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EUROPEAN SOCIAL CHARTER

11th National Report on the implementation of

the European Social Charter

submitted by

THE GOVERNMENT OF LITHUANIA

Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29
for the period 01/01/2013 - 31/12/2016

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CYCLE 2018

FIFTEENTH REPORT OF THE REPUBLIC OF LITHUANIA

ON ARTICLES WHICH BELONG TO THIRD GROUP "LABOUR RIGHTS"
(2, 4, 5, 6, 21, 22, 26, 28, 29)
OF EUROPEAN SOCIAL CHARTER

Reference period: 2013.01.01 - 2016.12.31

Vilnius
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ACRONYMS USED IN THE REPORT:

LC − Labour Code of the Republic of Lithuania
The New Labour Code – revised Labour Code of the Republic of Lithuania (adopted on 14 September 2016) No XII-2603) that came into force on 1 July 2017
LITEKO − Lithuanian courts information system
AW – average wage
MMW − Minimum Monthly Wage
SLI − State Labour Inspectorate under the Ministry of Social Security and Labour of the Republic of Lithuania
CAO – Code of Administrative Offences of the Republic of Lithuania
CC – Criminal Code of the Republic of Lithuania

Article 2§1

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;

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 2§1 of the Charter on the ground that for some categories of workers a working day of up to 24 hours can be allowed.

Responses to the questions and conclusions of the European Committee of Social Rights

Governmental Resolution No 587 of 14 of May 2003 has not been abolished during the reference period. It means that list of categories of employees which are allowed to work 24 hours per day remained. However, this Governmental Resolution was abolished on 01/07/2017 when new Labour Code of the Republic of Lithuania (hereinafter – the Labour Code) entered into force. Since 01/07/2017 there is no list of categories of employees who may work 24 hours per working day.

The New Labour Code which came into force on 1 July 2017 (hereinafter – the New Labour Code) establishes **special working time arrangements for on-call work**. According to the Article 118 of the New Labour Code:

1. Where the employee performs his work duty by being on call (active on-call duty), the length of the working day/shift may not exceed twenty four hours and the employee's working time norm during the maximum accounting period of three months.
2. Where the employee is obliged to be at the place specified by the employer, ready to perform his function as necessary (passive on-call duty), length of the working day/shift may be up to twenty four hours but may not exceed the employee's working time norm during the maximum accounting period of two months. In such a case, the employee shall be afforded the opportunity to rest and to eat at his workplace.
3. The employee who performs either active or passive on-call duty shall be provided with appropriate conditions for eating and having a rest. Summary working time recording rules shall apply to such employees' working time arrangements and working time recording.
4. The employee's being out of the place of his employment but ready to take certain actions or to present himself to the place of employment if necessary during his normal rest period (passive on-call duty at home) shall not be deemed to be working time except for the time when specific action has been actually taken. Such being on-call shall not last longer than one week during uninterruptedly during a period of four weeks. Such passive on-call work shall be stipulated in the employment contract and the employee shall be paid an allowance in the amount of at least twenty percent of the average monthly salary for each week of on-call duty at a place other than the place of employment. Actions actually taken shall be paid as for the working time actually worked but for no more than sixty hours per week. A person may not be appointed to perform a passive on-call duty at home on a day on which he has already worked at least eleven hours in succession without interruption.
5. Persons under eighteen years of age shall not be appointed to perform a passive on-call duty and a passive on-call duty at home. Pregnant employees, employees who have recently given birth,

breast-feeding employees, an employee raising a child under fourteen years of age or a disabled child under eighteen years of age, a person caring for a disabled person, or a disabled person for whom passive on-call duty and passive on-call duty at home have not been prohibited by a conclusion issued by the Disability and Ability-for-Work Assessment Service under the Ministry of Social Security and Labour may only be appointed to perform the passive on-call duty and the passive on-call duty at home subject to their consent.

Article 114 of the New Labour Code sets up **maximum working time requirements**. According to this Article, the working time arrangement shall meet the following maximum working time requirements:
1) an average working time, including overtime, but excluding the work under the arrangement for extra work, during each period of seven days shall not exceed forty eight hours.
2) the working time including overtime and work under an agreement on additional working time may not exceed twelve hours (excluding lunch break) and sixty hours in each seven-day period;
3) the special working time arrangements set in the Republic of Lithuania Law on Safety and Health at Work for night workers, pregnant women, new mothers, breast-feeding women and persons under eighteen years of age;
4) the employee may not work more than six days during a period of seven consecutive days;

According to the Article 122 of the New Labour Code, working time arrangement shall not violate the following **minimum rest period requirements**:
- the length of a daily uninterrupted rest period between working days/shifts shall be no shorter than eleven hours in succession, and the employee shall be provided with at least thirty-five hour period of uninterrupted rest during any period of seven consecutive days. Where the length of the employee's working day/shift exceeds twelve hours but is no longer than twenty four hours, the length of the uninterrupted rest period between working days/shifts shall be at least twenty four hours;
- where on-call work lasts for twenty four hours, the rest period shall be at least twenty four hours.

The previous report of the Government contained explanations about the attempt to set a shorter limit for on-call time, however, organisations representing both the employers and the employees disagreed with this proposal: the Ministry of Social Security and Labour had drawn up a draft law on the amendment of respective articles of the Labour Code of the Republic of Lithuania and on 10 June 2013 submitted it to the institutions and organisations that participate in the activities of the Tripartite Council of the Republic of Lithuania as well as to other stakeholders for harmonization. The draft law offered to establish that the duration of on-call time at the premises of certain categories' employees (health care, guardianship (curatorship), children-rearing/education, energy, specialized communication services and specialized emergency services as well as other services operating at a continuous on-call mode) and of persons on duty/watchers would be *up to sixteen hours a day instead of twenty-four hours a day.* This regulation would take into consideration the conclusions provided by the Governmental Committee of the European Social Charter.

Article 2§2

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake: 2. to provide for public holidays with pay;

The Committee asks what remuneration applies when work on public holiday is scheduled. It also asks the next report to clarify what compensation applies when another rest day is granted, more specifically whether the worker receives, in addition to the additional paid rest day, a pay for the work performed on the public holiday.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Lithuania is in conformity with Article 2§2 of the Charter.

Responses to the questions and conclusions of the European Committee of Social Rights

According to the Article 194 of the Labour Code that was valid untill 1 July 2017, the pay for work on public holiday when this work was sheduled had to be paid at least at the double rate. In this case employee had no right to choose alterantive types of compensation.

