise or decline in the numbers of such violations: data tends to vary.

Report by the General Labour Inspectorate Executive Agency - 2008:

The reported violations of legal standards are distributed as follows:

- violations of standards relative to the Law on Health and Safety at Work – 129294, i.e. 70,3 % of the total number;

The reported violations under the Law on Health and Safety at Work are distributed as follows:

- relative to organisation of activities to ensure the application of the Law on Health and Safety at Work – 73747 (57 %);
- relative to safety of operational equipment and technologic processes – 28841 (22,3 %);
- relative to hygiene of labour – 26706 (20,7 %).

There is tendency showing preserving of relative shares of those violations compared to 2007 nonetheless **the total number of violations under the Law on Health and Safety at Work decreased by 7067 vs. the total number of violations under the Law on Health and Safety at Work in 2007.**

Reported unfulfilled instructions relative to the Law on Health and Safety at Work have the following general feature: out of the total of 503 unfulfilled instructions in this area of legislation, 259 account for unfulfilled instructions on standards relative to the implementation of activities ensuring compliance with the Law on Health and Safety at Work, 130 are unfulfilled instructions relative to standards concerning safe condition of operational equipment and technologic processes and 114 are unfulfilled instructions relative to compliance with sanitary and hygiene standards.

The formal notes taken in 2008 were allocated as follows:

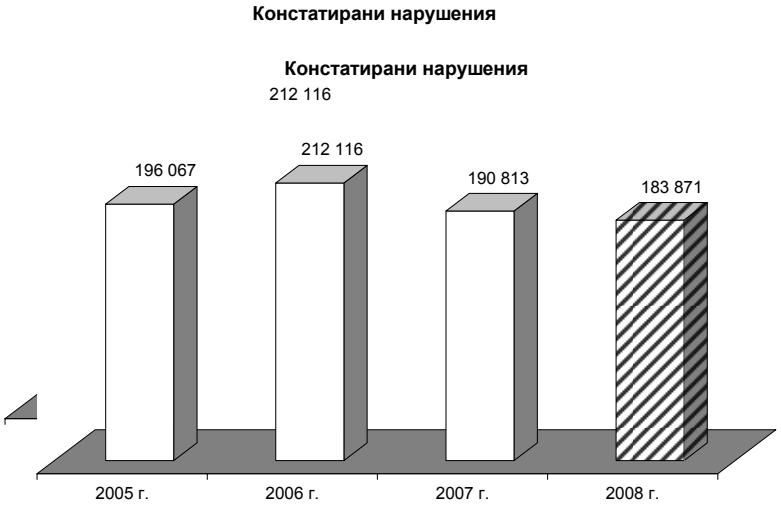
– against violations of standards regulating the provision of the Law on Health and Safety at Work – 5415 where 509 were for unfulfilled instructions;

In the area of the Law on Health and Safety at Work, the highest levels of exigency were demonstrated against violators of sanitary and hygiene standards: Formal Note for Administrative Infringement was taken for one out of every 15 violations, and 88 % of such Formal Notes for Administrative Infringement here were for violations of standards regulating provision and use of personal vehicles.

The results from inspection activities in 2008, taken as a total, showed that out of a total 27303 inspected undertakings, risk assessments were made in 23453 undertakings, i.e. in 86 %.

A total of 6611 violations of Art. 16 of the Law on Health and safety conditions was reported. Such violations made 9 % of the reported violations of standards regulating the organisation

and management of activities under the Law on Health and Safety at Work and 5 % of the total of reported violations of standards regulating compliance with the Law on Health and Safety at Work to those employed.
In comparison with 2007, there is no significant change detected in the relative share of inspected employers for compliance with the requirement for having a body engaged in safety and health at work: 90 % complied with such requirement.



Article 2§5

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

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

3) Please provide pertinent figures, statistics or any other relevant information, in particular:
circumstances under which the postponement of the weekly rest period is provided.

There are no amendments to relevant national legislation concerning weekly off days (Labour Code and Ordinance on Working Hours, Breaks and Leaves).

Art. 79 of the Road Transport Act was repealed in connection with the harmonisation of national legislation with Regulation 561/2006 of the European Parliament:

Road Transport Act:
Art. 78. (Amended, - SG, No. 11 of 2002, No. 80 of 2007) (1) In the case of transportation of passengers with buses and hauling consignments by road vehicles which either alone or within a set of vehicles have tolerable maximum mass over 3,5 tonnes, the persons who perform hauling on their own account, carriers and conductors shall comply with the requirements of:

1. Regulation (EC) No. 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 of the Council referred to hereinafter as Regulation 561/2006;
2. Regulation (EEC) No. 3821/85 of the Council on recording equipment in road transport referred to hereinafter as Regulation 3821/85.
(2) Fitting vehicles as listed in Art. 13, para. 1, sub-paragraphs „b", „c", „d", first sentence, sub-paragraphs „g", „m" and „o" of Regulation 561/2006, shall be not obligatory in the case of providing hauling in the territory of the Republic of Bulgaria.
(3) In the case of performing hauling by the vehicles under para. 2, conductors shall comply with the requirements concerning driving times, breaks and rest periods under Art. 5 - 9 of Regulation 561/2006.
(4) The requirements concerning driving times, breaks and rest periods in the case of performing hauling by the vehicles under Art. 3a of Regulation 561/2006 shall be determined by the Minister of Transport with the ordinance under Art. 89, para. 1.
Art. 79. (Amended, - SG, No. 11 of 2002, Rep., No. 80 of 2007).

Regulation 561/2006:

CHAPTER II
CREWS, DRIVING TIMES, BREAKS AND REST PERIODS

Article 5
1. The minimum age for conductors shall be 18 years.
2. The minimum age for drivers' mates shall be 18 years. However, Member States may reduce the minimum age for drivers' mates to 16 years, provided that:
(a) the carriage by road is carried out within one Member State within a 50 kilometre radius of the place where the vehicle is based, including local administrative areas the centre of which is situated within that radius;
(b) the reduction is for the purposes of vocational training;
and
(c) there is compliance with the limits imposed by the
Member State's national rules on employment matters.
Article 6
1. The daily driving time shall not exceed nine hours.
However, the daily driving time may be extended to at most 10 hours not more than twice during the week.
2. The weekly driving time shall not exceed 56 hours and shall not result in the maximum weekly working time laid down in Directive 2002/15/EC being exceeded.
3. The total accumulated driving time during any two consecutive weeks shall not exceed 90 hours.
4. Daily and weekly driving times shall include all driving time on the territory of the Community or of a third country.
5. A driver shall record as other work any time spent as described in Article 4(e) as well as any time spent driving a vehicle used for commercial operations not falling within the scope of this Regulation, and shall record any periods of availability, as defined in Article 15(3)(c) of Regulation (EEC) No 3821/85, since his last daily or weekly rest period. This record shall be entered either manually on a record sheet, a printout or by use of manual input facilities on recording equipment.

Article 7
After a driving period of four and a half hours a driver shall take an uninterrupted break of not less than 45 minutes, unless he takes a rest period. This break may be replaced by a break of at least 15 minutes followed by a break of at least 30 minutes each distributed over the period in such a way as to comply with the provisions of the first paragraph.

Article 8
1. A driver shall take daily and weekly rest periods.
2. Within each period of 24 hours after the end of the previous daily rest period or weekly rest period a driver shall have taken a new daily rest period. If the portion of the daily rest period which falls within that
24 hour period is at least nine hours but less than 11 hours, then the daily rest period in question shall be regarded as a reduced daily rest period.
3. A daily rest period may be extended to make a regular weekly rest period or a reduced weekly rest period.
4. A driver may have at most three reduced daily rest periods between any two weekly rest periods.
5. By way of derogation from paragraph 2, within 30 hours of the end of a daily or weekly rest period, a driver engaged in multi-manning must have taken a new daily rest period of at least nine hours.
6. In any two consecutive weeks a driver shall take at least:

— two regular weekly rest periods, or
— one regular weekly rest period and one reduced weekly rest period of at least 24 hours. However, the reduction shall be compensated by an equivalent period of rest taken en bloc before the end of the third week following the week in question.
A weekly rest period shall start no later than at the end of six 24-hour periods from the end of the previous weekly rest period.
A weekly rest period shall start no later than at the end of six 24-hour periods from the end of the previous weekly rest period.
7. Any rest taken as compensation for a reduced weekly rest period shall be attached to another rest period of at least nine
hours.
8. Where a driver chooses to do this, daily rest periods and reduced weekly rest periods away from base may be taken in a vehicle, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary.
9. A weekly rest period that falls in two weeks may be counted in either week, but not in both.
Article 9
1. By way of derogation from Article 8, where a driver accompanies a vehicle which is transported by ferry or train, and takes a regular daily rest period, that period may be interrupted not more than twice by other activities not exceeding one hour in total. During that regular daily rest period the driver shall have access to a bunk or couchette.
2. Any time spent travelling to a location to take charge of a vehicle falling within the scope of this Regulation, or to return from that location, when the vehicle is neither at the driver's home nor at the employer's operational centre where the driver is normally based, shall not be counted as a rest or break unless the driver is on a ferry or train and has access to a bunk or couchette.
3. Any time spent by a driver driving a vehicle which falls outside the scope of this Regulation to or from a vehicle which falls within the scope of this Regulation, which is not at the driver's

home or at the employer's operational centre where the driver is normally based, shall count as other work.

Questions of the ECSR:

The Committee requested clarification as to whether it is possible to postpone the weekly rest period, and if so, for how long. The report is unclear in this respect therefore the Committee requests information to be provided in the next report as to whether weekly rest periods may be deferred to the following week, or subsequent weeks, and what is the longest period a worker may work before being granted a weekly rest period etc.

The previous report contains a quotation of the provision of Art. 154, para. 2 of the Labour Code, according to which the Council of Ministers may on a separate occasion announce other days for official holidays, days of celebrations of different occupations, and may as well rearrange the off days over the year. In such cases the length of the working week may not exceed 48 hours, and the length of the weekly rest may not be less than 24 hours.

Given the quoted legal regulation, the Council of Ministers (MC) shall issue a decision for each separate occasion (to be promulgated in the "State Gazette"), where the legal requirement stipulating that the of length of the working week may not exceed 48 hours and the length of the weekly rest may not be less than 24 hours, shall be monitored for compliance. We hereunder illustrate such a hypothesis by the following specific example:

According to DECISION No. 739 of the Council of Ministers of 21.11.2008 on the rearrangement of off days in 2009 (promulgated in SG, No. 103 of 2.12.2008, suppl., No. 17 of 6.03.2009):

"On the grounds of Art. 154, para. 2 of the Labour Code, and Art. 55, para. 2 of The State Official Act, THE COUNCIL OF MINISTERS

DECIDED:

1. Announces that 2 January (Friday) shall be an off day, while 10 January (Saturday) shall be an working day.

2. Announces that 2 March (Monday) shall be an off day, while 14 March (Saturday) shall be an working day.

3. Announces that 4 May (Monday) and 5 May (Tuesday) за off days, while 16 May (Saturday) and 30 May (Saturday) shall be working days.

4. Announces that 21 September (Monday) shall be an off day, while 26 September (Saturday) shall be an working day."

This decision provides for rearranging of off days over the year (2009) in order not to interrupt the working week with a day of an official holiday which would impact negatively the working process, and to ensure more efficient use of the weekends and combining thereof with the country's official holidays.

In the first point: the official holiday 1 January – New Year in 2009 was on Thursday while the subsequent day, 2 January (Friday), was an working day. The rearrangement provides that 2 January (Friday) was announced to be an off day, while 10 January (Saturday) was an working day. Therefore, 1, 2, 3 and 4 January 2009 were off days while the next week contained a sequence of working days from 5 January to 10 January 2009 (i.e. Monday–Saturday), which makes 6 working days (48 hours) and the ensured weekly rest was 24 hours (a day off was 11 January 2009, Sunday).

In the second point: the official holiday, 3 March, national holiday of the Republic of Bulgaria in 2009 fell on Tuesday while the precedent day, 2 March (Monday), was an working day. By way of rearrangement, 2 March (Monday) was announced to be an off day, while 14

March (Saturday) was an working day. Therefore, 28 February was an off day, 1, 2 and 3 March 2009, 4, 5 and 6 March 2009 were working days, 7 and 8 March 2009 were off days, while the subsequent week contained a string of working days from 9 March to 14 March 2009 (Monday–Saturday), which makes 6 working days (48 hours) and the ensured weekly rest was 24 hours (a day off was 15 March 2009, Sunday).

In third point: the official holidays 1 May, Labour Day and Day of International Workers' Solidarity, and 6 May, St. George's Day, Day of Bravery and the Bulgarian Army in 2009 fell on Friday and Wednesday, while the two days, 4 May and 5 May (Monday and Tuesday) were working days. By way of rearrangement, 4 May (Monday) and 5 May (Tuesday) were announced to be off days, while 16 May (Saturday) and 30 May (Saturday) were working days. The next weeks contained strings of working days, 11 May–16 May 2009 and 25 May–30 May 2009 (Monday–Saturday), which makes 6 working days (48 hours) and the ensured weekly rests were 24 hours each (days off were 17 May 2009, Sunday, and 31 May 2009, Sunday).

In fourth point: the official holiday 22 September, Day of Independence of the Republic of Bulgaria in 2009 fell on Tuesday while the precedent day, 21 September (Monday), was an working day. By way of rearrangement, 21 September (Monday) was announced to be an off day, while 26 September (Saturday) was an working day. Therefore, 19, 20, 21 and 22 September 2009 were off days while 23, 24, 25 and 26 September 2009 were working days, and the ensured weekly rest was 24 hours (a day off was 27 September 2009, Sunday).

The above shows that whenever off days were rearranged, there was always the compliance with the legal requirement that the length of the working week should not exceed 48 hours and the length of the weekly rest should not be less than 24 hours. The longest time period when the worker/employee may work prior to a weekly rest is ensured is 6 days, i.e. 48 hours (6 working days by 8 hours each). The rearrangement of the off days is made within the same calendar month so there would be no change in the number of working days therein, and to keep the number of the off days.

Article 2§6

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

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

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

Labour Code

Form

Art. 62. (Amended, - SG, No. 100 of 1992, as amended and suppl., No. 2 of 1996) (1) The employment contract shall be concluded in writing.

(2) (Rep. - SG, No. 120 of 2002).

(3) (New, - SG, No. 120 of 2002, amended, No. 105 of 2005, suppl., No. 108 of 2008) Within a three-day term as of conclusion or amending of an employment contract and within a seven-day term as of its termination, the employer or a person authorised by him must forward a

notification thereof to the relevant territorial directorate of the National Revenue Agency. The National Revenue Agency shall in real time provide to authorised persons from the Labour Inspectorate directorates electronic access to the register of employment contracts and, at request, within three working days, should forward a copy of the relevant certified notification.
(4) (New, - SG, No. 120 of 2002, amended, No. 105 of 2005, in force as of 29.12.2005) data contained in the notification, and the procedure of forwarding thereof shall be stipulated by an ordinance of the Minister of Labour and Social Policy as agreed with the Executive Director of the National Revenue Agency and the chairperson of the National Statistical Institute.
(5) (Former para. 3 - SG, No. 120 of 2002) When an employment contract is concluded, the employer shall make the worker or the employee familiar with the work liabilities which stem from their position or the work performed by them.
(6) (Former para. 4 - SG, No. 120 of 2002) The documents needed to conclude an employment contract shall be specified by the Minister of Labour and Social Policy.

Liability for violations of the other provisions of labour legislation
Art. 414. (Amended, - SG, No. 100 of 1992, No. 2 of 1996, No. 25 of 2001, No. 120 of 2002)
(3) (Amended, - SG, No. 48 of 2006, No. 108 of 2008) An employer who violates the provisions of Art. 62, para. 1 or 3 and Art. 63, para. 1 or 2, shall be penalised by penalty or fine of 15 000 BGN and the guilty official shall be penalised by fine of 10 000 BGN for each violation.

Amendments to Ordinance No. 5 of 2002 on the contents and procedure for forwarding the notification under Art. 62, para. 4 of the LC:
Art. 1. (1) (Supplemented, - SG, No. 88 of 2004, as amended and suppl., No. 1 of 2006) An employer shall notify the competent territorial directorate of the National Revenue Agency (TD of NRA) of any conclusion, amendment or termination of employment contracts by forwarding a notification (annex No. 1) and a notification of change of the employer under Art. 123, para. 1 of the Labour Code or on any changes of employer's legal form (annex No. 5).
(2) forwarding shall be made by:
1. (amended, - SG, No. 1 of 2006, suppl., No. 25 of 2006) lodging at the competent or at any TD of NRA;
2. (Supplemented, - SG, No. 1 of 2006, amended, No. 25 of 2006) Internet, by electronic signature when the employer has a certificate of universal electronic signature, or by an explicitly authorised person having a certificate of universal electronic signature;
3. registered letter.
Art. 5. (Supplemented, - SG, No. 88 of 2004) The notification (annex No. 1) shall contain:
1. data of the employer: unified identification code (UIC) with the BULSTAT register of the insurer;
2. (Supplemented, - SG, No. 1 of 2006) details of the worker or the employee: name and personal identity number (personal number of a foreign national);
3. details on the terms and conditions under the employment contract:
a) grounds to conclude the employment contract according to the Labour Code;
b) number of the contract if the employer maintains records of employment contracts;
c) date of conclusion;
d) duration of the contract if the contract is concluded for a fixed duration;
e) amount of the base labour remuneration;
f) name of position;
g) date of termination of the contract;
4. other details:

a) (amended, - SG, No. 25 of 2006) code under the National Classification of Occupations and Offices (NCOO) where the office of the person by the time of forwarding the notification is classified in;
b) (amended, - SG, No. 1 of 2009, in force as of 1.01.2009) name and code of the economic activity under the Classification of Industries (CEA-2008) where the person by the time of forwarding the notification is employed;
c) (amended, - SG, No. 1 of 2009, in force as of 1.01.2009) reference code of persons employed in supplementary activities of the insurer when the latter is engaged in more than one economic activity according to CEA-2008.
Art. 5a. (New - SG, No. 88 of 2004) The notification (annex No. 5) shall contain:
1. (Supplemented, - SG, No. 1 of 2006) grounds for the change under Art. 123, para. 1 of the Labour Code or for the change of legal form;
2. unified identification code with the BULSTAT register of the previous employer;
3. unified identification code with the BULSTAT register of the new employer;
4. date of change of the employer;
5. details of persons who have changed the employer: name and personal identity number (personal number of a foreign national).
Art. 6. (1) (Supplemented, - SG, No. 1 of 2006) When forwarding a notification in the cases of Art. 3, para. 1, i. 1, sub-paragraphs „a" and „c", details under Art. 5 shall be filled in save i. 3, sub-paragraph „g".
(2) (Supplemented, - SG, No. 1 of 2006, amended, No. 25 of 2006, No. 1 of 2009, in force as of 1.01.2009) When forwarding a notification in the cases of Art. 3, para. 1, i. 1, sub-paragraph „b", UIC under BULSTAT of the employer, shall be filled in, name and PIN (PNF) of the worker or the employee, the date and the grounds for conclusion the employment contract whereto the additional agreement is referred to, the date of conclusion of such additional agreement and the details of changes made to the employment contract referent to the office and duration, as well as the economic activity where the person is employed and the codes under NCOO and CEA-2008, respectively.
(3) (Supplemented, - SG, No. 1 of 2006) When forwarding a notification in the cases of Art. 3, para. 1, i. 2 UIC under BULSTAT of the employer shall be filled in, name and PIN (PNF) of the worker or the employee, the date and the grounds for conclusion of the employment contract and the date of its termination.
Art. 7. (Amended, - SG, No. 88 of 2004) Moreover, a notification (annex No. 1) shall be forwarded when the employer requests cancellation of an already forwarded notification, provided:
1. a worker or an employee should not start work within the agreed term, and according to Art. 63, para. 3 of the LC, the employment relationship shall be deemed not to have occured;
2. should a dismissed worker or employee be restored to office in case the order of dismissal has been cancelled; the notification shall be forwarded within a three-day term as of the take of office.
Art. 8. (1) (Supplemented, - SG, No. 88 of 2004, amended, No. 1 of 2006) When a supervising body of the Executive Agency „General Labour Inspectorate" or a revenue body of NRA detect, during inspection, a inconformity between the details contained in the certified notification and the terms and conditions under the employment contract, the employer undertakes to make such details good by forwarding a new notification within a 7-day term as of the detection of such inconformity.
(2) (Supplemented, - SG, No. 88 of 2004) Furthermore, the employer may, by his own initiative, make good the details in the certified notifications (annex No. 1) by forwarding a new notification.

(3) (New, - SG, No. 88 of 2004) An employer may make good the details in the notification (annex No. 5) by forwarding a new notification.
(4) (Former para. 3 - SG, No. 88 of 2004) In the cases under para. 1 and 2, the employer shall hand over to the worker or the employee copies of the certified notifications pursuant to the provisions of Art. 4.
Art. 9. (Amended, - SG, No. 1 of 2006) The procedure and the method interaction between NRA and the Executive Agency „General Labour Inspectorate" in supervising the implementation of this ordinance shall be determined in an agreement between the parties.

Concerning the supervision on compliance with the labour legislation and administrative liability:
Labour Code:
Rights of the supervising agencies
Art. 402. (1) (Amended, - SG, No. 108 of 2008) The supervising agencies shall, within their competencies, be entitled to:
1. visit at all times ministries, other entities, undertakings and locations where there is labour activity, premises used by workers or employees, and may as well request from persons who are present on the premises to provide an identity document;
2. request from the employer explanations, information and provision of all relevant documents, papers and certified copies thereof in relation to the supervision exerted;
3. retrieve information directly from workers or employees in respect of all matters concerning supervision as well as may request from them to declare in writing facts and circumstances associated with their labour activity, inclusive details of pay against work;
4. take samples, specimens and other similar materials for laboratory analyses and research, use technical devices and equipment and make measurements of factors of working environment relative to supervision over work activities carried out;
5. establish reasons and circumstances surrounding work accidents.
(2) Employers, officials, workers or employees must co-operate with the supervising agencies in completion of their functions.
(3) (New, - SG, No. 48 of 2006) The National Revenue Agency makes available to the supervising agencies under Art. 399 all relevant tax and insurance information for the purposes of supervising compliance with the labour legislation.
(4) (Amended, - SG, No. 25 of 2001, former para. 3, No. 48 of 2006) The supervising agencies under Art. 399, 400 and 401 implement their rights in collaboration with the employers, those employed and their organisations.
Coercive administrative measures
Art. 404. (1) (Amended, - SG, No. 108 of 2008) For prevention and termination of violations of labour legislation, as well as for prevention and elimination of damages resulting there from, the General Labour Inspectorate and its bodies, as well as the bodies under Articles 400 and 401, by their own initiative or by proposal of the trade union organisations, may apply the following coercive administrative measures:
1. (Supplemented, - SG, No. 57 of 2006) give obligatory instructions to the employers and officials as to elimination of the violations of the labour legislation, including as to their liabilities concerning social servicing of workers or employees and as to their liabilities concerning informing and consulting with workers or employees on matters relative to this Code and to the Law on Information and Consultation with Employees of Multinational (Community-Scale) Undertakings, Groups of Undertakings and Companies and as to the elimination of deficiencies regarding the provision of health and safety conditions;

2. (amended, - SG, No. 108 of 2008) halt commissioning of buildings, plant, industrial shops and sites unless all rules regarding health and safety conditions and social servicing are complied with;
3. to halt the operation of enterprises, production lines and projects, including construction or overhaul thereof, as well as machines, facilities and work stations, whenever the violation of the regulations for healthy and safe working environment are hazardous to the life and health of people;
4. (amended, - SG, No. 108 of 2008) to cancel the implementation of unlawful decisions or orders of employers and officials;
5. (Supplemented, - SG, No. 108 of 2008) suspend from work employees who are not familiar with the regulations for healthy and safe work environment and do not have proper qualifications, or workers or employees who have not completed 18 years of age or those who have been divested of their job permits under Art. 302, para. 2 and Art. 303, para. 3;
6. (New, - SG, No. 25 of 2001) give instructions for introduction of special regime of safe work in the case of serious and immediate hazard for the life and health of the employees, where it is not possible to apply sub-paragraph 3;
7. (New, - SG, No. 25 of 2001) halt operations on the work site or the operation of the enterprise in the event of repeated violation of Article 62, paragraph (1), till elimination of the offence;
8. (New, - SG, No. 108 of 2008) give mandatory instructions to employers and officials on elimination of a violation related to accrual in the payrolls of a sum lesser that the sum that the employer has paid to the worker or the employee for a job completed by him; in case the prescription has not been implemented within the term as designated therein or in case of further violation, the supervising agencies of the Labour Inspectorate may halt the activities of the undertaking until the violation has been eliminated.
(2) Should the mandatory instruction under subparagraph 1 of the preceding paragraph refer to elimination of violations of labour legislation, it may be issued upon request of an employee prior to bringing an action before the court; after the action has been brought the issue may be settled only by the court.
(3) Whenever pursuant to the preceding paragraph on the same issue there are both a mandatory instruction and an effective court ruling which contradict, the ruling of the court shall be valid.
(4) (New, - SG, No. 108 of 2008) Where coercive administrative measures are applied, the supervising agencies of the Labour Inspectorate do not incur liability for damage caused.

2006 Report by the General Labour Inspectorate Executive Agency:

"In 2006 there was an increase in the number of reported violations of the imperative provisions of Articles 62 and 63 of the Labour Code. Last year saw 1931 reported violations of those provision, or 187 violations more than the established violations of this type in 2005. As a result of the inspections made, the labour inspectors established that TDs of NRA had registered employment contracts that had not been initialled by the parties to the employment relationship. This is a case of registration of employment relationship, which, in fact, has not yet occurred.

The basic reasons for allowing violations of Art. 62, para. 1 Labour Code, are of economic nature, such as cases of evasion of social security contributions. In some other cases, the worker himself refuses to sign an employment contract in writing to use the compensation due to him in case he registers as an unemployed and unemployment benefit pursuant to the provisions of social assistance simultaneously with receiving labour remuneration. Often, when documentation is made out regarding the registration of the employment contracts, the three-day term is not complied with, which comes as a result of unfamiliarity of employers and officials with relevant legal regulations. There are employers who do not deem it necessary to

conclude an employment contract with a worker who, being employed, is still within the probation period.

There are more violations under Art. 63, para. 1 and para. 2 of the LC, which in 2006 totalled 1039, i.e. by 61 more than the recorded the precedent year. The reason why the employers allow workers in their sites before they have given them a copy of a certified notification to a territorial unit of NRA has its roots in the considerable fluctuation of labour and the seasonal nature of the employment in the tourism sector. Employer-employee relationships in the economic activities relative to tourism have seasonal nature.

.....

Against the 53162 violations relative to starting, change, completion and termination of employment relationships in 2006, 4771 formal notes were taken, i.e. 42,5 % of the total number of formal notes taken against violations of the labour legislation over the year.

The most formal notes for 2006 were taken against violations of Art. 63 of the LC – 1273 or 26,7 % of all formal notes against violations in the area of employment relationships, followed by payment of work – 835 or 17,5 %. The formal notes against violations of Art. 62 of the LC totalled 825 (17,3 %), against unfulfilled instructions – 343 (7,2 %), against violations of provisions relative to working hours – 248 (5,2 %) and 288 against violations of standards protecting the work of minors of age, i.e. 6 %.

In 2006, 10092 penal injunctions were given, 1636 were appealed, 8648 were enforced with no appeals, and the total of enforced for 2006 was 9783. Penal injunctions issued in connection with the incurrence, performance and termination of employment relationships totalled 4064, which made 40,3 % out of the total number of penal injunctions issued."

2007 Report by the General Labour Inspectorate Executive Agency:

„As a result of a total of 33031 inspections carried out in 2007, **a total of 53762 violations of provisions regulating the incurrence, change, performance and termination of employment relationships**, while 2006 saw 53162 such violations detected as a result of 36036 inspections, which shows that **the compliance levels by the employers of the provisions of the Labour Code and the legal regulations relevant to its enforcement showed no significant change if compared to 2006.**

.....

In 2007 there was an insignificant reduction in the number of reported violations of the imperative provisions of Articles 62 and 63 of the Labour Code. Over the last year, there were records of 1643 violations of those provisions, which was a reduction by 288 violations than the violations of this type detected in 2006.

.....

More frequent were the violations under Art. 63, para. 1 and para. 2 of the LC, which for 2007 were 899, yet they were 140 fewer than these established during the precedent year.

.....

Against those 53762 violations recorded for incurrence, change, performance and termination of employment relationships, in 2007, 3641 formal notes were taken, which accounted for 41 % of the total number of formal notes taken against violations of the labour legislation.

2007 saw 8086 penal injunctions given, of which there were appeals in 1416 cases. In 2007 there was a total of 7959 enforced penal injunctions. The delivered penal injunctions for established violations referring the incurrence, performance and termination of employment relationships, were 3352.**"**

2008 General Labour Inspectorate Executive Agency Report:

"54107 violations referring incurrence, performance and termination of employment relationships (ER) were recorded, which accounted for 29,4 % of the total number of violations established over the year.

There are still violations of the provisions of Articles 62 and 63 of the LC relative to the registration of employment contracts and deliveries of copies of the notifications certified by NRA. These are some of the main dominating violations of labour legislation. The violations of Art. 63 of the LC show higher abundance. It was found out that some employers did not forward the notifications or forwarded them beyond the legal term.

There were 758 violations under Art. 62 of the LC and 913 violations under Art. 63 of the Labour Code detected in 2008. Against the reported violations of Articles 62 and 63 of the Labour Code, a total of 1775 formal noted were taken.

.....

– violations of ER-related standards – 54107, 29,4 % of the total number;

.....

For the purposes of elimination of violations recorded over the year, **the labour inspectors applied a total of 181681 coercive administrative measures,** of which 181264 were on the grounds of the Labour Code and 417 were grounded on the Public Heath Act."

Article 2§7

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

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

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

Questions of the ECSR:

The Committee asks that the next report contain detailed information on measures such as periodical medical examinations, the possibilities for transfer to daytime work; and continuous consultation with workers' representatives on the introduction of night work, and on measures taken to reconcile the needs of workers with the special nature of night work.

- Special rules for night shift labour established by the Labour Code:

"Art. 140a. (New - SG, No. 48 of 2006) (1) Workers or employees, within the regular office who have records of at least three hours of night shifts under Art. 140, para. 2, as well as workers or employees, who take shifts, one of which includes at least three hours of night work shall be considered as workers or employees who take night shifts.

(2) Workers or employees who take night shifts shall only be assigned jobs upon a preliminary medical examination at the account of the employer.

(3) Workers or employees who take night shifts shall pass regular medical examinations under Art. 287.

(4) When a health care authority establishes that the health status of worker or employee has deteriorated as a consequence of night shift labour, he shall be transferred to appropriate daytime job or should be labour readjusted.
(5) An employer whose workers or employees take night shifts, must, at General Labour Inspectorate Executive Agency's request, provide it with information on their number, night hours worked as well as information on the measures undertaken to ensure safety and health working conditions.

Regular medical examinations
Art. 287. (1) (As amended, - SG, No. 100 of 1992, former text of Art. 287, No. 25 of 2001) All workers or employees shall pass obligatory regular medical examinations. The frequency of such examinations shall, in accordance with the nature of work, working conditions and the age of the workers or employees be determined by the Minister of Health Care.
(2) (New, - SG, No. 25 of 2001) Medical examinations under para. 1 shall be at the expense of the employer.
(3) (New, - SG, No. 25 of 2001, amended, No. 48 of 2006) An employer and officials in an undertaking must keep in secret all details concerning health status of the workers or employees and the information from and on relevant medical examinations.

The provisions of Art. 140a of the LC was enforced as of 1 July 2006. These provisions regulate the specific rules valid for night shift labour. Night shift labour shall be labour performed from 2200 to 0600. Those who during regular working hours which include at least three hours of night labour as well as those employed who take shifts one of which includes at least three hours of night labour and who fall within the scope of the above specific rules shall be considered as "night" workers or employees. These shall be enrolled upon preliminary medical examinations. "Night" workers or employees shall pass obligatory regular medical examinations under Art. 287 of the Labour Code (pursuant to the provisions of ORDINANCE No. 3 of 28.02.1987, as amended, on the obligatory preliminary and regular medical examinations of workers). Transfers to appropriate daytime jobs or labour readjustments shall be made when the health care authority establishes that health status of the worker or the employee has deteriorated as a result of working night shifts.

- Consultations with the workers or employees' representatives shall be held in respect of:

- issue of Rules of Internal Working Procedures. According to Art. 181 of the Labour Code:
Rules of Internal Working Procedures
Art. 181. (Amended, - SG, No. 100 of 1992, No. 108 of 2008) (1) An employer undertakes to issue Rules of Internal Working Procedures where he defines the rights and liabilities of workers or employees and of the employer under the employment relationship and arranges the labour management in the undertaking according to the particular details of its activities.
(2) An employer shall issue Rules of Internal Working Procedures upon holding preliminary consultations with representatives of trade union organisations in the undertaking and with the workers or employees' representatives under Art. 7, para. 2."

The workers or employees' representatives under Art. 7, para. 2 of the Labour Code shall be elected at a general meeting; they represent their common interests in the matters of labour and social security relationships before their employer or before the State authorities.

- Regarding the liability of the employer to ensure health and safety conditions as enforced by Art. 26 of the Law on Health and Safety Conditions pursuant to which:

"Art. 26. (1) An employer undertakes to consult with those employed or their representatives and organisations by providing possibilities to them to participate in:
1. discussing and adopting all measures referent to health and safety of those employed;

2. assigning the labour who will carry out activities ensuring health and safety conditions, first aid, anti-fire measures and evacuation of those employed;
3. planning and providing training of those employed in topics concerning health and safety conditions.
(2) An employer undertakes to ensure:
1. (Supplemented, - SG, No. 76 of 2005, No. 48 of 2006, amended, No. 40 of 2007) to each labour, inclusive to those employed under fixed-duration relationship or under the terms as stipulated by temporary employment under Art. 14, para. 1, as well as to those employed working shifts or night shifts, appropriate training and instructions in terms of safety and health at work in accordance with the specificity of their individual workplaces and occupation in the case of:
a) entering employment;
b) transfer to another job or changing jobs;
c) introduction of new or change of operational equipment or technology;
2. all expenses to provide trainings to be conducted within working hours.
(3) (New, - SG, No. 40 of 2007) The training and instructions under para. 2, i. 1 shall be conducted on a regular basis, by working into consideration any new or altered risks.

- Regarding measures undertaken to match the needs of the workers with the special nature of night shift labour:

The legislation contains provisions which explicitly, in view of the special nature of night shifts labour, introduce either absolute or relative prohibition on night shift labour (Art. 140, para. 4 of the LC):

1. Night shift labour shall be absolutely prohibited to:
   - workers or employees who have not completed 18 years of age;
   - pregnant workers or employees.
2. For night shift labour, a prior consent in writing shall be requested from:

- mothers having children aged under 6 or mothers who take care of children with disabilities, irrespective of their age;

- labour readjusted workers or employees if this has no adverse effects on their health, according to conclusions issued by health care authorities;

- workers or employees who continue their cooperative education.

According to Art. 7 of the Ordinance on the working time, rests and leaves, the consent for night shift labour from mothers having children aged under 6, from mothers who take care of children with disabilities, irrespective of their age and from labour reajusted workers or employees should be in writing. Such consent may be withdrawn subject to a notification in writing lodged 3 days the latest prior to the date as of which the worker or the employee should like to terminate night shift labour unless there are substantial reasons imposing this should be enforced forthwith.

The legislation contains a provision (140, para. 3 of Labour Code) which obligates the employer to ensure to workers or employees warm food, refreshing drinks and other facilitating conditions encouraging efficiency in night shift labour.
According to the Law on Health and Safety Conditions:
"Art. 16 (2) (New, - SG, No. 76 of 2005, suppl., No. 48 of 2006) An employer must ensure health and safety conditions and equal levels of protection from production-related risks to all labour irrespective of the duration of the contract or of the duration of the working time, inclusive in shift labour or night shift labour conditions.

Art. 19 (1) (Supplemented, - SG, No. 76 of 2005) An employer shall make available to those employed, inclusive to those employed under fixed-duration relationship or under the terms as stipulated by temporary employment under Art. 14, para. 1, or to their representatives all relevant information on the risks for their health and safety and on the measures being undertaken to the effect of elimination, reduction or control of such risks.
(2) (New, - SG, No. 48 of 2006) The information under para. 1 sjall be made available to those employed who take shifts or night shifts."

Scope of the provisions as interpreted by the ECSR

Paragraph 1: Establishment of reasonable limits on daily and weekly working hours through legislation, regulations, collective agreements or any other binding means; weekly working hours should be progressively reduced to the extent permitted by productivity increases; flexibility measures regarding working time must operate within a precise legal framework and a reasonable reference period for averaging working hours must be provided.

Paragraph 2: The right to public holidays with pay should be guaranteed; work on public holidays should only be allowed in special cases; work performed on a public holiday should be paid at least at double the usual rate.

Paragraph 3: The right to a minimum of four weeks of annual holiday with pay should be guaranteed; annual leave may not be replaced by financial compensation; days lost to illness or injury during annual leave should be allowed to be taken at another time.

Paragraph 4: Application of preventive measures to eliminate the risks in inherently dangerous or unhealthy occupations; where it has not yet been possible to eliminate or sufficiently reduce these risks some form of compensation should be ensured to those workers exposed to such risks, namely reduced working hours or additional paid holidays.

Paragraph 5: The right to a weekly rest period coinciding, as far as possible, with the day traditionally recognised as a day of rest should be guaranteed; weekly rest periods may not be replaced by compensation and cannot be given up.

Paragraph 6: The right of workers to written information upon commencement of their employment should be guaranteed. This information should cover essential aspects of employment relationship.

Paragraph 7: Compensatory measures should be guaranteed for workers performing night work.

For a list of selected other international instruments in the same field, see Appendix.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;

2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;

3. to recognise the right of men and women workers to equal pay for work of equal value;

4. to recognise the right of all workers to a reasonable period of notice for termination of employment;

5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

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

Appendix to Article 4§4

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

Appendix to Article 4§5

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

Article 4§2

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

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

3) Please provide pertinent figures, statistics (estimates, if necessary) or any other relevant information, in particular: methods used to calculate the increased rates of remuneration; impact of flexible working time arrangements on remuneration for overtime hours; special cases when exceptions to the rules on remuneration for overtime work are made.

Labour Code:

Weekly rest

Art. 153. (1) in the conditions of a 5-day working week, a worker or an employee has the right to weekly rest amounting to two subsequent days one of which falls on Sunday, as a principle. In such cases the worker or the employee must be provided with at least 48 hours of continuous weekly rest.

(2) (Amended, - SG, No. 25 of 2001, No. 52 of 2004) When summing up the working time, the continuous weekly rest shall be at least 36 hours.

(3) (New, - SG, No. 52 of 2004) In case of switching shifts, when summing up the working time, the continuous weekly rest may be shorter than the rest under para. 2, yet it should not be less than 24 hours in the cases when the real or technical work management and logistics in the undertaking may impose this.

(4) (New, - SG, No. 52 of 2004) For extra hours during the two days of the weekly rest, when summing up all working hours on a daily basis, a worker or an employee, apart form extra pay against such work, has additionally the right to uninterrupted rest during the next working week not less than 24 hours.

ORDINANCE on the Civil servants Status

Art. 19. (Amended, - SG, No. 18 of 2004) (1) For extra hours worked, the Civil Servant shall be paid extra pay for the hours worked off, as calculated the on the basis of the individual basic salary, as follows:

1. 50 per cent – for work during working days;
2. 75 per cent - for work during the off days;
3. 100 per cent - for work during the days of official holidays.

(2) Civil servants who are entitled to additional holiday for open-ended working hours shall not be entitled to extra pay for the extra hours worked over the working days.

(3) When extra hours are worked, the right shall be respected to the continuous rest between days that may not be less than 12 hours.

Art. 19a. (New - SG, No. 18 of 2004) (1) While in State office during the days of official holidays included in the monthly schedule, the civil servant shall earn for the time worked off on that day extra pay increased by 100 per cent as calculated on the basis of the individual basic salary.

(2) While in State office during the days of official holidays not included in the monthly schedule, apart from extra pay for extra hours under Art. 19, para. 1, i. 3, a civil servant shall also earn extra pay increased by 100 per cent as calculated on the basis of the individual basic salary for the hours worked.

Art. 20. (1) (Amended, - SG, No. 18 of 2004) A civil servant earns for each hour or part of it extra labour remuneration amounting to 0,10 BGN for the at call time away from the workplace and beyond the established working hours.

(2) The place at call shall be specified by the assigning authority and by the civil servant.

(3) The time the civil servant has been at call should not be included within or accounted as working hours.

(4) (Rep. - SG, No. 18 of 2004).

(5) The maximum duration of the at call duties may not exceed:

1. for one calendar month: a total of 50 hours;
2. for one day during the working days: a total of 6 hours;
3. during off days: a total of 24 hours.

(6) The civil servant may not assigned to be at call:

1. within two subsequent working days;

2. within more than two off days within one calendar month.

Art. 21. (1) (Amended, - SG, No. 18 of 2004) For scientific degree (at least PhD) which is related to the work performed, a civil servant shall earn extra pay amounting to:

а) (amended, - SG, No. 50 of 2005) forty BGN – for PhD;

б) (amended, - SG, No. 50 of 2005) ninety BGN – for DSc.

(2) (Amended, - SG, No. 18 of 2004) In case there are more than one grounds under para. 1, the civil servant shall earn the extra pay that is more favourable.

Art. 22. (Amended, - SG, No. 18 of 2004, No. 46 of 2008) Each worked off night hour or for part of it between 2200 and 0600, shall be remunerated as extra pay for night labour equal to 0,25 BGN.

Art. 23. (Rep. - SG, No. 2 of 2006).

Art. 24. (1) (Former text of Art. 24 - SG, No. 35 of 2001, amended, No. 18 of 2004, No. 92 of 2008) For implementation of other additional or specific liabilities, as foreseen in a Law or an instrument of the Council of Ministers, extra pay shall be earned as specified by the order of the assigning authority which assigns the implementation thereof.

(2) (New, - SG, No. 35 of 2001, amended, No. 18 of 2004) For the time of the paid annual leave, a civil servant is given labour remuneration according to the size of his gross monthly salary as specified under the official legal relationship by the starting time of the leave.

(3) (New, - SG, No. 35 of 2001, amended, No. 18 of 2004) In the cases when the paid annual leave is used in a period including more than one calendar month, the average daily gross labour remuneration for each day of such leave over the relevant month shall be determined by the gross salary under para. 2 and the number of working days within the relevant month.

(4) (New, - SG, No. 35 of 2001, amended, No. 18 of 2004) When by virtue of a legal regulation issued by the Council of Ministers a date is specified for pay rises of salaries of civil servants and if such pay rise is not included in the amount of the gross salary under para. 2, relevant recalculations of the average daily gross labour remuneration under paragraphs 2 and 3 shall be made and the difference shall be paid up.

(5) (New, - SG, No. 35 of 2001) In the case of termination of the official legal relationship, the average daily sum of the cash compensation for compensating of unused days of paid annual leave shall be determined by the size of gross monthly salary as determined for the civil servant by the date of termination of the employment relationship and the average monthly number of working days for the relevant year.

.....

There are amendments to the Civil Servant Act that have incurred during the reference period referring the working time and the additional holidays:

Duration of working time

Art. 49. (1) (Former text of Art. 49 - SG, No. 43 of 2008) Working hours of the civil servant shall be 8 hours a day and 40 hours weekly in conditions of a 5-day working week.

(2) (New, - SG, No. 43 of 2008) The assigning authority may establish summing up method of calculation of working time, i.e. weekly, monthly or for another calendar period that may not be longer than 6 months.

(3) (New, - SG, No. 43 of 2008) No summing up method of calculation of working time shall be admissible for civil servants with open-ended working hours.

(4) (New, - SG, No. 43 of 2008) The maximum duration of a work shift in the conditions of summing up method of calculation of working time may be up to 12 hours whereas the duration

of the working week may not exceed 56 hours and for civil servants working reduced hours it may not exceed 1 hour over the working time as stipulated for these.
Open-ended working hours
Art. 50. (1) If needed, a civil servant must perform his liabilities even after the working time have elapsed subject to non-violation of the rest between days or between weeks.
(2) For implementation of his liabilities beyond the working time, a civil servant has the right to additional paid annual leave amounting to 12 days.
(3) The procedure for implementation of the liabilities beyond working hours and the way of specifying the size of the additional paid holiday under para. 2 shall be determined by the assigning authority.

Ministry of Interior Act (promulgated in SG, No. 17 of 24.02.2006, in force as of 1.05.2006,)

Section VII
Working hours and leaves
Art. 211. (1) The normal duration of the working time for the civil servants in MoI shall be 8 hours a day and 40 hours weekly in the conditions of a 5-day working week.
(2) All civil servants who perform their service duties in harmful, dangerous or specific working conditions enjoy reduced working hours.
(3) The length of working time for civil servants shall be calculated in working days, i.e. on a daily basis and for those employed in 8-, 12- or 24-hour shift: working time shall be calculated on a quarterly basis.
(4) For all MoI employees except for those under para. 2 and those employed on shifts, an open-ended working hours shall be enforced. If needed, they must perform their service duties even after the regular working hours have elapsed.
(5) All service performed beyond regular working hours shall be compensated by:
1. additional paid annual leave for the service during working days plus labour remuneration for extra hours for the service performed in off days and red-letter days – for employees under para. 4;
2. labour remuneration for extra hours: for up to 50 hours per reference period and by an additional holiday for all hours above 50 hours: for employees under para. 3.
(6) Overtime under para. 5 shall be paid on the basis of basic monthly labour remuneration plus 50 per cent.
(7) The arrangements for distribution of working time, their reporting and compensating the work of the civil servants beyond the regular working hours shall be specified by instructions of the Minister of Interior.
Art. 212. (1) MoI civil servants have the right to use the following types of leaves:
1. regular paid annual leave: 30 working days;
2. additional paid annual leave: + one day for each year in service, inclusive for equalised length of service but not more than 10 working days;
3. additional paid annual leave under Art. 211, para. 5: up to 12 working days;
4. additional paid annual leave in cases of service transfer to another location: up to three working days that may not be compensated by cash compensation;
5. (amended, - SG, No. 69 of 2008) additional paid holiday up to 5 working days per a calendar year in cases of "expression of gratitude" awards by the Minister, the Deputy-Ministers and Commissionaire General of MoI, and up to three working days in cases of awards by the supervisors of the basic structures under Art. 186, para. 1;
6. unpaid leave: up to 6 months once for the whole duration of the service;

7. unpaid leave: for the time of participation in international missions or in international organisations on the grounds of contracts which the Republic of Bulgaria is party too;
8. unpaid leave pursuant to the provisions of Art. 259;
9. unpaid service leave pursuant to the provisions of Art. 52, paragraphs 1 - 3 of the Law on Election of Members of Parliament and Art. 47 of Local Elections Act;
10. (amended, - SG, No. 64 of 2007) unpaid leave; for the period of conducting apprenticeship under Art. 294 of Judiciary Act.
(2) The leaves under para. 1 shall be calculated as length of service under this law except the cases under para. 1, i. 10.
(3) For the time of their paid annual leaves, MoI civil servants receive the basic monthly labour remuneration and the continuous extra pays depending on their amount by the moment of starting using the leave.
(4) Compensations shall be prohibited of leaves under paragraphs 1, i. 1 - 3 and 5 by cash compensation except the case of termination of the employment relationship.
(5) All travels of MoI civil servants in the territory of the country during their paid annual leaves shall be once a year at the account of MoI.

Regarding the open-end working day and the extra hours:
Labour Code:
Art. 139. (1) The distribution of working time shall be laid down in the Rules for Internal Labour Order of the undertaking.
(2) (Amended, - SG, No. 100 of 1992) In undertakings where the labour management allows for, working hours may be established such that they may have flexible limits. The time when a worker or an employee must obligatorily be at work at the undertaking, and the method of calculation thereof shall be specified by the employer. Beyond any such mandatory presence times, a worker or an employee shall determine the start of his working hours at his own discretion.
(3) In function of the nature of labour and the work management and logistics, the working day may be divided into two or three parts.
(4) (Amended, - SG, No. 100 of 1992, No. 25 of 2001, Rep., No. 48 of 2006).
(5) (Amended, - SG, No. 100 of 1992) For some categories of workers or employees, and for reasons stemming from the special nature of their work, an obligation may be established that such workers or employees should be on duty or at call to the employer during certain hours of the day. The categories of workers or employees, the maximum duration such period and the procedure of calculation thereof shall be specified by the Minister of Labour and Social Policy.
Open-ended working hours
Art. 139a. (New - SG, No. 48 of 2006) (1) For reasons stemming from the specific nature of the work, the employer may, upon consultations with the representatives of trade union organisations and with the workers or employees' representatives under Art. 7, para. 2, establish an open-ended working hours for some positions.
(2) (New, - SG, No. 108 of 2008) Open-ended working hours may not be set for workers or employees working reduced hours.
(3) (Former para. 2 - SG, No. 108 of 2008) The list of positions, for which an open-ended working hours is established shall be specified with an order of the employer.
(4) (Former para. 3 - SG, No. 108 of 2008) The workers or employees working an open-ended working hours undertake to, if needed, perform their working duties even after the elapse of the regular working hours.

(5) (Former para. 4 - SG, No. 108 of 2008) In the cases under para. 3, the workers or employees shall be entitled to, apart from the breaks under Art. 151, take a break of at least 15 minutes upon the elapse of the regular working hours.
(6) (Former para. 5 - SG, No. 108 of 2008) In the cases under para. 3, the overall duration of the working time may not violate the uninterrupted minimum between-two-days and weekly rest, as stipulated by this code (12 hours of between-two-days rest and 48 hours weekly rest).
(7) (Former para. 6 - SG, No. 108 of 2008) The extra hours performed beyond the regular working hours in working days shall be compensated by additional paid annual leave, and the work in off days and holidays shall be compensated on an increased labour remuneration for extra hours basis."

Paragraph 4 of Art. 139 was repealed, however an additional Art. 139a was added, which further develops the term 'open-ended working hours'.

The rates concerning the pay for extra hours в the Labour Code have not been amended:

Art. 262. (Amended, - SG, No. 100 of 1992) (1) The extra hours worked shall be subject of an increase to be agreed between the worker or the employee and the employer, however at least:
1. 50 per cent: for work during working days;
2. 75 per cent: for work during the off days;
3. 100 per cent: for work during the days of the official holidays;
4. 50 per cent: for work using summing up method of calculation of working hours.
(2) Except as otherwise provided, the increase under the precedent paragraph shall be calculated on the basis of the labour remuneration, as specified by the employment contract.
Pay of extra hours in the conditions of an open-ended working hours
Art. 263. (Amended, - SG, No. 100 of 1992) (1) For extra hours worked in working days by workers or employees with open-ended working hours, no labour remuneration shall be paid.
(2) For extra hours worked by workers or employees with open-ended working hours during the days of the weekly rest and during the days of the official holidays, labour remuneration shall be paid according to the rates under Art. 262, paragraphs 1, i. 2 and 3.
Labour remuneration for work during the official holidays
Art. 264. (Amended, - SG, No. 100 of 1992) For work during the days of the official holidays, whether these are extra hours or not, the worker or the employee shall be paid to as preconcerted, however not less than the double amount of his labour remuneration.

Regarding the reduced working hours and part time, and extension thereof, the following legislation amendments were introduced:

Labour Code:
Extension of working time
Art. 136a. (New - SG, No. 25 of 2001) (1) (Amended, - SG, No. 48 of 2006) Due to business-related reasons, the employer may, by an order in writing, prolong the working time during some working days and compensate them by accordingly reducing the working hours during other days subject to prior consultation with the representatives of trade union organisations and the workers or employees' representatives under Art. 7, para. 2. For extension of working time, the employer undertakes to notify thereof the Labour Inspectorate, in advance.
(2) (As amended, - SG, No. 52 of 2004) The duration of the extended working day, subject to the conditions under para. 1, may not exceed 10 hours, and for workers or employees working reduced hours: up to 1 hour over their reduced working hours. In such cases the duration of the

working week may not exceed 48 hours, and for workers or employees working reduced hours it is 40 hours. An employer must keep a special book of records of extension, and compensation, respectively of working time.
(3) Extension of working time under para. 1 and 2 shall be admissible for a period not exceeding 60 working days in the course of one calendar year, however, for not longer than 20 consecutive working days.
(4) In the cases under para. 1, the employer undertakes to compensate the extension of working time by its reduction, respectively, within a 4-month term, for each extended working day. Where the employer fails to compensate the extension of working time within the term as stated above, a worker or an employee has the right to specify himself the time during which the extension of working time will be compensated, by notifying the employer thereof in writing with at least a two-week notice.
(5) In the case of termination of the employment relationship prior to the compensation under para. 4, the difference up to the normal working day shall be paid as extra hours.
(6) For the workers or employees under Art. 147, extension of working time shall be admissible under the terms as stipulated by this article, for working extra hours.
Reduced working hours
Art. 137. (1) (Former text of Art. 137 - SG, No. 25 of 2001) Reduced working hours shall be set for:
1. (As amended, - SG, No. 100 of 1992, amended, No. 83 of 2005) workers or employees, who work in specific conditions and the risks for their lives or health may not be either eliminated or reduced, irrespective of the measures undertaken, but such reduction of the duration of working time would lead to limiting the risks for their health;
2. (Supplemented, - SG, No. 100 of 1992) workers or employees who have not completed 18 years of age.
(2) (New, - SG, No. 83 of 2005) The types of jobs where reduced working hours shall be established, shall be stipulated by an ordinance of the Council of Ministers.
(3) (Rep. - SG, No. 100 of 1992, new, No. 25 of 2001, former para. 2, No. 83 of 2005) Right to reduced working hours under para. 1, i. 1 shall be granted to workers or employees who work in relevant conditions for at least the half of the legally stipulated working hours.
(4) (New, - SG, No. 25 of 2001, former para. 3, No. 83 of 2005) In the case of reduction of the working time under paragraphs 1 and 2, the labour remuneration or any other rights of the worker or the employee under the employment relationship shall not be reduced.
Part-time schedule
Art. 138. (Amended, - SG, No. 100 of 1992) (1) (Former text of Art. 138 - SG, No. 25 of 2001) The parties to the employment contract may agree work for part of the legally stipulated working hours (part-time schedule). In such cases they specify the duration and the distribution of working time.
(2) (New, - SG, No. 25 of 2001, amended, No. 48 of 2006) In the cases under para. 1, the monthly duration of working time of the workers or employees on a part-time schedule shall be lesser than the monthly duration of working time of the workers or employees who work full time under employment relationship at the same undertaking and perform the same or similar jobs. When there are no hired workers or employees working full time performing the same or similar jobs, the comparison shall be made versus the duration monthly working hours of the other workers or employees at the undertaking.
(3) (New, - SG, No. 25 of 2001, amended, No. 48 of 2006) The workers or employees under para. 1 may not be put in more unfavourable position just because of the shorter duration of their working hours vs. the workers or employees who are parties to employment contracts for full time performing identical or similar jobs at the undertaking. They shall benefit from the

same rights and have the same liabilities as the workers or employees working full time, unless the law provided for that using certain rights should be in function of the duration of worked hours, the length of service, the qualification levels proved, etc.

Introduction of a part-time schedule by the employer
Art. 138a. (New - SG, No. 48 of 2006) (1) In case of decline in the work effort the employer may, for a period up to three months within one calendar year, introduce a part-time schedule for the workers or employees in the undertaking or in a unit thereof, who work full time, subject to prior agreement with the representatives of trade union organisations and with the workers or employees' representatives under Art. 7, para. 2.
(2) The duration of working time under para. 1 may not shorter than the half of the legal for the period of calculation of working time.
(3) In view of providing possibilities to pass from full to a part-time schedule or vice versa, the employer shall:
1. take into consideration the applications submitted by workers or employees for transfers from full time to a part-time schedule, whether such applications refer to the same of to another workplace, where the undertaking offers such possibilities;
2. take into consideration the applications submitted by workers or employees for transfers from a part-time schedule to full-time schedule or for increases of the duration of part time, if such opportunities occurred;
3. timely provide to the workers or employees information in writing on the vacant workplaces and positions on full-time and part-time schedules, at an appropriate location at the undertaking, to support transfers from full time to part-time schedules or vice versa; such information shall also be made available to the representatives of trade union organisations and to the workers or employees' representatives under Art. 7, para. 2;
4. undertake measures to facilitate the access to work on a part-time schedule at all levels in the undertaking, inclusive to the positions requiring qualifications, and for managerial positions, and, if possible, to facilitate the access to the workers or employees working on a part-time schedule to professional training to increase the possibilities for career development and occupational mobility.

Admissibility, by way of exception
Art. 144. Extra hours shall be admissible, by way of exception, in the following cases only:
1. for job assignments associated with the defence of the country;
2. (Supplemented, - SG, No. 100 of 1992, amended, No. 19 of 2005, suppl., No. 102 of 2006, amended, No. 35 of 2009, in force as of 12.05.2009) for prevention, setting control over and overcoming implications of calamities;
3. (amended, - SG, No. 100 of 1992) for performing urgent works of public importance and need relative to restoration of water supplies, electric power supply, heating power supply, sewerage, transport and communications and delivering medical aid;
4. (amended, - SG, No. 100 of 1992) for performing rescue and recovery operations and repairs in working premises, of machinery and other plant;
5. (amended, - SG, No. 100 of 1992, No. 108 of 2008) for finishing already started jobs that may not be carried out during regular working hours;
6. (New, - SG, No. 100 of 1992) for performing intensive seasonal assignments.

Questions of the ECSR:

The Committee notes that Paragraph 2 of Article 150 of the Labour Code concerning the prohibition of compensation for overtime work with a rest period was repealed. In this connection the Committee would like to ask whether the compensatory rest period granted is longer than the overtime worked.

Along with the repeal of Art. 150, para. 2 of the LC (SG, No. 52 of 2004), a new paragraph 4 in Art. 153 of the Labour Code was adopted:

"Weekly rest

Art. 153. (4) (New, - SG, No. 52 of 2004)

For work, done during the 2 days of the week rest, while calculating the working time day-by-day, the worker, or employee shall have the right to, apart from the increased payment of this work, also to an uninterrupted rest during the following working week not shorter than 24 hours."

The Law Amending the Labour Code (promulgated in SG, No. 52 of 2004) adopting amendments to a variety of provisions as laid down in the Labour Code (inclusive the repeal of Art. 150, para. 2 and the introduction of a new 4 в Art. 153), are all related to the liabilities assumed by the Republic of Bulgaria to fully harmonise Bulgaria's labour legislation with the *Acquis Communautaires* of the European Union in the process of its pre-accession negotiations with the EU. Implementing such liabilities, the provisions of the Labour Code on compensating work done by equal periods of rest were harmonised with Directive 2003/88/EC, in some aspects of the organisation of working time.

The cited provision of para. 4 of Art. 153 of the LC shows that a worker or an employee has the right to uninterrupted rest during the next working week not less than 24 hours, when extra hours were also worked during the two days of weekly rest, during which the worker/employee would be supposed to take rest if he were not to take extra hours. The minimum duration of the rest shall be 24 hours. Therefore, the duration of the rest should correspond to the duration of the extra hours worked. A lengthier rest (for example, 48 hours) shall be provided when a worker or an employee has worked extra hours in conditions of full duration of the working time during the two off days (2 days x 8 hours). According to Art. 15, para. 2 (New, - SG, No. 72 of 2004) of the Ordinance on the working time, rests and leaves in the cases under Art. 153, para. 4 of the LC, the order for the extra hours for each worker or employee must specify the day when, during the next working week, the uninterrupted rest of not less than 24 hours will be used.

Taking into consideration the above, the provided rest period is consistent with the duration of the extra jobs assigned. The rest under Art. 153, para. 4 of the LC shall be acknowledged as length of service. The rest shall be provided irrespective of and along with the extra pay against the extra hours.

In its previous conclusion the Committee asked about civil servants whose compensatory leave cannot be more than twelve days per year. In particular it asked how many hours of overtime work a one-day compensatory leave was meant to compensate. In this connection the Committee notes from the report that in pursuance to Section 50 of the Civil Service Act the terms and conditions of additional leave to compensate overtime are defined by the employment body. The Committee notes that it is not clear from the report whether the right to an increased compensatory time off is guaranteed to workers in civil service, therefore it repeats its question.

According to the Ordinance or the official status of the civil servant as adopted by Decree of the Council of Ministers No. 34 of 20.03.2000, as promulgated in SG, No. 23 of 22.03.2000, in force as of 22.03.2000 г.:

Art. 24. (1) (Former text of Art. 24 - SG, No. 35 of 2001, amended, No. 18 of 2004, No. 92 of 2008) For the implementation of any other additional and specific liabilities, as foreseen in a Law or an instrument of the Council of Ministers, extra pay will be payable, as specified by the order of the assigning body, by which order the implementation thereof was assigned.

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Section V

Additional paid holiday

Art. 25. (1) (Amended, - SG, No. 18 of 2004, former text of Art. 25, No. 46 of 2006) A civil servant has the right to additional holiday in function of the office occupied in accordance with annex No. 7.

(2) (New, - SG, No. 64 of 2008, in force as of 1.07.2008) A diplomatic servant has the right to additional holiday in function of the office occupied in accordance with annex No. 9.

(3) (New, - SG, No. 46 of 2006, former para. 2, No. 64 of 2008, in force as of 1.07.2008) A civil servant who performs his job on a part-time schedule, has the right to additional holiday in proportion to the duration of working hours specified for the office occupied.

Art. 26. In case of transfer or substituting for an office в position under the provisions of Art. 83 and 84 of the Civil Servant Act, a civil servant shall benefit from the length of the additional paid holiday specified for his main office.

Annex No. 7

To Art. 25 (Amended, - SG, No. 89 of 2000, No. 28 of 2001, No. 108 of 2001, in force as of 14.12.2001, No. 18 of 2004, in force as of 1.01.2004)

Table
On the lengths of the additional paid holiday in function of the office occupied

Positions included in the relevant office level of the Unified classification of the positions in the administration		Length of the additional paid holiday (days)
1.	A1	15
2.	A2	14
3.	A3, B1	13
4.	A4, Б2	12
5.	A5, Б3	11
6.	A6, Б4	10
7.	A7, Б5	9

8.	А8, Б6	8
9.	Б7	7
10.	А9, Б8 and Б9	6
11.	В10 and В11	5

The additional holiday will depend on the relevant office level in the Unified classification of the positions in the administration (Annex 1). As Annex 7 to Art. 25 of the Ordinance on the official position of the civil servant shows, servants at the lowest office level B10 and B11 have the right to a minimum of 5 days of additional paid holiday annually, which gradually increases.

The Committee also asked what was the impact of working time flexibility measures on compensation for overtime work. In this respect the report states that by virtue of Article 263 of the Labour Code no additional labour remuneration shall be paid for overtime work to employees with open-ended working time. By virtue of Article 139§4 of the Labour Code the overtime in such cases will be compensated by additional annual paid leave. The Committee also notes that according to Article 136.*a* of the Labour Code the employer may extend the working hours during a period of up to 60 working days in one calendar year but for not more than 20 consecutive working days. The employer shall compensate the extension of working hours with respective reduction of working hours within 4 months. The Committee notes that flexible arrangements where working hours are averaged on a certain reference period do not constitute a violation of Article 4§2 provided that they prevent unreasonable daily and weekly working time (up to 16 hours on any single day or more than 60 hours in any single week) and that they operate within a legal framework providing adequate guarantees for workers. The Committee asks if this is the case.

- The provisions of Art. 263 of the LC refer to pays of the extra hours to a specified category of workers or employees – those who work under the terms as stipulated by open-ended working hours. Open-ended working hours shall be laid down pursuant to the provisions of Art. 139a of the LC, according to which:

"Open-ended working hours
Art. 139a. (New - SG, No. 48 of 2006) (1) Given the specific nature of the work, the employer may, subject to consultations with the representatives of trade union organisations and with the workers or employees' representatives under Art. 7, para. 2, laiy down open-ended working hours for some positions.
(2) (New, - SG, No. 108 of 2008) Open-ended working hours may not be laid down for workers or employees working reduced hours.
(3) (Former para. 2 - SG, No. 108 of 2008) The list of positions where open-ended working hours is laid down shall be specified by an order of the employer.

(4) (Former para. 3 - SG, No. 108 of 2008) The workers or employees working an open-ended working hours undertake to, if needed, perform their working duties even after the elapse of the regular working hours.
(5) (Former para. 4 - SG, No. 108 of 2008) In the cases under para. 3, the workers or employees shall be entitled to, apart from the breaks under Art. 151, take a break of at least 15 minutes upon the elapse of the regular working hours.
(6) (Former para. 5 - SG, No. 108 of 2008) In the cases under para. 3, the overall duration of the working time may not violate the uninterrupted minimum between-two-days and weekly rest, as stipulated by this code (12 hours of between-two-days rest and 48 hours weekly rest).
(7) (Former para. 6 - SG, No. 108 of 2008) The extra hours performed beyond the regular working hours in working days shall be compensated by additional paid annual leave, and the work in off days and holidays shall be compensated on an increased labour remuneration for extra hours basis."

The regime of work in the conditions of an open-ended working hours shall be established by the employer, as he is the best to know the specificity of work and the need to from time to time work even after the elapse of the normal duration of the working day. Prior to determining the relevant categories of workers or employees whose labour function would from time to time require that they should continue to work even after their regular working hours have elapsed, the employer must hold consultations with the workers or employees' representatives. Upon the consultations the employer shall, by an order in writing, endorse a list of positions, which require work under the terms as stipulated by open-ended working hours. Usually, the employers include in this list positions of the administrative and technical personnel. The law explicitly stipulates that open-ended working hours may not be established for workers or employees, for whom reduced working hours are provided, i.e. 6- or 7-hour working day.

"Open-ended working hours" does not mean that the worker/employee has no specified in advance standards of work duration. Basically, a worker/employee's working time has normal duration (8 hours). The working regime typical for an open-ended working hours means that from time to time performance of assigned jobs should continue even after the elapse of the normal duration of the working hours, and until stopping work becomes possible. The way of determining the measure of work is specific, and this is precisely because of the nature of work, where two criteria at a time should be applied: by establishing the normal duration of working hours and by studying the scope and nature of duties to be performed by a worker or an employee. Such duties will, for reasons of nature of work, sometimes impose that work to be done even after the elapse of the normal working hours. Work after the elapse of the normal working hours shall not be regular. It is about needed and assigned jobs that are included within the measure of the work owed by the worker or the employee. Therefore, in this case it is not about true extra hours. This is why the law allows benign work beyond the normal duration of the working hours during working days only, by compensating this by additional paid annual leave. This is the hypothesis (i.e. overtime in working days done by workers or employees with an open-ended working hours) that enters the scope of Art. 263, para. 1 of the LC, i.e. for this kind of work, no labour remuneration shall be paid, as it has already been compensated by the additional paid annual leave. According to Art. 156, para. 1, i. 2 of the LC, the additional paid annual leave shall be at least 5 working days, and higher levels maybe negotiated in the individual employment contract or in the collective agreement, i.e. this is a way of providing a possibility to take account of the nature of work when the specific length of the leave is considered. When the same workers or employees work during off days or red-letter days, then, in accordance with the general practices, this kind of labour shall be extra hours. Basically, during the off days and the holidays, such workers or employees are not obliged to work,

notwithstanding the open-ended working hours regime as established for them. Therefore, the work performed by them during the off days or red-letter days shall be extra hours and shall be paid at increased rated, accordingly, and this is the hypothesis that is within the scope of Art. 263, para. 2 of the LC.

We consider that the work regime referred to as "open-ended working hours" as provided by the Bulgarian legislation is in accordance with the requirement of Art. 4, para. 2 of the ESC (r), as the workers or employees, for whom such a work regime was stipulated have the right to raised pay against the extra hours worked by them in off days and red-letter days, and the existing exception is applied in cases that are strictly determined by the legislation, when there is work after the normal working hours during working days, which is compensated by the ensured additional paid annual leave.

- The possibility prescribed by Art. 136a of the Labour Code to extend working time and its compensation by the relevant reduction is a form of flexibility of the working hours. Where there is extension of working time, the legal procedure and limitations are complied with. An employer may prolong working hours during some working days and compensate these by the relevant reduction thereof in other days, however, for production-related reasons only, and upon prior consultations with the representatives of trade union organisations and with the workers or employees' representatives under Art. 7, para. 2. The Labour Inspectorate needs to be given a prior notice by the employer. An employer must keep a special book of records of working hours.

Here are the limitations that should be observed:

- the duration of the extended working day may not exceed 10 hours, and for the workers or employees working reduced hours – up to 1 beyond their reduced working hours;
- the duration of the working week may not exceed 48 hours, and for the workers or employees working reduced hours the value shall be 40 hours;
- extension of working time shall be admissible within not more than 60 working days over one calendar year, however, for not longer than 20 consecutive working days;
- the employer must compensate the extension of working time by the relevant reduction thereof within 4 months for each extended working day;
- where the employment relationship is terminated prior to the compensation, then the difference to the normal working day shall be paid as extra hours.

According to Art. 8 of the Ordinance on the working time, rests and leaves:

"Art. 8. (Rep. - SG, No. 67 of 1993, new, No. 54 of 2001) (1) Extension of working time under Art. 136a of the Labour Code shall be enforced by an order in writing by the employer for each case where the order in question should be issued at least 3 working days prior to the date of such extension, and forthwith informing of such issued order all workers or employees, whom it may concern. The order shall lay down the starting and the date of conclusion of such extension, and shall list all units and workplaces, whom it concerns.

(2) Within 2 working days as of the issue of the order under para. 1, the employer shall notify thereof the relevant Labour Inspectorate.

(3) (Amended, - SG, No. 96 of 2006) The special book for records of extensions and compensations of working hours shall specify: the number of the working time extension order, details of the consultations held with the representatives of trade union organisations and the workers or employees' representatives under Art. 7, para. 2 Labour Code, the name of the worker or employee, the day and time of the extension, the duration of the extension, the starting and the concluding dates of the extension period, the number of the compensation order and the number of the notification addressed to the Labour Inspectorate, and in the cases under Art. 136a, para. 5 Labour Code: the labour remuneration paid. Where an undertaking has

introduced a salary information processing and personnel management automated system, the special book should contain only records of the numbers of the extension orders and of the working hours compensation orders, provided the other details are included in that system.
(4) An employer shall specify by way of an order the official who shall be in charge of making the records of the details under para. 3 in the special book for records of extensions and compensations of working hours.
(5) (Amended, - SG, No. 72 of 2004) The consent concerning work under the terms as stipulated by prolonged working hours as given by mothers with children aged under 6, by mothers who take care of children with disabilities, notwithstanding their age, by persons who were labour readjusted, provided this causes no harmful impact upon their health status, which should be proved by a conclusion issued by the health care authorities, and by in-service training participants, where such consent shall be given in writing for each separate case.
(6) In case of extension and compensation of working hours, the labour remuneration due to the workers or employees, which fall within the scope of an enforced hourly wage system, shall not be altered."

"Extension of working time" is a form of flexible labour management and flexible labour management and logistics and shall be admissible during working days only. No work shall be assigned on such grounds during the days of the weekly rest or the red-letter days. The workers or employees, who fall within the scope of such work management and logistics, shall, over a certain period, continue to work after the elapse of their normal working hours. What is 'extra work' during that particular period of 'extension of working time' shall be compensated by 'lesser effort work' during a subsequent period of 'reduction of working hours'. Therefore, the work performed, i.e. the hours worked as calculated for the average for the two periods, will be equal to the working hours, which a worker or an employee must wrk off in accordance with his employment contract. In order to guarantee the right of the workers or employees to fair labour remuneration, the prescription is that in case of termination of the employment contract prior to enforce the compensation, the extra hours worked should be paid as extra hours (i.e. higher pay rates for overtime).

The flexible arrangements (Art. 136a of the LC), where the hours worked are calculated as an average value for a determined period do exist within a legal framework which provides adequate warranties for the workers or employees.

Article 4§3[4]

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

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

3) Please supply detailed statistics or any other relevant information on pay differentials between men and women not working for the same employer by sector of the economy, and according to level of qualification or any other relevant factor.

Here we refer to the information as presented in the Sixth National Report on Article 20 of ESC (r).

Article 4§4

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

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

GENERAL NOTES:

The duration of the notice period prior to termination of an employment contract is one of the obligatory components of its contents. According to Art. 66, para. 1, i. 6 of the LC, the employment contract shall specify **equal notice period for both parties in the case of its termination**. This means that when a concluded employment contract is terminated by notice, then the duration of the notice period shall be equally valid both for the employer, and for the worker/employee. This amendment to the Labour Code was adopted in conformity with the Law Amending … (promulgated in SG, No. 52 of 2004) in relation to the negotiation process of accession of the Republic of Bulgaria to the European Union and is in conformity with Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

- Regarding the 30-day notice period:

According to Art. 326, para. 2 of the LC (As amended, - SG, No. 108 of 2008):

"The notice period for termination of an employment contract of unlimited duration shall be 30 days, unless an extended period has been agreed by the parties, but not longer than 3 months. In a collective agreement, the notice period in case of discharge under Art. 328, para. 1, paragraphs 1 - 4 and i. 11 may be placed in function of the duration of the length of service of the worker or the employee with the same employer. The notice period for termination of an employment contract of an indefinite period shall be 3 months, but not more than the remaining period of the contract."

The reason for the supplement to Art. 326, para. 2 of the LC (new second sentence) is the Conclusion of the European Committee of Social Rights. In the motivation part to the Law Amending the Labour Code (promulgated in SG, No. 108 of 2008) it was explicitly outlined that, "In the context of some unconformities noted by the European Committee of Social Rights of the national legislation with the European Social Charter (ESC (r)), a supplement to the Labour Code must be provided whereby to arrange a worker or an employee's right to compensation by the employer where a worker or an employee refuses to follow the undertaking or its branch where he works when such branch moves to another settlement, as well as creation of a new provision under which the collective agreement should provide for the opportunity to arrange the notice period in some cases of discharge to depend on the duration of the length of service of the worker or the employee with the same employer."

One must take into consideration that prior to passing the Law Amending the Labour Code (promulgated in SG, No. 108 of 2008) in the National Assembly, the bill was discussed and consulted with the social partners within the framework of the National Council for Tripartite Co-operation according to Art. 3 of the LC. Within the consultations held, a unanimous consent was achieved that the specific notice period in the case of termination на employment contract of unlimited duration placed in function of the duration of the length of service of the worker or the employee with the same employer, should be arranged in the collective agreement.

The cases of discharge where the notice period may be placed in function of the duration of the length of service of the worker or the employee, are as follows:

"**Art. 328.** (Amended, - SG, No. 21 of 1990, No. 100 of 1992) (1) An employer may terminate a contract of employment by giving a notice in writing to the employee in observance of the terms of Article 326, para 2, in the following cases:

1. Closing down of the undertaking;
2. Partial closing down of the undertaking or staff cuts;
3. Reduction of the volume of work;
4. (Amended - SG, No. 25/2001) Work stoppage for more than 15 work days;

.....

11. When the requirements for the job have been changed and the employee does not qualify for it;
12. ....."

The specified reasons are reasons for termination of an employment contract by the employer with a prior notice. All of them are 'non-guilty' reasons for termination of an employment contract, i.e. each one of them excludes the guilty behaviour of the worker or the employee, with whom the employment contract is to be terminated. What is common between them is that the reason for the termination is borne by the employer and is basically related to some business changes and reorganisations in the business of the employer. Therefore, the possibility of placing the notice period in function of the duration of the length of service of the worker or the employee in such cases, is substantiated and, in our opinion, it complies with the requirement of Art. 4, para. 4 of ESC (r) for "a reasonable notice period in case of discharge".

- Regarding the 15-day notice period:

According to Art. 334, para. 1 of the LC:

"Art. 334. (Amended, - SG, No. 100 of 1992) (1) In addition to cases provided for by this Code, an employment contract for additional work (Articles 110, 111 and 114) may be terminated by the employee or the employer with a 15 days notice."