The Article 144 of the New Labour Code regulates payment for work on days-off and holidays and for overtime as well as compensations for workers engaged in mobile jobs or jobs related to travelling or driving. It states, that the employee shall receive for work on a day-off that has not been set in the work/shift schedule as well as on a holiday a pay of at least two times the employee‘s wage. For overtime on a day-off that has not been set in the work/shift schedule or overtime at night, the employee shall receive a pay that is at least double the employee‘s wage, and for overtime on a holiday the employee shall receive a pay of at least two-and-a-half times the employee‘s wage. At the employee‘s request, the working time on a day-off or on a holiday or the overtime may be added to the annual leave.

Referring to the explanation provided by the State Labour Inspectorate, the given provision of the new Labour Code should be interpreted by implementing the principle of flexibility and the right of conclusion of an agreement between the employee and the employer on the alternative form of compensation by giving an employee rest days and by paying for them double rate (giving two paid days off). The systematic interpretation of the provisions of the Labour Code implies the imperative application of the practice where work on holidays and rest periods is remunerated by paying the double tariff, therefore, should an employee choose and the employer agree on an alternative form of compensation for work on holidays and rest days according to the procedure laid down in Article 144 of the Labour Code (where paid rest days are preferred), an employee shall be given two rest days which shall then be added to his/her annual leave.

Article 2§3

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake: 3. to provide for a minimum of two weeks’ annual holiday with pay;

The Article 126 New Labour Code that entered into force from 1 July 2017 stipulates that employees are entitled to at least 20 working days (for those who work five days per week) or at least 24 working days (for those who work six days per week) of annual leave. If the number of working days per week is less or different, the employee must be granted leave of no less than four weeks. Leave is calculated in terms of working days. Holidays shall not be included in the length of

leave. Longer leave may be established by employment contracts, collective agreements or labour law provisions.
The right to take annual leave in parts (or to receive monetary compensation therefor in the case established by this Code) shall arise when the employee becomes entitled to at least one working day's leave. The working year that annual leave is granted for shall begin on the day that the employee begins working under the employment contract.
According to the Article 128 of the New Labour Code, annual leave must be granted at least once per working year. At least one part of the annual leave must be at least 10 working days or at least 12 working days (for those who work six days per week), and where the number of working days per week is less or different, the part of the leave may not be shorter than two weeks.

Article 2§6

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

The Article 44 of the New Labour Code regulates **the notification of working conditions.** Before the beginning of work, the employer must provide an employee with the following information:
1) the full name of the employer, code, registered office address (in case of a natural person - forename, surname, personal identification number or, where the latter is unavailable, the date of birth and permanent place of residence);
2) the place of the performance of the work function. If an employee does not have a place of the performance of the main work function or it is not permanent, it shall be indicated that the employee works in several places and the address of the place of employment from which the employee receives instructions.
3) the type of the employment contract;
4) the characteristic or description of the work function or the title of the work (position or duties, profession, speciality) and, where established, its hierarchical and/or qualification or complexity level (degree);
5) the beginning of work;
6) the planned end of work (in case of a fixed-term employment contract);
7) the duration of annual leave;
8) the notice period, when the employment contract is terminated on the initiative of the employer or employee;
9) the remuneration and its components; the time limits and procedure for payment of the remuneration;
10) the established duration of the working day or working week of the employee;
11) information about the collective agreements valid in the enterprise, with indication of the procedure for familiarisation with those agreements.

In case of changes of the working conditions, the employee, in accordance with the same procedure, shall provide information about the changes of the working conditions applicable to the employee before their entry into force. These requirements do not need to apply to employees the period of whose employment contract is shorter than one month.

Article 4§1

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

The Committee points out that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be no lower than the minimum threshold, which is set at 50% of the net average wage. This is the case when the net minimum wage is more than 60% of the net average wage. When the net minimum wage is between 50% and 60% of the net average wage, it is for the state to establish whether this wage is sufficient to ensure a decent standard of living.The Committee asks for information in the next report on the minimum pay calculated using the basic amount of the official wage. It also asks for information, where possible with examples, on the remuneration for civil servants and contractual staff in the civil service governed by the Civil Service Act of 8 July 1999 (No. VIII-1316) and the Remuneration of Politicians and State Representatives Act of 29 August 2000 (No. VIII-1904).

Conclusion
The Committee concludes that the situation in Lithuania is not in conformity with Article 4§1 of the Charter on the ground that the minimum wage applied to private sector workers does not ensure a decent standard of living.

Responses to the questions and conclusions of the European Committee of Social Rights

The Article 141 of the New Labour Code sets up **the requirements for the minimum wage**. It states that the wage of the employee per month shall not be lower than the minimum wage set according to a procedure specified in this Article. The minimum wage (the minimum hourly wage or the minimum salary) shall mean the lowest permissible remuneration to an employee for unqualified work for an hour or for the working time norm of a calendar month. Work for which no special requirements in terms of qualifications, skills or professional competence are set shall be deemed to be unqualified work. The minimum hourly wage and the minimum monthly salary shall be approved by the Government of the Republic of Lithuania upon recommendation of the Tripartite Council of the Republic of Lithuania and having regard to the indicators and trends of development of the national economy. The Tripartite Council of the Republic of Lithuania shall present its conclusion to the Government of the Republic of Lithuania on an annual basis, by 15 June or any other date as requested by the Government of the Republic of Lithuania. Collective agreements may stipulate levels of the minimum hourly wage and the minimum monthly salary that are higher than those set under paragraph 3 of this Article.

Change of the minimum wage (minimum hourly rate and minimum monthly wage) since 2013

Applied as of	Minimum monthly wage	Minimum hourly rate
0-01-2013	LTL 1,000	LTL 6,06
10-01-2014	LTL 1,035 (EUR 299.76)	LTL 6.27 (EUR 1.82)
01-01-2015	EUR 300	EUR 1.82
01-07-2015	EUR 325	EUR 1.97
01-01-2016	EUR 350	EUR 2.13
01-07-2016	EUR 380	EUR 2.32
01-01-2018	EUR 400	EUR 2.45

In accordance with the Law of the Republic of Lithuania on Payment to Employees of State and Municipal Institutions, the lowest basic salary of qualified staff (with up to 2 years of experience) amounts to EUR 391.5, meanwhile, the lowest basic salary paid to non-qualified staff is equal to the minimum monthly salary.
In accordance with the Republic of Lithuania Law on Payment to State Politicians and Public Officials, the lowest basic salary amounts to EUR 914.

Article 4§2

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

The Committee requested to receive more detailed information regarding the notion of "competence to give binding instructions to employees in a position of subordination", a category, which, it noted, was much wider than that of senior officials. The Committee notes that the report does not provide this information. It only states that Article 151 of the Labour Code defines the exceptional cases of permitted overtime work. However, it does not provide any further details which would establish that the administrative officials in the meaning of Article 150 of the Labour Code correspond to the category of workers for whom exceptions to the right to an increased remuneration are permitted under Article 4§2 of the Charter.