The additional work employment contracts are a specific kind of employment contracts. This kind of employment contracts incur in the time after the incurrence of basic employment relationship. Within the meaning of the additional provisions of § 1, i. 12 of the LC (New, - SG, No. 48 of 2006) "Primary employment relationship" means each employment relationship, which, irrespectively from the grounds it has incurred on, existed prior to the conclusion of the employment contract for additional work. Under the primary employment relationship, a worker or an employee performs his job "permanently" and, basically, on a full-time schedule. The most important feature of the primary employment contract, which makes it different from the additional employment contract, is that such a primary employment contract provides continuous employment to the worker or the employee. The additional employment contract is a flexible form of employment and is usually of temporary nature, and, as a rule, is concluded as an additional contract to a primary employment contract. The types of employment contracts for additional work are: for work with the same employer (with whom the worker/employee has a primary employment contract) – Art.110 of the LC; for work with another employer (the worker/employee has a primary employment contract with one employer and an additional – with another employer) – Art. 111 of the LC; employment contract for work in specified days throughout a month – Art. 114 of the LC.

Employers and the workers/employees conclude employment contracts for additional work when the nature of the assigned work does not require worker's permanent employment. The job assigned is of temporary nature both in terms of the daily working hours needed to perform it, and in terms of the appropriate duration by calendar. Generally, the employment

contracts for additional work are concluded as fixed-duration employment contracts on a part-time schedule and, accordingly, are terminated at expiration of the term.

Whatever their specificity, the contracts for additional work are employment contracts, and, therefore, they fall within the scope of application of the general grounds and terms for termination of employment contracts. However, taking into consideration their specific nature, the legislator has also provided for a possibility for their termination with a 15-day notice. Each of the parties to the contract may make use of the short notice period when it considers that its interests would require this. As to the worker/employee: when his will to be involved into additional work falls away (due to family, or health, or any other reasons, which he does not need motivate), and as to the employer: when the need of the result of the additional work falls away (due to business, logistical or any other reasons, which he does not need motivate).

In view of the above, we consider that the possibility of termination of the employment contracts for additional work with a 15-day notice, as provided for by the legislation, is in the interest of both parties. This legislative solution takes into account precisely what is the main specificity of these contracts, which is the term "additional". Therefore, in our opinion, the duration of the notice period meets the requirement of Art. 4, para. 4 of ESC (r) for "a reasonable notice period in case of discharge". We are of opinion that in such cases it is neither reasonable nor acceptable to take account of the duration of the length of service of the worker or the employee. Extension of the notice period for termination of the employment contracts for additional work would have a bounding effect for the parties, which would not be in their interest.

- Ragarding the complaint against a notice of discharge in court (the amendments shown below do not refer to appeals against the notice itself, but of the act as an object therein):

On 1 March 2008, a new Code of Civil Procedure, which rearranges a number of institutions within the Bulgarian civil procedure law, including the claim process.

As to the labour disputes, apart from the already mentioned fundamental provisions, the new Code of Civil Procedure provides for their **obligatory** consideration pursuant to the provisions of summary proceeding, however the parties or the court not being entitled to choose whether to apply it or not. The very summary proceeding is carried out, generally speaking, within shorter, vs. the regular proceedings, terms, for instance the Court shall conduct an inspection of the validity of the bill of claim and of the admissibility of the claim as early as the day of lodging such a bill of claim; once the term for response by the defendant (one month), the court sets the hearing not later than three weeks, gives instructions to the parties, which must take a stand thereon and on the report on the case within one week. After the last session on the case, The court must within a two-week term announce its decision and the motives thereon. The same rules are enforced accordingly to the proceedings in a court of appeal. At the same time, the grounds for a cassation appeal are already such that the cassation instance should perform comprehensively its function to see to the exact and equal observance of laws by the inferior courts, and not to become a third instance on the merits of the dispute. For labour disputes, this means that in practice, the proceedings are two-instance, while to the third instance, i.e. to the cassation instance, labour disputes will arrive only in rare or exceptional cases, in so far as these have established and constant court practice.

All these changes mean that a labour dispute should have a definite decision within 6 months, provided the plaintiff shows integrity, observes procedural terms and his procedural behaviour should address co-operation to the courts activity to achieve a fair decision within the terms provided by the law. Otherwise, he will harvest the unfavourable consequences as a result of dragging the case beyond that term associated only with non-receipt of a larger

compensation. AND: however, in both cases the duration of the trial will be significantly reduced.

Article 4§5

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

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

Questions of the ECSR:

In the previous cycle (Conclusions 2003, p. 42), the Committee deferred its conclusion pending receipt of information indicating:
– whether the system limiting wage deductions ensured that workers would earn at least a minimum subsistence income under all circumstances;
– what procedures applied in the event of wage deductions.
With regard to the first question, the Committee points out that, after deductions, salaries must still be high enough for workers to provide for themselves and their dependants (Conclusions XI-1, Greece, p. 76). It notes that the report states only that wage deductions may never exceed the amounts set by the Code of Civil Procedure, as listed in the previous conclusions. The Committee notes therefore that the report does not reply in sufficient detail to the question put in the previous conclusions.

- Deductions from salaries:

The deductions, which the employer may make from the labour remuneration of the worker or the employee without the latter's consent are regulated in the provisions of Art. 272 of the Labour Code,:

"Deductions from the labour remuneration (Title amended, - SG, No. 100 of 1992)

Art. 272. (1) (Supplemented, - SG, No. 100 of 1992) Without the consent of the employee no deduction shall be made of his labour remuneration except for:
1. advance payments received;
2. excessive sums received due to technical error;
3. taxes deductible from the labour remuneration in accordance with specific laws;
4. assurance contributions on the expense of the employee who is assured for all the assurance events; (in force as from 01.03.1996)
5. attachments in accordance with established procedures;
6. deductions in the case of Article 210, para 4.
(2) The total amount of the monthly deductions under the preceding paragraph shall not exceed the amount set forth in the Civil Procedure Code. "

The first paragraph of Art. 272 of the LC regulates the type of deductions, and the second paragraph sets forth that in all cases their total amount may not exceed the amount set forth in the Civil Procedure Code.

As of 01.03.2008 г. a new Code of Civil Procedure is in force:

Code of Civil Procedure
promulgated in SG, No. 59 of 20.07.2007, in force as of 1.03.2008, as amended and suppl., No. 50 of 30.05.2008, in force as of 1.03.2008 г.; Decision No. 3 of the Constitutional Court of the Republic of Bulgaria of 8.07.2008, - No. 63 of 15.07.2008 г.; as amended, No. 69 of 5.08.2008, No. 12 of 13.02.2009, in force as of 1.01.2010, (*) - as amended, No. 32 of 28.04.2009, suppl., No. 19 of 13.03.2009, as amended and suppl., No. 42 of 5.06.2009 г.; as amended, Decision No. 4 of the Constitutional Court of the Republic of Bulgaria of 16.06.2009, - No. 47 of 23.06.2009 г.; No. 82 of 16.10.2009.

"Unseizable Income
Art. 446. (1) (Amended, - SG, No. 50 of 2008, in force as of 1.03.2008) If the enforcement is levied against a labour remuneration or against any other remuneration for work whatsoever, as well as against a pension to an amount exceeding the minimum wage, only the following shall be withheld:
1. if the person found against has a monthly income not exceeding BGN 300: one-fourth, if the person has no children, and one-fifth, if the person has any children maintained thereby;
2. if the person found against has a monthly income exceeding BGN 300 but not exceeding BGN 600: one-third, if the person has no children, and one-fourth, if the person has any children maintained thereby;
3. if the person found against has a monthly income exceeding BGN 600 but not exceeding BGN 1,200: one-half, if the person has no children, and one-third, if the person has any children maintained thereby;
4. if the person found against has a monthly income exceeding BGN 1,200: the excess over BGN 600, if the person has no children, and the excess over BGN 800, if the person has any children maintained thereby.
(2) (New, SG No. 50/2008) The monthly labour remuneration referred to in Paragraph (1) shall be determined by deducting the taxes and compulsory social insurance contributions due on the said remuneration.
(3) (Renumbered from Paragraph (2), SG No. 50/2008) The limitations covered under Paragraph (1) shall not apply to any maintenance obligations. In such cases, the amount for maintenance as awarded shall be withheld in whole, and the deductions covered under Paragraph (1) for the other obligations of the party found against and for maintenance obligations for a past period shall be made on the balance of all income accruing to the said debtor.
(4) (Renumbered from Paragraph (3), SG No. 50/2008) Coercive enforcement against receivables for maintenance shall not be admitted. Coercive enforcement against student grants shall be admitted solely in respect of maintenance obligations.
Invalidity of Waiver of Remedy
Art. 447. Any waiver by the execution debtor of the remedy under Articles 444 and 446 herein shall be invalid."

The purpose of the provisions of Art. 446 от Code of Civil Procedure on unseizability of income is precisely to guarantee to the workers or employees receiving such labour remuneration, which will in any case ensure them minimum means of livelihood.

The minimum monthly labour remuneration established for the country for 2009, in full time, which each worker or employee is entitled to shall be 240 BGN.
Example: in the hypothesis in Art. 446, para. 1, i. 1 of the Code of Civil Procedure (if the person found against has a monthly income not exceeding BGN 300) provided the minimum

labour remuneration is 240 BGN the amount withheld may not exceed 60 BGN (on-third, if the person has no children) or 48 BGN (one-fourth, if the person has any children maintained thereby). This means that the disposable part, i.e. the minimum amount left for maintenance will be 180 BGN and 192 BGN, respectively.
In order to consider to what extent the said sums (180 BGN and 192 BGN), i.e. are sufficient, we should use the comparability principle. In this case as a criterion may be used the "Guaranteed minimum income" which was defined pursuant to Social Assistance Act (SAA):

Social Assistance Act
promulgated in SG, No. 56 of 19.05.1998, amended, No. 45 of 30.04.2002, as amended and suppl., No. 120 of 29.12.2002, in force as of 1.01.2003, No. 18 of 28.02.2006, amended, No. 30 of 11.04.2006, in force as of 12.07.2006, No. 105 of 22.12.2006, in force as of 1.01.2007, as amended and suppl., No. 52 of 29.06.2007, amended, No. 59 of 20.07.2007, in force as of 1.03.2008, No. 58 of 27.06.2008, in force as of 1.07.2008, as amended and suppl., No. 14 of 20.02.2009, suppl., No. 41 of 2.06.2009, in force as of 1.07.2009, amended, No. 74 of 15.09.2009, in force as of 15.09.2009.

SUPPLEMENTARY PROVISION
§ 1. Within the meaning of this law:
10. (New, - SG, No. 120 of 2002, former i. 9, No. 14 of 2009) „Guaranteed minimum income" means an amount of means as specified by the relevant regulation which shall be used as a base for determining of the social aid to ensure the minimum income to satisfy the primary life need of the persons according to their age, marital status, health status and property status.

According to Art. 12, para. 3 of SAA (New, - SG, No. 120 of 2002), the Council of Ministers shall determine a monthly amount of guaranteed minimum income that will serve as a base for determining of the social aid.

By Decree No. 6 of the Council of Ministers of 15.01.2009 on determining a new monthly amount of guaranteed minimum income (promulgated in SG, No. 7 of 27.01.2009, in force as of 1.01.2009), as of 1 January 2009 the Council of Ministers determines new monthly amount of the guaranteed minimum income to be 65 BGN. The amount of the guaranteed minimum income shall be determined for a full calendar month.

The above shows that in case of observing the provisions of Art. 272 of the LC in connection with Art. 446 of the Code of Civil Procedure, in the above example, the minimum monthly amount remaining for maintenance will be 180 BGN, 192 BGN, respectively, will be higher than the monthly amount of the guaranteed minimum income: 65 BGN

In our opinion, the existing system which limits the deductions withheld from the labour remuneration ensures that the workers or employees should have **at least minimum maintenance of life.**

- Procedures as enforced in the case of withholding deductions from salaries:

An employer, who is the payer of the labour remuneration, pursuant to the provisions of the Labour Code, must accrue in the payrolls the labour remunerations of the workers or employees and pay them, either in advance or to the full amounts twice a month, unless agreed otherwise. In the case of the accrual on the labour remuneration, the employer shall withhold the legally stipulated deductions by observing the provisions of Art. 272 of the LC and shall pay the relevant amount.

When the labour remuneration is imposed garnishment on under the relevant rules (i.e. a deduction within the meaning of Art. 272, para. 1, i. 5 of the LC), the employer shall additionally observe the provisions of Art. 512 of the Code of Civil Procedure:

Garnishment of Labour Remuneration

Art. 512. (1) The garnishment of a labour remuneration shall affect not only the remuneration specified in the garnishment communication but also any other remuneration received by the execution debtor in consideration of the same or other work with the same employer or at the same institution.
(2) If the execution debtor takes up employment with another employer or at another institution, the garnishment communication shall be forwarded there by the person who initially received the said communication and shall be considered dispatched by the enforcement agent. The garnishee shall notify the enforcement agent of the new place of work of the execution debtor and of the amount withheld until the change of employment.
(3) The person who pays a labour remuneration to the execution debtor notwithstanding the garnishment imposed, without withholding the amount under the garnishment, shall be liable in person to the execution creditor for the said amount solitarily with the garnishee.
(4) The garnishment communication under maintenance obligations shall be entered into the civil-service or employment work book of the execution debtor by the person who pays the remuneration. Where the execution debtor takes up employment with another employer or at another institution, the remuneration thereof shall continue to be withheld on the basis of this entry even if no other garnishment communication is received.
(5) The entry shall be expunged at the command of the enforcement agent who has imposed the garnishment.
(6) If the employment relationship or civil-service relationship of the execution debtor is terminated after the imposition of the garnishment on the labour remuneration and the said debtor fails to notify the enforcement agent of the new employment of the said debtor within one month, the enforcement agent shall impose a fine not exceeding BGN 200 on the said debtor."

Scope of the provisions as interpreted by the ECSR

Paragraph 1: Wages must guarantee a decent standard of living to all workers. The net minimum wage must amount to at least 60% of the net national average wage.

Paragraph 2: The right to an increased remuneration rate for overtime work should be guaranteed to workers; where leave is granted to compensate for overtime, it should be longer than the overtime worked.

Paragraph 3: The right to equal pay without discrimination on grounds of sex should be expressly provided for in legislation. Appropriate and effective remedies should be provided in the national legislation in the event of alleged wage discrimination on grounds of sex.

Paragraph 4: The right of all workers to a reasonable period of notice for termination of employment should be guaranteed.

Paragraph 5: The right of all workers to their wage being subject to deductions only in circumstances which are well-defined in a legal instrument (law, regulation, collective agreement or arbitration award) should be guaranteed.

For a list of selected other international instruments in the same field, see Appendix.

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this Article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Information to be submitted

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

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

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

The amendments to the relevant regulations made to the above report are as follows:

Labour Code:

Chapter three

TRADE UNION ORGANISATIONS AND EMPLOYERS' ORGANISATIONS
(Title amended, - SG, No. 100 of 1992)
Independence

Art. 33. (Amended, - SG, No. 100 of 1992) (1) Trade union organisations and employers' organisations are entitled, within the bounds of the law, to autonomously draw up and adopt their statutes and rules, to freely elect their bodies and representatives, to organise their leadership, as well as to adopt programmes of action.
(2) Trade union organisations and employers' organisations shall define their functions freely, and shall perform them pursuant to their statutes and the law.

Representative Organisations of the Employees

Art. 34. (Rep. - SG, No. 100 of 1992, new, No. 25 of 2001, amended, No. 120 of 2002, No. 40 of 2007) Recognised as representative organisations of the employees on national level shall be the organisations which have:
1. at least 50 000 members;
2. at least 50 organisations with not less than 5 members each in more than half of the industries set forth in the National Classification of Industries;
3. local bodies in more than half of the municipalities in the country and a national managing body;
4. capacity of legal entity, acquired pursuant to Article 49, para. 1 at least two years prior to lodging the request for acknowledgement of representativeness

Representative Organisations of the Employers

Art. 35. (Rep. - SG, No. 100 of 1992, new, No. 25 of 2001, amended, No. 120 of 2002, No. 40 of 2007) (1) Recognised as representative organisations of the employers on national level shall be the organisations which meet the following requirements:
1. has at least:
(a) 750 members with not less than 10 workers or employees each, hired on employment contracts, and a total of at least 15 000 workers or employees in all members of the employers' organisation; or;
(b) 30 000 workers or employees each, hired on employment contracts, in all members of the employers' organisation;
2. has employers' organisations in more than one fifth of the industries set forth by the Council of Ministers in compliance with the National Classification of Industries;
3. local bodies in more than one fifth of the municipalities in the country and a national managing body;
4. capacity of legal entity, acquired pursuant to Article 49, para. 1 at least two years prior to lodging the request for acknowledgement of representativeness

(2) Where one sector employers' organisation is a member of two or more employers' organisations, by the time of establishing the membership under para. 1, i. 2 as regards the compliance with all representativeness criteria, it shall be included in the list of that organisation, to which it has granted an explicit power of attorney for being represented.

Recognition of Representative Organisations

Art. 36. (Rep. - SG, No. 100 of 1992, new, No. 25 of 2001, amended, No. 40 of 2007) (1) Organisations of the employees and of the employers shall be recognised by the Council of Ministers as representative on national level upon their request for a 4-year term.

(2) Once every 4 years, the Council of Ministers shall launch a procedure of recognition of the organisations of workers or employees and employers as representative on a national level.
(3) The chairperson of the National Council for Tripartite Co-operation shall announce in the *State Gazette* the start of the procedure for recognition of representativeness 6 months prior the expiry of the term under para. 1.
(4) The organisations of workers or employees and employers' organisations, which would wish to be recognised as representative, lodge their applications within a three-month term as of the date of promulgation of the announcement under para. 3.

(5) The Council of Ministers shall set forth the procedure for verification of compliance with the criteria for representativeness as per Articles 34 and 35 by observing the following principles:
1. equality, when the assessment is made of all criteria for representativeness and the presence of social mandate;
2. transparency of the procedure for ascertaining the presence of all criteria for representativeness under Articles 34 and 35;
3. guaranteeing the veracity of the primary information;
4. mutual control on ascertaining the presence of all criteria for representativeness.
(6) The Council of Ministers shall issue decision within three months following the receipt of legitimate request by the interested organisation.
(7) The denial of the Council of Ministers to recognise as representative an organisation of employees or employers shall be supported by reasons and shall be notified to the interested organisation within 7 days following the issue of such decision. The interested organisation may appeal the denial before the Supreme Administrative Court.
(8) Recognised as representative shall also be all divisions of organisations recognised as representative on national level.
Verification of Requirements for Representativeness

Art. 36a. (New - SG, No. 25 of 2001, amended, No. 40 of 2007) (1) The Council of Ministers may, on its own initiative or upon proposal of the National Council for Tripartite Cooperation, carry out verification of the compliance with the requirements for representativeness of the organisations of employees and of employers pursuant to Articles 34 and 35.

(2) Depending on the results of such verification the Council of Ministers shall take decision, by which it may:
1. deny the recognition of the representative character of organisations of employees or of employers at a national level;
2. confirm the representative character of such organisations pursuant to Article 36, paragraphs (1) and (2).
(3) The decision under para. 2, i. 1 may be appealed pursuant to the provisions of Art. 36, para. 7.

.....

(Title amended, - SG, No. 100 of 1992, No. 48 of 2006)
Art. 46. (1) (Amended, - SG, No. 100 of 1992, former text of Art. 46, No. 48 of 2006)

State agencies and employers shall provide conditions for, and cooperate with, trade union organisations to further their activities. The former shall make available to the latter, for gratuitous use, real estate and movables, buildings, premises, and other facilities required for the performance of their functions.

(2) (New, - SG, No. 48 of 2006) An employer must co-operate with the workers or employees' representatives to the end of performing their funcions and provide conditions for the implementation of their activities.

.....

TRANSITIONAL PROVISIONS to the Law Amending the Labour Code

(SG, No. 40 of 2007, amended, No. 64 of 2007)
§ 5. (1) shall announce in the *State Gazette* the start of the procedure for recognition of representativeness within a 7-day term as of the enforcement of this law.
(2) (Amended, - SG, No. 64 of 2007) The organisations of employees and employers wishing to be recognised as representative on a national level, shall lodge their requests by 28 September 2007.
(3) (Amended, - SG, No. 64 of 2007) The Council of Ministers shall make its decision on the requests lodged not later than 28 December 2007.
§ 6. The organisations of employees and employers recognised as representative on a national level by a decision of the Council of Ministers prior to the enforcement of this law, which have lodged request for recognition of representativeness under § 5, para. 2, shall retain their representativeness until the conclusion of the procedure.

Motives for amendments to legislation:
In the dominion of the social dialogue, the European Commission recommends to develop objective and impartial criteria for representativeness of the organisations of the social partners, so the participation in the tripartite dialogue would be limited to the organisations of the social partners with social mandate.
Therefore, it is imperative to improve all criteria for representativeness on a national level of the organisations of employees and employers.
To the now existing criteria for representativeness of the organisations of the workers or employees, an additional requirement is added: such organisations should have acquired the status of a legal entity at least two years prior request for recognition of representativeness.
A similar requirement was introduced in respect of the employers' organisations.
Due to some specific characteristics of the employers' organisations and in view of providing a wider scale of representativeness of the small to medium undertakings, the bill for the Law amending the Labour Code suggests that when specifying the number of members of an organisation, to apply two alternative criteria.
To guarantee the objectivity at the time of determining the representativeness of the employers' organisations it is provided that where a sector organisation of the employers is a member of two or more national employers' organisations, these should be included in the lists of those organisations whom they have given an explicit power of attorney to represented within the tripartite cooperation system.
A 4-year representativeness mandate shall be introduced upon the elapse of which the Council of Ministers shall launch a procedure for recognition of the organisations of employees and employers as representative on a national level.
It is provided for that the chairperson of the National Council for Tripartite Cooperation should announce in the „*State Gazette*" start of the procedure for recognition of representativeness 6 months prior to the elapse of the 4-year term where the organisations of employees and employers should simultaneously lodge their requests within a three-month term as of the date of promulgations of such announcement.
When determining the procedure for ascertaining the presence of all criteria for representativeness on a national level of the organisations of employees and employers, the Council of Ministers shall, as regulated, observe the principles of equalitywhen assessing all criteria for representativeness, transparency of the procedure for ascertenment thereof, guarantying the veracity of the primary information and the mutual control at the time of ascertaining the presence of all criteria for representativeness .

ORDINANCE on ascertaining the presence of all criteria for representativeness of the organisations of employees and employers (adopted by Decree of the Council of Ministers No. 152 of 11.07.2003, as promulgated in SG, No. 64 of 18.07.2003; as amended with Decision No. 9121 of 15.10.2003 of the Supreme administrative Court of the Republic of Bulgaria - No. 93 of 21.10.2003, in force as of 21.10.2003; as amended and suppl., No. 52 of 29.06.2007)

Art. 2. The Ordinance shall be enforced when:
1. (amended, - SG, No. 52 of 2007) The organisations of employees and employers request from the Council of Ministers to be recognised as representative on a national level upon the promulgation in „*State Gazette*" of a start of a procedure for recognition of representativeness under Art. 36, para. 3 of the Labour Code;
2. (Rep. - SG, No. 52 of 2007);
3. (amended, - SG, No. 52 of 2007) The Council of Ministers shall on its own initiative, check the presence of all criteria for representativeness of the organisations of employees and employers.
Art. 3. (Rep. - SG, No. 52 of 2007).
Chapter three
DOCUMENTS FOR PRIMARY ASCERTAINING OF THE PRESENCE OF ALL CRITERIA UNDER ART. 35 OF THE LABOUR CODE,
Art. 6. (Amended, - SG, No. 52 of 2007) (1) Where the employers' organisations lodge a request to be recognised as representative on a national level, they submit to the Council of Ministers:
1. a court decision on entry and a certificate of the up-to-date status of the organisation;
2. an certified by the court copy of the last statutes of the organisation;
3. documents by which is established the presence of the needed membership of the organisation under Art. 35, para. 1, i. 1, letters „a" or „b" of the Labour Code;
4. documents by which is established the presence of the membership of the organisation needed under Art. 35, para. 1, i. 2 of the Labour Code where the economic activities of its members under annex No. 1 shall be listed, as endorsed by the national management body;
5. a list of the local bodies and their addresses as distributed by the municipalities and the names of the persons representing thereof containing their PINs as endorsed by the national management body;
6. a list of the members of the national management body of the organisation;
7. a power of attorney under Art. 35, para. 2 of the Labour Code.
(2) The membership of the organisation under Art. 35, para. 1, i. 1, letter „a" of the Labour Code shall be ascertained by a list of the employers that are members of the organisation which have at least 15 000 workers or employees hired on employment contracts certified by representative of the organisation in conformity with its statutes where the full name and the BULSTAT of the undertaking shall be entered. The list shall explicitly specify at least 750 employers, each of which has at least 10 workers or employees, hired on employment contracts. The list shall come with a certified reference from the National Social Security Institute proving the veracity of the supplied information.
(3) The membership of the organisation under Art. 35, para. 1, i. 1, letter „b" of the Labour Code shall be ascertained by a list of the employers that are members of the organisation which have at least 30 000 workers or employees hired on employment contracts certified by representative of the organisation in conformity with its statutes where the full name and the BULSTAT of the undertaking shall be entered together with a certified reference from the National Social Security Institute proving the veracity of the supplied information.
(4) The data under para. 1, i. 3–6 shall be supplied both in paper and in electronic carrier.

Chapter four

TERMS FOR PRESENTING THE DOCUMENTS IN THE CASES UNDER ART. 36a OF THE LABOUR CODE

Art. 7. (Amended, - SG, No. 52 of 2007) In the cases under Art. 36a, para. 1opf the Labour Code, in its decision on conducting an inspection, the Council of Ministers shall specify a term not shorter than 3 months where the organisation of the workers or employees or of the employers must present the documents under Art. 4 or 6.

Chapter five

BODIES AND PROCEDURE FOR ASCERTAINING AND VERIFICATION OF ALL CRITERIA FOR REPRESENTATIVENESS UNDER ARTICLES 34 AND 35 OF THE LABOUR CODE

Art. 8. The documents under Articles 4 and 6 provided to the Council of Ministers shall be presented to the Minister of Labour and Social Policy for analysis and assessment of the data contained therein.

Art. 9. The Minister of Labour and Social Policy shall assign a commission for ascertaining the presence of all criteria for representativeness; representatives of the organisations who participate in the procedure for ascertaining of all criteria for representativeness may take part as observers in the activity of this commission.

Art. 10. (1) The Minister of Labour and Social Policy may request from the relevant organisations to supply additional information relative to the documents under Articles 4 and 6 and organise the inspections in situ in the undertakings or organisations, as needed.

(2) In the cases under Art. 5, para. 5 the Minister of Labour and Social Policy shall request the provision of lists containing all names of the members of the organisations of the workers or employees in the undertaking.

(3) (Rep. - SG, No. 52 of 2007).

(4) (Amended, - SG, No. 52 of 2007) In the cases under Art. 35, para. 2 of the Labour Code, when a sector organisation of the employers has not given its explicit power of attorney, the Minister of Labour and Social Policy shall request from such an organisation to present it within a 14-day term in order to ascertain the presence of all criteria for representativeness.

(5) (Rep. by Decision No. 9121 of the Supreme Administrative Court of the Republic of Bulgaria - SG, No. 93 of 2003).

Art. 11. (1) On the grounds of the results from the analysis made, the Minister of Labour and Social Policy shall, within a two-month term as of the receipt of all documents as requested under Art. 4 or under Art. 6, submit to the Council of Ministers a report containing a draft solution.

(2) A copy of the report under para. 1 shall be made available to the organisation which is subject of ascertaining said presence of all criteria for representativeness.

Art. 12. (1) (Supplemented, - SG, No. 52 of 2007) In the cases under Art. 36a, para. 1 of the Labour Code, the Council of Ministers shall announce its decision within 3-month term as of the date of receipts of the documents under Art. 7.

(2) When the Council of Ministers accepts that additional evidence needs to be supplied or that a check of some of the stated data should be made, it shall notify the interested organisation thereof. In such cases the term under para. 1 shall be extended by the time specified for submitting the supplemental information or conducting the said check.

Motives for amendments:

The amendments to the Ordinance are related to the amendments made to the Labour Code, which introduced a 4-year mandate of representativeness for the organisations of employers' and trade union organisations (Art. 36, para. 1 of the LC).

The appropriate documents were specified, which must be provided by each employers' organisation. These are related to the adopted two alternative criteria for ascertaining the presence of the appropriate membership of the organisation. The first is that the membership of the organisation should be ascertained by a list of the member employers, which have at least 15 000 workers or employees hired on employment contracts. This list must be certified by the board of managers and shall explicitly specify at least 750 employers, each of which has at least 10 workers or employees, hired on employment contracts. The list shall come with a certified reference from the National Social Security Institute proving the veracity of the supplied information. The second criterion provides for that the membership should be ascertained by a list of the organisation member employers, which have at least 15 000 workers or employees hired on employment contracts and shall come with a certified reference from the National Social Security Institute.

Questions of the European Committee of Social Rights

Right to join or not to join a trade union

The Committee previously considered penalties imposed on employers in the underground economy and small and medium enterprises that pressurised employees to give written undertakings not to join a trade union. Under Article399 of the Labour Code, monitoring of compliance with labour legislation in all sectors is the responsibility of the general labour inspectorate under the authority of the Ministry of Labour and Social Policy. If inspectors consider that the law has been broken, they must notify the public prosecutor.

According to the Confederation of Independent Trade Unions of Bulgaria (CITUB), the existing legal provisions are inadequate. The Committee asks for government's comments on the situation in practice.

The right of the workers or employees to trade union activity, as regulated by Art. 49 of the Constitution of the Republic of Bulgaria, is laid down in the Labour Code. They are entitled to associate in trade unions and leagues to defend their interests in the area of labour and social security and to join them.

According to Art. 8, para. 4 of the Labour Code, the waiver of labour rights, as well as the transfer of labour rights or liabilities is invalid. These are personal. Therefore, even if

workers or employees submit a declaration that they do not intend to join a trade union organisation in the undertaking, this will entail no legal consequences.

An employer shall not be entitled to require from workers or employees to fill in declarations of waiver. A liability for any certification through declaration shall solely be introduced by a Law.

Where a declaration is not filled in and signed and unfavourable consequences for the workers or employees incur, they shall be entitled to bring a law suit to court. Similarly, a worker or an employee shall be entitled to bring a law suit to court when he joins a trade union organisation in the undertaking, notwithstanding the fact he is filled and signed a declaration.

Accepted the amendments to the Labour Code by the end of 2008 (as amended, SG, No. 108 of 2008), there was a significant raise in the amount of property sanctions and fines relative to violations of the labour legislation:

"Art. 414. (Amended, - SG, No. 100 of 1992, No. 2 of 1996, No. 25 of 2001, No. 120 of 2002) **(1)** (Amended, - SG, No. 48 of 2006, No. 108 of 2008) An employer who violates provisions of labour legislation beyond the rules for ensuring safe and healthy conditions of work, unless liable to a heavier sanction, shall be penalised by penalty or fine from 10 000 to 15 000 BGN, and a guilty official, unless liable to a heavier sanction, shall be penalised by fine of 2500 to 10 000 BGN

(2) (Amended, - SG, No. 48 of 2006, No. 108 of 2008) For a repeat violation under para. 1 the sanction shall be penalty or fine of 20 000 to 30 000 BGN, and, respectively, fine of 5000 to 20 000 BGN"

The Penal Code foresees punishments for crimes against the labour rights of citizens:

"Art. 172. (As amended, - SG, No. 28 of 1982, amended, No. 1 of 1991) (1) (Amended, - SG, No. 10 of 1993, as amended and suppl., No. 92 of 2002) Who deliberately obstructs somebody to occupy a position or compels him to leave the job because of his nationality, race, religion, social origin, membership or no membership in a trade union or other organisation, a political party, organisation, movement or coalition with a political purpose or because of his or his next of kin political or other convictions shall be punished by imprisonment of up to three years or by a fine of up to BGN five thousand."

Article 46 of the Labour Code requires employers and government to provide, free of charge, the necessary premises and other facilities to perform their functions satisfactorily. The CITUB states that, in practice, in companies where there are representative trade unions, they are not always able to hold meetings on company premises, or have only restricted access. In addition, it is very difficult and frequently impossible for trade union representatives from outside to Conclusions 2006 – Bulgaria, Article 592 gain access to companies where there are no trade unions, particularly those belonging to the underground economy. The Committee asks whether access to the workplace and meetings on the premises are authorised in practice for all unions in all companies.

We do not have information on non-compliance with the provisions of Art. 46 of the Labour Code by the State authorities or the employers in respect of provisions of conditions and assistance to the trade union organisations for the implementation of their activities.

In its previous conclusion (ibid.), the Committee considered that the situation is not in conformity with Article 5 of the Revised Charter as the Labour Code (Section 225) – which provides for damages up to a maximum of 6 months wages in the event of discriminatory dismissal because of trade union activities – does not provide for adequate compensation, which would be proportionate to the damage suffered by the victim (Conclusions 2004, pp. 32-38). According to the report, the Labour Code was not altered in this point during the reference period. Therefore, the Committee considers that the situation is still not in conformity.

From March 2008 a new Code of Civil Procedure was enforced to rearrange a number of institutions of the Bulgarian civil procedure law, including the claim process. The principles on which it is generally founded are connected on early preclusion of proceeding terms, concentration of provided requests and evidence in first instance, a service principle expressed as a more active role of the court in the trial and all this leads to better standards of discipline of the parties and the court, to significant reduction of the periods of the judicial proceedings in civil law suit cases and to swifter solutions to civil disputes, respectively.

As to the labour disputes, apart from the already mentioned fundamental provisions, the new Code of Civil Procedure provides for their obligatory consideration pursuant to the provisions of summary proceeding, however the parties or the court not being entitled to choose whether to apply it or not. The very summary proceeding is carried out, generally speaking, within shorter, vs. the regular proceedings, terms, for instance the Court shall conduct an inspection of the validity of the the bill of claim and of the admissibility of the claim as early as the day of lodging such a bill of claim; once the term for response by the defendant (one month), the court sets the hearing not later than three weeks, gives instructions to the parties, which must take a stand thereon and on the report on the case within one week. After the last session on the case, The court must within a two-week term announce its decision and the motives thereon. The same rules are enforced accordingly to the proceedings in a court of appeal. At the same time, the grounds for a cassation appeal are already such that the cassation instance should perform comprehensively its function to see to the exact and equal observance of laws by the inferior courts, and not to become a third instance on the merits of the dispute. For labour disputes, this means that in practice, the proceedings are two-instance, while to the third instance, i.e. to the cassation instance, labour disputes will arrive only in rare or exceptional cases, in so far as these have established and constant court practice.

All these changes mean that a labour dispute should have a definite decision within 6 months, provided the plaintiff shows integrity, observes procedural terms and his procedural behaviour should address co-operation to the courts activity to achieve a fair decision within the terms provided by the law. Otherwise, he will harvest the unfavourable consequences as a result of dragging the case beyond that term associated only with non-receipt of a larger compensation . AND however, in both cases the duration of of the trial will be significantly reduced.

In its previous conclusion, the Committee noted that it was possible for foreign workers to form a trade union or to participate in the formation of a trade union as founder member. However, formation in this case is subject to the previous award of an authorization (Order No. 1 of 15 August 2002). The Committee recalls that employees who are nationals of other parties to the Revised Charter must have the same rights to organise as nationals (see mutatis mutandis Conclusions XIII-3 Turkey, Article 19§4b, p. 415). In view of the said restrictions that are placed on foreign workers' right to form trade

unions, the Committee considers that the situation is not in conformity with Article5 in this respect.

No amendments to the legislation versus the precedent report.

In its previous conclusion (ibid.), the Committee took note of comments from several trade unions about the over-general nature of the Civil Service Act, which it criticised for providing inadequate protection of the right to organise and making it impossible for unions to take part in collective bargaining. Since there was insufficient evidence to support these allegations, the Committee asked the Government to comment on them and provide more detailed information on the situation in law and in practice. The report states that Section 7 of the Civil Service Act prohibits all discrimination, privileges or restrictions that apply on the ground of trade union membership. Section 44 guarantees the right of civil servants to found, join and leave associations freely. By virtue of a Decision of the Council of Ministers of 2 November 2004, disputes are examined by the National Council for Tripartite Co-operation. The Professional Association of Civil Servants and the National Trade Union of Civil Servants also protect the right to defend civil servants' professional interests.

The right of civil servants to independently constitute trade union organisations, to join and to terminate their membership in these is guaranteed by Art.44 of the Civil Servant Act. The trade union organisations shall represent and defend the interests of civil servants before the State authorities in respect of their work relationships and social security relationships through suggestions, requests and participation in making drafts of internal rules and instruction relative to the work relationships. The State authorities shall assist the trade union organisations in the implementation of their activities by granting them gratuitously premises and other facilities for the implementation of their functions (Art. 46 of the Civil Servant Act).

Representatives of trade unions may take part in the process of merit rating of employees by giving their opinion in cases of disagreement of an employee with the the merit rating given (Art. 29, para. 1 of the Ordinance on the terms and conditions for merit rating of the employees in the State administration).

The legal regulations referred to hereinabove shall not prejudice or impede the participation of the trade unions in the debates on the issues of economic and social interest for the civil servants. At present, there are many trade union organisations and assotiation of civil servants, such as the Federation of the Independent Trade Unions from the State administration at the CITUB, the National trade union of the administrative employees at the Podkrepa Labour Confederation, and the like, who are not duly registered or entered in the non-profit entities register.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article5 of the Revised Charter on the grounds that :

–legislation does not provide for adequate compensation proportionate to the loss suffered by the victims of discriminatory dismissal because of trade union activities

See the information above referent to the amendments to the Code of Civil Procedure.

Scope of the provision as interpreted by the ECSR

Trade unions and employers' associations must be free to organise without prior authorisation, and initial formalities such as declaration and registration must be simple and easy to apply. These organisations must be independent where anything to do with their organisation or functioning is concerned. They must be free to form federations and join similar international organisations.

Workers must be free not only to join but also not to join a trade union. Domestic law must guarantee the right of workers to join a trade union and include effective punishments and remedies where this right is not respected. The same rules apply to employers' freedom to organise.

Trade unions and employers' organisations must have broad autonomy where anything to do with their internal structure or functioning is concerned. They are entitled to perform their activities effectively and devise a work programme. Any excessive interference by a State constitutes a violation of Article 5.

Domestic law may restrict participation in various consultation and collective bargaining procedures only to representative trade unions.

Article 5 applies to the public and private sectors. States party are entitled to restrict or withdraw the right of the armed forces to organise. Restrictions may be placed on the right of the police to organise, but they may not be deprived of all their trade union prerogatives.

For a list of selected other international instruments in the same field, see **Appendix**.

Article 6 – The right of workers to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake

1. to promote joint consultation between workers and employers;

2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of

terms and conditions of employment by means of collective agreements;

3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Appendix to Article 6§4

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

Information to be submitted

Article 6§1

1) Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.

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

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

The Bulgarian labour legislation went through significant changes in the dominion of workers or employees information and consultation. the Law Amending the Labour Code (LALC) enforced as of 01.07.2006 was promulgated in the *State Gazette*, No. 48 of 13.06.2006. LALC was developed in line with the commitments assumed by the Republic of Bulgaria in the process of accession to the European Union. This law is the final mark in the process of transposition of the EC directives in the area of labour legislation and removes some in accuracies in the said transposition of the EC directives, namely those relative to the massive redundancies, transfers of undertakings, etc. Pursuant to the provisions of the Directive establishing a general framework for informing and consulting employees in the European Community (2002/14/EC), liabilities were set forth for the employers concerning carrying out information and consultation procedures and the terms for conducting thereof, the procedure and the method of electing representatives of workers or employees for the purposes of conducting such procedures and their rights and liabilities.

Multinational information and consultation is regulated under the Law on Information and Consultation with Employees of Multinational (Community-Scale) Undertakings, Groups of Undertakings and Companies (promulgated in SG, No. 57 of 14.07.2006), in force as of the date of enforcement of the Treaty of Accession of Bulgaria to EU. This law transposes entirely the provisions of the Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, Council Directive No 2001/86/EC of 8 October 2001 complementing the Statute for a European Company with regard to the involvement of employees in the European company and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.

We provide some detailed information on the legislative amendments in our answer under Art. 21 - Right to information and consultation.

Questions of the European Committee of Social Rights

Joint consultation

However, the Committee notes from the report that there has recently been a restriction in the scope of topics subject to consultation within the NCTC and that a formalisation of consultation procedures occured which led to the two largest trade union confederations, the Confederation of Independent Trade Unions and the Confederation of Labour Podkrepa discontinuing participation in the NCTC in the year 2005, i.e. outside the reference period. The Committee further notes from another source1 that the aformentioned unions complained that during the last few years the tripartitie cooperation within the NCTC became increasingly inefficient and that the Government was taking unilateral decisions without prior consultation of the social partners. The Committee asks for the Government's comments on this development as well as for detailed information on the activities of the NCTC.

As of the month of July 2009, the Government undertook measures to enhance the social dialogue at all levels, inclusive through the National Council for Tripartite Co-operation and the standing commissions thereto, the sectoral, the branch and the regional councils for co-operation. A focus group at the National Council for Tripartite Co-operation was created to conduct ongoing monitoring of the socio-economic situation and to suggest anti-crisis measures. As a result of this approach, the National Council for Tripartite Co-operation discussed and adopted some suggestions by the organisations of workers or employees and employers representative on a national level for anti-crisis/stabilisation measures, in the areas of its competency:

- labour relations and all relationships directly associated with these;
- health and safety conditions;
- employment, unemployment and professional qualifications;
- social and health security;
- income and life standard;
- budget policy issues;
- the social implications entailed by restructurisation and privatisation.

Moreover, some action has been undertaken aimed at the institutionalisation of the regional councils for tripartite co-operation, which will enhance possibilities to discuss and give opinions on a variety of issues related to the social policies on a regional level relevant to regulation of labour relations and all relationships directly associated with these, social security relations, as well as living standard related issues.

Within the social dialogue, development and putting forward for consideration and adopting in the Council of Ministers and the National Assembly of draft legislation on regulation of home work, telework and of the activities of temporary employment agencies and work assigned through temporary employment agencies.

For the implementation of all this, conclusion of national agreements between the representative employers' and trade union organisations was foreseen aiming to create conditions for the introduction of ILO Convention No. 177 on home work (ratified by a Law),

on the introduction of European Framework Agreement on Telework and on possibilities for application of Art. 11 of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on Temporary Agency Work.

Another priority target in the scope of enhancing the social dialogue is using the prerogative of the Minister of Labour and Social Policy to expand the scope of the branch collective agreements on the basis of a prior consensus within the sectoral social co-operation councils.

In this regard, some collaborative action with the social partners are undertaken to specify the approach in the course of expanding the scope of the branch collective agreements.

In its previous conclusion, the Committee asked for information on whether the employers' and employees' organisations have themselves established joint consultative bodies. The report refers in this respect to a "General Framework for National Economic and Social Pact of Bulgaria until 2010" as well as an "Address to the political parties on common proposals of employers and trade unions for the economic and social policy up to 2010" elaborated and signed jointly by representatives of employers' organisations and trade unions in the year 2005. The Committee wishes the next report to specify whether bipartite consultative bodies are established in Bulgaria and whether measures aimed at promoting bipartite social dialogue at national, regional and enterprise level are in place. Finally, the Committee reiterates its question whether joint consultative bodies exist in the public service. Pending receipt of the information requested, the Committee defers its conclusion.

It is of particular importance, especially in respect of boosting the autonomous bilateral dialogue, that there is a possibility where the scope of a collective agreement at sectoral/branch level as initialled by all representative organisations of employees and employers, to be expanded over all undertakings in the respective sector/branch, and thus creating the opportunity where the social partners might regulate labour relations and all relationships directly associated with these.

So far the Minister of Labour and Social Policy has not made use of the opportunity provided to him by the Labour Code to expand the scope of such contracts, and that was due to the fact that prior to initialling such contracts there is no prior agreement between the national organisations of employees and employers whereby to outline the general provisions concerning the scope and the procedural framework of the sectoral and the branch contracts, and thus to meet the requirement of the Labour Code.

Hence, with the amendments to the Labour Code made by the end of 2008 (Amended, - SG, No. 108 of 2008), provisions were made to comprehend the scope and the procedural framework issues in the sectoral and the branch contracts to be the subject of an agreement between the relevant organisations and, therefore, the text "on the grounds of an agreement between their national organisations, which would lay down the general provisions regarding the scope and the procedural framework of the sectoral and the branch contracts" was dropped off.

An invitation to the social partners was sent so they should determine briefly their representatives to participate in focus group to specify the approach to expanding the scope of the branch collective agreements upon a prior consensus within the sectoral social co-operation councils and the implications thereof for the trade unions and the employers' organisations.

As we stated above, draft legislation is going to be developed to regulate home work, telework and the activity of temporary employment agencies and temporary employment agencies' work.

For the purposes of the implementation of this, conclusion of national agreements between the representative employers' and trade union organisations to create conditions is provided to enforce ILO convention No. 177 on home work (ratified by a Law), for enforcement of the European Framework Agreement on Telework and the possibilities to apply Art. 11 of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on Temporary Agency Work.

Article 6§2

1) Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.

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

3) Please provide pertinent figures, statistics or any other relevant information, in particular on
collective agreements concluded in the private and public sector at national and regional or sectoral level, as appropriate.

Art. 53 of the Labour Code regulating conclusion and entering records of collective agreements has undergone the following amendments aimed at enhancing the legal regulations thereto:

"(4) (Amended, - SG, No. 108 of 2008) Records shall be made on the grounds of applications in writing lodged by each party within a one-month term as of their receipt by the Labour Inspectorate. Attached to such an application comes a copy of the contract initialled by the parties thereto plus an electronic image of the document."

New paragraph 5 is inserted:

"(5) (New, - SG, No. 108 of 2008) Copies of the recorded collective agreements shall be provided by virtue of a procedure laid down by the Minister of Labour and Social Policy, the National Institute for Conciliation and Arbitration which shall set up and maintain the information system for collective agreements."

Art. 58 – Information liability: was amended as follows:
"Art. 58. (Amended, - SG, No. 100 of 1992, No. 48 of 2006) An employer must inform all workers or employees of collective agreements concluded by sectors, branches or municipalities which he is bound with, and make available to workers or employees the texts of those agreements at all times."

Furthermore, the amendments to the Labour Code by the end of 2008 (Amended, - SG, No. 108 of 2008) led to amendments to Art. 51b, para. 1.

"Art. 51b. (New - SG, No. 25 of 2001) (1) (Amended, - SG, No. 108 of 2008) Collective agreements by industries and branches shall be concluded between the respective representative organisations of employees and employers."

This amendment brought about that the issues associated with the scope and the procedural framework of the sectoral and the branch contracts should be a subject of agreement between the relevant organisations; the text "on the basis of an agreement between their national organisations thereby setting forth the general provisions on the scope and the procedural framework of the sectoral and the branch contracts" dropped off. This is particularly important in respect of encouraging the autonomous bilateral dialogue as this is associated with the opportunity where the scope of a collective agreement at sectoral/branch levels initialled by all representative organisations of employees and employers to be expanded over all undertakings in the respective sector/branch and therefore, the social partners would be provided the possibility to regulate labour relations and all relationships directly associated with these.

As it was stated hereinabove, so far the Minister of Labour and Social Policy has not made use of the opportunity provided to him by the Labour Code to expand the scope of such contracts, and that was due to the fact that prior to initialling such contracts there is no prior agreement between the national organisations of employees and employers whereby to outline the general provisions concerning the scope and the procedural framework of the sectoral and the branch contracts, and thus to meet the requirement of the Labour Code.

As at today, an invitation to the social partners was sent so they should determine briefly their representatives to participate in focus group to specify the approach to expanding the scope of the branch collective agreements upon a prior consensus within the sectoral social co-operation councils and the implications thereof for the trade unions and the employers' organisations.

Regarding the civil servants and the collective bargaining, there are no amendments versus the precedent report. Our position, as already expressed, is that notwithstanding the lack of entitlement to collective bargaining within the closest understanding of this term, the legislation allows civil servants to take part in debating issues of economic and social interest, take part in the competition election commissions and the like, i.e. there is no limitation in respect of the rights of the civil servants thereto.

Questions of the European Committee of Social Rights

Negotiation procedure

Pursuant to Bulgarian law, employers are required to negotiate the conclusion of collective agreements, failing which they are liable to damages (Section 52 of the Labour Code). The report specifies that should an employer or employers' organisation not comply with this obligation within one month following a proposal for negotiation submitted by a trade union, he/it is obliged to compensate the damages incurred by the workers due to the non-compliance with or delay of the obligation to negotiate. The Committee asks for clarification how the amount of such damages is calculated. The Committee further notes from comments on the report submitted by the Bulgarian Industrial Association (BIA) that employers are not allowed to propose draft collective agreements for negotiation and wishes to receive the Government's comments in this respect.

As we already stated in the previous report, the disputed regarding the non-completion of the liabilities under Art. 52, para. 1 of the Labour Code and on the scale of damage caused are disputes of civil law nature and, therefore, shall be solved under the common claim procedure, i. e. the non-completion, its guilty nature and the scale of damage caused must be

ascertained and proved in the course of the trial. Therefore, we do not have any information on the scale of such misfeasance.

In reply to the Committee's question on the conditions of negotiations at branch, industry and local level, the report refers to various difficulties collective bargaining is facing at these levels. The Committee notes from the report and the aforementioned source, that one of the main difficulties results from the lack of structure and organisation of employers' organisations at branch and sectoral level. Some firms are simultaneously members in different employers' organisations whereas in some branch structures there is a low coverage of employer's organisation membership and there appears to be a general lack of participation in employers' organisations by small and medium-sized enterprises. According to the above source, employers often prefer not to become members of any employers' organisation in order to stay out of the collective bargaining process. The Committee further notes that in 2003, for the second year in succession, the employers' organisations refused to sign a "National framework agreement for common conditions and scope of sectoral and branch collective labour agreements" even though the agreement has previously been discussed and agreed by most of the nationally representative employers' and workers' organisations. The Committee wishes to receive the Government's comments on the aforementioned obstacles to the development of collective bargaining. It considers that social dialogue in Bulgaria needs to be further promoted and asks to be informed on any developments in this respect and in particular on measures to promote voluntary collective negotiations.

As we stated hereinabove, so far the Minister of Labour and Social Policy has not made use of the opportunity provided to him by the Labour Code to expand the scope of such contracts, and that was due to the fact that prior to initialling such contracts there is no prior agreement between the national organisations of employees and employers whereby to outline the general provisions concerning the scope and the procedural framework of the sectoral and the branch contracts, and thus to meet the requirement of the Labour Code.

Therefore, with the amendments to the Labour Code by the end of 2008 this obstacle was removed as laid down hereinabove.

The Committee understands that there is no possibility for the state to intervene in collective bargaining except for the right of the Minister of Labour and Social Policy to extend the validity of sector or branch level collective agreements to all enterprises within the sector or branch. According to the above source and the opinion of the CITUB, the Ministry of Labour has only rarely made use of this right and shows a lack of willingness to do so. Again, the Committee wishes to receive the Governments comments on this finding and asks the next report to provide further information on the conditions for such extension and the procedure to be followed.
Pending receipt of the information requested, the Committee defers its conclusion.

As we stated hereinabove, one of the priority targets of enhancing the social dialogue is that the Minister of Labour and Social Policy should make use of his right to expand the scope of the

branch collective agreements and this is why some collaborative action was undertaken involving the social partners through their participation in the joint focus group.

Article 6§3

1) Please describe the general legal framework as regards conciliation and arbitration procedures in the private as well as the public sector, including where relevant decisions by courts and other judicial bodies, if possible. Please specify the nature of, reasons for and extent of any reforms.

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

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

The following amendments to the Collective Disputes Settlement Act (LSCLD) were adopted:

- Collective Disputes Settlement Act

"Art. 14. (1) The workers and the employer must, with an agreement in writing, provide conditions for carrying out, during the strike, activities whose non-completion or discontinuation might entail danger for:

1. (New, - SG, No. 87 of 2006) lives and health of citizens in need of urgent medical aid or hospital treatment;

2. (former i. 1, as amended, - SG, No. 87 of 2006) the production, distribution, transfer and supply of gas, electric and heat power, satisfactory household amenities and transportation of population and for interruption of radio and TV broadcasting and the voice telephone services;"

At the same time, Art. 16, i. 4 was repealed, which arranged prohibition of strikes in the industrial sector, electric power distribution and supplies, communications and health care (SG, No. 87 of 2006).

Motives for amendment to legislation:

Protection of the fundamental constitutional right to strike as stipulated by Art. 50 of the Constitution and ensuing of Art. 8 of the International Pact on Economic, Social and Cultural Rights. The right to strike e is a medium of effective protection of economic and the social interests of workers and has a close relationship with a number of other constitutional rights of Bulgaria's citizens: the right to labour (Art. 48), the protection of labour by the law (Art. 16) and the right to free trade union association (Art. 49, para. 1). Such amendment is in accordance with practices in most the European countries, the jurisprudence of the ILO and the trend this medium of protection to encompass labour in a number of public spheres.

The abolition of this prohibition is accompanied with the liability, in case of a strike, to ensure minimum scale of services and activities connected with electric power supply,

communications and health care supplied to the population, by means of a supplement to Art. 14, para. 1, i. 1 of the law. Such suggestion is in line with Art. 50 of the Constitution which allows for the enforcement of terms and conditions for exercising the right to strike.

- Another amendment to LSCLD provides for the expansion of the scope of the obligatory arbitration:

"Art. 14 (3) (As amended, - SG, No. 87 of 2006) When the parties fell to achieve an agreement under para. 1, each of them may request from the National Institute for Conciliation and Arbitration the issue to be settled by an individual arbitrator or arbitration committee. Within a term of three working days as of the receipt of such request the director of the Institute shall assign an individual arbitrator or arbitration committee composed of arbitrators included in the list under Art. 4a, para. 7, i. 5 . Within a 7-day term as of its assignment, the arbitration authority shall hear the dispute and settle it pursuant to the provisions of Art. 6."

- Regarding the settlement and arbitration procedures in the public sector, there are no legislation amendments versus the precedent report. We would like to notice once again that efforts are made to harmonise the national legislation to the Charter in this respect. As the issue of settlement and arbitration procedures in the public sector is also related to the Convention No. 98 on the Right to Organise and Collective Bargaining Convention, 1949 of the International Labour Organisation (ILO), we requested expert consultancy support from ILO.

Article 6§4

1) Please describe the general legal framework as regards collective action in the private as well as the public sector, including where relevant decisions by courts and other judicial bodies, if possible. Please also indicate any restrictions on the right to strike. Please specify the nature of, reasons for and extent of any reforms.

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

3) Please provide pertinent figures, statistics or any other relevant information, in particular: statistics on strikes and lockouts as well as information on the nature and duration of Parliament, Government or court interventions prohibiting or terminating strikes and what is the basis and reasons for such restrictions.

Collective Disputes Settlement Act

"Art. 16. A strike shall not be admissible:

1. if the requests set forth by the workers contradict the Constitution;
2. (amended, - SG, No. 25 of 2001) when the requirements of Articles 3, 11, para. 2 and 3 and Art. 14 are not met inclusive in respect of issues that are settled by an agreement or an arbitration decision;
3. during an Act of God and the emergency rescue and recovery works relative thereto;

4. (Rep. - SG, No. 87 of 2006);
5. for settlement of individual labour disputes;
6. (amended, - SG, No. 57 of 2000, No. 87 of 2006) within the systems of the Ministry of Defence, the Ministry of Interior, the legislature, the prosecutors offices and the investigative authorities;
7. by which political requests are set forth."

As we mentioned hereinabove, 2006 saw the repeal of Art. 16, i. 4 which regulated the prohibition of strikes in electric power production, distribution and supply, communication and health care (SG, No. 87 of 2006).

At present there is prohibition of strikes in the following cases:

- regarding those employed in the Ministry of Defence, the Ministry of Interior, the legislature, the prosecutors offices and the investigative authorities (LSCLD);

The prohibition in such cases is in accordance with Art. G of the Charter, i.e. it refers to limitations regulated by the law and needed in a democratic society for protection of rights and freedoms of the other or for protection of the communities' interest, the national security, public health or moral.

The relevant opinion ,expressed bt the Ministry of Defence in this respect is as follows:

The provisions of Art. 50 of the Constitution of the Republic of Bulgaria raises the workers or employees' right to strike to the rank of their fundamental constitutional right. As such it is irrevocable by a Law or by another legal act: Art. 57, para. 1 of the Constitution. From the provisions of Art. 50 of the Constitution as construed in connection with Art. 57 the idea may ensue of constitutional admissibility of enforcement by way of exception in the law, of some limitations in the execution of the right to strike as applied to strictly defined workers or employees.

There are cases when the right to strike as a right for effective stoppage of work under incurred employment or official legal relationships may entail real, direct and obvious threat for the territorial integrity of the country, for the life, security and health of all population or part thereof which is inadmissible in view of Art. 57, para. 2 of the Constitution, according to which exercising of rights shall be inadmissible if such exercising would prejudice rights and lawful interests of other people.

According to Art. 16, i.6 of LSCLD, a strike in the system of the Ministry of Defence shall be inadmissible. Art. 285, sentence 2 of Defence and Armed Forces Act of the Republic of Bulgaria specifies that the civil employees of the Ministry of Defence shall not be entitled to effective strikes. The Bulgarian army, the Military Information Service and the Military Police, the administration of the Ministry of Defence, the Military universities and the military schools, the National Guard and the other structures attached to the Minister of defence constitute the armed forces of the Republic of Bulgaria. The armed forces must guarantee the sovereignty, security and independence of the country and defend its territorial integrity – Art. 9 of the Constitution, and the defence of the fatherland is a duty of each Bulgarian citizen – Art. 59, para. 1 of the Constitution. This constitutional function of the national defence system excludes stoppage of either entire or part of its activities including through the strike of those employed in there on either employment or official legal relationship.

As part V, Art. G, i.1 of the Charter allows for limitations or reserves, provided these are regulated by the law and are needed in a democratic society for the sake of protection of rights and freedoms of the other people or for protection of the communities' interest, the national

security, public health or moral. On the grounds of the above, we do consider that deprivation of the right to effective strike of the civil employees of the Ministry of Defence does not contradict the ESC(r).

- regarding civil servants who are entitled to solely symbolic strike activities (Art. 47, para. 2 of the Civil Servant Act);

Until now the Ministry of State Administration and Administrative Reform – MSAAR (abolished in 2009) firmly stood the opinion that the inadmissibility of the right to effective strike for civil servants is reasonable as stoppage of their activities would place in danger the functioning of the State itself and may entail negative implications in all spheres of public life impacted thereby. In 2008 an interdepartmental focus group was set up to make up the relevant legislative amendments, however, due to the unchanged position of MSAAR it was unable to successfully perform its job. Work of this focus group is planned to resume. As this question is also connected with Convention No. 87 on Freedom of Association and Protection of the Right to Organise Convention, 1948, of the International Labour Organisation (ILO), we have requested expert consultant assistance of ILO.

- There is a certain limitation to the right to strike to be found in the provisions of Art. 51 of the Railway Transport Act regulating transportation of communities in the time of strikes of transport workers. It sets out ensuring at least 50 per cent of the total of travels and hauling as per prior to strike activities were undertaken. According to the committee of experts on the implementation of conventions and recommendations of International Labour Organisation, a situation like this is not in compliance with ILO Convention No. 87. According to that Committee's opinion, setting of a minimum services threshold during strike is a limitation to one of the fundamental means of pressure of the workers for protection of their economic and social interests, and therefore, the workers' organisations must have the opportunity to take part in the process of setting minimum services thresholds.

Drafting suggestions for overcoming such incongruence was among the targets of the above interdepartmental focus group which is about to resume its work. The Ministry of Transport, Information Technologies and Communications declared its will to introduce some legislative amendments to overcome such incongruence.

Questions of the European Committee of Social Rights

Procedural requirements pertaining to collective action
Pursuant to Section 11.3 of the SCLDA, the employees or their representatives are required to notify the employer or his representatives in writing of the duration of a strike and of the body directing it at least seven days before the beginning of the strike. The Committee asked how the requirement for employees or their representatives to indicate the proposed duration of a strike is applied in practice and in particular how precise the information must be and what are the consequences of extending a strike beyond the time indicated.

The requirement of Art. 11, para. 3 of LSCLD on workers or their representative's liability to notify in writing the employer or his representative at least 7 days prior to the start of the strike, to specify its duration and the body to manage the strike, is an explicit legal

requirement to the lawfulness of the strike. Therefore, any information to be submitted should be exact and true.

The report refers in this respect to Section 22 of the SCLDA, stipulating that a violation of the obligations under its Section 11.3 shall be fined by 0.2 to1 lev (0.1 to 0.5 Euro) unless subject to a more severe sanction. The Committee wishes the next report to provide information on the other applicable sanctions. It understands that these sanctions apply in the event that the notification obligation under Section 11.3 of the SCLDA is not complied with and reiterates its question what are the consequences of extending a strike beyond the time indicated in a duly made notification. It further reiterates its question how the notification requirement is applied in practice and how precise the information to be included in the strike notice must be. Meanwhile, it reserves its position on this point.

If the information submitted under Art. 11, para. 3 of LSCLD is not exact or true this may entail a status of unlawfulness the strike upon the elapse of its announced duration.

In such cases may apply annex Art. 17 of LSCLD:

"Art. 17. (1) An employer, and workers, who do not strike may bring a claim to court to establish the unlawfulness of an announced, started or finished strike.

(2) Such claim shall be brought to the regional court at the locality of seat or residence of the employer. When a party to the dispute are employers with seats or residence in different court regions, the claim shall be brought, at employer's discretion, to one of the relevant regional courts.

(3) The case shall be tried within a seven-day term, on a public hearing pursuant to the provisions of the Civil Procedure Code with the participation of a prosecutor.

(4) The court shall enact its decision within a three-day term as of the trial on the case."

The need to undertake action for amendment to LSCLD, including in respect of Art. 11, para. 3 shall be discussed jointly with the social partners.

In the event of a strike, employees and their employer are required to draw up a written agreement specifying the arrangements for the continued performance of activities which, if not maintained during the strike, might endanger the satisfactory provision of everyday services provided to households and communities, the functioning of transport or the broadcasting of radio and television programmes, cause irreversible damage to public or private property or the environment or threaten public order. The agreement must be concluded at least three days before the start of the strike. In the event of disagreement, the matter must be settled by a single arbitrator or an arbitration commission appointed from a cabinet-approved list of arbitrators (Section 14). In reply to the Committee's question as to what is the justification for this provision, the report states that it corresponds to the necessity to provide for minimum conditions guaranteeing normal functioning of economy and preservation of social peace during strike action. The Committee wishes the next report to provide further information showing that the restrictions to the right to strike resulting from the requirement to enter into an agreement on the maintenance of the aforementioned services and the recourse to

arbitration if no such agreement can be reached fall within the limits prescribed by Article G of the Revised Charter. It in particular reiterates its question as to what are the sectors to which Section 14 of the SCLDA could apply.

In 2006, some amendments and supplements to the text of Art. 14 of LSCLD (SG, No. 87 of 2006) were undertaken:

"Art. 14. (1) Workers and the employer must, with an agreement in writing ensure conditions to carry out, in the time of the strike, the activities whose non-implementation or discontinuation may create hazards for:

1. (New, - SG, No. 87 of 2006) lives and health of citizens needing rescue or emergency medical care, or those who have been hospitalised;

2. (former i. 1, as amended, - SG, No. 87 of 2006) the production, distribution, transfer and supply of gas, electric and heat power, satisfactory household amenities and transportation of population and for interruption of radio and TV broadcasting and the voice telephone services;

3. (former i. 2 - SG, No. 87 of 2006) causing irreparable damage to public or personal property or to the natural environment;

4. (former i. 3 - SG, No. 87 of 2006) public order.

(2) The agreement in writing under the precedent paragraph shall be concluded at least 3 days prior to the start of the strike.

(3) (As amended, - SG, No. 87 of 2006) When the parties fail to achieve an agreement under para. 1, each one of them may request from the National Institute for Conciliation and Arbitration the issue to be settled by an individual arbitrator or arbitration committee. Within a term of three working days as of the receipt of such request the director of the Institute shall assign an individual arbitrator or arbitration committee composed of arbitrators included in the list under Art. 4a, para. 7, i. 5 . Within a 7-day term as of its assignment, the arbitration authority shall hear the dispute and settle it pursuant to the provisions of Art. 6."

Therefore, we consider that limitations the right to strike are regulated by the law and needed in a democratic society for protection of rights and freedoms of the other or for protection of the communities' interest, the national security, public health or moral." (Art. G of ESC (revised).

The Committee considered in its previous conclusion that the following restrictions to the right to strike under Bulgarian law go beyond the limits of ArticleG of the Revised Charter and are not in conformity with its Article6§4:

(i) The general ban on strikes in the energy, telecommunications and health sectors pursuant to Section 16.4 of the SCLDA;

(ii) Public officials are only allowed to declare symbolic strikes and are not granted the right to collectively withdraw their labour (Section 47 of the Civil Service Act, No. 67 of 27 July 1999);Conclusions 2006 – Bulgaria, Article 6 102

(iii) The general ban on the right to strike of all personnel employed by the Ministry of Defence or any establishment responsible to such Ministry (Section 274.2 of Act No. 112 of 1995).

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 6§4 of the Revised Charter on the ground that:
- The general ban on the right to strike of all personnel employed by the Ministry of Defence or any establishment responsible to such Ministry (Section 274.2 of Act No. 112 of 1995) non-military personnel of the Ministry of Defense and any establishments responsible to that ministry are denied the right to strike.

In 2006, Art. 16, i. 4 was abolished, which arranged the prohibition of strike in the electric power production, distribution, and supply, the communications and health care (SG, No. 87 of 2006).

Regarding the right to strikes for civil servants and within the Ministry of Defence, see the information above under Art. 6, para. 4.

Scope of the provisions as interpreted by the ECSR

Paragraph 1: Promotion of joint consultation between employees and employers or the organisations that represent them on all matters of mutual interest on national, regional or sectoral and enterprise level in the private and public sector (including the civil service).

Paragraph 2: Promotion of the right of employee's and employer's organisations to free and voluntary collective bargaining and conclusion of collective agreements; right of public officials to participate in the determination of their working conditions.

Paragraph 3: Promotion of voluntary and independent conciliation, mediation and/or arbitration procedures in order to facilitate the resolution of collective conflicts concerning the conclusion of a collective agreement or the modification, through collective bargaining, of conditions of work contained in an existing collective agreement as well as for resolving conflicts which may arise between the public administration and its employees.

Paragraph 4: Guarantee whether in law or case-law of the right to call and participate in a strike in connection with a conflict of interests between employers and employees including public officials.

Procedural requirements in connection with the exercise of the right to strike (e.g. peace obligation, prior approval by workers, cooling-off periods, etc.) shall not excessively limit the right to strike.

A strike should not be considered a violation of the contractual obligations of the striking employees entailing a breach of their employment contract. It should be accompanied by a prohibition of dismissal.

For a list of selected other international instruments in the same field, see <u>Appendix</u>

Article 21 – The right of workers to be informed and consulted within the undertaking

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a. to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b. to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employmentsituation in the undertaking.

Appendix to Articles 21 and 22

1. For the purpose of the application of these articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

2. The terms "national legislation and practice" embrace as the case may be, in addition to laws andregulations, collective agreements, other agreements between employers and workers'representatives, customs as well as relevant case law.

3. For the purpose of the application of these articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to producegoods or provide services for financial gain and with power to determine its own market policy.

4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings" within the meaning ofparagraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect theorientation of the undertaking.

5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling theobligations deriving from these provisions.

6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Information to be submitted

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

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

3) Please provide pertinent figures, statistics or any other relevant information, in particular on the percentage of workers out of the total workforce which are not covered by the provisions granting a right to information and consultation either by legislation, collective agreements or other measures.

In comparison with the previous report, the legislation has seen the following amendments:
The Bulgarian labour legislation underwent significant changes in the area of information and consultation with workers or employees. The State Gazette, No. 48 of 13.06.2006 promulgated the Law amending the Labour Code (LALC), enforced as of 01.07.2006. LALC was developed in connection with the commitments assumed by the Republic of Bulgaria associated with country's accession to the European Union. This law is the final mark in the process of transposition of the EC directives in the area of labour legislation and removes some in accuracies in the said transposition of the EC directives, namely those relative to the massive redundancies, transfers of undertakings, etc. Pursuant to the provisions of the Directive establishing a general framework for informing and consulting employees in the European Community (2002/14/EC), liabilities were set forth for the employers concerning carrying out information and consultation procedures and the terms for conducting thereof, the procedure and the method of electing representatives of workers or employees for the purposes of conducting such procedures and their rights and liabilities.
Multinational information and consultation is regulated under the Law on Information and Consultation with Employees of Multinational (Community-Scale) Undertakings, Groups of Undertakings and Companies (promulgated in SG, No. 57 of 14.07.2006), in force as of the date of enforcement of the Treaty of Accession of Bulgaria to EU. This law transposes entirely the provisions of the Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, Council Directive No 2001/86/EC of 8 October 2001 complementing the Statute for a European Company with regard to the involvement of employees in the European company and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.
According to the Labour Code, representativeness of workers or employees in their interrelations with the employer shall be exerted in three ways:
A. Representatives of workers or employees – the trade union organisations in the undertaking – according to Art. 4, para. 2 of the LC the trade union organisations shall represent and defend interests of workers or employees before the State authorities and beofore the employers in respect of issues relevant to labour and social security relations and на living standards through collective bargaining, participation in tripartite collaboration, organising strikes and other legal action.
B. Workers or employees' representatives under Art. 7, para. 2 of the LC shall:

- represent the common interests of workers or employees;
- in the area of and social security relations;
- before the employer and the State authorities;
- be elected (have been elected) by a majority of votes two-thirds plus of the members of the general assembly;
- those representatives elected under Art. 7, para. 2 until 01.07.2006, shall retain their positions and functions until new representatives have been elected, but not later than 01.07.2007;
- after 01.07.2007 representatives under Art. 7, para. 2 may only be representatives elected by a new general assembly.

Applicable provisions to the general assembly of workers or employees:

"General assembly of workers or employees"

Art. 6. (Amended, - SG, No. 100 of 1992, No. 25 of 2001) (1) The general assembly shall be constituted by all workers or employees in the undertaking.

(2) When the labour management or other reasons impede the functioning of the general assembly, by initiative of workers or employees, or that of the employer there may be constituted an assembly of proxies. This shall be constituted by representatives of workers or employees elected for a term as specified by the general assemblies in the structural units within the undertaking. The standard of representativeness shall be set forth by the workers or employees and shall be the same for the whole undertaking.

(3) For convocation, activities and rights of the assembly of proxies, rules shall apply that apply for the general assembly of workers or employees.

Agenda of the general assembly (Title amended, - SG, No. 25 of 2001)

Art. 6a. (New - SG, No. 2 of 1996) (1) (New, - SG, No. 25 of 2001) The general assembly of workers or employees shall only determine the agenda of its work.

(2) (Former para. 1 - SG, No. 25 of 2001) The general assembly (the assembly of proxies) in the undertaking shall be convoked by the employer, by the management of the trade union organisation, or by initiative of one-tenth of the workers or employees (proxies) of the undertaking.

(3) (Former para. 2 - SG, No. 25 of 2001) The general assembly (the assembly of proxies) shall be valid if it is attended by more than the half of the workers or employees (proxies).

(4) (Former para. 3, amended, - SG, No. 25 of 2001) The general assembly of workers or employees shall adopt its decisions by usual majority of those present, unless this code, another law or statutes does not provide for otherwise.

Participation of workers or employees in the management of the undertaking

Art. 7. (1) (Amended, - SG, No. 100 of 1992, former text of Art. 7, No. 25 of 2001, amended, No. 48 of 2006) Workers or employees participate through representatives elected by the general assembly of workers or employees in discussions and solving issues relative to the management of the undertaking only in the cases stipulated by the law.

(2) (New, - SG, No. 25 of 2001) The workers or employees may at a general assembly elect representatives who would represent their mutual interests as to all issues connected with labour and social security relations before their employer or before the State authorities. The representatives shall be elected by a majority of more than tow-thirds of the members of the general assembly .

(3) (New, - SG, No. 52 of 2004, Rep., No. 48 of 2006).

TRANSITIONAL AND FINAL PROVISIONS to the Law Amending the Labour Code (SG, No. 48 of 2006, in force as of 1.07.2006)

§ 42. Workers or employees' representatives under Art. 7, para. 2 elected prior to the enforcement of this law shall retain their functions and positions until new representatives have been elected, but for not longer than one year as of the date of enforcement of this law."

B. New type of workers or employees' representatives for information and consultation purposes – Art. 7a of the LC, in force as of 01.07.2006.
- the representatives under Art. 7a shall be involved in information and consultation only in the cases under Art. 130c and Art.130d of the LC;
- they shall be elected by the general assembly (GA) of workers or employees;
- procedure of convocation of GA under Art. 7a –Art. 6a, para. 2 shall be applied – GA may be convoked:
a) by the employer;
b) by the management of the trade union organisation;
c) by initiative of one-tenth of the workers or employees from the undertaking.
- quorum for a sitting thereof –Art. 6a, para. 3 shall be applied – GA shall be valid provided more than 1/2 of the workers or employees are present.
- GA shall take its decisions - by a regular majority of the attendants – 1/2;
- GA shall only set forth the procedure and the method of voting (i.e. secret or open vote);
- nominations may be made by:
a) individual workers or employees;
b) groups of workers or employees;
c) trade union organisations;
- there is applicability of the provisions of Art. 6 – assembly of proxies.
- may be elected in undertakings having 50 or more workers or employees;
- in organisationally or economically isolated units pertaining to undertakings, with 20 or more workers or employees;
- temporary measure to 23.03.2008 - the provisions of Art. 7a of the LC are enforced for undertakings having 100 or more workers or employees and for organisationally or economically isolated units pertaining to undertakings, with 50 or more workers or employees;
- number of representatives – shall be specified by GA in advance and shall be in function of the number of workers or employees in the undertaking:
a) 3 to 5 - in undertakings having 50 to 250 workers or employees;
b) 5 to 9 – in undertakings having more than 250 workers or employees;
c) 1 to 3 – in organisationally or economically isolated units pertaining to undertakings.
- GA may, by a regular majority of the attendants, decide that instead of elect special, new workers or employees' representatives, to concede the implementation of their functions to:
a) the workers or employees' representatives under Art. 7, para. 2;
b) representatives specified by the managerial bodies of trade union organisations.
Provisions applicable to the workers or employees' representatives under Art. 7a of the LC:
"Representatives for information and consultation with workers or employees"
Art. 7a. (New - SG, No. 48 of 2006) (1) In undertakings having 50 or more workers or employees, as well as in organisationally or economically isolated units pertaining to undertakings, with 20 or more workers or employees, the general assembly shall elect form its membership workers or employees' representatives for implementation of information and consultation under Art. 130c and 130d.
(2) The general assembly may concede the functions under para. 1 to representatives designated by the managements of the trade union organisations or to workers or employees' representatives under Art. 7, para. 2.
(3) The membership number under para. 1 shall be determined according to the average monthly number of enrolled workers or employees during the previous 12 months. The list thereof will include all workers or employees who have or have had employment relationship with the employer, irrespective of its duration or the duration of thier working hours.