Conclusion
The Committee concludes that the situation in Lithuania is not in conformity with Article 4§2 of the Charter on the ground that it has not been established that the exception to the right to increased remuneration applies only to senior officials and management executives.

Responses to the questions and conclusions of the European Committee of Social Rights

According to the Paragrahp 6 of the Article 144 of the New Labour Code, work performed by a single-handed management body of a legal person on days-off and holidays as well as night work and overtime work shall be recorded but not paid unless the parties have agreed otherwise in the

employment contract. Work performed by management staff of a legal entity (Article 101 (3) and (4) of this Code) on days-off and holidays as well as night work and overtime work shall be recorded and paid for as for work performed under a usual working time arrangement unless the parties have agreed otherwise in the employment contract. Such management staff of a legal entity may not account for more than twenty percent of the average number of employees of an enterprise, institution or another organisation. The list of such management staff shall be prescribed by labour law provisions.

It should be noted that, according to the Paragraphs 3 and 4 of the Article 101 of the New Labour Code, employment contracts shall be concluded with heads of divisions (branches and representative offices) of a legal person. Employment contracts shall be concluded with the managerial employees who have the right to give mandatory instructions to subordinate employees, and the specifics of this Section shall not apply to them.

Article 4§3

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake: 3. to recognise the right of men and women workers to equal pay for work of equal value; The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

The Committee recalls that under Article 4§3 the right of women and men to equal pay for work of equal value must be explicitly provided for in legislation. The Committee asks whether the legislation complies with this standard.
The Committee asks whether pay comparisons outside the company are possible in equal pay litigation cases, when the differences identified in the pay conditions of female and male workers performing work of equal value are attributable to a single source.
Conclusion
Pending receipt of the information requested, the Committee defers its conclusion.

Responses to the questions and conclusions of the European Committee of Social Rights

The New Labour Code regulates **the wage setting**. According to the Article 140, the remuneration system shall be prepared in such a way that any discrimination on the grounds of gender or other grounds is avoided in its application. Men and women shall receive equal pay for the same work or equivalent work. Same work shall mean the carrying out of a work activity which, based on objective criteria, is the same as or similar to another work activity to such extent that both employees can be interchanged without a significant cost for the employer. Equivalent work shall mean that, based on objective criteria, a work requires qualifications not lower, and is not less significant for the employer‘s objectives, than another comparative work.
For the purposes of realisation of the principles of gender equality and non-discrimination of employees on other grounds, wage without discrimination shall mean non-discriminatory wage and any additional wages, either in cash or in kind, that the employee receives from the employer in return for work either directly or indirectly.

Article 26 of the New Labour Code establishes the obligation for the employer to implement **the principles of gender equality and non-discrimination on other grounds**. This means that in an employer's relations with employees, any direct or indirect discrimination, harassment, sexual harassment or instruction to discriminate on the grounds of gender, race, nationality, language, origin, social status, age, sexual orientation, disability, ethnic affiliation, political affiliation, religion, faith, convictions or views, except for cases concerning a person's professed religion, faith or convictions for those working in religious communities, societies or centres, provided that the requirement for the employee regarding his or her professed religion, faith or convictions, in view of the ethos of the religious community, society or centre, is normal, lawful and justifiable, or intention to have a child/children, or due to circumstances unrelated to the employees' professional qualities or on other grounds established by law, shall be prohibited.

In implementing the principles of gender equality and non-discrimination on other grounds, the employer, irrespective of gender, race, nationality, language, origin, social status, age, sexual orientation, disability, ethnic affiliation, political affiliation, religion, faith, convictions or views, except for cases concerning a person's professed religion, faith or convictions for those working in religious communities, societies or centres, provided that the requirement for the employee regarding his or her professed religion, faith or convictions, in view of the ethos of the religious community, society or centre, is normal, lawful and justifiable, or intention to have a child/children, or due to circumstances unrelated to the employees' professional qualities or on other grounds established by law, must:

1) apply equal selection criteria and conditions when hiring employees;
2) create equal working conditions and opportunities to improve qualification, pursue professional development, retrain and acquire practical work experience, and also provide equal benefits;
3) use equal work evaluation criteria and equal criteria for dismissal from work;
4) pay the same remuneration for the same work or work of the same value;
5) take measures to ensure that at the workplace, the employee does not experience harassment or sexual harassment and no instructions are given to discriminate, and also that the employee is not subject to persecution and is protected from hostile treatment or adverse consequences if he or she files a complaint concerning discrimination or is involved in a case concerning discrimination;
6) take appropriate measures for conditions to be created for people with disabilities to get a job, work, pursue a career or learn, including the adequate adaptation of premises, provided that the duties of the employer are not disproportionately burdened by said measures.

In settling cases on pay discrimination, compensation for work shall be deemed as remuneration or any other pay, including pay in cash or in kind, which the employee receives for his or her work from the employer, either directly or indirectly. In settling cases on gender equality and non-discrimination on other grounds related to labour relations, it shall be the duty of the employer to prove that there was no discrimination if the employee specifies circumstances from which it may be presumed that the employee experienced discrimination. An employer who has an average number of employees of more than 50 must adopt and publish, in the ways that are accustomed at the workplace, the measures for implementation of the principles for the supervision of the implementation and enforcement of the equal opportunities policies.

Labour disputes shall be heard at the Commission of Labour Disputes free of charge without adjudging any litigation expenses to the parties, according to the Article 217 of the New Labour Code.

The Law on Equal Opportunities for Women and Men prohibits harassment, sexual harassment, or any form of discrimination (direct or indirect) on the basis of sex. The provisions of this Law are applicable in the areas of employment, education and science, the supply of goods and services and social security. This Law establishes the actions which are mandatory for employers, institutions of education and science, authorities responsible for the protection of consumer rights and social security.

Article 6 of the Law on Equal Opportunities of Women and Men imposes the obligation on the employer or employer's representative to exercise equal rights for men and women at work. To this end, the employer or employer's representative must:

1) apply uniform selection criteria when recruiting or promoting, except for the case specified in Article 10(5);

2) provide equal working conditions and opportunities to improve qualification, re-qualify, acquire practical work experience and provide equal benefits;

3) provide equal pay for the same work or for the work of equivalent value, including all the additional remuneration paid by the employer or employer's representative to employees for the performed work;

4) take appropriate measures to prevent sexual harassment of the employees;

5) take measures to ensure that an employee, a representative of an employee or an employee who is testifying or providing explanations, be protected from hostile behaviour, negative consequences and any other type of persecution as a reaction to the complaint or another legal procedure concerning discrimination.

Article 11 of the Law on Equal Opportunities to Women and Men stipulates that the actions of an employer or employer's representative shall be treated as violating equal rights for women and men, if, because of a person's sex, he applies to a person less (more) favourable terms of recruitment, transfer to another post or payment for the same work or for the work of equivalent value.