(4) The number of workers or employees' representatives set in advance by the general assembly, as follows:
1. for undertakings with 50 to 250 workers or employees - 3 to 5;
2. for undertakings with more than 250 workers or employees - 5 to 9;
3. for organisationally or economically isolated units - 1 to 3.
(5) Nominations for workers or employees' representatives under para. 1 may be suggested by individual workers or employees, groups of workers or employees, or trade union organisations.
(6) The general assembly shall specify the procedure of voting under para. 5, inclusive the method of voting.
(7) The general assembly shall take its decisions under para. 1, 2 and 4 by a regular majority of the attendants.
TRANSITIONAL AND FINAL PROVISIONS to the Law Amending the Labour Code (SG, No. 48 of 2006, in force as of 1.07.2006)
§ 43. The provisions of Art. 7a shall be enforced until 23 March 2008 in undertakings with 100 or more workers or employees, as well as in organisationally or economically isolated units pertaining to undertakings, with 50 or more workers or employees.
Mandate of the representatives under Art. 7, para. 2 and under Art. 7a of the LC:
- they shall be elected for terms varying from one to three years – Art. 7b;
- cases of early termination of the elected representatives' mandates:
a) in case there is a decision in force by virtue of which they are convicted for common premeditated crime;
b) in case of systematic non-fulfilment of their functions;
c) in case of objective impossibility of fulfilling their functions for a term longer than 6 months;
d) on their request.
Provisions applicable to the mandate of the representatives under Art. 7, para. 2 and Art. 7a of the Labour Code,:
Mandate of workers or employees' representatives"
Art. 7б. (New - SG, No. 48 of 2006) (1) Workers or employees' representatives under Art. 7, para. 2 and Art. 7a shall be elected for terms varying from one to three years. They shall be discharged before schedule:
1. in case they are convicted for common premeditated crime;
2.) in case of systematic non-fulfilment of their functions;
3. in case of objective impossibility of fulfilling their functions for a term longer than 6 months;
4. on their request.
(2) (Supplemented, - SG, No. 108 of 2008) In the cases under Art. 123, para. 1, if the undertaking, the business activities or part of the undertaking or its business activities retain its autonomy the workers or employees' representatives under Art. 7, para. 2 and Art. 7a, upon such change shall retain their functions and positions as they had prior to the change until new representatives have been elected, but for not longer than one year as of the date of such change. If after the change the undertaking, its business activities or part of the undertaking or its business activities does not retain its autonomy, the mandate of the elected workers or employees' representatives shall be terminated, and all workers or employees who were transferred to the new employer shall be represented by the workers or employees' representatives in the undertaking where they were transferred to work."
Provisions applicable on information and consultation - Labour Code:
"Liability of the employer for information and consultation"
Art. 130**.** (Rep. - SG, No. 100 of 1992, new, No. 25 of 2001, as amended and suppl., No. 52 of 2004, amended, No. 48 of 2006) (1) An employer must make available to trade union

organisations and to workers or employees' representatives under Art. 7 and 7a in the undertaking all information as required by the law, and hold consultations with them.
(2) An employer shall make available information, hold consultations and co-ordination in the cases stipulated by the law only with the trade union organisations or or only with the representatives under Art. 7, para. 2 when there are no trade union organisations or there are no elected representatives under Art. 7, para. 2 or any of them refuses to participate in the procedure on information and/or consultation in the undertaking.
(3) The trade union organisations and the workers or employees' representatives under Art. 7 and 7a must familiarise the workers or employees with the information provided by the employer and to take into consideration their opinions when they hold the consultations.
(4) The employees shall be entitled to timely, authentic and understandable information about the economic and financial position of the employer, such as may be important for their employment rights and obligations.
(5) Through the collective agreement or an agreement the employer and the workers or employees' representatives under Art. 7a may also negotiate some other practical measures on information and consultation with workers or employees beyond those specified in the law."
Obligation for information – Labour Code:
Art. 58. (Amended, - SG, No. 100 of 1992, No. 48 of 2006) An employer must inform all workers or employees on collective agreements concluded in the undertaking, by sectors, branches or municipalities, which he is bound to and to keep the texts thereof available to workers or employees.

Employment Promotion Act
Procedure of information in the case of mass dismissals
Art. 24**.** (1) (Supplemented, - SG, No. 26 of 2003, amended, No. 52 of 2004, No. 48 of 2006) The employer shall notify in writing the relevant division of the Employment Agency regarding planned mass dismissal not later than 30 days before the date of dismissal.
(2) (Amended, - SG, No. 26 of 2003) The Division of the Employment Agency shall send a copy of the notification under para. 1 to:
1. the municipal administration;
2. the local division of the National Social Security Institute;
3. the local division of the General Labour Inspectorate Executive Agency.
(3) (Amended, - SG, No. 52 of 2004, No. 48 of 2006) The notification under para. 1 must contain all needed information on planned mass dismissal, including: the reasons thereof; the number of workers or employees that are planned to be dismissed, and the basic industries, groups of occupations and positions which they are relevant to; the number of active workers or employees from the basic industries, groups of occupations and positions in the undertaking; the specific indices for applying of all criteria for eligibility of workers or employees under Art. 329 of the Labour Code to be dismissed; the period when the dismissals are to be made, and information on the preliminary consultations with the representatives of trade union organisations and with workers or employees' representatives under Art. 7, para. 2 of the Labour Code,.
(4) (New, - SG, No. 48 of 2006) An employer must make available to representatives of trade union organisations and to workers or employees' representatives under Art. 7, para. 2 of the Labour Code, a copy of the notification under para. 1 within three working days.
Art. 25. (1) Upon the receipt of the notification under Art. 24, teams are set up consisting of a representative of the employer, representatives of the organisations of workers or employees in the undertaking, a representative of the Division of the Employment Agency and a representative of the municipality administration.

(2) The teams under para. 1 shall make out draft for needed measures to encompass:
1. mediation for employment;
2. (amended, - SG, No. 26 of 2008) training for adults;
3. starting own business;
4. alternative employment programmes.
(3) (Amended, - SG, No. 26 of 2008) The projects under para. 2 shall be presented to the employment commission, and on the grounds of these, applications for financing shall be submitted under terms and conditions stipulated by the regulation for application of this law.
On 7 October 2009, an Agreement for Co-operation was initialled between the General Labour Inspectorate Executive Agency, CITUB and the Podkrepa Labour Confederation on ensuring health and safety at work and observance of labour legislation. This Agreement contains an evaluation of the significance of collective agreements as a material part of the labour legislation. The General Labour Inspectorate Executive Agency, in o cooperation with trade unions and within its powers, inclusive during implementation of its prevention functions should solicit before the employers to observe all collective agreements concluded.
„Multinational companies 2008", a research of the Institute for social research at CITUB
In a number of undertakings studied, the personnel information systems are related to company's corporate standards for openness and communication with the trade unions and the workers or employees (*Ceratizit, Mondi Packaging, Kraft Foods, Cumerio Med, Solvay Sodi*). For observance of such standards testify the details from the interviews with the trade unions leaders who state that they receive information on the situation and prospects before the development of the undertaking, the technologic updating and investments, on personnel training and development and on employment policies. Information and communication on issues relative to working conditions and health and safety conditions is provided regularly through the established Committees on working conditions.

The approach of multinational companies to all divisions in respect of information and consultation is identical in most undertakings where trade unions leaders and human resources managers have information. The meetings on informing the personnel and the trade unions on the situation and prospects before the development of the undertaking are regular and take place every 3 or 6 months depending on the accountability schedule and are organised by the employer.

Trade union managements and active members serve as a channel for information and communication link between the employer and the workers or employees (*Actavis, SKF, Kamenitza, Kodak, Promil, Strabag, Agropolychim*). Once the information has been received, they organise meetings, sittings, make individual conversations with the trade unions members. There are specialised *communication* units in three of the undertakings which implement the policies of the undertaking in respect of informing the trade unions, workers or employees – *Ideal Standard, Vidima, E.ON.*

The most popular form of distribution of information among the undertaking staff is the use of bilboards placed at the most accessible location for the workers, i.e. usually at the entrance of the undertaking, in workshops, departments and canteens. Canteens are also used for the purposes of direct awareness of personnel by placing there plasma displays where they continuously broadcast awareness programmes concerning production related and organisational issues, situation and prospects before the development of the undertaking (*Actavis, Vidima* and *Cumerio Med* intends to shortly introduce such a system). Modern communication means such as Internet and Intranet are used in *E.ON, Solvay-Sodi, Actavis,*

Agropolychim and Cumerio Med where the access to the information being broadcast is provided *inter alia* to trade unions leaders.

Some companies issue monthly bulletins accesible to all workers (*Cumerio Med, E.ON, etc.*). A newspaper is issued in *E.ON* which is an initiative of the corporate structure- E.ON World and E.ON Bulgaria which contains information on the trade unions, among others. *Inbef* issues a monthly magazine in all languages of the countries where it has branches which is also accessible to Bulgarian workers in *Kamenitza.*

Questions of the European Committee of Social Rights

Legal framework

The Committee assessed the provisions of the Labour Code and related Government regulations governing the right to information and consultation of workers within the undertaking through the employees' general assembly or representatives elected by the assembly in its previous conclusion on Article 21 of the Revised Charter (Conclusions 2003, Bulgaria).The Committee notes from another source1 that on 1 July 2006, i.e. outside the reference period, a bill amending the Labour Code concerning the regulation of employment relations with respect to information and consultation came into effect which is, inter alia, supposed to implement Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community and the Committee asks the next report what are the relevant rules stipulated by the new legislation in this respect.

Scope. Personal scope

The Committee noted from the previous report that legal provisions governing the information and consultation of workers apply to any category of workers. In reply to the Committee, the report clarifies that this includes employees of undertakings managed by public authorities and the Committee considers the situation to be in conformity with the requirements of the Revised Charter in this respect.

Material scope

The Committee noted in its previous conclusion that Article 7 of the Labour Code provides that employees shall participate, through their representatives, in the discussion and assessment of management issues where provided by law. The provision further requires that employee's representatives be consulted on issues relating to labour and social security. In addition, Article 37 of the Labour Code requires that trade unions represented within the undertaking participate in the drafting of internal regulations with regard to labour relations. The Committee noted that these provisions do not specify what are the decisions on which employees' representatives must be consulted, nor do they state whether the consultation must be done in good time and requested that the next report provide all relevant information with regard to these two particular issues. The report states in this context that within the scope of collective bargaining as well as during the preparation of collective agreements the employers must provide information regarding the economic and financial situation of the enterprise in good time to the employees' representatives.

Labour Code

Section II (New - SG, No. 48 of 2006)

General rules for information and consultation. Liability of the employer for information and consultation

Art. 130**.** (Rep. - SG, No. 100 of 1992, new, No. 25 of 2001, as amended and suppl., No. 52 of 2004, amended, No. 48 of 2006)

(1) An employer must make available to trade union organisations and to workers or employees' representatives under Art. 7 and 7a in the undertaking all information as required by the law, and hold consultations with them.

(2) An employer shall make available information, hold consultations and co-ordination in the cases stipulated by the law only with the trade union organisations or or only with the representatives under Art. 7, para. 2 when there are no trade union organisations or there are no elected representatives under Art. 7, para. 2 or any of them refuses to participate in the procedure on information and/or consultation in the undertaking.

(3) The trade union organisations and the workers or employees' representatives under Art. 7 and 7a must familiarise the workers or employees with the information provided by the employer and to take into consideration their opinions when they hold the consultations.

(4) The workers or employees shall be entitled to timely, authentic and understandable information about the economic and financial position of the employer, such as may be important for their employment rights and obligations.

(5) Through the collective agreement or an agreement the employer and the workers or employees' representatives under Art. 7a may also negotiate some other practical measures on information and consultation with workers or employees beyond those specified in the law."

Right to information and consultations in cases of collective dismissal

Art. 130a**.** (New - SG, No. 25 of 2001, amended, No. 52 of 2004, No. 48 of 2006) (1) In cases where the employer intends to undertake collective dismissal, he/she shall be obliged to undertake consultations with the representatives of trade union organisations and the worker and employee representatives timely to the workers or employees' representatives under Art. 7, para. 2, but not later than 45 days before the redundancy act, and to lay efforts for achieving an agreement with them so that be avoided, or limited the collective dismissal, and to relieve its consequences. The procedure and the method for making such consultations shall be specified by the employer, the representatives of trade union organisations and the workers or employees' representatives under Art. 7, para. 2.

(2) Notwithstanding the circumstance whether the employer or another legal entity has taken the decision entailing mass redundancies, the employer must prior to the start of the consultations under para. 1 provide information in writing to the representatives of trade union organisations and to the workers or employees' representatives under Art. 7, para. 2 за:

1.the reasons for the forthcoming redundancy;

2.the number of the workers and employees, who will be discharged and the basic economic activities, qualification groups and professions to which they refer;

3.the number of the occupied by the basic economic activities qualification groups and professions in the enterprise;

4. 4.the specific indices of the envisaged criteria for selection under Art. 329 of the workers and employees, who will be discharged;

5. the time, during which the redundancy will be done;

6. the compensations owed relevant to such redundancies.

(3) Once the information under para. 2 has been provided, the employer must, within three working days, send a copy thereof to the relevant division of the Employment Agency.

(4) The representatives of trade union organisations and the workers or employees' representatives under Art. 7, para. 2 may send to the relevant division of the Employment Agency an opinion on the information provided concerning the forthcoming mass redundancies.

(5) In case of non-compliance employer's liability under para. 2, the representatives of trade union organisations and the workers or employees' representatives under Art. 7, para. 2 shall be entitled to notify the General Labour Inspectorate Executive Agency of the non-compliance with the labour legislation.

(6) In case of non-compliance of his liability under para. 1, the employer may not refer to the circumstance that it was another authority which took the mass redundancies decision.

(7) The planned mass redundancies shall be done not earlier than 30 days upon notifying the Employment Agency, irrespectively of the notice periods.

Liability for information and consultations in case of change of the employer

Art. 130b**.** (New - SG, No. 48 of 2006) (1) Prior to the change under Art. 123, para. 1, the transferring employer and the acquiring employer, and in the cases of Art. 123a, para. 1, the former and the new employer must inform the representatives of trade union organisations and the workers or employees' representatives under Art. 7, para. 2 from their undertakings on:

1. the change as foreseen and the date of the implementation thereof;

2. the reasons for such change;

3. the possible legal, economic and social consequences as entailed by the change for the workers or employees;

4. any foreseen measures in respect of workers or employees, inclusive for the compliance with the liabilities under Art. 123, para. 4 and Art. 123a, para. 3.

(2) The transferring employer under Art. 123 or the former employer under Art. 123a must provide the information under para. 1 at least two months prior to such change.

(3) The acquiring employer under Art. 123 or the new employer under Art. 123a must provide the information under para. 1 timely but in all cases at least two months prior to the time when his workers or employees will be directly affected by the change in respect of working conditions and employment.

(4) When any of the employers plans measures under para. 1, i. 4 in respect of the workers or employees from his undertaking, he must, prior to such change, timely hold consultations and make efforts to achieve an agreement with the representatives of trade union organisations and with the workers or employees' representatives under Art. 7, para. 2 in respect of such measures.

(5) In the cases when in the undertaking there are no trade union organisations or workers or employees' representatives under Art. 7, para. 2, the employer shall provide the information under para. 1 of the relevant workers or employees.

(6) In case of non-feasance of the liability of the employer under para. 1 or when he fails to hold the consultations under para. 4, the representatives of trade union organisations and the workers or employees' representatives under Art. 7, para. 2 or the workers or employees shall be entitled to notify the General Labour Inspectorate Executive Agency on non-compliance with the labour legislation.

(7) For non-feasance of his liability under para. 1, the employer may not refer to the circumstance that it was another authority which took the mass redundancies decision.

The Committee again recalls that, under Article 21 of the Revised Charter, workers or their representatives shall be consulted in good time on proposed decisions that could substantially affect their interests, particularly on those decisions that could have an important impact on the employment situation in the undertaking. The Committee asks the next report to specify whether such consultation takes place with respect to such decisions which are taken outside the scope of collective bargaining. It asks whether rules on information and consultation are contained in collective agreements themselves and if so it wishes to receive information on their content and on what is the proportion of employees covered by such collective agreements. It asks in particular what are the corresponding rules pursuant to the aforementioned amendments to the Labour Code.

Provisions of the Labour Code on information and consultation with the representatives under Art. 7a of the LC: "Liability for information in case of change of business activity, economic situation or the labour management of the undertaking"

Art. 130c. (New - SG, No. 48 of 2006) (1) In the cases under Art. 7a the employer must provide to the selected workers or employees' representatives information on:

1. the last and the forthcoming amendments in the activity and the economic situation of the undertaking;

2. the situation, the structure and the expected development of the employment in the undertaking, and on planned preparatory measures, especially in the cases when there is threat to employment;

3. possible changes in the labour management.

(2) After providing the information under para. 1 the employer must да conduct consultations on the issues under para. 1, i. 2 and 3.

(3) Where the information under para. 1 contains data the disclosure of which may harm employer's legal interests he may provide it subject to confidentiality requirement.

(4) In the cases under para. 3 the workers or employees' representatives are not entitled to disclose the information under para. 1 to other workers or employees or to third persons.

(5) An employer may refuse such provision of information or conducting the consultations when the nature of such information or consultations may seriously prejudice the functioning of the undertaking or the legal interests of the employer.

(6) In case of refusal to provide information under para. 5 and a dispute incurred as to its reasonableness, the parties may seek assistance for settling the dispute by mediation and/or voluntary arbitration from the National Institute for Conciliation and Arbitration.

Terms for information and consultation

Art. 130d. (New - SG, No. 48 of 2006) (1) An employer and the workers or employees' representatives under Art. 7a shall specify in the agreement:

1. the contents of the information and the terms within which such information will be provided to them;

2. the terms within which the workers or employees' representatives should prepare their opinion on the information provided;

3. the terms and the subject of the consultations;

4. the representatives of the employer assigned to provide information and to hold consultations.

(2) In case no agreement under para. 1 is achieved:

1. the information on the last and the forthcoming amendments in the activity and the economic situation of the undertaking shall be provided within the terms for drafting the accounting statements;

2. the information on the situation, structure and the development of the employment in the undertaking and the measures to preserve it shall be provided not later than one month prior to undertaking such measures;

3. the information on the decisions that might entail serious changes to labour management or employment relationships shall be provided not later than one month prior to such changes;

4. the consultations under Art. 130c, para. 1, i. 2 and 3 shall be held within two weeks upon said providing of information.

(3) In the cases when the employer plans measures leading to a change under Art. 123 or 123a or to mass redundancies, the information and the consultations shall be held according to the terms and conditions under Art. 130a and 130b.

(4) In case the employer fails to provide the information within the terms under para. 1 or 2, the workers or employees' representatives shall be entitled to request such information from him in writing, and in case of his refusal to provide said information, they may notify the General Labour Inspectorate Executive Agency on non-compliance with the labour legislation".

The amendments of the legislation enforced as of 01.07.2006 are in accordance with Art. 21 of ESC (r), and it ensures effective execution of workers' right to be informed and to be consulted with within the undertaking, inclusive of the situation, structure and expected development of the employment in the undertaking, and on the foreseen preparatory measures, particularly in the cases where there is threat to employment.

Information and consultation in case of change of business activity, economic situation and the labour management in the undertaking shall be held with the representatives under Art. 7a of the LC, who shall be selected by the general assembly of workers or employees in the undertaking. As we already noticed in the general comments, the general assembly is constituted by all workers or employees in the undertaking. A representative may selected among all workers or employees. Nominations may be suggested by individual workers or employees, groups of workers or employees, and by trade union organisations. It should be noticed that the general assembly may decide, by a regular majority of the attendants, decide that instead of elect special, new workers or employees' representatives, to concede the implementation of their functions to representatives designated by the managements of the trade union organisations in the undertaking or to workers or employees' representatives under Art. 7, para. 2 of the LC whose functions prior to the amendments to the legislation consist in representation of common interests of workers or employees in the issues relative to labour and social security relations before the employer and the State authorities. The amendments to the legislation relative to information and consultation that regulates the power of the general assembly to select special representatives or to concede such functions to the representatives of trade union organisations or to workers or employees' representatives under Art. 7, para. 2 of the LC, is compliant with the existing national legislation and practices.

The above shows that information and consultation may not take place beyond the scope of collective bargaining. In order to ensure the effective execution of the right to information and holding consultations with the workers or employees, the provisions of Art. 130c and Art. 130d of the LC stipulate the type of information and the terms for providing such information and holding consultations. An opportunity is stipulated that the contents of the information and the specific terms might be arranged for in an agreement between the employer and the workers or employees' representatives under Art. 7a of the LC. In case the parties fail to achieve an agreement the law guarantees the execution of such right, by stipulating terms for information and consultation that should be obligatory for the parties.

Given the above, the law contains rules on information and consultation. Information on concluded agreements according to Art. 130d, para. 1 of the LC, and on their contents may be provided by the social partners.

Rules and procedures

The Committee observed in its previous conclusion that the workers' right to information and consultation is vested in the "personnel assembly" (PA), which pursuant to Art. 6 of the Labour Code, is composed of all employees in the undertaking. Pursuant to Art. 6§2 of the Labour Code, an assembly of workers' delegates (DA) may be elected by the PA to act in its stead. Pursuant to Art. 6.a of the Labour Code, the PA, or DA, shall be convened by the employer, by a trade union, or by one-tenth of the employees (or their elected delegates, as the case may be). The PA (DA) may take decisions by a simple majority vote, provided it is attended by more than half of the employees (delegates).

1. Website of the European Foundation for the Improvement of Living and Working Conditions (www.eiro.eurofound.eu.int). 2. Official Journal L 80, 23.3.2002, pp. 29-34.

The Committee understands from the information provided in the report in reply to its corresponding question that also non-unionised members of the PA may nominate candidates or be elected as workers' delegates and that employees who are nationals of States Parties to the Revised Charter or the Charter of 1961 may participate in the votes and be elected as workers' delegates. It asks the next report to confirm that this understanding is correct.

The above shows that workers or employees who are not members of trade union organisations are entitled to participate in the work of the general assembly, put forward nominees and be selected as representatives.

The Bulgarian labour legislation odes not contain any limitations whatsoever to workers or employees' rights relative to their citizenship. Therefore, each worker or employee, including citizens of a State that is a party to the 1961 ESC, may vote and be selected as a representative.

Enforcement

The Committee noted that employers who infringe their obligations under the above-mentioned provisions may incur criminal sanctions. The report specifies that trade unions may lodge a complaint with the competent court in the event of a violation of their right to be informed and consulted within the scope of collective bargaining. The report further refers to Article 414 of the Labour Code stating that an employer who violates provisions of the Labour Codes may be subject to a fine between 250 to 1 000 Leva (128 to 510 Euro).

Labour Code - amendments

Art. 414. (Amended, - SG, No. 100 of 1992, No. 2 of 1996, No. 25 of 2001, No. 120 of 2002) (1) (Amended, - SG, No. 48 of 2006, No. 108 of 2008) Employer who violates the provisions of labour legislation beyond the rules for ensuring safe and healthy conditions of work, unless liable to a heavier sanction, shall be penalised by penalty or fine from 10 000 to 15 000 BGN, and a guilty official, unless liable to a heavier sanction, shall be penalised by fine of 2500 to 10 000 BGN

(2) (Amended, - SG, No. 48 of 2006, No. 108 of 2008) For a repeat violation under para. 1 the sanction shall be penalty or fine of 20 000 to 30 000 BGN, and, respectively, fine of 5000 to 20 000 BGN.

The Committee also asks whether employees' representatives other than trade union representatives have a similar right to complain and whether similar sanctions are applicable.

Labour Code

Coercive administrative measures and sanctions:

The control on the compliance with the labour legislation is carried out by the General Labour Inspectorate Executive Agency. The supervising agencies have the powers as stipulated by the Labour Code. According to Art. 404, para. 1, i. 1 and Art. 414, para. 4 of the LC:

"Coercive administrative measures"

Art. 404. (1) (Amended, - SG, No. 108 of 2008) For prevention and discontinuance of violations of labour legislation, as well as for prevention and elimination of harmful consequences thereof, the supervising agencies of the Labour Inspectorate and the authorities under Art. 400 and 401, on their own initiative, or on the proposal of the trade union organisations may apply the following coercive administrative measures:

1. (Supplemented, - SG, No. 57 of 2006) give obligatory instructions to the employers and officials on elimination of violations of labour legislation, inclusive on the liabilities to the social and community services for workers or employees and on the liabilities concerning information and consultation with workers or employees under this Code and under the Law on Information and Consultation with Employees of Multinational (Community-Scale) Undertakings, Groups of Undertakings and Companies, as well as for the elimination of deficiencies regarding provision of health and safety conditions;

Liability for violations of other provisions of the labour legislation

Art. 414. .....

(4) (New, - SG, No. 48 of 2006) Employer who violates the provisions of Art. 130a, para. 1 and 2, Art. 130b, para. 1 and 2 and Art. 130c, para. 1 and 2, shall be penalised by penalty or fine from 1500 to 5000 BGN, and a guilty official, shall be penalised by fine of 250 to 1000 BGN, for each violation."

Labour disputes:

The Labour Code stipulates the terms applicable for a labour dispute, terms for bringing a claim to court, etc., connected with the proceedings on labour cases:

"Chapter Eighteen

Labour disputes

Definition

Art. 357. (1) (Supplemented, - SG, No. 25 of 2001, former text of Art. 357, No. 48 of 2006) Labour disputes are the disputes between the worker or the employee and the employer regarding the incurrence, existence, execution and termination of employment relationships and disputes on execution of collective agreements and ascertaining length of service.

(2) (New, - SG, No. 48 of 2006) Moreover, labour disputes are the disputes between workers or employees' representatives as selected pursuant to the provisions of Art. 7, para. 2 and Art. 7a and the employer, in case their rights are violated.

Prescription

Art. 358. (Amended, - SG, No. 100 of 1992) (1) Claims to labour disputes shall be lodged within the following terms:

1. (amended, - SG, No. 48 of 2006) one month: for diputes on limited property liability of the worker or the employee, for cancellation of the disciplinary sanction 'reprimand' and in the cases under Art. 357, para. 2;

.....

(2) The terms under the precedent paragraph shall start to run:

1. .....

2. for other claims: as of the day when the entitlement which is the subject of the claim has become executable or may have been exerted. In the cases of cash receivables the recoverability shall be deemed to have incurred as on the day when a payment must have been made under the receivable, following the procedure as stipulated by the law.

(3) The term under para. 1 shall not be deemed to have been missed provided prior to its expiry, the bill of claim was lodged to an incompetent authority. In this case the bill of claim shall be retransferred to the court, by default.

Proceedings on labour cases, free of charge

Art. 359. (Amended, - SG, No. 25 of 2001) The proceedings on labour cases shall be free of charge for the workers or employees. They shall not pay any fees or charges for the proceedings, inclusive for the applications for enforced decisions on labour cases.

Jurisdiction

Art. 360. (1) Labour disputes shall be heard in courts. They shall be heard pursuant to the provisions of Civil Procedure Code unless that Code does not provide otherwise."

The quoted provisions show that each representative of the workers or employees elected pursuant to the provisions of Art. 7, para. 2 and Art. 7a of the LC, whether he is a representative of trade union organisation not, shall be entitled to lodge a claim in court.

Scope of the provision as interpreted by the ECSR

Right of employees in private or public undertakings and/or their representatives to be informed on all matters relevant to their working environment and to be consulted in good time with respect to proposed decisions that could substantially affect the employees' interests.

Workers must have legal remedies when these rights are not respected. There must also be sanctions for employers which fail to fulfill their obligations under this Article.

For a list of selected other international instruments in the same field, see Appendix.

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

a. to the determination and the improvement of the working conditions, work organisation and working environment;

b. to the protection of health and safety within the undertaking;

c. to the organisation of social and socio-cultural services and facilities within the undertaking;

d. to the supervision of the observance of regulations on these matters.

Appendix to Articles 21 and 22

1. For the purpose of the application of these articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

2. The terms "national legislation and practice" embrace as the case may be, in addition to laws and

regulations, collective agreements, other agreements between employers and workers'

representatives, customs as well as relevant case law.

3. For the purpose of the application of these articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods

or provide services for financial gain and with power to determine its own market policy.

4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings" within the meaning of paragraph 3.

Establishments pursuing activities which are inspired by certain ideals or guided by certain moral

concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.

5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.

6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Appendix to Article 22

1. This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of the bodies in charge of monitoring their application.

2. The terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc.

Information to be submitted

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

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

3) Please provide pertinent figures, statistics or any other relevant information on employees who are not covered by Article 22, the proportion of the workforce who is excluded and the thresholds below which employers are exempt from these obligations.

Since the last National report the following amendments were made in the national legislation:

Healthy and Safe Working Conditions Act

Article 29

The working conditions committees and groups shall:

1. discuss once a trimester the whole range of activities related to the safety and health of employees and adopt measures to improve it;
2. discuss the results of the occupational risk assessment and the analyses of the health status of employees, the reports of specialized safety and occupational health services as well as other issues concerning the safety and health protection of employees;
3. discuss the planning and introduction of new technologies, work organization and fitting-out of work places and propose solutions ensuring that the safety and health protection of employees are respected;
4. carry out inspections on the status of implementation of occupational health and safety provisions;
5. keep watch on work accidents and occupational morbidity at the undertaking;
6. take part in the elaboration of information and training programs on issues concerning healthy and safe working conditions.

Article 30

(1) Employees' representatives at the working conditions committees and groups shall receive training according to curricula, procedure and conditions defined with an executive ordinance of the Minister of Labour and Social Policy and the Minister of Health.

(2) Employees' representatives at the working conditions committees and groups shall be entitled to:

1. have access to the existing information concerning working conditions, the analyses of work accidents and occupational morbidity, the findings and the prescriptions of the control authorities;
2. require of the employer to undertake appropriate measures and submit proposals to mitigate hazards and remove sources of danger to their safety and health;
3. appeal to the control authorities if they consider that the measures taken by the employer are inadequate for the purposes of ensuring safety and health at work;
4. participate in the inspection visits rendered by the control authorities.

(3) The employer shall provide the employees' representatives with all necessary conditions and means to enable them to exercise their rights and functions and shall ensure that they receive adequate training and qualification during working hours without loss of pay.

(4) Employees' representatives in working conditions committees and groups shall not be put in unfavourable position as a result of their activities for providing healthy and safe working conditions.

……..

Article 34

(1) Employees must in accordance with their training and the instructions given by their employer:

1. make correct use of machinery, apparatus, tools, dangerous substances and preparations, transport vehicles and other means of production;
2. (add. – SG 40, 2007) make correct use of personal protective equipment and special working clothes and after work to place them back for preservation;
3. (amend – SG 40, 2007) make correct use of the devices for collective protection equipped on machines, apparatus, tools, building or plant, as well as not to remove, disconnect, switch off or modify them unwarrently,
4. immediately inform the employer or the workers in charge with specific responsibilities in providing healthy and safe working conditions of any work situation that pose or may pose imminent danger to their health and of any shortcomings in the collective protection arrangements;
5. (amend – SG 40, 2007) cooperate with the employer or the employees with specific responsibilities in providing healthy and safe working conditions and/or representatives of the workers providing healthy and safe working conditions to enable any tasks or requirements imposed by the control authorities to protect the safety and health at work to be carried out.

(2) Each employee who during repair, installation or regular checks temporarily removes a protection device or a warning signal, shall immediately restore it or shall undertake other protective measures with the same efficiency.

Chapter four

ORGANIZATION AND MANAGEMENT OF ACTIVITIES

…….....

Article 36a (New – SG 108, 2008) (1) Every 5 years the Minister of Labour and Social policy after consulting with the employers, workers and employees recognized as representatives on national level, shall submit to the European Commission a single report on the implementation of:

1. Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, hereinafter referred to as "Directive 89/391/EEC";
2. Individual directives under art. 16, par. 1 of Directive 89/391/EEC;
3. Council Directive 89/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship, Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels, Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work and Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work (second individual Directive within the meaning of Article 8 of Directive 80/1107/EEC).

(2) The report under art. 1 should be prepared in accordance with the determined by the European Commission structure and content.

(3) The report under art.1 should be submitted to the European Commission within 12 months after the end of the 5 year period."

Questions of the European Committee of Social Rights

The Committee understands from the information provided in the report in response to its corresponding question that also non-unionised members of the PA may nominate candidates or be elected as workers' delegates and that employees who are nationals of States Parties to the Revised Charter or the Charter of 1961 may participate in the votes and be elected as workers' delegates. It asks the next report to confirm that this understanding is correct.

The above shows that workers or employees who are not members of trade union organisations are entitled to participate in the work of the general assembly, put forward nominees and be selected as representatives.

The Bulgarian labour legislation odes not contain any limitations whatsoever to workers or employees' rights relative to their citizenship. Therefore, each worker or employee, including citizens of a State that is a party to the 1961 ESCh, may vote and be selected as a representative.

The Committee asked for information what are the matters covered by Article 22 of the Revised Charter that are subject to participation of the PA.

The purpose of the General Assembly of factory and office workers is the decision-making in order to represent the common interests of employees before the employers or before the State bodies. By the GeneralAssembly the employees may:
- elect their representatives, who shall represent their common interests on issues of industrial and social-security relations before the employers or before the State bodies. (Art. 7, para. 2

LC)
- adopt a draft for collective agreement where within the enterprise the trade union organisations fail to submit a common draft - Art. 51a, para. 3 LC
- determine the manner of use of the resources social, welfare and cultural services - art. 293, para. 1 LC
- allow the use of social funds and the forms of social services by families of employees and pensioners who have worked for the same employer. - Art. 300 LC.

The Committee understands from the information provided in the report that participation in the determination of working conditions through the PA is limited to cases where matters are not already covered by participation of trade union representatives. The Committee already noted in its conclusion under Article 21 that such participation mainly takes place within the scope of collective bargaining. Noting that the worker's right to take part in the determination and improvement of the working conditions and working environment seems to be mainly implemented through trade union representatives, the Committee asks whether workers or their representatives have an effective right to take part in the determination of working conditions and working environment in the undertaking also outside the scope of collective bargaining. In this context it wishes e.g. to know whether collective agreements themselves contain rules on the participation of employees in the determination and improvement of the working conditions and working environment and what is the proportion of workers out of the total workforce covered by such collective agreements.

Outside the scope of the collective bargaining the workers and employees can take part in the determination of the working conditions committees and groups. They are regulated by the Healthy and Safe Working Conditions Act.

Healthy and Safe Working Conditions Act.
Article 29

The working conditions committees and groups shall:

7. discuss once a trimester the whole range of activities related to the safety and health of employees and adopt measures to improve it;
8. discuss the results of the occupational risk assessment and the analyses of the health status of employees, the reports of specialized safety and occupational health services as well as other issues concerning the safety and health protection of employees;
9. discuss the planning and introduction of new technologies, work organization and fitting-out of work places and propose solutions ensuring that the safety and health protection of employees are respected;
10. carry out inspections on the status of implementation of occupational health and safety provisions;
11. keep watch on work accidents and occupational morbidity at the undertaking;
12. take part in the elaboration of information and training programs on issues concerning healthy and safe working conditions.

Article 30

(1) Employees' representatives at the working conditions committees and groups shall receive training according to curricula, procedure and conditions defined with an executive ordinance of the Minister of Labour and Social Policy and the Minister of Health.

(2) Employees' representatives at the working conditions committees and groups shall be entitled to:

5. have access to the existing information concerning working conditions, the analyses of work accidents and occupational morbidity, the findings and the prescriptions of the control authorities;
6. require of the employer to undertake appropriate measures and submit proposals to mitigate hazards and remove sources of danger to their safety and health;
7. appeal to the control authorities if they consider that the measures taken by the employer are inadequate for the purposes of ensuring safety and health at work;
8. participate in the inspection visits rendered by the control authorities.

(3) The employer shall provide the employees' representatives with all necessary conditions and means to enable them to exercise their rights and functions and shall ensure that they receive adequate training and qualification during working hours without loss of pay.

(4) Employees' representatives in working conditions committees and groups shall not be put in unfavourable position as a result of their activities for providing healthy and safe working conditions.

The Committee had found in its previous conclusion that in practice a large proportion of the workforce is in fact not covered by CWCs and GWCs and that some of the bodies that are established have been found to not function adequately. It therefore requested more detailed information on the proportion of workers actually covered by CWCs and GWCs bodies that are established. It notes from the report that over the reference period the number of enterprises having established CWCs or GWCs has increased and that in 2004, 47.2 % of enterprises disposed of such bodies. However, the Committee notes that still less than half of the total number of enterprises are comprised in this development and further notes from the report that many of the existing CWCs and GWCs are not functioning in practice. The report explains that this is mainly related to a lack of interest by the social partners to make the existing bodies operative or to establish new ones. The Committee reiterates its question as to what are the measures envisaged by the Bulgarian Government to counteract this situation.

Excerpts from reports of the General Labour Inspectorate Executive Agency:
2006:

The participation in inspection of representatives of the Working Conditions Committees (WCC) and Working Conditions Groups (WCG) remains unsatisfactory although in each inspection the inspectors have invited them to participate. In 2006, only in 6.8% of the inspections the representatives of the WCC and WCG have participated, whereas in 2005 these checks held 7.8 % of the total number of inspections carried out.

There have been established working conditions committees and groups (WCC and WCG) in order to be carried out the necessary social dialogue and to be ensured that employees will participate in solving specific problems in relation to ensuring healthy and safe working conditions in the enterprises. The inspections carried out by the General Labour Inspectorate Executive Agency in 2006 found that unlike in 2005, when in 74% of the risky

sites there have been established such structures, then in 2006 such structures have been set up in 77% of the risky sites. As an example of well functioning structure we can indicate the WCC in Rompetrol Bulgaria JSC, Neochim JSC and Stomana Industry S.A., where on meetings were considered issues related to ensuring healthy and safe working conditions namely: discussed risk assessment and measures proposed to minimize the risk and evaluate their performance, accepted various analysis of the health and safety at work bodies, including those relating to labor traumas; adopted decisions and proposals for improvement of working conditions and etc.

Cooperation with the authorities for cooperation and social dialogue on working conditions and promotion and retention of employment

In 2006 the labour inspectors have registered 12456 enterprises with working conditions groups and committees established (about 42,5% of all enterprises inspected, but including inspected microenterprises with staff up to 5 people, where the WCC and WCG are not obligatory). The established WCG and WCC in the enterprises from the beginning of the year are 19%. Compared with 2005, it has been seen a small increase of 1.1 % of the WCC and WCG established.

In some conventionality it can be summarized that in 2006 there are 15 regions that are below the average indicator for the country "WCC and WCG established in the inspected enterprises", as the lowest results are in the Regions of Burgas and Razgrad, where 13,5% and 16,7% of the enterprises inspected have WCC and WCG established. Below 30% are also the Regions of Pazardjik, Smolyan and Haskovo. There is a clear necessity to focus the efforts of the social partners in those regions in order to intensify the work on establishing of WCC and WCG. The establishing of WCG in the small enterprises in the agriculture, hunting and forestry, wood industry, commerce, hospitality and business services continues to move slowly. But it is again noted a high level of establishment of WCC and WCG in the mining industry, most of the manufacturing, the manufacture of non-metallic mineral products, metal manufacture and cast, production and distribution of electricity and thermal energy and in education. However, the significant positive changes from 2005 and the other periods under review in the activity of the WCC and WCG have not been reported. There are only few examples of well functioning WCC or WCG, whose all activity is carried out under the provisions of art. 29 of the Health and Safety at Work Act. There is still a lot to come to assess more firmly the readiness of the established WCC and WCG to cooperate with the supervisory authorities in solving issues related to the health and safety at work and that they are trained and informed well enough to be better partners to the employers. The employers still have a long way to go, especially as regards the level of fulfillment of their obligations arising from the provision of art. 30 of the Health and Safety at Work Act. There are still cases of violation of the equality of the representatives of the employers and the representatives of the workers, that are found in some written orders of managers regarding the staff of the WCC and still the duties for annual training of the representatives of those who work in the WCC and WCG continue not to be fulfilled.

In comparison with data from 2005, the members of WCC and WCG have participated in less inspections with labour inspectors in 2006 – 6,8% (for 2005 – 7,8%). With the highest level of participation in the inspections throughout the year are the members of WCC established in the Regions of Kardzhali, Montana, Pernik, Stara Zagora, Ruse and etc. Invitation for participation in the inspections sent by the labour inspectors have been mostly accepted by members of WCC/WCG established in extraction of non-metallic products and raw materials, manufacture of chemical products, machines, equipment and household appliances, education, construction, textile manufacture and hotels and restaurants. The

systematic support by the Directorate Regional Labour Inspectorate to the members of WCC/WCG in relation to their activity should continue considering its importance for the development of preventive culture in the field of health and safety at work in enterprises.

Priority for the employers in the enterprises should be to fulfill the obligations provided by the Health and Safety at Work Act by carrying out a real and qualitative risk assessment, taking appropriate measures to prevent, reduce and control the risk (including adaptation of the microclimate in accordance with the sanitary-hygienic norms, take protective measures to reduce noise levels in work areas, introduction of a physiological mode of work and rest for workers in the motor expressed monotony and forced posture – cutters, tailors, ironers and activating the work of WCG/WCC). Enterprises where the physiological mode of work and rest for the workers have been introduced it should be fulfilled the provisions of art. 10 of Regulation № 15 (SG 54, 1999) to assess the effectiveness of the introduction of a physiological mode of work and rest (this type of assessment should be carried out one year after the introduction of the physiological mode of work and rest).

Social partnership bodies – issues on the Health and Safety at Work Act in the enterprises

The reports of the Directorate Regional Labour Inspectorate shows that in conducting the inspections, the labour inspectors cooperate with the WCC/WCG established in the enterprises. From total of 1130 enterprises from the seven economic activities inspected in 2006, in 734 of them there are WCC/WCG established (65%, average for the country – 42,5%).

Economic results from the all 7 branches:

- 73,4% of the enterprises inspected in metal manufacture and cast;
- 69 and 67% of the enterprises inspected in the silicate and chemical industry;
- 64% of the enterprises inspected in production of wood pulp, paper and paperboard;
- 42% of the enterprises inspected in printing and publishing.

The checks carried out on the activity of the WCC and WCG established only confirm their formality and insufficiency – there are not any periodic meetings hold, no issues to discuss and no measures proposed to improve the working conditions and etc.

The WCC and WCG established in the most of the large and medium enterprise work well.

In most of the printing and publishing enterprises there are not any WCC or WCG established yet – 58% of the enterprises inspected in 2006.

2007:

A practice has been established within the Directorate Regional Labour Inspectorate to invite representatives of different syndicates and WCC/WCG to participate in the inspections. The data reported for 2007 shows that only in 142 inspections representatives of syndicates have taken part, while members of WCC and WCG have taken part in 2028 inspections. The participation in the inspections of representatives of different syndicates and WCC/WCG is still very passive and does not contribute essentially to improve the effectiveness of the control. The problem is in the selecting of staff pointed to represent these structures.

The inspection activity of the Directorate Regional Labour Inspectorate is bounded with measures supporting the social dialogue on level enterprise, branch, region and on national level and most of them have already been realized.

In comparison with the data reported for the previous 2 years, the members of WCC/WCG are less responsive to the invitation of the labour inspectors to participate in the inspections, as their share in 2007 lowered to 6,1% (7,8% and 6,8% in 2005 and 2006). The reasons for that have many times been discussed, but It came to the following – the employers forbid the representatives of the WCC and WCG to communicate with the labour inspectors, not fulfillment of obligations provided by art. 30 of the Health and Safety at Work Act and lack of initiative from the employer to dialogue with the workers when solving their problems related to considering their personal interests to improve the working conditions.

2008:

In 73% of the enterprises inspected there are WCC and WCG established. The problems and the violations related to the WCC and WCG are confined to their membership and activity namely: not observing the principle of equality between the representative of the employer and the representative of the workers; the staff of the WCC/WCG is not updated in time when there is termination of employment of any of its members; the necessary training of representatives is not carried out.

- the inspections show that in 80% of the enterprises inspected with staff over 5 people employed there are WCC/WCG established - 49% for the country for all economic activities;

In 2008 the inspection activity of the Directorate Regional Labour Inspectorate is bounded with measures on programs supporting and promoting the social dialogue on level enterprise, branch, region and on national level and most of them have already been realized.

During the inspections there have been given 49940 technical advices (28% increase compared with 2007) to employers, syndicalists, officials and line managers, workers and members of WCC and WCG, as well as clear explanations to the representatives of the workers on labour legislation and social security standards under the Health and Safety at Work Act, focusing on the latest amendments of the normative documents. In order to be achieved changes in the behavior related to issues of safety and health at work, most of the consultations and advices during the inspections have been given in enterprises that in 2008 had been inspected for the first time (32% of all enterprises inspected) – (25% share in 2007). *It is also strengthened the role of the labour inspectors as negotiators in promoting better law enforcement in the sector of small and medium business. The share of enterprises inspected that have fulfilled basic obligation under the Health and Safety at Work Ac has reached 61%.*

There are 13309 enterprises with WCC or WCG established in the year reported – about 49% of all enterprises inspected. In the large production plants the level of WCC/WCG established is good. The establishment of WCC/WCG continues even in slowly motion in the commerce, repair and maintenance of motor vehicles, restaurants and in other professional activities, agriculture, recruitment and provision of manpower and other professional services.

The activity of the labour inspectors throughout the period reported has been directed towards promotion and support to their functioning. The initiatives to comply with the legislation come from the syndicate bodies in the companies with WCC/WCG established and in the syndicates.

The tendency of the past three years remains unchanged – the members of WCC/WCG are less responsive to the invitation of the labour inspectors to participate in the inspections. The share of the inspections where representatives of the WCC/WCG have taken part in 2008 is 5,4%. Many of the representatives of the workers in WCC/WCG have no real time to participate in inspections due to their current work.

Scope of the provision as interpreted by the ECSR

Right of employees in private or public undertakings and/or their representatives to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in Article 22.

Workers must have legal remedies when these rights are not respected. There must also be sanctions for employers which fail to fulfil their obligations under this Article.

For a list of selected other international instruments in the same field, see Appendix.

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the

Parties undertake, in consultation with employers' and workers' organisations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;

2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Appendix to Article 26

It is understood that this article does not require that legislation be enacted by the Parties. It is understood that paragraph 2 does not cover sexual harassment.

Information to be submitted

Article 26§1

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

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

Please supply any relevant statistics or other information on awareness-raising activities and programmes and on the number of complaints received by ombudsmen or mediators, where such institutions exist.

- Amendments to the Protection against Discrimination Act during the reference period:

Art. 7. (1) Following shall not be deemed discrimination:

.....

9. (Supplemented, - SG, No. 68 of 2006) the measures and programmes under the Employment Promotion Act;

.....

12. (New, - SG, No. 69 of 2008) establishment of maximum eligibility age for granting a credit under the Law on Crediting Students and Post-graduate Students;

.....

Art. 11. (1) (Amended, - SG, No. 69 of 2008) The bodies of state power, the public bodies and the local self-governance bodies shall take measures within the meaning of Art. 7, para. 1, i. 13 and 14, when that is necessary to achieve the objectives of this Law

(2) (Amended, - SG, No. 69 of 2008) The bodies of state power, the public bodies and the local self-governance bodies shall take with priority measures within the meaning of Art. 7, para. 1, i. 13 and 14 to equalise the opportunities of persons, victims of multiple discrimination

.....

Art. 13. (1) The employer shall ensure equal working conditions regardless the grounds referred to in Article 4, Paragraph 1.

.....

(3) (New, - SG, No. 108 of 2008) When the mother who uses her maternity and childbirth leave or leave for raising a child, or the person using the leave under Art. 163, para. 8 of the Labour Code, or for raising a child, returns to work due to the expiry of such leave or due to an interruption of such leave, shall be entitled to be reinstalled on the same position or another equal to the previous and to make use of any improvement to working conditions that she would have been entitled to benefit from if she had not been in leave.

Art. 14. (1) The employer shall ensure equal remuneration for equal work and work of equal value.

(2) (Supplemented, - SG, No. 108 of 2008) Paragraph 1 shall apply for all remuneration, paid directly or indirectly, in cash or in kind irrespective of the term of the employment contract or the duration of working time.

.....

(4) (New, - SG, No. 108 of 2008) Upon a return from leave in the cases under Art. 13, para. 3, provided workers or employees' labour remunerations have, in the meantime, been indexed, the labour remuneration of the leave user shall be indexed using the rate correspondent to the rate that the other workers or employees have benefited from.

Art. 15. (1) (Former text of Art. 15 - SG, No. 108 of 2008) The employer shall provide equal opportunities to the employees, with no reference to the grounds under Article 4, paragraph 1, for vocational training and increasing their professional qualification and re-qualification, as well as for professional development and promotion in position or rank by applying equal performance criteria and indicators in the assessment of their activity.

(2) (New, - SG, No. 108 of 2008) Upon a return from a pregnancy and childbirth leave and/or a leave for raising a child and in case any technologic changes have been introduced in the meantime, the person under Art. 13, para. 3 shall benefit training to acquire professional qualifications relevant to such changes.

.....

Art. 29. (1) (Amended, - SG, No. 74 of 2009, in force as of 15.09.2009) The Minister of Public Education, Youth and Sciences and the local self-government bodies shall take the necessary measures not to allow any racial segregation in the training institutions.

(2) The head of the training institution shall take effective measures to prevent any form of discrimination on the place of training committed by pedagogical or non-pedagogical staff or a student.

.....

Art. 39. (1) (Amended, - SG, No. 68 of 2006) If the candidates for a position in the administration are equivalent 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, No. 68 of 2006) In case some specific circumstances regarding the equivalent applicant of the better represented sex in view of the requirements for occupying the position he will be employed unless this is discrimination versus the candidate of the under represented sex.

(3) (Former para. 2, As amended, - SG, No. 68 of 2006) Paragraphs 1 and 2 shall apply also in the selection of participants or board members, expert working groups, governing, counsellor or other bodies, unless those participants are determined my means of election or competition.

Art. 40. (1) The Commission for protection against discrimination, referred to hereinafter as "The Commission", shall be an independent specialised state body for prevention of discrimination, protection against discrimination and ensuring equal opportunities.

(2) The Commission shall exert control over the implementation and compliance with this or other laws regulating equality of treatment.

(3) (Supplemented, - SG, No. 68 of 2006, in force as of 1.01.2007) The Commission is a legal person on budget support with head office in Sofia and is a primary controller of budget credits.

(4) (New, - SG, No. 68 of 2006) The Commission shall have its representatives where the terms and conditions for specifying thereof shall be stipulated by the rules under Art. 46, para. 1.

(5) (Former para. 4 - SG, No. 68 of 2006) The Commission shall report annually to the National Assembly on its activities not later than March 31 of the following year, which shall include *inter alia* information on the activity of each of its standing spcecialised juries.

.....

Art. 52. (1) Proceedings shall not be instituted, and those already instituted shall be terminated, in case of three years have past after the occurrence of the violation.

(2) (Amended, - SG, No. 68 of 2006) In case the Commission discovers that proceedings in court have been initiated on the same case, it shall not institute proceedings.

(3) (New, - SG, No. 68 of 2006) The proceedings before the commission shall be terminated when the complaint or the notification has been withdrawn or has not been made good within the term as specified by the commission.

.....

Art. 59. (1) The investigation shall be carried out within 30 days. In cases, which present factual or legal complexity, this period may be prolonged with up to 30 additional days with an order issued by the Chairperson.

(2) (New, - SG, No. 68 of 2006) The term under para. 1 stops running where it has been established that the report-maker has, during the investigation, been hindered by persons, or State or local-government authorities and this has been an obstacle before the full and comprehensive clarifying of the circumstances.

(3) (Former para. 2 - SG, No. 68 of 2006) After completion of the investigation the parties shall be given an opportunity to get acquainted with the materials on the case collected during the investigation.

(4) (Former para. 3 - SG, No. 68 of 2006) If in the process of the investigation, evidence for a committed crime has been found, the Commission shall send the claim file to the prosecution.

.....
Art. 61. (1) The sessions of the Commission shall be open.
(2) (Amended, - SG, No. 59 of 2007) The sessions shall be held in camera upon the reasons and under the provisions of Art. 136 of the Civil Procedure Code.
(3) (Amended, - SG, No. 59 of 2007) The members of the panel may be removed upon the reasons and under the provisions of Articles 22 - 24 of the Civil Procedure Code.
Art. 62. (1) (Amended, - SG, No. 68 of 2006) At the first session the rapporteur shall invite the parties to achieve a settlement. In case of agreement, expressed by the parties, the speaker shall call settlement proceedings session.
(2) In case of achieving an agreement between the parties on the basis of equal treatment during the settlement proceedings, the Commission shall approve it by a decision and shall terminate further proceedings on the case.
.....
Art. 68. (1) (Amended, - SG, No. 30 of 2006) The decisions of the commission are subject of appeal brought to the Supreme Administrative Court pursuant to the provisions of the Administrative Proceeding Code, within a 14-day term as of the communication thereof to the interested parties.
(2) The complaint to declare the decision as null and void shall be lodged with no limitations in the time.
Art. 69. The decisions of the Commission shall enter into force, if:

1. they have not been appealed against within the term;
2. the appeal submitted has not been taken into consideration;
3. the achieved settlement among the parties has been proved by the decision.

Art. 70. (1) (Amended, - SG, No. 30 of 2006) On issues, which are not regulated by the provisions in this Section, the provisions of the Administrative Proceeding Code shall apply.
(2) (Amended, - SG, No. 105 of 2005) The fines and property sanctions on the enforced decisions of the Commission shall be collected under the provisions of the Tax-Insurance Procedure Code.
Art. 71. (1) Beyond the cases under Section I, any person whose rights under this or other laws regulating the equal treatment have been violated may lodge a claim before the Regional Court through which to demand:

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

(2) The trade unions organisations and their units, as well as the non-for-profit legal persons carrying out activities beneficial to the public may, upon request from persons whose rights have been violated, lodge a claim before the court. These organisations may step in as a concerned party into a pending legal action under para. 1.
(3) (Amended, - SG, No. 59 of 2007) In cases of discrimination when rights of many people have been violated, the organisations under Paragraph 2 may lodge an independent claim. The persons whose rights have been violated may step into the legal action as an assisting party as referred to in Art. 218 of the Civil Procedure Code.
Art. 73. (Amended, - SG, No. 30 of 2006) Any person whose rights have been violated by an administrative act issued in contravention to the provisions of this or other laws regulating the equal treatment may appeal it before the Court following the provisions of the Administrative Proceeding Code.
.....

Art. 82. (1) A person who does not implement the provisions of a Commission's or Court decision issued under this Law shall be punished with a fine of 2 000 to 10 000 BGN, unless he/she is liable to a heavier sanction.
(2) (Amended, - SG, No. 68 of 2006) In case the violation continue after three months of the entry into force of the punishment measure under Paragraph 1, a fine shall be imposed of 5 000 to 20 000 BGN.

Additional provisions.
§ 1a. (New - SG, No. 108 of 2008) This law introduced the provisions на Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast):

- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast):

Article 2
Definitions
1. For the purposes of this Directive, the following definitions shall apply:
.....
(c) 'harassment': where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;
(d) 'sexual harassment': where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs,
with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;

- Motives for the amendments made to the special anti-discrimination legislation (Protection against Discrimination Act.):

The purpose of these amendments is to improve the legal regulations: firstly, referring the implementation of the State policy in the field of equal treatment of men and women; secondly, in respect of the status of the Commission for Protection against Discrimination acting as an independent specialised State authority; and thirdly, referring the activity of the Commission for Protection against Discrimination under Chapter Four, Section I from the Protection against Discrimination Act.

The legislative amendment to Chapter Three, Art. 40 of the Protection against Discrimination Act was imperative in view of achieving effective independence of the Commission as a specialised State authority.

The legislative amendment to Chapter Four, Section I from the law became imperative in connection with deficiencies in the Law encumbering the achievement of the fundamental goals of the proceedings before the Commission: speed and informality. (The previous version of Art. 52 , para. 2 of the Law allowed to, at all times of the proceedings to bring a claim pursuant to the provisions of Art. 71 of the law to the regional court and thus to block up the proceedings before the Commission, which was obliged to terminate such proceedings. There were cases where the parties misused their entitlement to claim whenever they found out that the evidence collected by the Commission were not in thir favour).

It is obviously necessary to introduce a time limit until which the party to proceedings

before the Commission may lodge a claim to the regional court which limit to entail the termination of such proceedings. It would be inappropriate to admit misuse of the right to defence by randomly switching from one defence body to another.

Moreover, having put forward the justification of procedural economy, the legislative amendment was imposed by inserting a new paragraph 3 into Art. 52 from the law concerning termination of proceedings in case when the claimant who has brought the complaint or the notification withdrawn thereof or in case of silent waiver thereof.

The legislative amendment to Art. 59 of the law by inserting the new paragraph 2 was justified by the need to observe the short terms for investigation as set forth by the provisions of Art. 59, para. 1 of the law. Discontinuation of terms in the case of inaction of State/local-government authorities gives the right to the Commission to impose the fine as stipulated by Art. 78, para. 2 of the Protection against Discrimination Act. On the other had, such discontinuation would allow the Commission to observe the terms under para. 1 на Art. 59 of the law.

The legislative amendment to Art. 62, para. 1 of the Protection against Discrimination Act was needed to equalise the role of the Chairperson to the case initiated with the role of the Chairperson to the jury in the civil, criminal and administrative judicature. The proceedings before the Commission for Protection against Discrimination are quasi-judicature.

The amendment to Art. 82, para. 2 of the Protection against Discrimination Act was needed in the light of the fact that the Commission may not enact „penal injunctions".

Questions of the ECSR:

Liability of employers and means of redress

In its previous conclusion, the Committee asked for information about well-established case-law in the field of sexual harassment. In the absence of any such information, the Committee reiterates its question, including that of the Commission for protection against discrimination.

Enclosed here are decisions of CPAD and decision to discrimination cases on the grounds of sexual harassment and harassment. The information was retrieved from Commission's annual reports and from practical compilation on the Protection against Discrimination Act issued in 2008. A breakdown is shown herein bellow by years demonstrating summarised information on complaints lodged, cases initiated, decisions taken and recommendations given.

Damages

The Committee points out that compensation must be sufficient to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. In the absence of any information on the subject in the report, it asks whether these damages are an adequate deterrent to the employer, particularly in cases of complaints of unlawful dismissal.

The decisions enclosed encompass *inter alia* the compensations ruled.

Prevention

The Committee asked previously what action, if any, the government had taken in terms of preventive measures. In the absence of any information on the subject, the Committee repeats its question and asks to be systematically informed of any new preventive

measures taken during the reference period to make the public more aware of the problem of sexual harassment, including efforts to consult employers' and workers' representatives.

During that report's reference period, i.e. as of its establishment in 2005, the Commission for Protection against Discrimination, jointly with other institutions, NGOs, and other interested parties, has implemented a variety of initiatives, measures and investigations. Herein below we list the information on these by years:

- **2005:**

During the period from December 2005 to February 2006, a member of the Commission for Protection against Discrimination was part of the focus group in charge of drafting the Bill amending the Protection against Discrimination Act and making out a draft for the Bill on Equal Opportunities for Women and Men.

claims and notifications received and processed by the Commission: total and by juries:

During the reference period CPAD has received a total of 194 applications, claims and notifications from individuals, non-government organisations, trade unions and media. Of these, 89 proceedings were initiated under Protection against Discrimination Act and 35 of the claims and notifications received were ruled out.

The distribution of cases by juries is as follows:

• First Specialised Standing Jury: by attributes *"ethnic and racial groups"* – 38;
• Second Specialised Standing Jury: by attributes *"sex, human genome and protection of the right to labour"* – 11;
• Third Specialised Standing Jury: by attributes *"nationality, citizenship, origin, religion and faith"* – 17;
• Fourth Specialised Standing Jury: by attributes *"conviction, party affiliation, personal and social status"* – 23;
• Fifth Specialised Standing Jury: by attributes *"disability, age and sexual orientation"* – 13;
• Sixth Specialised Standing Jury: by attributes *"marital status and property status"* – 8;
• Jury *"ad hoc"* in cases investigation – 4;
• in 5-member Jury for *multiple discrimination* – 5.

Five of the cases initiated were terminated while five of them saw decision enacted by the relevant jury. Three formal notes on administrative violations were issued and by a decision of the whole jury of the Commission, three compulsory instructions to employers and officials and 3 recommendations to the State authorities were issued.

Moreover, the Commission has initiated one proceeding by its own initiative through referral made by a member of its pursuant to the provisions of Art.50, i.2 of Protection against Discrimination Act , i.e. it has implemented the so-called *" self-referral"*.

Seminars:

The first training seminar of the Commission was conducted on 8 and 9 December 2005 in Rousse.

Seminar entitled "The anti-discrimination legislation in Bulgaria: public attitudes and practices", Rousse 8-9.12.2005.

The seminar was organised by CPAD. Representatives of the municipality of Rousse, mayors, regional governor and representatives of regional administration, the Regional Education Inspectorate of the Ministry of Education and Science in Rousse, teacher, the

Bulgarian Chamber of Commerce branch in Rousse, employers, trade unions and citizens were invited and attended.

On 25 January 2006, a second training seminar was conducted with representatives of some of the main non-government organisations with activities in the sphere of human rights protection and protection against discrimination by all attributes.

Seminar entitled "The anti-discrimination legislation in Bulgaria: public attitudes and practices" Sofia, 25.01.2006.

The seminar was organised by CPAD. Representatives were invited of 35 non-government organisations with activities in the sphere people with disabilities, ethnic groups and minority-related issues, work with women, sexual orientation, youth-related activities, etc. 59 representatives of 23 organisations took part in the seminar.

On 27 March 2006 in Plovdiv a third training seminar was conducted with the participation of the mayors from the region, school headmasters, the Regional Directorate of the Police, and the regional and municipal administrations. The seminar was organised by the Plovdiv regional Administration jointly with CPAD. Its goal was elucidating the principles of anti-discrimination behaviour and engagements thereto under Protection against Discrimination Act and the sanctions to be imposed in case of deviation from equal treatment standards, to the main administrations from the region servicing or interacting with community members.

March saw some training seminars taking place in Stara Zagora, Veliko Tarnovo and Montana.

A training seminar on the practical application of the Protection against Discrimination Act and its relation to other civil and penal laws in Bulgaria was conducted by CPAD members for several nation-wide representative organisations and people with disabilities in February 2006.

Furthermore, jointly with the National Institute of Justice, the Commission conducted a training for magistrates from the Sofia courts and the Prosecutors Office.

In its endeavour to be closer to community members, their needs and problems, CPAD decided to delocalise its activity by periodically granting the opportunity to community members from a number of regions throughout the country to benefit directly from the competent assistance of the Commission members. Therefore, temporary receptions were set up in cities like: Rousse, Varna, Lom, Montana, Veliko Tarnovo, Plovdiv, Stara Zagora, Blagoevgrad, Kyustendil, Gabrovo, Vidin and some other locations. Rousse and Plovdiv saw such temporary receptions more than once.

In 2005 CPAD took part in several seminars and workshops with NGOs:

• meeting with a Bulgarian Helsinki Committee in May 2005;

• international seminar entitled "Discrimination of people with disabilities" organised by the British Council in May 2005;

• international conference titled „Dialogue between the civil society and protection against discrimination institutions" under the project Euroequality implemented by the Ministry of Labour and Social Policy, the National Council for Collaboration in Ethnic and demographic issues, the Employment, Social Issues and Equal Opportunities General Directorate at the European Commission in June 2005;

• CPAD meeting with the European Centre for Minority Issues in June 2005;

• seminar with the Zhar Foundation, the Gender Project and the Open Society in November 2005;

• meeting with European Dialogue, London, chaired by Peter Mercer and Robin Oakley, vice-chairman, September 2005;

• UNDP seminar in Bulgaria on the issues of equal opportunities and of discrimination by sex and age, December 2005;

• meeting with representatives from the Netherlands on the project entitled "Enhancing the capacity of executive authorities for providing gender equality", March 2005;

• forum organised by the British Council and the Consultative Centre on anti-discrimination evaluation of learning aids for overcoming marginalisation practices and discrimination attitudes in learning materials by inter-cultural and civil co-operartion – March 2006 г.;

CPAD takes part in central government institutions' work, also on international lavel.

Different public opinion polls take place to evaluate community members' attitudes to discrimination problems.

2006:

Over the reference period, the registration desk of the Commission for Protection against Discrimination received and processed a total of 389 claims and notifications. 220 of entered claims and notifications, by an order of the chairperson of the Commission, entailed initiated cases, while the follow-up for the other were ruled out.

- on "harassment" attribute when exercising the right to labour – 4 cases;
- on "sexual harassment" - 2 cases;
- 5-member jury: a total of 43 cases.

Such juries are set up where there are complaints or notifications envisaging discrimination by more than one attribute, i.e. the so called *„multiple discrimination"*.

In response of the need to undertake an aggregate of activities for policy making in the field of prevention and protection against discrimination, CPAD accepted a long-term 2006-2010 Action Plan against Discrimination where the following priorities were outlined:

1. Investigation and analysis efforts by attributes of discrimination;
2. Awareness campaign for implementation of anti-discrimination legislation;
3. Setting up a data base to support Bulgarian anti-discrimination law enforcement;
4. Setting up partnerships with NGOs, with law enforcement institutions and government authorities;
5. Setting up continuous standards for efficient application of anti-discrimination legislation;
6. Conducting topical monitoring;
7. Participation in EU international initiatives and activities to the celebration of the Year of Equal Opportunities spearheaded by the European Commission;
8. Attracting media as partners in the activities against discrimination, active collaboration with national and international media as partners in prevention and fight against discrimination.

The Commission made up a national awareness campaign plan on Protection against Discrimination Act, which was carried out as training seminars by target groups, discussion meetings with supervisors of central and regional structures of the Ministry of Education and Science, MoI, MLSP, of NGOs, of associations of employers, trade unions, with regional governors and their administration, and with mayors and representatives of municipal councils and administration. Along with the meetings and seminars, temporary receptions with local community members were organised. Commission's action plan also lays down participations in conferences organised by international State and non-governmental structures, and membership in international bodies, organisations and their associations similar to the Commission for Protection against Discrimination.

Seminar entitled: "The anti-discrimination legislation in Bulgaria: social attitudes and practices" Sofia, 25.01.2006

This seminar was organised by CPAD; representatives of 35 non-government organisations with activities in the sphere of: people with disabilities, ethnic groups and minority related issues, work with women, sexual orientation, youth-related activities, etc. were invited to participate. 59 representatives of 23 organisations participated in the seminar.

On 27 March 2006 in Plovdiv was conducted a training seminar with the mayors from the region, school headmasters, the Regional Directorate of the Police, and the regional and municipal administrations. In March, training seminars were conducted in Stara Zagora, Veliko Tarnovo and Montana. A training seminar on the practical application of the Protection against Discrimination Act and its relation to other civil and penal laws in Bulgaria was conducted by CPAD members for several nation-wide representative organisations and people with disabilities in February 2006. Jointly with the National Institute of Justice, the Commission conducted a training for magistrates from the Sofia courts and the Prosecutors Office.

On 8 December 2006, on the occasion of the International Day of Protection of Fundamental Human Rights and Freedoms, CPAD spearheaded a conference attended by the National Ombudsman, the chairpersons of the main nation-wide representative trade unions, NGOs and media.

Surveys and polls

In 2006, the Commission for Protection against Discrimination ordered a series of nation-wide representative sociologic surveys. There they used, *inter alia*, some comparative data from similar research efforts conducted in previous periods to outline the trends and processes. One of those research efforts as titled „Discrimination on sexual basis in Bulgaria". That research included data from a series of nation-wide representative polls (January 2006 – May 2006) conducted involving 3580 individuals. Data on labour attitudes (i.e. the preferred type of work) was taken from a nation-wide representative survey and a survey conducted in May 2006 ad involving 1012 individuals. That research included, *inter alia*, some international comparative data. Its topics concerned the vocational formation, educational levels, labour remuneration, labour and career attitudes, sexual harassment at the workplace, the status of women in the family. There is no significant difference if Bulgarian women's status in the family is compared with that in Europe. The difference between "male" and "female" labour remuneration matches the average European levels. Women's career developments is not obstructed by sexual discrimination from employers.

We attach hereto a summarised analysis of the situation in respect of the discrimination in Bulgaria, after an investigation conducted by CPAD (Annex 6).

2007:

In 2007 the Commission for Protection against Discrimination received and processed a total of 569 complaints, 80 notifications and 9 self-referrals on the initiative of the commission. Cases were initiated on 215 of the claims and notifications and self-referrals by arrangements of the commission's chairman while the other were ruled out or were sent to the relevant administrative authority's jurisdiction. Pending and the non-concluded proceedings of 2006 numbered 182. CPAD issued 94 decisions; 42 CPAD decisions were appealed before the Supreme Administrative Court (SAC); 16 rulings were appealed. throughout The Commission took part in 126 open court hearings over the period from 17.01.2007 ro 30.06.2007 and from 10.09.2007 to 31.12.2007. Following CPAD cases 53 decisions were issued by SAC in 2007 by three- and five-member juries.

The place of the Commission for Protection against Discrimination beyond the structure of the executive authority and its status of an independent State authority are guaranteed in itself for impartial decision making due to its quality of an equality authority. A

further reason proving the uniqueness of the proceedings before the commission and commission's place in the process of imposing the equal treatment principle is the number of complaints which in 2007 outnumbered 2006 by 66,8 %.

In view of the already established need of the Bulgarian citizen to realise his rights resulting from the Protection against Discrimination Act, CPAD prepared, accepted and implemented a national awareness campaign targeting both Bulgarian and European anti-discrimination legislation. The fundamental goal of this campaign is, by launching a system of various activities, to promote prevention and overcoming of prejudice and negative attitude accumulated in Bulgaria's society toward differences: expressed through the representatives of target groups isolated and depending on the attributes referred to the Protection against Discrimination Act. Meetings with the supervisors of regional and sectoral structures of State authorities were made. Awareness brochures, a CPAD compendium of legal regulations were printed and material kits were prepared to be provided to the awareness meeting attendants.

The end of the programme in each regional town and some municipalities from the region visited saw temporary receptions for community members. During the working hours of those temporary receptions CPAD members, together with an expert group consulted community members on their complaints and notifications. The average attendance during the work of such temporary reception was around 15-20 which depended on the number of inhabitants of the township visited. As a result of that awareness campaign, all 28 regional capitals of the country and around 40 municipalities were visited.

There was good follow-up to the collaboration with the State institutions, the regional and municipal administrations and some international projects are underway. 5 collaboration agreements with different institutions were signed. The co-working with NGOs and media is going on.

2008 :

In 2008, 714 initiation documents were registered by the Commission for Protection against Discrimination of which 645 complaints of affected persons, 65 notifications from natural persons and legal entities, and 4 self-referrals of the Commission on the grounds of the publications in the media followed by initiated proceedings. 278 orders to initiate new cases were made out, along with 10 orders for resumed or initiated cases upon decisions issued by the courts and 29 denials.

In 2008, CPAD enacted 268 decisions; of which 182 decisions were enacted in substance while the e other were considered by CPAD and terminated on a variety of grounds.

In 2008, 58 cases were initiated for „multiple discrimination" which is an increase by 31% in comparison with the precedent year: by attribute „harassment" while „exercising the right to labour" which was 6 cases.

Ad hoc juries initiated after specific cases affecting attributes beyond those explicitly listed in Art. 4, para. 1 of Protection against Discrimination Act, as stipulated by a law or an international treaty which the Republic of Bulgaria is a party to, considered 2 initiated cases on reports by commission members concerning „sexual harassment".

2008 saw a follow-up to the practice established in past years to launch a national awareness campaign for promoting Bulgarian and European anti-discrimination legislation.

In 2008 the Commission for Protection against Discrimination participated with a project „Partners in the fight against discrimination" in the first initiative following the PROGRESS Programme for Employment and Social Solidarity (2007-2013) launched by the European Community. The conceptual nucleus of the project „Partners in the fight against discrimination" which was realised by the CPAD in partnership with the European Institute Foundation was increasing awareness and consciousness of the entire society, stigmatisation of discrimination and application of the equal opportunities principle by encouraging co-

operation and joint initiatives among all stakeholders. The project related events included information days, forums for planning future joint activities, identifying, analysis and exchange of good practices and exchange of experience.

The project's communication strategy aimed at the target groups included a number of topical meetings and events – research, analysis, national and regional days of diversity, seminars and trainings, children happenings, CPAD delocalised temporary receptions, informational and educational materials, specialised publications and handbooks.

Six regional seminars were held in Pleven, Stara Zagora, Montana, Blagoevgrad, Bourgas and Varna. Those seminars were attended by representatives of the municipal authorities, trade unions and a number of non-government organisations, as well as community members standing active positions on the issues related to anti-discrimination. Those seminars saw discussions of various European values and practices in the fight against discrimination and its dimension in the European Union.

An important step contributing to enhancing community sensitivity and the fight against discrimination were the two regional seminars for MoI employees. The first was held on 22 and 23 May 2008 in Varna and was attended by nearly 60 employees from the system of MoI. The second was held on 16 and 17 October 2008 in Bankia where over 70 MoI employees from North-west and West Bulgaria took part.

The six regional open CPAD temporary receptions coincided both in terms of time and location with the regional seminars which provided community members from relevant regions with opportunities to consult with CPAD experts in direct conversations and seek advice or assistance in place.

The six children's happenings were events to follow the regional seminars and turned to be an interesting educational and creative way of children's appearance in the relevant municipalities. Schoolchildren from first to fourth class were able to find innovative and entertaining ways to express their attitudes to discrimination by drawing or dramatising cases, or singing, reciting poems, writing and expressing their positions to diversity.

One of the most significant and innovative initiatives in the scope of the project was the first of its kind national seminar for lawyers which was organised by the Commission for Protection against Discrimination in collaboration with the National Justice Institute from 1 to 3 October 2008 in Varna. That seminar was a gathering place for practicing lawyers, i.e. judges from the Sofia City Court, the Supreme Court of Cassation and the Supreme Administrative Court, solicitors, legal advisers, prosecutors and investigators and international trainers from the European Commission, the lawyers' guild and University circles.

After the planned investigation and the national conference titled „Diversity at the workplace" were held, on 27 November 2008 the Commission for Protection against Discrimination and the European Institute organised a national conference titled „Prudently to diversity" and „The principles of equal treatment and equal opportunities in the EU structural funds: challenges for Bulgaria". The participants were representatives of a number of State institutions: the Ministry of Finance, the Ministry of Labour and Social Policies, the National Council for Collaboration of Ethnic and Demographic Issues at the Council of Ministers, Podkrepa Labour Confederation and CITUB, as well as a number of non-government organisations.

The publications under the project were the handbook "CPAD Practices", „Rules for proceedings before CPAD", the information brochure promoting the PROGRESS programme and the two final publications under the project – „Prudently to diversity" and „The principles of equal treatment and equal opportunities in the EU structural funds: challenges for Bulgaria".

The CPAD's project titled „Partners in the fight against the discrimination" under the PROGRESS Programme for Employment and Social Solidarity contributed to better awareness and consciousness levels of a variety of social communities in the issues relative to the fight against discrimination under the six protected attributes pursuant to EU Directives and the 19 protected attributes pursuant to the Protection against Discrimination Act of the Republic of Bulgaria, the right to equal access and equal opportunities and the role of the Commission for Protection against Discrimination as a warrantor.

Article 26§2

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

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

2) Please supply any relevant statistics or other information on awareness-raising activities and programmes and on the number of complaints received by ombudsmen or mediators, where such institutions exist.

Questions of the ECSR:

Liability of employers and means of redress

In its previous conclusion, the Committee asked for conclusive information about well established case-law in the field of harassment. In the absence of any such information, the Committee reiterates its question, including concerning the Commission for protection against discrimination. It also wishes to know how harassment cases and acts of discrimination are respectively analysed.

Damages

All victims applying to the Commission for protection against discrimination may also claim damages. The Committee recalls that compensation must be sufficient to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. In the absence of any information on the subject in the report, it asks whether these damages are an adequate deterrent to the employer.

Prevention

The Committee asked previously what action, if any, the government had taken in terms of preventive measures. In the absence of any information on the subject, the Committee repeats its question and asks to be systematically informed of any new preventive measures taken during the reference period to make the public more aware of the problem of sexual harassment, including efforts to consult employers' and workers' representatives.

See the responses to Art. 26, para. 1.

Scope of the provisions as interpreted by the ECSR

Paragraph 1: This concerns forms of behaviour deemed to constitute sexual harassment in the work place or in relation to work. Existing measures must ensure effective protection for workers against sexual harassment. It also concerns the liability of employers and/or their employees. There should be effective remedies for victims and reparation for pecuniary and non-pecuniary harm suffered, including appropriate compensation. The burden of proof should be adjusted and steps should be taken to increase awareness of and prevent sexual harassment.