Article 17 of the Law on Equal Opportunities to Women and Men stipulates that a person who thinks that discriminatory actions have been directed against him by the employer or employer's representative (e.g., applies to a Person less (more) favourable terms of recruitment, transfer to another post or payment for the same work or for the work of equivalent value; in organising work, creates worse (better) working conditions for an employee; imposes a disciplinary penalty on an employee, changes the working conditions, transfers him to another job or terminates the employment contract; persecutes an employee because of his/her complaint, etc.), he shall have the right to appeal to the Equal Opportunities Ombudsperson of the Republic of Lithuania for an objective and unbiased help. Upon receiving a written consent of a person, organisations of employees or employers and other legal persons who have a legitimate interest may represent him/her in judicial or administrative procedures in the manner prescribed by laws.

Article 18 of the Law on Equal Opportunities for Women and Men stipulates that a person who has suffered discrimination on the grounds of sex shall have the right to demand that the guilty persons reimbursed the pecuniary and non-pecuniary damage in the manner prescribed by laws.

A person who exercises this right can apply directly to the court.

Pursuant to Article 3 of the Law on Equal Opportunities for Women and Men when investigating the complaints or applications of natural persons as well as the disputes of persons concerning discrimination on grounds of sex, in courts or other competent institutions, it shall be presumed that the fact of direct or indirect discrimination has indeed occurred. A person or institution against

whom/which a complaint was filed must prove that the principle of equal rights has not been violated.

The Office of the Equal Opportunities Ombudsperson carries out research and presents its findings about the prohibited grounds of discrimination entrenched in the Republic of Lithuania Law on Equal Treatment, i.e. sex, race, nationality, citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin, religion. The Office also performs the supervision of adherence to the Republic of Lithuania Law on Equal Opportunities to Women and Men which sets the prohibition to discriminate on the grounds of sex.

Article 4§4

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

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

The exercise of these rights 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.

The Committee asks for information in the next report on the compensation provided for in the event of wrongful dismissal. It asks for information in the next report on the cases provided for by law in which probationary periods may last six months. It also asks for information on the notice periods and/or compensation applicable in the event of early termination of fixed-term or piece-work contracts in case the employee refuses to be transferred to another post (Article 129, paragraph 5 of the Code).

It considers, however, that some grounds of termination of employment do not meet the criteria of a gross breach of duties, such as: the entry into force of a judicial decision which prevents the performance of work; the withdrawal of administrative licences required for the performance of work; the request from bodies or officials authorised by the law; and the unfitness for work certified by authorised bodies (Article 136, paragraph 1, Nos. 1 to 4 of the Code). Excluding notice or compensation under these circumstances are not in conformity with Article 4§4 of the Charter.

The Committee asks that the next report indicate the notice period and/or compensation applicable in case of the termination of an employment contract following the death of the employer (Article 136, paragraph 2 of the Code); when employers or their representatives cannot be identified (Article 124, paragraphs 1 and 2 of the Code); and in cases of bankruptcy (Article 137 of the Code). It also asks for information on the notice period and/or compensation applicable to permanent civil servants and contract staff in the civil service governed by the Civil Service Act of 8 July 1999 (No. VIII-1316) and the Remuneration of Politicians and State Representatives Act of 29 August 2000 (No. VIII-1904).

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 4§4 of the Charter on the ground that no notice is given in case of termination of employment based on a judicial decision which prevents the performance of work; the withdrawal of administrative

licences required for the performance of work; the request from bodies or officials authorised by the law; and the unfitness for work certified by authorised bodies.

Responses to the questions and conclusions of the European Committee of Social Rights

The Article 60 of the New Labour Code regulates the termination of an employment contract without the will of the parties to the employment contract. According to this Article, an employment contact must be terminated without any notice in the following cases:

1) upon the entry into force of a court decision or court judgement, whereby an employee is sentenced to a punishment preventing him from performing the work;

2) when an employee, according to a procedure prescribed by law, is deprived of special rights to perform certain work or to hold a certain position;

3) when termination of the employment contract is demanded by one of the parents of an employee aged up to sixteen years, or statutory representative of the child, or the medical doctor supervising the health of the child, or, during the academic year, the school where the child studies;

4) when an employee, according to the conclusion of a healthcare institution, is no longer able to hold the position or perform the work and disagrees to be transferred to another position or work available at that place of employment and meeting his health, or when such a position or work is not available at that place of employment;

5) upon returning to the work the employee to whose place the employee being dismissed has been recruited;

6) upon demand of an institution controlling illegal work or competent officer in case of establishing a case of the illegal work of a foreigner;

7) when the employment contract contradicts laws and those contradictions cannot be eliminated, while the employee disagrees to or cannot be transferred to another vacant workplace available at that place of employment.

Having received a document proving a reason specified above or having become aware of such a reason otherwise, the employer must terminate the employment contract not later than within five working days from the day of receipt of the document or becoming aware.

In the cases established in sub-paragraphs 4, 5 and 7, the employee shall be paid a severance pay amounting to the average remuneration of the employee for one month or, if the labour relationship has lasted for less than one year, a severance pay amounting to the average remuneration of the employee for half a month.

According to the Article 57 of the New Labour Code, the employer has the right to terminate an open-ended or fixed-term employment contract prematurely for the following reasons:

1) the function performed by the employee becomes excessive for the employer due to changes in work organisation or for other reasons related to the activities of the employer;

2) the employee fails to attain the agreed work results according to the results improvement plan provided for in paragraph 5 of this Article;

3) the employee refuses to work under changed necessary or supplementary conditions of the employment contract or to change the type of the working time arrangement or the location of employment;

4) the employee disagrees with the continuity of the labour relationship in the case of the transfer of the business or its part;

5) a court or a body of the employer takes a decision due to which the employer terminates.

Changes in the organisation of work or other reasons related to the activities of the employer may serve as reasons for the termination of an employment contract only in case when they are real and predetermine the uselessness of the work function or work functions performed by a specific employee or group of employees. An employment contract may be terminated on these grounds only when during the period from the notice of the termination of the employment contract to the point of time five days before the end of the notice period, there is no vacant workplace to which the employee could be transferred with his consent.

If the excessive work function is performed by several employees but only a part of them is dismissed, the criteria for the selection of employees to be dismissed shall be approved by the employer upon coordinating with the work council or, if there is no work council in place, with the trade union. In this case, the selection shall be carried out and proposals on the dismissal of employees shall be provided by a commission formed by the employer, which must include at least one member of the work council. In establishing the criteria for the selection of employees to be dismissed, it is necessary to ensure the right of priority to retain jobs to be applied to the following employees in respect of all other employees of the same specialisation of the respective employer at the same location of employment:

1) employees, who sustained an injury or contracted an occupational disease at that place of employment;

2) employees, who raise more than three children (adopted children) under the age of fourteen or are single parents raising children (adopted children) under the age of fourteen, or a disabled child under the age of eighteen, or take care alone of other family members for whom the working capacity level below fifty-five per cent is established or family members who have reached the old-age retirement age with the established high or average level of special needs;

3) employees with the continuous length of service at that place of employment of at least ten years, except for employees who have reached the statutory old-age retirement age and acquired the right to an old-age pension while working for the employer;

4) those who will reach the statutory old-age retirement age in not more than three years;

5) those to whom such a right is established in the collective agreement;

6) those who are elected as members of the management bodies to the employees' representatives acting at the level of the employer.