Paragraph 2: This concerns forms of behaviour deemed to constitute psychological harassment in the work place or in relation to work. Existing measures must ensure effective protection for workers against psychological harassment. It also concerns legal protection against psychological harassment and the liability of employers and/or their employees. There should be effective remedies for victims and reparation for pecuniary and non-pecuniary harm suffered, including appropriate compensation. The burden of proof should be adjusted and steps should be taken to increase awareness of and prevent psychological harassment.

For a list of selected other international instruments in the same field, see Appendix.

Article 28 – Right of worker representatives to protection in the undertaking and facilities to be afforded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

a. they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;

b. they are afforded such facilities as may be appropriate in order to enable them to carry out theirfunctions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Appendix to Article 28

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognized as such under national legislation or practice"

Information to be submitted

1) Please describe the general legal framework, including decisions by courts and other judicial bodies, if possible. Please specify the nature of, reasons for and extent of any reforms.

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

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

Rights and liabilities of workers or employees' representatives and collaboration for implementation of their activities:

Labour Code

"Art. 7c. (New - SG, No. 48 of 2006) (1) The workers or employees' representatives shall be entitled to:

1. be informed by the employer in a way that would allow them evaluate the possible impact of measures stipulated by the competent authorities;

2. request from the employer to provide them all needed information if that was not done within the stipulated terms;

3. take part in consultation procedures with the employer and to express their opinions on the measures stipulated by the competent authorities, which opinions hould be taken into consideration at the time of decision making;

4. request meetings with the employer in the cases when they ought to inform him on the questions asked by workers or employees;

5. access to all workplaces in the undertaking or the division;

6. participate in the training as part of exercising their functions.

(2) Workers or employees' representatives must:

1. inform workers or employees of the information received under para. 1, i. 1 and 2 and of the results from the consultations and meetings held under para. 1, i. 3 and 4;

2. not disclose, or misuse, either for themselves or at the account of third parties, the information under para. 1, i. 1 and 2, which was provided to them subject to confidentiality clause, while they are workers or employees' representatives, as well as after they have waived from their functions.

(3) Workers or employees' representatives may determine their own work schedules. They may assign one or several persons from their number who would, in the cases stipulated by the law, conclude agreements with the employer.

(4) In the context of the collective agreement or by means of a separate agreement with the employer, they may provide for that workers or employees' representatives may, in case of need or in view of their liabilities, use their right to reduced duration of their working hours, additional holiday, etc.

Liability in case of disclosure of confidential information

Art. 7d. (New - SG, No. 48 of 2006) Persons who have been provided information subject to confidentiality clause, shall be liable for the damage caused to the employer due to non-feasance of the obligation of keeping such information in secrecy.

Co-operation to further activities of trade union organisations and workers or employees' representatives (Title amended, - SG, No. 100 of 1992, No. 48 of 2006)

Art. 46. (1) (Amended, - SG, No. 100 of 1992, former text of Art. 46, No. 48 of 2006) State agencies and employers shall provide conditions for, and cooperate with, trade union organisations to further their activities. The former shall make available to the latter, for gratuitous use, real estate and movables, buildings, premises, and other facilities required for the performance of their functions.

(2) (New, - SG, No. 48 of 2006) An employer must assist to workers or employees' representatives in the implementation of their functions and create conditions for the implementation of their activities."

Remedy in case of redundancy

Labour Code

"Remedy in case of redundancy"

Art. 333. (Amended, - SG, No. 100 of 1992) (1) (Amended, - SG, No. 110 of 1999, in force as of 17.12.1999, No. 25 of 2001) In the cases under Article 328, para 1, items 2, 3, 5 and 11 and Article 330, para 2, item 6, an employer may dismiss subject to a prior consent of the labour inspectorate for each specific case:

.....

5. (New, - SG, No. 48 of 2006) Worker or employee who was selected as a representative of the workers or employees pursuant to the provisions of Art. 7, para. 2 and Art. 7a, for the time until he has such quality;

(3) (Amended, - SG, No. 110 of 1999, in force as of 17.12.1999, No. 25 of 2001) In the cases under Article 328, para 1, items 2, 3, 5 and 11, and Article 330, para 2, item 6, an employer may dismiss an employee who is a member of the enterprise trade union leadership belonging to a territorial, industrial 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 leadership of the respective trade union organisation.

The cited provisions show that the amendments to the Labour Code included a new item 5 inserted into Art. 333, para. 1, which stipulates the remedy in case of dismissal of a worker or employee who was selected to be a representative of workers or employees pursuant to the provisions of Art. 7, para. 2 and Art. 7a of the LC, for the time until he has such quality. The amendments to the legal regulations expanded the group of workers or employees who are entitled to remedy in case of dismissal.

The remedy in case of dismissal shall be enforced when the employer intends to terminate the employment contract of a representative on one of the grounds as stipulated in Art. 328, para. 1, items 2, 3, 5 and 11 and Art. 330, para. 2, i. 6 of the LC, namely:

Termination of an employment contract by the employer with notice

Art. 328. (Amended, - SG, No. 21 of 1990, No. 100 of 1992) (1) An employer may terminate a contract of employment by giving a notice in writing to the employee in observance of the terms of Article 326, para 2, in the following cases:

1. .....

2. Partial closing down of the enterprise or staff cuts;

3. Reduction of the volume of work;

4. .....

5. When an employee lacks the qualities for efficient work performance;

.....

11. When the requirements for the job have been changed and the employee does not qualify for it;

12. .....

Art. 330. .....(2) (Amended, - SG, No. 100 of 1992) An employer may terminate without notice an employment contract of an employee when:

.....

6. (former i. 6 - SG, No. 100 of 1992, former i. 5, No. 83 of 1998) In case of disciplinary dismissal of a worker or an employee."

In the above case of termination of an employment contract, the employer may dismiss a worker or an employee who was selected as a representative of workers or employees pursuant to the provisions of Art. 7, para. 2 and Art. 7a of the LC subject to the prior consent of the Labour Inspectorate. In case the employer has dismissed such representative without such prior consent or although he has requested a consent, it was not authorised, then the dismissal shall be illegal solely on these formal grounds. In this case, if the lawfulness of the dismissal is contested in court, Art. 344, para. 3 of the Labour Code, shall apply:

"Contestation of lawfulness of dismissal

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

1. Recognition of dismissal as unlawful and its repeal;

2. Reinstatement to his previous position;

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

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

(2) On his own initiative an employer may cancel an order of dismissal prior to the bringing of the action before the court by the employee.

(3) In cases where for dismissal a prior consent of the labour inspectorate or a trade union body is required, and no such consent has been asked for or given before the dismissal, the court shall cancel the order of dismissal as unlawful on these grounds only, without considering the merits of the labour dispute."

In November 2009, eight projects were agreed to be started in pursuance of an operation entitled 'Increase of flexibility and effectiveness of labour market through active action of social partners' under the *Development of Human Resources Operative Programme*

(DHROP). Beneficiaries to this programme are the Confederation of the Independent Trade Unions in Bulgaria, the Podkrepa Labour Confederation, the Association of Industrial Capital in Bulgaria, the Bulgarian Industrial Association, the Bulgarian Chamber of Commerce and Industry, the Union of Private Bulgarian Entrepreneurs "Vuzrazdane", the Confederation of Employers and Industrialists in Bulgaria, the Economic Initiative Union. Gratuitous financial aid is planned to be provided to nation-wide representative organisations targeting improving adaptivity of those employed to labour market in Bulgaria through collaborative action between social partners. MLSP will co-ordinate the implementation of activities under projects on a monthly basis.

The total budget of the operations is 71 223 672 BGN or 3 % from the budget of DHROP. Projects will be implemented from 2009 to 2013, involving activities limiting informal economy, introducing information systems on the labour market and increasing labour force efficiency, developing and applying measures for flexicurity on the labour market, developing industrial relations through innovation models.

Questions of the ECSR

The Committee takes note of the information provided in the Bulgarian report.

Protection of worker representatives

Article 333§3 in connection with Articles 328 and 330 of the Labour Code enumerates a number of particular cases in which trade union representatives may be dismissed subject to prior approval of the relevant trade union organisation like in the event of termination of the employer's business etc. The Committee understands that in all other cases dismissal of trade union representatives related to their mandate is unlawful and that protection against dismissal continues to apply for a period of six months following expiry of the trade union representative's mandate and asks the next report to confirm that this is actually the case.

The remedy under Art. 333, para. 3 of the LC (the provision has not been amended) is enforced in respect of a worker or an employee who is a member of a trade uinion management in an undertaking or of a territorial, sectoral or national managing elective body over the time when he occupies the respective trade union position and up to 6 months after he steps down from that position. The remedy in case of dismissal shall be enforced when the employer intends to terminate the employment contract of a representative on one of the grounds as stipulated in Art. 328, para. 1, items 2, 3, 5 and 11 and Art. 330, para. 2, i. 6 of the LC (as referred to hereinabove). In such cases of termination of an employment contract, the employer may dismiss a worker or an employee who was selected as a representative of workers or employees subject to the prior consent of the Labour Inspectorate. In case the employer has dismissed such representative without such prior consent or although he has requested a consent, it was not authorised, then the dismissal shall be illegal solely on these formal grounds. In this case, if the lawfulness of the dismissal is contested in court, Art. 344, para. 3 of the Labour Code.

Pursuant to Article 344 of the Labour Code, an employee may lodge a complaint with the competent court alleging that a dismissal was unlawful and may request reinstatement and compensation for the period he or she was not employed due to the unfair dismissal. According to Article 225§1 of the Labour Code, the compensation is calculated on the basis of the individual's gross income and is limited to a maximum of

six months' earnings. The Committee considered in its previous conclusions on Article 5 of the Revised Charter (Conclusions 2004 and 2006, Bulgaria) that where an unfair dismissal based on trade union membership has occurred, there must be adequate compensation proportionate to the damage suffered by the victim. In the particular case of termination of employment on the ground of trade union activities, it considered that the compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement. Since this is not the case in Bulgarian law, the Committee held that the situation is not in conformity with Article 5 of the Revised Charter and thus also finds the situation not to be in conformity with Article 28 of the Revised Charter.

Active provision of Art. 225, para. 1 of the LC:

"Art. 225**.** (As amended, - SG, No. 100 of 1992) (1) In case of unlawful dismissal the employee shall be entitled to a compensation by the employer in the amount of his gross labour remuneration for the period of unemployment caused by that dismissal, but not for more than six months."

Further to the Committee's conclusion that the size of the compensation for unemployment as a result of unlawful dismissal as referred to in Art. 225, para. 1 of the LC, is not adequate to the damage suffered, and as a consequence it is assumed that such situation is not in accordance with Art. 5 of ESC (r) and, therefore, it does not comply with Art. 28 of ESC (r), we provide the following information:

From March 2008 a new Code of Civil Procedure was enforced to rearrange a number of institutions of the Bulgarian civil procedure law, including the claim process. The principles on which it is generally founded are connected on early preclusion of proceeding terms, concentration of provided requests and evidence in first instance, a service principle expressed as a more active role of the court in the trial and all this leads to better standards of discipline of the parties and the court, to significant reduction of the periods of the judicial proceedings in civil law suit cases and to swifter solutions to civil disputes, respectively.

As to the labour disputes, apart from the already mentioned fundamental provisions, the new Code of Civil Procedure provides for their **obligatory** consideration pursuant to the provisions of summary proceeding, however the parties or the court not being entitled to choose whether to apply it or not. The very summary proceeding is carried out, generally speaking, within shorter, vs. the regular proceedings, terms, for instance the Court shall conduct an inspection of the validity of the bill of claim and of the admissibility of the claim as early as the day of lodging such a bill of claim; once the term for response by the defendant (one month), the court sets the hearing not later than three weeks, gives instructions to the parties, which must take a stand thereon and on the report on the case within one week. After the last session on the case, The court must within a two-week term announce its decision and the motives thereon. The same rules are enforced accordingly to the proceedings in a court of appeal. At the same time, the grounds for a cassation appeal are already such that the cassation instance should perform comprehensively its function to see to the exact and equal observance of laws by the inferior courts, and not to become a third instance on the merits of the dispute. For labour disputes, this means that in practice, the proceedings are two-instance, while to the third instance, i.e. to the cassation instance, labour disputes will arrive only in rare or exceptional cases, in so far as these have established and constant court practice.

All these changes mean that a labour dispute should have a definite decision within 6 months, provided the plaintiff shows integrity, observes procedural terms and his procedural behaviour

should address co-operation to the courts activity to achieve a fair decision within the terms provided by the law. Otherwise, he will harvest the unfavourable consequences as a result of dragging the case beyond that term associated only with non-receipt of a larger compensation . AND however, in both cases the duration of of the trial will be significantly reduced.

The Safe and Healthy Working Conditions Act provides for the participation of workers' representatives in working conditions committees or working conditions groups (see the conclusion under Article 22 of the Revised Charter). In reply to the Committee's question what protection is afforded to these representatives, the report refers to Section 30 of the said Act stipulating that they shall not have disadvantages because of their function or the actions carried out in their capacity as workers' representatives. The Committee asks for further information whether this includes protection against dismissal on the grounds of their capacity as workers' representatives and what are the applicable rules in this respect. The Committee notes from another source1 that on 1 July 2006, i.e. outside the reference period, a bill amending the Labour Code came into effect and it appears from the information provided in the report that the new legislation also includes rules on the protection of employee representatives elected by the general assembly of employees (see also the Committee's conclusion under Article 21 of the Revised Charter). The Committee asks the next report to provide information on the rules regarding the protection of employees' representatives under the new legislation. The Committee also observes that the aforementioned bill amending the Labour Code was, inter alia, supposed to implement Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees2 and the Committee asks the next report to specify what are the relevant rules on the protection of such representatives and the facilities accorded to them under the new legislation.

Law on Information and Consultation with Employees of Multinational (Community-Scale) Undertakings, Groups of Undertakings and Companies (promulgated in SG, No. 57 of 14.07.2006, in force from the date of enforcement of the Accession Treaty of the Republic of Bulgaria to the European Union - 1.01.2007)

This Law shall regulate the terms and procedure of the establishment and operation of a European Works Council or another procedure for informing and consulting of employees in multinational (Community-scale) undertakings and groups of undertakings and in defining their participation in the activities of the European company (SE) or the European Cooperative Society (SCE). The objective of this Law is to ensure the right to information and consultation of employees in multinational (Community-scale) undertakings, groups of undertakings, European companies (SE) or European Cooperative Societies (SCE) to participate in their management , and to ensure that their interests are represented by means of special bodies or by using a special procedure envisaged by the Law.

This Law introduces the provisions of Directive 94/45/EC of the Council on the terms and procedure of the establishment and operation of a European Works Council or another procedure for informing and consulting of employees in multinational (Community-scale) undertakings and groups of undertakings, Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.According to the requirements as referred to in Regulation 2157/2001/EC, each European company with seat in

Bulgaria shall establish a representative body of workers or employees.

Furthermore, the Committee asks for information on protection of employee representatives against prejudicial acts short of dismissal.

The workers or employees' representatives selected pursuant to the provisions of Art. 7, para. 2 and Art. 7a of the LC may seek protection from action harmful to them, however not reaching as far as discharge, pursuant to the provisions of Art. 357, para. 2 of the LC.

Labour Code

„Definition

Art. 357. (1) (Supplemented, - SG, No. 25 of 2001, former text of Art. 357, No. 48 of 2006) Labour disputes are the disputes between the worker or the employee and the employer regarding the incurrence, existence, execution and termination of employment relationships and disputes on execution of collective agreements and ascertaining length of service.

(2) (New, - SG, No. 48 of 2006) Moreover, labour disputes are the disputes between workers or employees' representatives as selected pursuant to the provisions of Art. 7, para. 2 and Art. 7a and the employer, in case their rights are violated.

Prescription

Art. 358. (Amended, - SG, No. 100 of 1992) (1) Claims to labour disputes shall be lodged within the following terms:

1. (amended, - SG, No. 48 of 2006) one month: for disputes on limited property liability of the worker or the employee, for cancellation of the disciplinary sanction 'reprimand' and in the cases under Art. 357, para. 2;

.....

(2) The terms under the precedent paragraph shall start to run:

1. .....

2. for other claims: as of the day when the entitlement which is the subject of the claim has become executable or may have been exerted. In the cases of cash receivables the recoverability shall be deemed to have incurred as on the day when a payment must have been made under the receivable, following the procedure as stipulated by the law.

(3) The term under para. 1 shall not be deemed to have been missed provided prior to its expiry, the bill of claim was lodged to an incompetent authority. In this case the bill of claim shall be retransferred to the court, by default.

Proceedings on labour cases, free of charge

Art. 359. (Amended, - SG, No. 25 of 2001) The proceedings on labour cases shall be free of charge for the workers or employees. They shall not pay any fees or charges for the proceedings, inclusive for the applications for enforced decisions on labour cases.

Jurisdiction

Art. 360. (1) Labour disputes shall be heard in courts. They shall be heard pursuant to the provisions of Civil Procedure Code unless that Code does not provide otherwise."

The above shows that in case of violation of the rights of workers or employees' representatives (action unfavourable to them, however not reaching as a far as dismissal) there is a labour dispute within the meaning of the law. In this case they shall be entitled to bring a claim to court within one month as of the day when the right subject of such claim becomes recoverable or might have been exerted. The provisions of Art. 357, para. 2 of the LC are enforced precisely in the cases when the employers carry out actions, by which they violate the rights of the representatives, however not reaching as a far as dismissal. As we stated hereinabove, in case of redundancy of a representative of the workers or employees the remedy, laid down in Art. 333, para. 1, i. 5 and Art. 333, para. 3 of the LC shall be enforced. The lawfulness of such redundancy shall be claimed pursuant to the provisions of Art. 344 of the LC, and the term to bring the claim to court shall be 2 months as of the day of termination of the employment relationship.

Facilities for worker representatives

The Committee noted in its previous conclusion on Article 5 of the Revised Charter (ibid.) that trade union representatives were granted paid time off to enable them to pursue their union activities and undergo any associated training and found the situation to be in conformity with the Revised Charter.

1. Website of the European Foundation for the Improvement of Living and Working Conditions (www.eiro.eurofound.eu.int).

2. Official Journal L254 of 30 September 1994, pp. 64-72.

As regards the facilities granted to trade union representatives with a view to enabling them to carry out their functions, the Committee noted from the comments submitted by the Confederation of Independent Trade Unions (CITUB) with respect to the previous report on Article 5 of the Revised Charter that in practice in companies where there are representative trade unions, they are not always able to hold meetings on company premises, or have only restricted access. The Committee reiterates its question whether access to the workplace and meetings on the premises are authorised in practice for all unions in all companies. As far as the working conditions committees or working conditions groups established in accordance with the provisions of the Safe and Healthy Working Conditions Act are concerned, the said Act stipulates that an employer shall provide the necessary conditions and means for the workers' representatives to exercise their rights and functions as well as paid time off from work for the related training and the Committee again asks how the said provisions are implemented in practice.

The Committee asks what are the facilities accorded to workers' representatives other than trade union representatives.

Provisions applicable referring to provision of appropriate conditions for implementation of workers or employees representative's functions:

Labour Code

"Cooperation to Further the Activities trade union organisations and those of workers or employees' representatives (Title amended, - SG, No. 100 of 1992, No. 48 of 2006)

Art. 46. (1) (Amended, - SG, No. 100 of 1992, former text of Art. 46, No. 48 of 2006) State agencies and employers shall provide conditions for, and cooperate with, trade union organisations to further their activities. The former shall make available to the latter, for gratuitous use, real estate and movables, buildings, premises, and other facilities required for the performance of their functions.

(2) (New, - SG, No. 48 of 2006) An employer must co-operate with the workers or employees' representatives to the end of performing their functions and provide conditions for the implementation of their activities.

Rights and liabilities of workers or employees' representatives

Art. 7c. (New - SG, No. 48 of 2006) (1) The workers or employees' representatives shall be entitled to:

.....

5. access to all workplaces in the undertaking or the division."

Provisions applicable referring the control on the compliance with labour legislation (when obstructing the implementation of workers or employees representatives' functions):

Liabilities of supervising agencies

Art. 403. (1) The controlling bodies shall have the following obligations:
1. to keep secret all classified and confidential information that has come to their knowledge in the course of exercising control, and not to use such information in business activities of their own;
2. to keep secret the source of information about violation of labour legislation;.

.....

Coercive administrative measures

Art. 404. (1) (Amended, - SG, No. 108 of 2008) For prevention and termination of violations of labour legislation, as well as for prevention and elimination of damages resulting there from, the General Labour Inspectorate and its bodies, as well as the bodies under Articles 400 and 401, by their own initiative or by proposal of the trade union organisations, may apply the following coercive administrative measures:

1. (Supplemented, - SG, No. 57 of 2006) to issue mandatory instructions to employers and officials for elimination of violations of labour legislation, including their obligations with respect to social and community services for employees, and to the liabilities за information and consultation with workers or employees under this Code and under the Law on Information and Consultation with Employees of Multinational (Community-Scale) Undertakings, Groups of Undertakings and Companies, as well as for elimination of flaws in providing safe and healthy working environment;

.....

4. (amended, - SG, No. 108 of 2008) to cancel the implementation of unlawful decisions or orders of employers and officials;

.....

(2) Should the mandatory instruction under subparagraph 1 of the preceding paragraph refer to elimination of violations of labour legislation, it may be issued upon request of an employee prior to bringing an action before the court; after the action has been brought the issue may be settled only by the court.

.....

Notifying function of trade union organisations

Art. 406. (1) Trade union organisations shall have the power to notify controlling bodies about violations of labour legislation, and to demand enforcement of administrative sanctions against the offenders.

(2) (New – SG, No. 25/2001) In pursuance of their functions under paragraph (1) the representatives of trade union organisations shall be entitled to:

1. visit at any time the enterprises and other locations where work is done, as well as the premises used by the employees;

2. demand from the employer explanations and provision of the required information and documents;

3. obtain information directly from the employees on all issues concerning compliance with the labour legislation.

(3) (New – SG, No. 25/2001) In pursuance of their notifying function the representatives of trade union organisations shall be bound to comply to the requirements of Article 403, paragraph (1).

(4) The controlling bodies shall be obliged to inform the trade union organisations within one month of the measures undertaken."

The cited provisions show that employers must co-operate in the implementation of trade union organisations' activities and in those of workers or employees' representatives, including they must provide access to workplaces and opportunities to conduct meetings in the premises of the undertaking. "Employer" within the meaning of the Labour Code (§ 1, i. 1 of the additional provisions of the Labour Code) shall be each natural person, legal person or his division, as well as any other organisationally or economically isolated unit (an undertaking, institution, organisation, co-operative, economic unit, establishment, household, company and the like), which independently hires workers or employees under employment relationship, and "undertaking" (§ 1, i. 2 of the additional provisions of the Labour Code) shall mean each place: an undertaking, institution, organisation, co-operative, establishment, site and the like where wage labour is performed. The provisions на the Labour Code are applicable to all employers and their undertakings. Employers have the above liabilities both in respect of trade union organisations and their representatives, and to workers or employees' representatives who are not trade unions representatives. Each worker or employee, including in his quality as a representative of workers or employees, shall be entitled to notify the supervising agencies about violation of labour legislation. Coercive administrative measures under Art. 404 of the LC may be imposed by supervising agencies both on proposals from trade union organisations, and by request of a worker or employee, including in his quality as a representative. The notifying function of trade union organisations under Art. 406 of the LC

is quite specific. This function is used by the trade union organisations to support the supervising agencies in their endeavour to comply with labour legislation, as the rights under para. 2 give them the opportunity to collect trustworthy information.

When their right are violated the workers or employees' representatives shall be entitled to refer to the court in case where there is a labour dispute within the meaning of Art. 357, para. 2 of the LC.

The legal provisions ensure an opportunity for swift and efficient implementation of workers or employees representatives' functions and guarantee their rights to seek collaboration from the competent authority in case of obstructions or violations by the employers.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 28 of the Revised Charter on the ground that the legislation applicable during the reference period does not provide for adequate protection in the event of an unlawful dismissal based on the employee's status or activities as a trade union representative.

See above quoted information in the report.

Scope of the provision as interpreted by the ECSR

This provision guarantees the right of workers' representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognizes a similar right in respect of trade union representatives.

The term "workers' representatives" means persons who are recognized as such under national legislation or practice.

Protection should cover the prohibition of dismissal on the ground of being a workers' representative and the protection against detriment in employment other than dismissal.

The facilities to be provided may include for example paid time off to represent workers, financial contributions to the workers' council, the use of premises and materials for the operation of the workers' council, etc.

Article 29 – The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Appendix to Articles 28 and 29

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

Information to be submitted

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

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

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

The State Gazette, No. 48 of 13.06.2006 promulgated the Law Amending the Labour Code (LALC), in force as of 01.07.2006. LALC was drafted in relation to the commitments assumed by the Republic of Bulgaria in the process of its accession to the European Union. This law

This law is the final mark in the process of transposition of the EC directives in the area of labour legislation and removes some inaccuracies in the said transposition of the EC directives, including Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.

LALC amends Art. 130a and i. 9 of § 1 of the Additional provisions and inserts a new i. 4 in Art. 414. The purpose of the amendments is to improve the procedure and the method for providing information and holding consultations in the cases when the employer plans to make collective dismissal. The opportunity is regulated of the representatives of trade union organisations and of workers or employees to notify the General Labour Inspectorate Executive Agency of non-compliance with the labour legislation, in case the employer fails to comply with his liability to provide information and hold consultations. Moreover, some amendments and supplements to the Employment Promotion Act are provided for.

Information and consultation in the cases of collective dismissal shall be carried out with the representatives of trade union organisations and with workers or employees' representatives under Art. 7, para. 2 of the LC. The procedure and the method of carrying out such consultations shall be specified by all three parties (i.e., the employer, the representatives of

trade union organisations and the workers or employees' representatives under Art. 7, para. 2 of the LC) subject to an agreement between them.

It is employer's liability to provide all legally required information and start relevant consultations.

Changes made after 01.07.2006:

- prior to 01.07.2006 information was provided only by provided criteria for selection of workers or employees to be dismissed while **after 01.07.2006 –** information is to be provided on specific indices for application of selection all criteria under Art. 329 of the LC;

- there is a new liability to supply information on any compensations owed relative to dismissals;

The liability of the employer to supply information **will not depend on** the circumstances whether he or another legal entity has taken the decision resulting in mass redundancies;

Term to start the consultations – timely but not later than 45 days prior to mass dismissals;

in case of non-feasance of the liability of the employer to supply information - the representatives of trade union organisations and the workers or employees' representatives under Art. 7, para. 2 of the LC shall be entitled to notify the General Labour Inspectorate Executive Agency;

- within three working days the latest upon such supply of information - the employer must send a copy thereof to the relevant division of the Employment Agency (EA);

- the representatives of trade union organisations and the workers or employees' representatives under Art. 7, para. 2 may send the relevant EA division an opinion on the information supplied relative to planned mass redundancies;

- the employers may not make mass dismissals prior to the elapse of 30 days upon the notification to EA notwithstanding the notice periods.

Liability of the employer to supply information pursuant to the provisions of Art. 24 of the Employment Promotion Act:

- a separate notification procedure under the Employment Promotion Act;

- employer's liability under the Employment Promotion Act shall be subsequent to his notification liability under the Labour Code – not later than 30 days prior to the date of dismissals;

- the notification to EA under the Employment Promotion Act shall contain almost the same information as that under the Labour Code, however it shall additionally contain information on prior consultations carried out with the representatives of trade union organisations and the workers or employees' representatives under Art. 7, para. 2 of the LC, i.e. on the results thereof;

- the employer must send a copy of the notification to EA, to the representatives of trade union organisations and to the workers or employees' representatives under Art. 7, para. 2 of the LC – within three working days the latest.

The Labour Code and the Employment Promotion Act regulate two separate notification procedures. These shall be carried out between different subjects and will have different timing. What is common between them is the introduced mechanism of sending notification copies to relevant authorities.

A common goal of the procedures established is to prevent or limit mass dismissals and to outline some preparatory measures.

Provisions applicable on mass dismissals (Labour Code, Employment Promotion Act, Regulations for Application of the Employment Promotion Act):

Labour Code

"Chapter six (Amended, - SG, No. 100 of 1992)

FUNDAMENTAL LIABILITIES OF THE PARTIES TO AN EMPLOYMENT RELATIONSHIP Section II (New - SG, No. 48 of 2006)

General rules on information and consultation. Right to information and consultations in case of collective dismissal

Art. 130a. (New - SG, No. 25 of 2001, amended, No. 52 of 2004, No. 48 of 2006) (1) When the employer intends to undertake mass redundancies, he must start consultations with the representatives of trade union organisations and with the workers or employees' representatives under Art. 7, para. 2 timely but not later than 45 days prior to launching them and make efforts to achieve an agreement with them to avoid or limit mass dismissals and to mitigate the consequences thereof. The procedure and the method for holding consultations shall be specified by the employer, the representatives of trade union organisations and the workers or employees' representatives under Art. 7, para. 2.

(2) notwithstanding whether the employer or another legal entity has taken the decision resulting in mass redundancies, the employer must prior to the start of the consultations under para. 1 supply information in writing to the representatives of trade union organisations and to the workers or employees' representatives under Art. 7, para. 2 on:

1. the reasons for planned dismissals;

2. the number of workers or employees to be dismissed and the basic economic activities, groups of occupations and positions which these refer to;

3. the number of employed workers or employees from the basic economic activities, groups of occupations and positions in the undertaking;

4. specific indices for application of all selection criteria under Art. 329 of workers or employees to be dismissed;

5. the period when such dismissals are to be carried out;

6. compensations owed relative to dismissals.

(3) Upon such supply of information under para. 2, within three working days the employer must send a copy thereof to the relevant division of the Employment Agency.

(4) The representatives of trade union organisations and the workers or employees' representatives under Art. 7, para. 2 may send to the relevant division of the Employment Agency an opinion on the supplied information concerning planned mass redundancies.

(5) In case of non-feasance of the liability of the employer under para. 2 the representatives of trade union organisations and the workers or employees' representatives under Art. 7, para. 2 shall be entitled to notify the General Labour Inspectorate Executive Agency on non-compliance with the labour legislation.

(6) For non-feasance of his liability under para. 1, the employer may not refer to the circumstances that it has been another body which has taken the decision for mass redundancies.

(7) Planned mass redundancies shall be carried out not sooner than 30 days as of the notification to the Employment Agency notwithstanding the notice periods.

Chapter nineteen

Supervision on the compliance with the labour legislation and administrative penalty liability for violation thereof

Section II

Administrative penalty liability for violations of labour legislation

Liability for violations of the other provisions of the labour legislation

Art. 414. (Amended, - SG, No. 100 of 1992, No. 2 of 1996, No. 25 of 2001, No. 120 of 2002) .....

(4) (New, - SG, No. 48 of 2006) Employer who violates the provisions of Art. 130a, para. 1 and 2, Art. 130b, para. 1 and 2 and Art. 130c, para. 1 and 2, shall be penalised by penalty or fine from 1500 to 5000 BGN, and a guilty official, shall be penalised by fine of 250 to 1000 BGN, for each violation."

Employment Promotion Act

"Chapter five

Information procedure in the case of mass redundancies

Art. 24. (1) (Supplemented, - SG, No. 26 of 2003, amended, No. 52 of 2004, No. 48 of 2006) Any employer shall notify in writing the competent division of the National Employment Agency and the workers' representatives at the enterprise of any contemplated collective dismissals not later than 30 days prior to the dismissal date.

(2) (Amended, - SG, No. 26 of 2003) The division of the National Employment Agency shall transmit copies of the notification referred to in Paragraph (1) to:

1. the municipality administration;

2. the local division на National Social Security Institute;

3. the local division на General Labour Inspectorate Executive Agency.

(3) (Amended, - SG, No. 52 of 2004, No. 48 of 2006)

, as well as regarding the advance consultations held with the workers' representatives

The notification referred to in Paragraph (1) must include all the relevant information regarding the contemplated collective dismissals, particularly: the reasons thereof; the number of workers or employees to be dismissed, and the basic economic activities, groups of occupations and positions these refer to; the number of employed workers or employees by basic economic activities, groups of occupations and positions in the undertaking; specific indices for application of all selection criteria applicable to workers or employees under Art. 329 of the Labour Code to be dismissed; the period when such dismissals will be made, and information on the advance consultations held with the representatives of trade union organisations and with workers or employees' representatives under Art. 7, para. 2 of the Labour Code,.

(4) (New, - SG, No. 48 of 2006) An employer must provide to the representatives of trade union organisations and to the workers or employees' representatives under Art. 7, para. 2 of the Labour Code, a copy of the notification under para. 1 within three working days the latest.

Art. 25**.** (1) Upon the receipt of the notification under Art. 24, teams shall be set up consisting of a representative of the employer, representatives of the organisations of workers or employees in the undertaking, a representative of the Division of the Employment Agency and a representative of the municipality administration.

(2) The teams under para. 1 shall draft projects for relevant measures referring:

1. employment placement intermediation;

2. (amended, - SG, No. 26 of 2008) training for adults;

3. own business start-up;

4. alternative employment programmes.

(3) (Amended, - SG, No. 26 of 2008) The drafts covered under Paragraph (2) shall be submitted for approval to the Employment Commission, with applications for financing submitted on the basis of the said drafts under terms and according to a procedure established by the Regulations for Application of this Act.

Chapter nine

Control and Administrative Penalty Liability

Section II

Administrative Penalty Liability

Art. 83. (Amended, - SG, No. 26 of 2003) An employer, who or which shall undertake a collective dismissal without advance notification and prior to the lapse of the period under Article 24 (1) herein, will be liable to a fine or a pecuniary penalty to the amount of BGN 200 for each person dismissed."

Regulations for Application of the Employment Promotion Act:

"Chapter six

Information procedure in the case of mass redundancies

Art. 18. (1) (Amended, - SG, No. 60 of 2008, in force as of 4.07.2008) For the purposes of certifying a planned collective dismissal, the employer shall, *inter alia*, lodge with the Labour Agency Directorate, a notification under Art. 24 of the Employment Promotion Act and a decision by a management body or another competent authority, and a valid certificate of business registration or specify his united business identity number.

(2) An employer may provide to the Labour Agency Directorate an application stating his need of training for personnel planned to retain their employment in the undertaking.

Art. 19. (1) The teams under Art. 25, para. 1 of the Employment Promotion Act shall be set up by initiative of the employer, the representatives of the organisations of workers or employees in the undertaking or the Director of the Labour Agency Directorate and shall act during the period as of the lodging of the notification through to the end of the collective dismissal.

(2) The teams under para. 1:

1. (amended, - SG, No. 60 of 2008, in force as of 4.07.2008) shall study the intermediation needs of workers or employees for employment placement and training and shall collaborate with the relevant Labour Agency Directorate in employment services provision;

2. jointly with the relevant Labour Agency Directorate, shall specify the types of services and ensure conditions for providing thereof in the undertaking;

3. make out schedules and terms when workers or employees will use Employment Agency's intermediation services;

4. (amended, - SG, No. 60 of 2008, in force as of 4.07.2008) put forward projects for training bound to employment placement opportunities;

5. (amended, - SG, No. 60 of 2008, in force as of 4.07.2008) co-operate with workers or employees for their inclusion in appropriate trainings to retain employment or provide other jobs;

6. direct workers or employees to vacant workplaces, and consult them on the existing opportunities to start their own businesses or inclusion in other alternative forms of employment.

(3) The alternative employment programmes shall be developed pursuant to the provisions of Art. 24 on proposals of the employer, the representatives of the organisations of workers or employees and the Employment Agency on the grounds of already studied market niches, isolating separate parts of the undertaking, or implementation of branch programmes, etc."

Furthermore, the following programmes/projects are implemented:

<u>New Employment Opportunity National Programme</u>

The main goal of the Programme is setting limits to unemployment and providing new employment placement to dismissed individuals registered with the Labour Agency Directorate left jobless as a result of the economic crisis.

The direct goals of this Programme are:

1. Prevention from periods in the labour market of persons made redundant as a result of the economic crisis, restructuring, starting insolvency procedure or liquidation of undertakings by inclusion into training for adults and providing employment placement, including starting their own businesses.

2. Prevention of deskilling, loss of skills and work habits and improvement of knowledge, skills and qualifications through acquiring a new profession and key skills. Retaining and improving labour force's competitiveness.

Own Business: Change of Profession Project

This project is aimed at overcoming employment problems related to structural changes in tobacco production and tobacco processing. Particularly critical are the problems in cigarette factories where collective redundancies took place. Shumen and Blagoevgrad cigarette factories face redundancies which is the case of all other tobacco processing units. The number of redundancies is expected to exceed 3 000 workers or employees who, in their majority, have been in the sector for more than 30 years. A great majority of those people (72%) are strictly specialised, having specific qualified skills and not having sufficient knowledge or skills to be successful on the labour markets. Those redundancies are accompanied with agreements according to which all workers or employees made redundant will have sufficient funds to start their own businesses, however, they lack needed qualifications or skills to be successful in such activities.

Tobacco growers are also part of the project, as beneficiaries. They were affected by the reduced tobacco production, while their practical skills prove to be insufficient for them to be redirected to other activities. Timely qualifications of those people is imperative and the goal is that they must be provided with a second chance on the labour market throughout the regions where the project will be implemented. In their majority, tobacco growers belong to ethnic minorities and have primary education levels. In part of the regions within the project scope unemployment levels exceed the average for the country.

Questions of the ECSR

The Committee notes the information provided in Bulgaria's report.

The Committee previously deferred its conclusion under Article 29 of the Revised Charter pending information on new legislation (Conclusions 2003).

Definition and Scope

According to the most recent amendments to the Labour Code where an employer intends to implement collective redundancies he is obliged to inform and start negotiations with representatives of the respective trade unions at least 45 days prior to implementing the dismissals. The Committee asks how "collective redundancies" are defined in Bulgarian law.

According to Labour Code - § 1.9 „Mass dismissals" shall mean dismissals on one or more grounds made at the discretion of the employer, inclusive on grounds unrelated to a specific worker or employee whenever the number of dismissals is:

a) at least 10 in undertakings where the payroll list of those employed in the month preceding the collective dismissal is more than 20 and less than 100 workers or employees for a period of 30 days;

b) at least 10 per cent of the workers or employees in undertakings where the payroll list of those employed the month preceding the collective dismissal is at least 100, yet not more than 300 workers or employees for a period of 30 days;

c) at least 30 in undertakings, where the payroll list of those employed the month preceding the collective dismissal, is at least 300 or more workers or employees for a period of 30 days;

d) at least 20 in undertakings irrespective of the number of workers or employees for a period of 90 days.