The right of priority to retain jobs referred to in sub-paragraphs 1–5 shall apply to those employees whose qualification is not below the qualification of the other employees of the same speciality working in that enterprise, institution or organisation.

The working results of the employee may serve as the reason for the termination of the employment contract if the work deficiencies unachieved personal results of the employee were indicated to him in writing, and a results improvement plan was drawn up in general, which covered a period of at least two months, and the results of the execution of the plan are unsatisfactory.

The refusal of the employee to work under changed necessary or supplementary conditions of the employment contract or to change the type of the working time arrangement or the location of employment may serve as the reason for the termination of the employment contract when the proposal of the employer to change the working conditions is grounded by considerable reasons of economic, organisational or production necessity.

The employment contract shall be terminated by giving the employee notice one month in advance or, if labour relations continued for less than one year, a two weeks' notice. These notice periods shall be doubled for employees, who would reach the statutory old-age retirement age in less than five years, and tripled for employees, who are raising a child (adopted child) under the age of

fourteen and employees, who are raising a disabled child under the age of eighteen, as well as employees with disabilities and employees, who would reach the statutory old-age retirement age in less than two years.
An employee being dismissed shall be paid a severance pay amounting to double average remuneration of the employee or, if the labour relationship has lasted for less than one year, a severance pay amounting to half of the average remuneration of the employee.
An employee being dismissed shall be additionally paid, according to a procedure prescribed by law, a long-term work benefit, taking into account the continuous length of service of that employee at that place of employment.

As it is stipulated in the Article 69 of the New Labour Code, a fixed-term employment contract shall expire upon the expiry of its term. However, a fixed-term employment contract shall become an open-ended employment contract if labour relationship actually continues for more than one working day of the administration of the employer upon the expiry of its term, except for the case specified in Article 67(3) of this Code. If labour relationship under a fixed-term employment contract continue for more than one year, the employer must give the employee a five working days' written notice of the expiry of the employment contract or, if labour relationship under a fixed-term employment contract continues for more than three years, a ten working days' written notice. In case of breach of this duty, the employer shall pay the employee a remuneration for each day of breach of the established term but not more than for five or ten working days, respectively. If labour relationship under a fixed-term employment contract continues for more than two years, upon the expiry of the employment contract the employee shall be paid a severance pay amounting to the average remuneration of the employee.

The Description of Procedure for Expiration of Employment Contract When It Is Impossible to Identify the Location of Employer (Where the Employer is a Natural Person) or Employer's Representative or When the Employer (Where the Employer is a Natural Person) Has Died approved by Order No. A1-340 of the Minister of Social Security and Labour of the Republic of Lithuania of 29 June 2017 stipulates that an employee who wants to terminate labour relationship with his/her employer whose location is not known or who has died has to provide the State Labour Inspectorate of the Republic of Lithuania under the Ministry of Social Security and Labour (hereinafter referred to as the "State Labour Inspectorate") with a written request for expiration or termination of employment contract on the basis of Article 53(6) or Article 65(9) of the Labour Code, the sample form of which is available on the website of the State Labour Inspectorate www.vdi.lt, by mail, via courier, by electronic means (endorsing it by digital signature). After 10 business days from the date of receipt of the request for expiration of employment contract when it is impossible to identify the location of the employer pass and in case of failure to identify the employer's location, the next day, the inspector of the State Labour Inspectorate shall issue to the employee a certificate in a format established by the chief inspector of the State Labour Inspectorate of the Republic of Lithuania whereby it shall be stated that the employment contract expired pursuant to Article 53(6) of the Labour Code and on the date of issuance of the certificate s/he shall extract information about the commencement of an inspection from the website. An employment contract is considered expired from the date of issuance of the certificate. The State Labour Inspectorate shall examine the request for expiration of employment contract on the basis of Article 65(9) of the Labour Code (hereinafter referred to as the "Request for Expiration of Employment Contract When the Employer Has Died") and within 5 business days from the date of receipt of the

Request for Expiration of Employment Contract When the Employer Has Died shall verify with the manager of the Registry of Residents of the Republic of Lithuania, whether the employer has died. In case it is identified that the employer has died, the next working day, the employer is issued a certificate in a format established by the chief inspector of the State Labour Inspectorate of the Republic of Lithuania whereby it shall be stated that the employment contract expired pursuant to Article 53(5) of the Labour Code. The employment contract is considered expired from the date of death of the employer. The State Labour Inspectorate shall notify the State Social Insurance Fund Board under the Ministry of Social Security and Labour of the expiry of the employment contract within 2 business days from the date of issuance of the aforementioned certificate.

According to the Article 45 of the New Labour Code, changes in the necessary conditions of the employment contract, supplementary conditions of the employment contract, established type of the working time arrangement, or transfer of the employee to another place of employment on the initiative of the employer shall only be possible subject to the written consent of the employee. The consent or non-consent of the employee to work under proposed changed necessary or supplementary conditions of the employment contract, in the working time arrangement of a different type or in a different location shall be expressed within the time limit established by the employer, which may not be shorter than five working days. The refusal of the employee to work under the proposed changed conditions may be considered as a reason for the termination of labour relationship on the initiative of the employer without fault of the employee in accordance with the procedure established in Article 57 of this Code. The refusal of an employee to work for a reduced remuneration may not be considered a lawful reason for the termination of the employment contract.

In respect of an unlawful change of the employment contract, the employee has the right to appeal to the body hearing labour disputes over law with a request to obligate the employer to execute the employment contract and to compensate the damage that occurred. If the employee fails to do so within three months from the moment when the employee became aware or should have become aware about the infringement of his rights, it shall be considered that the employee has agreed to work under the proposed changed working conditions.

Any other working conditions may be changed by a decision of the employer in case of change of the rules governing them or in cases of economic, organisational or production necessity. The employee shall be informed about changes of those conditions within a reasonable term. The employer shall provide the employee with sufficient conditions to prepare for the future changes.

Regarding the decisions in the cases concerning unlawful suspension or dismissal from work, Article 218 of the New Labour Code stipulates that if an employee is suspended from work without any lawful basis, the body hearing labour disputes shall render a decision to reinstate the employee in work and award the average work pay for the employee for the period of involuntary idle time and award the property and non-property damage inflicted. If an employee is dismissed from work without a valid basis or in breach of the procedure established by laws, the body hearing labour disputes shall render a decision to recognise the dismissal from work as unlawful and reinstate the employee in former work as well as award the average wage for the period of involuntary idle time from the day of dismissal until the day of enforcement of the decision, not exceeding one year, and award the property and non-property damage suffered. The employee shall be reinstated in work not later than on the next working day after the decision of the body hearing labour disputes to regarding the reinstatement in work becomes enforceable. If the body hearing labour disputes

ascertains that the employee may not be reinstated in his previous job due to economic, technological, organisational or similar reasons, or because he may be provided with conditions not favourable for work, or when the employer requests not to reinstate the employee, the body hearing the labour dispute shall render a decision to recognise the dismissal from work as unlawful, award him the average wage for the period of involuntary idle time from the day of dismissal from work until the effective date of the court decision, not exceeding one year, and award the property and non-property damage suffered. The employee shall also be awarded a severance pay, the amount whereof shall be equal to one average wage of the employee for every two years of employment, not exceeding six average wages of the employee. The remedies for violated employee rights shall also apply when that is requested by the employer who normally employs up to ten employees, when the body hearing labour disputes decides to recognise the employee's dismissal from work as unlawful.

Article 4§5

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

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 these rights 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§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 exceptions being those persons not so covered.

It previously concluded (Conclusions 2007 and 2010) that the situation in Lithuania was not in conformity with Article 4§5 of the Charter on the ground that after authorised deductions, the wages of workers with the lowest pay did not ensure that they could provide for themselves and their dependants. It asked for information on the available guarantees preventing workers from waiving their right to limits to deduction from wages.

Accordingly, it repeats its request for details on the safeguards provided by state, case law or collective agreements to protect against the potential waiving of the wage protection afforded by the Code. It brings to the Government's attention that, unless this information is provided in the next report, it will not have the information it requires to establish that the situation is in conformity in this respect. The Committee also points out that under Article 4§5 of the Charter, the circumstances in which deductions may be made from wages must be indicated clearly and precisely in a legal instrument (law, regulation, collective agreement or arbitration award) and that all forms of deductions from wages must be protected. In this connection it requests that the next report complete the list of grounds for deductions from wages authorised by the law. It also requests that the next report state to what extent the law permits workers to agree to their wages being forfeited, assigned or pledged for the benefit of their employer or third parties. It also asks for information on the notice period and/or compensation applicable to permanent civil servants and contractual staff in the civil service.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 4§5 of the Charter on the ground that after all authorised deductions, the wages of workers with the lowest pay do not allow for them to provide for themselves or their dependants.

Responses to the questions and conclusions of the European Committee of Social Rights

Article 150 of the new Labour Code regulates **the deductions from wages.** According to this Article, deductions from wages shall be made for the following purposes only:
1) repayment of the employer‘s funds transferred to but not used by the employee;
2) repayment of amounts overpaid due to calculation errors;
3) indemnification for the damage done by the employee to the employer due to the employee‘s fault;
4) recover a holiday pay for the leave that has been given in excess of the employee‘s entitlement to an annual leave in full or in part, where the employment contract has been terminated on the initiative of the employee without valid reasons or on the initiative of the employer due to the fault of the employee.
The employer shall have the right to give an instruction for a deduction no later than within one month from the date when the employer learnt or could have learnt about the grounds for the deduction. The amount of deductions from a wage that does not exceed the minimum monthly salary approved by the Government of the Republic of Lithuania shall not exceed twenty percent of the wage payable to the employee, and for the purposes of a recovery of maintenance in the form of periodic payments for the damage done by causing disability or other health damage or by taking the breadwinner‘s life and for the indemnification for the damage caused by a criminal act – up to fifty percent of the wage payable to the employee. Where deductions are made under a number of writs of execution from a wage that does not exceed the minimum monthly salary approved by the Government of the Republic of Lithuania, the employee must retain fifty percent of the wage payable to the employee. Seventy percent of the wage payable to the employee shall be deducted from the part of the wage exceeding the minimum monthly salary approved by the Government of the Republic of Lithuania unless the body that has heard the labour dispute sets a lower deduction rate.

According to the Article 143 of the New Labour Code, where the scope of a work function (i. e. a work norm) has been established for the employee (either individually or as part of a group of employees), the employer shall ensure working conditions enabling the employee and the group of employees to complete such work norm. Reasoned applications over improper setting of work norms filed by employees shall be considered by bodies hearing labour disputes. The employer shall have the duty of proving that the work norm has been set having regard to occupational risks, working time required, and circumstances of performing a work function. Should the employee fail to complete his work norms not due to his own fault, the employee shall be paid for the work actually performed. In such a case the wage per month may not be lower than two-thirds of the employee’s average wage and not lower than the minimum wage. Should the employee fail to complete his work norms due to his own fault, the employee shall be paid for the work actually performed.
If the employer is unable to provide the employee with the work agreed upon in the employment contract due to objective reasons not due to the fault of the employee and the employee disagrees to

perform the other work proposed to him, the employer shall declare idle time for the employee, according to the Article 47 of the New Labour Code. Idle time may also be declared to a group of employees. Upon declaring idle time lasting up to one working day, the employee shall be paid his average remuneration and the employer has the right to require the employee should stay at the place of employment. If idle time is declared for a period of time longer than one working day but not longer than three working days, it may not be required that the employee should arrive to the place of employment every day for a period of time longer than one hour. For the time of staying at the place of employment during idle time, the employee shall be paid his average remuneration, and for the other period of idle time, when the employee is not obliged to stay a work, he shall be paid two thirds of his average remuneration. If idle time has been declared indefinitely or for a period of time longer than three working days, the employee shall not be obliged to arrive to the place of employment but shall be prepared to arrive to the place of employment next day after the notice from the employer. Payment for idle time of up to three working days shall be in accordance with the procedure established above, and the other period of idle time the employee shall retain forty percent of his average remuneration. During the calendar month when idle time was declared to an employee, the remuneration to be received by the employee for that month may not be smaller than the minimum monthly salary approved by the Government of the Republic of Lithuania when the whole working time standard is agreed upon in his employment contract. The employer may declare partial idle time to an employee when the number of working days per week (by at least two working days) or the number of working hours per day (by at least three working hours) is reduced for a certain period of time.