When in the periods as referred to in letters (a)–(c) the employer has dismissed at least 5 workers or employees, each subsequent termination of employment relationship made at the discretion of the employer, inclusive on grounds unrelated to a specific worker or employee, shall be taken into account when calculating the number of dismissals as referred to in letters (a)–(c);

According to Art. 130 of the Labour Code, in case of non-feasance the liabilities of the employer the representatives of trade union organisations and of workers or employees in the undertaking shall be entitled to notify the authorities of the General Labour Inspectorate Executive Agency on non-compliance with the labour legislation. Therefore, the Committee inquires what the sanctions are which the General Labour Inspectorate Executive Agency may impose.

Information and Consultation

The employer is obliged to make efforts to reach an agreement with the trade unions in order to avoid or limit the extend of the redundancies and their consequences. The employer must provide in writing information regarding the reasons for the redundancies, the number of workers to be dismissed, the main activities, occupations concerned, the criteria to be followed in selecting those to be made redundant, the period during which the redundancies are to be made and the compensation to be made to the workers (section 130 of the Labour Code). The employer is also obliged to provide the above-mentioned information to the National Employment Agency at least 30 days prior to the proposed dismissals (section 24 of the Employment Protection Act), which then notified the Labour Inspectorate. Subsequently the National Employment Agency unit concerned, the employer, employee representatives as well as representatives from the local municipality form a task force in order to draft measures in order to seek alternative employment for the workers concerned. These drafts are then presented to the regional employment commission (section 25 of the Employment Promotion Act).

Sanctions and preventative measures

Where an employer fails to properly discharge his obligations under Section 130 of the Labour Code, the trade union and worker representatives concerned may complain to the Labour Inspectorate. The Committee asks in this respect what sanctions the Labour Inspectorate may impose. It recalls its case law in this respect: "Consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to

ensure that they are not put into effect before the consultation requirement is met. Provision must be made for sanctions after the event, and these must be effective, i.e. sufficiently deterrent for employers. The right of individual employees to contest the lawfulness of their dismissal is examined under Article 24 of the Charter"17.

It asks that the next report provide full information on the consequences of an employer failing to fulfill his obligations

Conclusion

Pending receipt of the information requested the Committee defers its conclusion

Labour Code

"Coercive administrative measures

Art. 404. (1) (Amended, - SG, No. 108 of 2008) For prevention and termination of violations of labour legislation, as well as for prevention and elimination of damages resulting there from, the General Labour Inspectorate and its bodies, as well as the bodies under Articles 400 and 401, by their own initiative or by proposal of the trade union organisations, may apply the following coercive administrative measures:

1. (Supplemented, - SG, No. 57 of 2006) give obligatory instructions to the employers and officials as to elimination of the violations of the labour legislation, including as to their liabilities concerning social servicing of workers or employees and as to their liabilities concerning informing and consulting with workers or employees on matters relative to this Code and to the Law on Information and Consultation with Employees of Multinational (Community-Scale) Undertakings, Groups of Undertakings and Companies and as to the elimination of deficiencies regarding the provision of health and safety conditions;

2. (amended, - SG, No. 108 of 2008) halt commissioning of buildings, plant, industrial shops and sites unless all rules regarding health and safety conditions and social servicing are complied with;

3. to halt the operation of enterprises, production lines and projects, including construction or overhaul thereof, as well as machines, facilities and work stations, whenever the violation of the regulations for healthy and safe working environment are hazardous to the life and health of people;

4. (amended, - SG, No. 108 of 2008) to cancel the implementation of unlawful decisions or orders of employers and officials;

5. (Supplemented, - SG, No. 108 of 2008) suspend from work employees who are not familiar with the regulations for healthy and safe work environment and do not have proper qualifications, or workers or employees who have not completed 18 years of age or those who have been divested of their job permits under Art. 302, para. 2 and Art. 303, para. 3;

6. (New, - SG, No. 25 of 2001) give instructions for introduction of special regime of safe work in the case of serious and immediate hazard for the life and health of the employees, where it is not possible to apply sub-paragraph 3;

7. (New, - SG, No. 25 of 2001) halt operations on the work site or the operation of the enterprise in the event of repeated violation of Article 62, paragraph (1), till elimination of the offence;

8. (New, - SG, No. 108 of 2008) give mandatory instructions to employers and officials on elimination of a violation related to accrual in the payrolls of a sum lesser that the sum that the employer has paid to the worker or the employee for a job completed by him; in case the prescription has not been implemented within the term as designated therein or in case of further violation, the supervising agencies of the Labour Inspectorate may halt the activities of the undertaking until the violation has been eliminated.

(2) Should the mandatory instruction under subparagraph 1 of the preceding paragraph refer to elimination of violations of labour legislation, it may be issued upon request of an employee prior to bringing an action before the court; after the action has been brought the issue may be settled only by the court.

(3) Whenever pursuant to the preceding paragraph on the same issue there are both a mandatory instruction and an effective court ruling which contradict, the ruling of the court shall be valid.

(4) (New, - SG, No. 108 of 2008) Where coercive administrative measures are applied, the supervising agencies of the Labour Inspectorate do not incur liability for damage caused.

Section II

Administrative penalty liability for violations of labour legislation

Types of administrative penalties

Art. 412a. (New - SG, No. 108 of 2008) The following types of administrative penalties shall be imposed for violations of labour legislation:

1. fines - for natural persons;

2. penalty - for legal entities and sole proprietors.

Liability for Violation of Normative Requirements for Safe and Healthy Conditions of Work (Title amended, - SG, No. 25 of 2001)

Art. 413. (Amended, - SG, No. 100 of 1992, No. 2 of 1996, No. 25 of 2001) (1) (Amended, - SG, No. 108 of 2008) A person who violates the regulations for provision of a safe and healthy work environment shall be fined to the amount of BGN 100 to 500, unless liable to a heavier sanction.

(2) (Amended, - SG, No. 48 of 2006, No. 108 of 2008) An employer or official who fails to perform his obligations to provide a safe and healthy work environment, unless liable to a heavier sanction, shall be penalised by penalty or fine from 10 000 to 15 000 BGN, and a guilty official, unless liable to a heavier sanction, shall be penalised by fine of 2500 to 10 000 BGN (3) For repeated violations the penalties shall be:

1. (amended, - SG, No. 108 of 2008) under para. 1 - a fine of 500 to 1000 BGN;

2. (amended, - SG, No. 48 of 2006, No. 108 of 2008) under para. 2 - penalty or a fine of 20 000 to 30 000 BGN, and, a fine of 5000 to 20 000 BGN, respectively

Liability for Violation of Other Provisions of Labour Legislation

Art. 414. (Amended, - SG, No. 100 of 1992, No. 2 of 1996, No. 25 of 2001, No. 120 of 2002) (1) (Amended, - SG, No. 48 of 2006, No. 108 of 2008) Employer violates the provisions of

labour legislation beyond the rules for ensuring safe and healthy conditions of work, unless liable to a heavier sanction, shall be penalised by penalty or fine from 10 000 to 15 000 BGN, and a guilty official, unless liable to a heavier sanction, shall be penalised by fine of 2500 to 10 000 BGN

(2) (Amended, - SG, No. 48 of 2006, No. 108 of 2008) For a repeat violation under para. 1 the sanction shall be penalty or fine of 20 000 to 30 000 BGN, and, respectively, fine of 5000 to 20 000 BGN

(3) (Amended, - SG, No. 48 of 2006, No. 108 of 2008) Employer who violates the provisions of Art. 62, para. 1 or 3 and Art. 63, para. 1 or 2, shall be penalised by penalty or fine from 15000 BGN, and a guilty official – shall be penalised by a fine amounting to 10 000 BGN for each violation.

(4) (New, - SG, No. 48 of 2006) An employer who violates the provisions of Art. 130a, para. 1 and 2, Art. 130b, para. 1 and 2 and Art. 130c, para. 1 and 2, shall be penalised by penalty or fine from 1500 to 5000 BGN, and a guilty official, shall be penalised by fine of 250 to 1000 BGN for each violation.

Liability for Implementing Instructions and Obstructing Controlling Bodies

Art. 415. (Amended, - SG, No. 100 of 1992, No. 2 of 1996, No. 124 of 1997) (1) (Amended, - SG, No. 25 of 2001, No. 108 of 2008) A person who fails to implement a mandatory instruction of controlling bodies for observation of the labour legislation, shall be fined to the amount of 2500 to 10 000 BGN

(2) (Amended, - SG, No. 25 of 2001, No. 48 of 2006, No. 108 of 2008) An employer or an official who unlawfully obstructs controlling bodies for observation of labour legislation in implementing their duties, shall be penalised by penalty or fine of 20 000 BGN unless liable to a heavier sanction, and a guilty official, shall be penalised by fine of 10 000 BGN, unless liable to a heavier sanction.

Liability for paying property sanctions and fines under penal injunctions

Art. 415a. (New - SG, No. 108 of 2008) Employer, official or worker or employee must, within one month as of the date of enforcement of the penal injunction, pay the imposed penalty or fine.

Liability for paying property sanctions and fines under penal injunctions

Art. 415b. (New - SG, No. 108 of 2008) An employer, official or worker or employee who, within one month as of the date of enforcement of the penal injunction, fails to pay the imposed penalty or fine, shall owe interest amounting to the base interest rate of the Bulgarian National Bank for the period plus 20 points.

Liability for minor violation

Art. 415c. (New - SG, No. 108 of 2008) For violation that may be remedied forthwith upon it has been established, according to the terms as laid down in this Code, and which has not entailed any harmful consequences for workers or employees, the guilty person shall be penalised by fine or penalty from 50 to 100 BGN Agreement in the administrative punitive proceedings

Art. 415d. (New - SG, No. 108 of 2008) (1) Until the issue of the penal injunction, but not later than 30 days as of the draft of the formal notes establishing an administrative violation, the administrative punitive body and the offender may reach an agreement, unless in the cases when the offence is a crime.

(2) The Agreement shall be drafted in writing and contain the consent на the administrative punitive body and the offender to the following issues:

1. whether the offence has been done, whether the offence has been done by the offender, whether the offence has been done guiltily and whether the offence is an administrative violation; 2. what was the type and the size of the sanction.

(3) The agreement may not determine:

1. sanction of a type that us different from the type as stipulated by the law for the specific administrative violation;

2. amount of the fine or of property sanction lower than the minimum as stipulated by the law for the specific administrative violation.

(4) The Agreement shall be signed by the administrative punitive body and the offender or by his explicitly authorised representative.

(5) Within 14 days as of the agreement signing, the executive director of the General Labour Inspectorate Executive Agency or an official with due powers as given to him by the former shall issue an authorisation.

(6) The Agreement shall be accepted if:

1. the legal requirements have been met;

2. the fine or penalty as determined thereby has either been paid or secured to the supervisory body's account.

(7) The decision under para. 5 shall not be subject of appeal.

(8) The Agreement shall be enforced as of the date of its approval. The Agreement has the effect of an enforced penal injunction.

(9) In case the agreement is not approved, the administrative punitive body shall issue a penal injunction.

Employment Promotion Act

"Art. 78**.** (1) The General Labour Inspectorate Executive Agency may apply the following coercive administrative measures:

1. (amended, - SG, No. 26 of 2008) issue mandatory prescriptions to employers and officials, local persons who have enrolled commissioned workers or employees from EU Member States, or commissioned workers or employees from third countries, as well as to persons under Art. 27, para. 2, i. 2 for cessation of violations under this Act;

2. to stay the execution of unlawful decisions or orders of an employer or official in the sphere of employment under this Act.

(2) (Supplemented, - SG, No. 26 of 2003) The coercive administrative measures covered under Paragraph (1) shall be appealable according to the procedure established by the Administrative Procedure Code, but an appeal shall not stay the execution of any such measures.

Section II

Administrative penalty liability

Art. 79**.** (1) (Amended, - SG, No. 26 of 2003, No. 26 of 2008) Any natural person and/or legal person, who or which shall fail to act on a mandatory prescription by the control authorities under Item 1 of Article 78 (1) herein, will be liable to a fine or a pecuniary penalty, as the case may be, to the amount of 500 to 1500 BGN or, in the case of a repeated violation, from 1000 to 3000 BGN

(2) (Amended, - SG, No. 26 of 2008) Any employer, official, unemployed person or natural person, as well as local persons who have enrolled commissioned workers or employees from EU Member States, or commissioned workers or employees from third countries, as well as to persons under Art. 27, para. 2, i. 2, who shall unlawfully obstruct the discharge of the official duties of control authorities, will be liable to a fine or a pecuniary penalty, as the case may be, to an amount from 500 BGN or exceeding this amount but not exceeding 1500 BGN, unless liable to a heavier sanction.

(3) (New, - SG, No. 26 of 2003) Any official or employer, who or which shall fail to comply with a coercive administrative measure under Art. 78, para. 1, i. 2 of the supervising agencies under this law, will be liable to a fine or a pecuniary penalty, as the case may be, to an amount not exceeding 1000 BGN, and for each subsequent incompliance, to 2000 BGN

(4) (New, - SG, No. 26 of 2003) Any official, who shall fail to terminate the registration of an unemployed person provided that the grounds under Article 20 (3) and (4) herein exist, will be liable to a fine of BGN 200 or exceeding this amount but not exceeding BGN 500.

Art. 80**.** (Rep. - SG, No. 81 of 2004).

Art. 81**.** (1) (Amended, - SG, No. 26 of 2003) Any natural and/or legal person practising job placement intermediation and providing intermediation services without registration will be liable to a fine or a pecuniary penalty, as the case may be, to the amount of BGN 5,000, to a fine or a pecuniary penalty of BGN 5,000 or exceeding this amount but not exceeding BGN 10,000 for a second violation, and to a fine or a pecuniary penalty of BGN 10,000 or exceeding this amount but not exceeding BGN 20,000 for any further violation.

(2) (Amended, - SG, No. 26 of 2003, No. 26 of 2008) Any natural person and/or legal person practising job placement intermediation and providing intermediation services in breach of the requirements for performance of the said activity will be liable to a fine or a pecuniary penalty, as the case may be, to an amount not exceeding BGN 2,500 and, for a repeated violation, to an amount not exceeding BGN 5,000.

Art. 82**.** (Amended, - SG, No. 26 of 2003, suppl., No. 18 of 2006, amended, No. 26 of 2008) (1) Any employer, who or which shall hire under an employment relationship a foreigner without a work permit, or any local person, who or which shall appoint a seconded foreigner without a work permit or without registration at the National Employment Agency, as well as any foreigner, who shall perform work without a work permit, will be liable to a fine or a

pecuniary penalty to an amount fixed under Article 48 of the Foreigners in the Republic of Bulgaria Act, unless subject to a severer sanction.

(2) Any local person who have enrolled commissioned workers or employees from EU Member States, or from the countries that are parties to the European Economic Area Agreement, or from the Swiss Confederation, or workers or employees from third countries, who shall not observe the terms and conditions for commissioning workers or employees from EU Member States, or from the countries that are parties to the European Economic Area Agreement, or from the Swiss Confederation, or for allowing commissioned workers or employees from third countries within the provision of services, will be liable to a fine or a pecuniary penalty, as the case may be, to an amount of 5000 BGN, and, for a repeated violation, to an amount from 5000 BGN or exceeding this amount but not exceeding 10 000 BGN.

Art. 83**.** (Amended, - SG, No. 26 of 2003) Any employer, who or which shall undertake a collective dismissal without advance notification and prior to the lapse of the period under Article 24 (1) herein, will be liable to a fine or a pecuniary penalty to the amount of BGN 200 for each person dismissed.

Art. 84. (Amended, - SG, No. 26 of 2008) Employers, unemployed persons, Penalty Enforcement Directorate General and/or its local units, licensed institutions handling vocational orientation matters, persons under Art. 48a, as well as training institutions, which fail to use properly the target financing provided to them under chapters six and seven, will be liable to a fine or a pecuniary penalty, as the case may be, to an amount from 1000 BGN or exceeding this amount but not exceeding 3000 BGN, and for a repeated violation, from BGN 2000 or exceeding this amount but not exceeding 6000 BGN

Art. 85. (1) Violations shall be ascertained by written statements drawn up by the State control authorities.

(2) Penal injunctions shall be issued by the head of the competent control authority of by officials authorized thereby in conformity with the institutional affiliation of the persons who have drawn up the formal notes.

(3) The ascertainment of violations, the issuance, appeal and execution of penalty decrees shall follow the procedure established by the Administrative Violations and Sanctions Act.

(4) The proceeds from fines and pecuniary penalties as imposed shall be administrated by the Ministry of Labour and Social Policy.

Art. 86. Upon ascertainment of any violations of the law which give reason to believe that a criminal offence has been committed, the control authorities shall forthwith notify the Prosecutor's Office."

Furthermore, we provide some information from:

<u>2006 Report by the General Labour Inspectorate Executive Agency</u>

In 2006 like in 2005, seeking administrative punitive liability from persons who violate regulatory provisions was one of the forms of active impact on such persons and a method to coerce them observe the requirements of the legal regulations.

Administrative punitive liability was sought from persons who fail to implement timely all given prescriptions and who periodically commit the same violations, who deliberately evade

legal regulations stipulating employing, using and dismissing labour force and who obstruct the implementation of the legal powers of the inspectors.

A total of 11216 formal notes were taken for ascertained administrative violations versus 9757 for 2005.

As to the violations of labour legislation, administrative punitive liability was sought more often from employers, officials and clerks in undertakings falling within the scope of the following economic activities: *Manufacture of textile and textile products, excluding garments*, *Manufacture of processed leathers without hair*; *manufacture of travel accessories*, *saddleware and footwear*, *Manufacture of garments, including leather; treatment of furs*, *Coal mining and peat industry*, *Civil construction*, *Manufacture of vehicle excluding automobiles* and *Activities of households as employers of home personnel*.

Seeking administrative punitive liability was less often in the undertakings falling within the scope of the following economic activities: *Financial brokerage excluding insurance and social security using independent funds*, *Water collection, purification and distribution*, *Manufacture of coke, refined oil products and nuclear fuel* and *State governance and defence; compulsory social security*.

For violating the standards in the area of health and safety conditions, administrative punitive liability who have committed such violations was most often sought in undertakings falling within the scope of the following economic activities: *Activities of households as employers of home personnel*, *Civil construction*, *Manufacture of vehicle excluding automobiles* and *Collection and treatment of waste materials, purification and recovery*, and less often in *Financial brokerage excluding insurance and social security using independent funds*, *Water collection, purification and distribution*, *Manufacture of tobacco products*, *Manufacture of coke, refined oil products and nuclear fuel* and *State governance and defence; compulsory social security*.

Formal notes taken

For violations of the standards in the area of employment relationships administrative punitive liability was most often sought from the persons who have committed such violations in undertakings falling within the scope of the following economic activities: *Coal mining and peat industry*, *Metal ore extraction*, *Manufacture of food stuff and beverages*, *Manufacture of textile and textile products, excluding garments*, *Manufacture of processed leathers without hair*; *manufacture of travel accessories*, *saddleware and footwear*, *Manufacture of products from other non-metal mineral raw materials*, *Manufacture of machines, equipment and home appliances*, *Manufacture of radio, TV and telecommunication equipment*, *Manufacture of medical, precision and optical apparatus and tools; manufacture of watches", Manufacture of automobiles, trailers and semitrailers*" and „*Manufacture of vehicle excluding automobiles*.

In 2006, administrative punitive liability was most often sought from the offenders versus 2005 by nearly all Regional Labour Inspection Directorates. Most often Formal Notes for Administrative Infringements were taken by Regional Labour Inspection Directorates in Gabrovo, Varna, Kyustendil, Plovdiv, Razgrad, Dobrich and Shumen.

Regarding finicality during the reference year versus 2005, there was significant improvement in the performance of Regional Labour Inspection Directorates in Lovech, Stara Zagora, Pernik, Kardzhali, Sliven, Sofia Region, Smolyan, Gabrovo Kyustendil and Targovishte.

Against the ascertained 993 unfulfilled prescriptions, 1067 formal notes were taken. 10092 penal injunctions were handed over within the legal term.

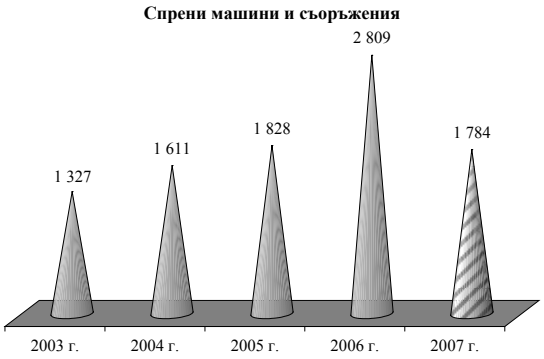
1636 penal injunctions were appealed, of which 1135 were acknowledged, 218 were cancelled and 283 are expecting court decisions. 9783 penal injunctions was the total number of enforced for the year amounting the fines to a total of BGN 4 421 260, versus BGN 3 621 799 for 2005, i.e. by 799461 BGN more. The average amount per fine in 2006 was equal to BGN 451,93, versus 446,25 BGN in 2005.

2007 Report by the General Labour Inspectorate Executive Agency

Undertaken coercive administrative measures

For the elimination of the reported violations in 2007, a total of 188520 coercive administrative measures was imposed, of which on the grounds of the Labour Code 187857 No. and on the grounds of the Employment Promotion Act – 663 No.

On the grounds of Art. 404, para. 1 i. 1 of the Labour Code, were given 185393 obligatory instructions for elimination of the violations ascertained during the inspections.



The operation was stopped of 1784 machines and plant until the violation has been eliminated ascertained during the inspection, which put in danger lives and health of those employed.

The most stopped machines and plant were found in undertakings falling within the scope of the following economic activities: *Civil construction* – 361, *Manufacture of garments* – 254, *Manufacture of processed leathers without hair*; *manufacture of travel accessories*, *saddleware and footwear* – 196, *Manufacture of food stuff and beverages* – 159, *Agriculture and game-preserve* – 78 No. and *Manufacture of metal products, excluding machines and equipment* – 75 No.

In 68 cases, prescription was issued to introduce a special safety work regime, as there was direct hazard for the lives and health of those employed, however, for technological reasons the coercive measure 'stay' was inapplicable.

The results from the inspections show that the special regime introduced quite often lasts too long, while no measures are undertaken to eliminate pending danger for those employed.

Over the year 2006 persons were temporarily removed from office, as they were not familiarised with the rules for health and safety conditions or did not have appropriate capacity. Furthermore, some minors employed without the authorisation of the Regional Labour Inspection Directorates were removed.

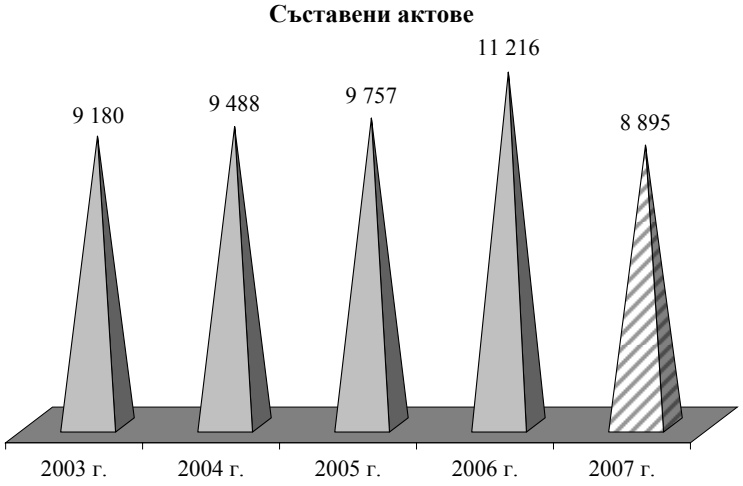
The most removed persons were within the scope of the following economic activities: *Manufacture of* c*hemical products* and *Civil construction*.

On the grounds of Art. 405a of the Labour Code, 399 enactments were issued to formalise employment relationships with persons who, during the inspections, were found to have been employed without employment contracts.

Administrative punitive liability sought

Administrative punitive liability was sought from persons who periodically commit the same violations, who deliberately evade legal regulations stipulating employing, using and dismissing labour force and who obstruct the implementation of the legal powers of the the labour inspectors.

In 2007, 8895 formal notes were taken for administrative violations.



For violations of labour legislation by employers, officials and legal entities and contractors, the most formal notes were taken in the following economic activities: *Civil construction* – 2159, *Hotels and restaurants* – 1126, *Manufacture of garments, including leather; treatment of furs* – 825, *Retail trade, excluding retail trade in automobiles and motorcycles; repairs of personal belongings and household goods* – 810., *Manufacture of food stuff and beverages* – 521, *Land transport, including pipeline* – 355 and *Agriculture and game-preserve and related services* – 267.

Administrative punitive liability was less often to be sought in the undertakings falling within the scope of the following economic activities: *Manufacture of coke, refined oil products and nuclear fuel*, *Water transport*, *Air transport*, *Scientific research and development*, *Manufacture of radio, TV and telecommunication equipment*, *Supplementary activities in finance brokerage* and *House holds with hired home personnel*.

Of all 8895 formal notes, 5046, or 56,7 % were taken for violations of standards regulating the implementation of the Law on Health and Safety at Work.

The most formal notes for violating such regulations were taken in following economic activities: *Civil construction* – 1807, *Retail trade, excluding retail trade in automobiles and motorcycles; repairs of personal belongings and household goods* – 351, *Hotels and restaurants* – 308, *Manufacture of garments, including leather; treatment of furs* – 298 and *Manufacture of food stuff and beverages* – 233.

The formal notes taken for violations of standards ensuring the implementation of health and safety at work are distributed as follows:

for reported violations of regulations ensuring the implementation of compliance with the Law on Health and Safety at Work – 2795 or 55,4 % from all formal notes regulating the implementation of the Law on Health and Safety at Work;

for reported violations labour hygiene standards – 1591;

for reported violations safety standards applicable to operational equipment and technological processes – 660.

For violations of standards regulating employment relationships, a total of 3641 formal notes were taken.

Most often, administrative punitive liability was sought from persons who have committed such violations in the undertakings falling within the scope of the following economic activities: *Hotels and restaurants* – 801, *Manufacture of garments, including leather; treatment of furs* – 518, *Retail trade, excluding retail trade in automobiles and motorcycles; repairs of personal belongings and household goods* – 446, *Civil construction* – 345, and *Manufacture of food stuff and beverages* – 285.

For violations of provisions as laid down by the Employment Promotion Act, 143 formal notes were taken and for obstructing the supervising agencies – 65.

For violating the regulations protecting the labour of minors 167 formal notes were taken, of which 139 formal notes were taken for minors hired without the authorisation from the Regional Labour Inspection Directorates.

Scope of the provision as interpreted by the ECSR

Workers' representatives have the right to be informed and consulted in good time by employers planning to make collective redundancies. The collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity.

Consultation procedures must take place in good time, before the redundancies. The purpose of the consultation procedure, which must cover at least the "ways and means" of avoiding collective redundancies or limiting their occurrence and support measures.

Consultation rights must be accompanied by guarantees that they can be exercised in practice

For a list of selected other international instruments in the same field, see Appendix.

The national organisations to which copies of the report have been communicated in accordance Article 23 of the Charter are the following:

The Confederation of the Independent Trade Unions in Bulgaria;
The Confederation of Labour - Podkrepa;
The Bulgarian Industrial Capital Association
Bulgarian Industrial Association - Union of Bulgarian Business
Bulgarian Union of Private Bulgarian Entrepreneurs - Vazrazdane
The Bulgarian Chamber of Commerce and Industry:
Confederation of the Employers and Industrialists in Bulgaria.
The Union for Private Enterprise

Notes to the Eighth National Report of the Confederation of Independent Trade Unions in Bulgaria (CITUB) on the use of texts from The European Social Charter (revised)

Under Article 5

Yet the right to organize is not sufficiently guaranteed in practice. There are many cases of impeding by the employers the creation of new trade union organizations, but it should be noted, that after the accession of Bulgaria to the European Union, the actions of the employers are increasingly underhand and indirect, so it is difficult a clear statistics to be made. People are manipulated by more sophisticated means to refuse to be organized. Moreover, in many cases they are still afraid of the reaction of the employers, as there is mistrust to the state institutions and the opportunities for protection of illegal dismissals or other actions for pressure by the employers. In the "shadow economy" the pressure continues to be brute and there it is impossible to be formed trade union organisations.

In some of the enterprises is still very difficult to carry out trade union activities - access to jobs, organizing meetings. In many cases, especially in the newly formed trade union organizations, they do not have any resources - facilities, technical equipment and others. For the external trade union representatives is also difficult, often impossible, to gain access to jobs in companies, where there are no trade unions, including and in companies outside the "shadow economy".

In respect to the civil servants – the lack of an explicit right to collective bargaining and negotiations in law, in practice negates their trade union activity.

Article 6 - Right to conclude collective labour agreements.

Article 6, paragraph 2

CITUB once again wants to emphasize, that considers the implementation of Article 6, paragraph 2, as unsatisfactory. The Law for the Civil Servant (in force from 27.08.1999, SG 67/27. 07. 1999, amend. SG 102/19 .12. 2006), which deals with the union association of the civil servants, including collective labour bargaining in the public sector, still does not contain provisions enabling the effective exercise of this right of the civil servants. The lack of legal regulation, concerning the conclusion of collective labour agreements for a specific category of employees – the public ones, (according to the Law for the Civil Servant), unless that it is inconsistent with Article 6, paragraph 1, supposition 2 of the European Social Charter (Revised), also violates the equal treatment, the equal rights of all categories of employees, in which way it is not in accordance with the Convention № 98 of the ILO for the Right to Organize and Collective Bargaining Convention, 1949 (ratified by the Republic of Bulgaria, SG 19 of 1959), which applies to all "workers", not dividing them into groups and even less, it does not regulate explicitly the civil servants in separate categories, as well as with the International Covenant on Civil and Political Rights - Part III, Art. 22, paragraph 1. In the Republic of Bulgaria By the Law for the Civil Servant is restricted the right of the trade union organizations, of which the civil servants are members, to maintain collective bargaining for conclusion of collective agreements and thus results in narrowing the scope of the constitutional right of association, of the actions and functions of the trade union organizations. This is obvious from **Art. 44, paragraph 3 of the Law for the Civil Servant**. According to it, the trade union organizations represent and protect the interests of civil servants before the government authorities on the issues of official and insurance relations by means of suggestions, requests and participation in project preparation of internal rules and regulations, that relate to the official relations. However, a text does not indicate collective

bargaining as the main instrument of a trade union action and a mechanism for representation and protection of rights and interests.

We consider, that the adopted legislative solution, by excluding the possibility of achieving a collective agreement for the civil servants, ultimately limits the constitutional and internationally recognized and accepted by the Bulgarian State right of organizing in trade union organizations. To make this finding, we accept that the right to collective bargaining, as well as the right to strike, are immanent to the right of association, i.e. they are contained in the right of association in trade union organizations.

As the right of conclusion of collective labour agreement for the civil servants is not governed by the Law for the Civil Servant, the Republic of Bulgaria, actually, does not comply with commitments, undertaken:

1. Under Article A, paragraph 1 of the Charter, for the reason that the law on ratification of the European Social Charter (revised) has obliged to consider Part I of the ESC (including Article 6, Part I), as a declaration for the purposes, which will follow by all appropriate means of national and international character.

The possible appropriate means by which the Republic of Bulgaria could fulfill its commitment, is precisely through introduction of legal provisions in the Law for the Civil Servant, by which the right under Article 6 of the ESC to be arranged.

2. Under art. 6, paragraph 1 and paragraph 2 of Part II of the ESC (revised) to ensure "the effective exercise of the right to bargain collectively" and "to promote .... the creation of an appropriate machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view the regulation of terms and conditions of employment to be settled by means of collective agreements".

In practice through the legislative way a part of the public employees, those whose relationships are governed by the Law for the Civil Servants, are deprived of the right to collective bargaining.

Legal regulation of the collective bargaining for public employees is necessary, for the reason that the legislative inactivity of the state power puts the public employees at a disadvantage compared to the ability to negotiate better working conditions and social benefits in collective agreements, compared to the statutory in the country.

Considering thus stated grounds, we accept that the waiver of the right of collective bargaining for civil servants goes beyond the recognized by the ESC (revised) rights for all workers and employees. At the same time the state has provided no other effective compensatory mechanism for protection of the labour and social interests and rights of civil servants, thus placing them at a disadvantage, compared with other workers and employees.

Under Article 21 / 1 /

Bulgaria has transposed all EU directives on information and consultation, but the legislative framework needs to be improved, especially the Law on informing and consulting of workers and employees in multinational enterprises, enterprise groups and European companies. In this law the texts of the directives are carried over verbatim and without the necessary mechanisms of adaptation, corresponding to the Bulgarian conditions, which complicates the implementation of the rights on informing and consulting in practice. Moreover, the recent changes in EU Directive 94/45 on European Works' Councils are not reflected.

In the Labour Code could be made certain amendments to facilitate the right of the hired workers to delegate to the trade union structures to represent them in the process of informing and consulting. According to the current legislation for that it is required a general

meeting / meetings of representatives, and also could be done through subscription and other mechanisms.

It is necessary to be regulated the rights of representation of employees in organizations with fewer than 50 employees, as well as the rights of representation on information and consultation of the civil servants.

Under Article 21 / 2 /

The rights on information and consultation are not sufficiently promoted and the hired workers are not acquainted with them. Not a small part of the employers do not know them as well. Only the trade unions have carried out information campaigns.

Under Article 21 / 3 /

In practical terms, due to lack of information the rights on information and consultation are not carried out sufficiently. According to the information of the CITUB in no more than 200 enterprises with 50 or more employees, in which exist trade union organizations, special systems for information and consultation by electing representatives of the general meetings / meetings of proxies, have been established. In another part of the enterprises in which exist trade union organizations, the rights on information and consultation have been delegated to their structures, but no accurate statistics on their number are available.

There are no statistics on the enterprises without trade unions, but there is data of established systems for informing and consulting available only for some subsidiaries of multinational companies. In the organizations with less than 50 employees most often there are no forms of representation, for the reason that there are rarely trade union structures.

According to the information of the CITUB in over 25 subsidiaries of multinational companies representatives on European Works' Councils have been elected / including in several enterprises, where there are no trade unions/, but they are no more than half of the units, belonging to companies in which European Works Councils are established. Currently, in the rest there is no initiative by the workers, by the trade unions or by the employers. There are also elected representatives in the respective representative bodies of 3 European companies / trade associations, that have subsidiaries in Bulgaria.

In particular cases, even if the employed in the subsidiaries have trade unions, there are attempts by the employers to interfere in determining the representatives in the European Works' Councils. In two of the cases, this interference is overcome, after helping by the members themselves of the European Works' Councils and the representatives of the European trade union structures. In enterprises without trade unions, however, such intervention is difficult to overcome and it is possible for the employer to push "his own" representative in the European Works' Councils /or Representative body for the European trade companies. For such a case there is an unofficial information for the insurance companies, in which there are no trade unions.

Overall, there are cases of violations of information rights, particularly after the beginning of the financial crisis impact. Not a few employers, including also of multinational companies, refuse information, including information that is directly related to labour relations and does not affect company's secrets, being particularly strict this information not to reach "external" trade union representatives, i.e. to representatives of field/branch federations and centrals.

Article 29 - Right to information and advice in mass redundancy.

We suggest to be added, that a change has occurred in the definition of the concept "a mass dismissal" with the recent amendments to the Labour Code, effective since 28.02.2010.

Although these changes have taken place after the reference period, we insist that they should be pointed out in the report.

Comments of the Government:

On Articles 5 & 6

See the information on pages 76-79 and 65.

We would like to add that since the end of 2009 to the scope of the Working group dealing with the right of strike was added to right to prepare proposals for amendments of the legislation on the collective bargaining of civil servants.

On Article 21 of the European Social Charter

Article 21 of the European Social Charter establishes the right to information and consultation to workers or their representatives to be exercised in accordance with national law and practice.

The requirements under Directive 94/45/EC on the establishment of an European Works Council have been introduced by the Act on Information and Consultation of Factory and Office Workers in Community-Scale Undertakings, Groups of Undertakings and European Companies, Workers and Employees in Community-Scale Undertakings or in Controlling Undertaking Located in Bulgaria and Employees and Workers in Branch of a community-scale Undertaking or in a Group of Undertakings Located in the Republic of Bulgaria (Act on Information and Consultation). The amendment of this Directive with Directive 2009/38/EC should be introduced into the Bulgarian legislation until 6.06.2011. It should be noted that neither the European Social Charter nor the two directives create the requirement that the representation of employees and workers in the exercise of this right should be realized through the trade unions. Rules that are created at European level are aimed at achieving representativeness. These are the relevant standards in the Bulgarian law.

The possibility of representation to delegation is established by Article 5, paragraph 3 of the Act on Information and Consultation whereby a decision of the General Assembly the functions of representatives of employees and workers in the special negotiating body and in the European Works Council shall be provided, ie to be assigned and executed by representatives appointed by the leaders of the trade unions. Such a possibility has been established in Article 7, paragraph 2 of the Labor Code with respect to information and consultation in the national undertakings.

The statutory mechanism for the selection of representatives of employees and workers by a General Assembly in Bulgaria is in force from about two - three years, which is a quite short period to evaluate the effectiveness of the implementation of the relevant provisions. Overall, it could be concluded that in accordance with the introduced European-level requirements, the Bulgarian law has given the framework in which to be placed the bilateral social dialogue in different cases of information and consultation.

Requirement for the application of rules for informing and consulting to companies with 50 or more employees in one member – state is in accordance with Article 3 of Directive 2002/14/EC and has been introduced in the Bulgarian Labor Code in due form. The necessity

to be regulated the rights of the representation of workers in organizations with less than 50 employees is questionable insofar as any legislative solution is a result of reasonable compromise between the interests of the employers and the workers .

The information on the application of the Act on Information and Consultation is neither supported by statistics, nor the different cases of violation are specified. In this sense they could be considered as observations on which CITUB could make proposals to bring forward to discussion with other social partners and the state as a regulator.