According to the Article 49 of the New Labour Code, if an employee has appeared at work under the influence of alcohol, narcotic, psychotropic or toxic substances, the employer shall suspend the employee from work that day (shift), without allowing the employee to work and without paying any remuneration. The employer shall also suspend an employee from work for up to three months, without allowing the employee to work and without paying any remuneration, upon a written request of officers or bodies granted the right of suspension by laws. The request shall specify the period of time for which the employee is suspended as well as the reasons and legal grounds for suspension. When investigating the circumstances of a possible infringement of work duties committed by an employee, the employer shall be entitled to suspend the employee from work for up to thirty calendar days, while paying him his average remuneration.
If the employee was suspended from work at the request of the employer or duly authorised bodies or officers groundlessly, he shall be compensated for damage according to a procedure prescribed by law. Disputes on the validity of suspension and compensation of damage shall be settled in accordance with the procedure established for the settlement of labour disputes over law.

The new edition of the Description of Procedure for Establishment of Shortened Working Time Norms and for Payment approved by Resolution No. 496 of the Government of the Republic of Lithuania of 21 June 2017 stipulates that employees specified in Paragraphs from 4 to 7 of the given Description shall be paid for the shortened working time the same remuneration as for full working time.

Article 6§1

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;

Article 203 of the New Labour Code enshrines **the rights of employees and employees' representatives to information and consultation.** It is stipulated that employees shall have the right to be informed, through work councils, and to take part in consultations with employers and representatives thereof on the matters related to the exercise and protection of the employees' labour, economic and social rights and interests in the cases and according to procedures specified in the Labour Code, collective agreements, agreements between the employer and the work council, and other labour law provisions.

Information shall be the transmission of information (data) to employees or the work council in order to make them conversant with the substance of a matter related to the employees' labour, economic and social rights and interests, according to the Article 204 of the New Labour Code. Consultation means an exchange of opinions and the establishing and developing of a dialogue between the work councils and the employer. For information purposes, the employer shall provide information in writing to the work council free of charge and shall assume responsibility for the correctness of the information. A work council having presented a written undertaking not to disclose trade/industrial or professional secret shall be entitled to gain access to the information that is considered a trade/industrial or professional secret but is necessary for the performance of its duties. Irrespective of the location of the work council's members and of expiry of an employment relationship or representation powers, the members shall be prohibited from using such information that is considered a trade/industrial or professional secret not according to its intended purpose and from disclosing it to other employees or third parties. Access to state and official secrets and liability for their disclosure or unlawful use are governed by special laws.
At the work council's request, the employer shall start a consultation procedure no later than within five working days from the date of receipt of a request. During the consultation procedures, members of the work council shall be entitled to meet with the employer and representatives thereof and, where necessary, with other members of management bodies of the enterprise, institution or another organisation, and submit proposals within fifteen working days from the first day of consultations, unless another time limit is agreed. At a reasoned request by the work council, during that period the employer may not take any actions due to which the consultation procedures have been started. Upon expiry of the said term the employer may terminate the consultation procedures if the work council has not provided its opinion. Consultations shall be aimed at finding a solution acceptable to both parties. Results of the consultation shall be executed in the form of a minutes or an agreement, or local legal acts shall be adopted.
The employer may refuse, in writing, to provide information that is deemed to be a trade/industrial or professional secret, or to start consultations with the work council if, due to their nature, such information or consultation would damage or could potentially damage the enterprise, institution or organisation or their activities, judging by objective criteria. The employer's decision to refuse to provide information may be appealed against according to a procedure established for the resolution of labour disputes over law. Should the body hearing labour disputes establish that the employer's refusal to provide information or to start consultations is unjustified, the employer shall be obligated to provide such information or to start consultations within a reasonable time limit
Consultations regarding information (data) provided by the employer and the opinion submitted by the work council shall be timely, providing the work council with an opportunity to receive reasoned responses from decision-making employers' representatives.

According to the Article 205 of the New Labour Code, the employer that employs twenty or more employees on the average shall provide, at the work council's request once in a calendar year but no later than by 1 April, information to work councils about current and future activities and economic position of an enterprise, institution or another organisation (and, in the case of a social partnership on a level of a place of employment, of the place of employment) as well as the status of employment relationship, and shall be obliged to hold consultations with the work council.
The employer shall provide the following information:
1) the employer's position and structure, potential changes in employment at the enterprise, institution or another organisation and its divisions, in particular if any threat to employment exists, including information about employee numbers and categories (also temporary workers), past and projected changes in personnel that could exert a significant influence over the employees' working conditions and redundancy;
2) past changes and projected trends in wages;
3) working time organisation characteristics including information on the length of overtime and the reasons for overtime;
4) results of implementation of health and safety at work measures that contribute to the working environment improvements;
5) current and potential development of operations and economic position of the enterprise, institution or another organisation and its divisions including information based on the entity's financial statements and the annual report (if the entity is obliged to draw up such documents by law);
6) other matters of particular importance for the economic and social position of the employees.
The work council may request to start the consultations no later than within five working days from the date of receipt of the information. Consultations between the employer and the work council shall start on the basis of the information provided, no later than within fifteen working days from the date of receipt of the information. An employer-level trade union shall be informed by the work council about the progress of the consultations and shall be entitled to express its opinion to the work council and the employer. Where an enterprise, institution or another organisation has no work council or an employees' trustee implementing its functions, the employer must provide the information referred to in paragraph 2 of this Article to the employer-level trade union. The trade union shall be entitled to express its opinion on such information to the employer. The employer shall conduct consultations during at least five working days from the first day of the consultations unless the work council agrees with another term.

Article 206 of the New Labour Code stipulates that the employer that employees twenty or more employees on average shall inform the work council and consult it prior to adopting decisions on the approval of or amendments to the following local normative legal acts:
1) rules of work establishing the general working procedures in place at the organisation;
2) rules establishing the working norms or the working norms;
3) remuneration system if there is no collective agreement establishing such a system;
4) procedure for the introduction of new production processes;
5) use of information and communications technologies and employees' monitoring and control at workplaces;
6) establishing measures that can potentially breach the protection of employees' private life;
7) employees' personal data storage policy and measures of its implementation;

8) measures to implement and enforce the gender equality policy;
9) establishing measures to reduce stress at work;
10) other legal acts relevant to employees' social and economic position.
The work council shall be informed about such future decisions on local normative legal acts ten working days prior to the planned approval thereof. The work council may request to start consultations no later than within three working days from the date of receipt of the information. Consultations between the employer and the work council shall start on the basis of the information provided, no later than within three working days from the date of receipt of the request. Where an enterprise, institution or another organisation has no work council or an employees' trustee implementing its functions, the employer must provide the above information to the employer-level trade union. The trade union shall be entitled to express its opinion to the employer concerning the employer's future decisions. The employer shall conduct consultations during at least five working days from the first day of the consultations unless the employees' representatives agree with another term.

Article 209 of the New Labour Code regulates the liability for Failure to Fulfil the Information and Consultation Duties. In the case the employer has violated his duties of information and consultation, the work council or the trade union shall be entitled to initiate a labour dispute over law within 2 months after finding out about the breach. Unless otherwise stipulated by this Code, a body hearing labour disputes over law shall have the right to reverse the employer's decisions and to obligate to take certain actions as well as to apply liability provisions under this Code or the Republic of Lithuania Code of Administrative Offences. The State Labour Inspectorate shall exercise control over the fulfilment of the information and consultation duties by employers. A person that has breached the employees' information and consultation duties or has disclosed confidential information to third parties shall be held to account according to the law.

A work council shall be formed on the initiative of the employer if the average number of employees is twenty or more, according to the Article 169 of the New Labour Code. Where there is a trade union operating on the level of an employer in the place of employment and over one-third of all employees are its members, no work council shall be formed, whereas the trade union assumes all the powers of a work council and performs all the functions of a work council. Where over one-third of employees in the place of employment are members of trade unions operating in the enterprise, functions of a work council shall be performed by the trade union elected by the members of trade unions or a joint representation of trade unions.

Article 170 regulates the composition of a work council. According to this Article, work council shall consist of at least three and no more than eleven members depending on the average number of employees of the employer:
1) where the number of employees is up to one hundred – three members of the work council;
2) where the number of employees is between one hundred and three hundred – five members of the work council;
3) where the number of employees is between three hundred one and five hundred - seven members of the work council;
4) where the number of employees is between five hundred one and seven hundred – nine members of the work council;

5) where the number of employees exceeds seven hundred one – eleven members of the work council.

An employee who has reached eighteen years of age and whose employment relationship with the employer lasts longer than six months may be elected member of a work council. An employee who has worked for a period shorter than six months may be elected member of a work council provided that all the employees have a work record shorter than six months.The employer and any person representing the employer by law or under a power of attorney or constitutional documents may not be elected member of a work council.

Article 171 of the New Labour Code regulates **the election of a work council**. It is stipulated that a work council shall be elected by secret ballot in direct elections based on the universal and equal voting right. Any employee of the employer may take part in the election with the voting right provided that the employee has been in an employment relationship with the employer for at least three months without interruptions.

The first elections shall be held by an election commission formed by the employer by issuing an order. In case of occurrence of the circumstances set out in this Code, the employer shall form, no later than within two weeks, an election commission of minimum three members and maximum seven members. Officers of the employer's administration may account for not more than one-third of members of this commission. Subsequent elections shall be organised and held by the work council.

3.The election commission shall convene its first meeting and start the organisation of the work council elections no later than within seven days from the date of its formation. At the first meeting, the election commission shall elect a chairperson from among its members and shall:

1) set the date of the work council elections, which shall not be later than two months after the date of formation of the election commission;

2) announce the registration of candidates to the members of the work council and shall set the time limit for the putting up of candidates, register the candidates, and draw up the final list of candidates;

3) organise the preparation and printing of the ballot papers. The names of candidates to the work council members shall be listed alphabetically in the ballot papers. A ballot paper shall provide an example of how to vote and state the number of the work council members to be elected. The number of the ballot papers shall be equal to the number of the employees having the voting right. Each ballot paper shall be signed by the chairperson of the election commission;

4) based on the data received from the employer compile the list of employees entitled to take part in the elections of the work council;

5) organise and hold the election to the work council;

6) count the election results and publish them no later than within three days from the election date;

7) perform other functions necessary for the organisation and holding of the work council election.

Employees appointed to the election commission may not be dismissed from work on the initiative of the employer during the term of office of the election commission. They shall receive their average wages for the time spent for the organisation and holding of the work council election. The mandate of the election commission shall expire upon the first meeting held by the work council.

Employees having the voting right shall be entitled to put up candidates to the work council. Only employees having the voting right may be put up as candidates, except for the members of the election commission. Each employee may put up one candidate by approaching the election commission in writing and by presenting the written consent of the candidate to be elected to the

work council. Trade unions operating on the level of an employer shall be entitled to put up at least three employees having the voting right to stand as candidates to the work council, and the candidate who receives the majority of votes of employees shall be deemed elected. The list of candidates shall be drawn up no later than within fourteen days until the date of election to the work council. Where the number of candidates is equal to or less than the number of members of the working council being elected, the election commission shall allot additional time for putting up of additional candidates. In such a case, employees, who have already put up their candidates may put up candidates repeatedly. If the number of candidates to the work council put up during the additional period is still insufficient, the election commission shall draw up and publish a statement to the effect that the election to the work council did not take place. In such a case, new work council elections shall be held according to the procedure prescribed by this Code, but not earlier than upon the expiry of six months after the date on which the election commission decided to recognise that the election did not take place. Elections to the work council shall be held in an enterprise, institution or another organisation during working hours. The employer shall enable employees to take part in the elections and shall pay average wages for the time spent for this purpose. The election commission and the employer shall enable employees who work at places other than the place of employment to take part in the work council elections.

Ballot papers shall be issued under signature. Employees taking part in the election shall have the number of votes equal to the number of members of the work council being elected. Only one vote may be cast for each candidate specified in the ballot paper, marking the ballot paper accordingly.

The election commission shall, upon expiry of the election term set by the election commission, count the votes and draw up the work council election report. The report shall state the following:

1) the time and place of the work council election;

2) the composition of the work council election commission;

3) the list of candidates to the work council members and the number of members of the work council being elected;

4) the number of employees entitled to take part in the work council election;

5) the number of employees that took part in the work council election, the number of ballot papers issued and the number of ballot papers unused;

6) the number of valid ballot papers and the number of invalid ballot papers (i. e. ballot papers with the marked number of candidates exceeding the set number of the work council members being elected or ballot papers according to which establishing the voter’s will is impossible);

7) the number of votes received by each candidate (the full list of candidates in the descending order of the number of votes received in the election);

8) the list of candidates elected to the work council;

9) the list of candidates who received at least one vote in the election but were not elected to the work council (in the descending order of the number of votes received in the election) based on which a list of reserve members of the work council shall be compiled.

The election report shall be signed by the members of the election commission. Results of the work council election shall be published and a copy of the report delivered to the employer no later than within three days after the date when the election results were established.

It shall be deemed that the work council election has taken place if more than one half of the employees having the voting right took part in the election. Should it be announced that the election has not taken place due to insufficient participation of employees, repeated elections shall be held during the next seven days. It shall be deemed that the repeated election has taken place if one-

fourth of the employees of the enterprise, institution or another organisation having the voting right participated in the election.
Candidates that have received the majority of votes shall be deemed to be elected to the work council. In the case if two or more candidates receive equal number of votes, the employee that has a longer record of service with the enterprise, institution or organisation shall be deemed to be elected. Persons on the list of reserve members of the work council may become members of the work council consecutively, as vacancies in the work council emerge.
Any documents related to the formation of the election commission and organisation and holding of elections as well as ballot papers shall be handed over to the work council at its first meeting. The working council shall store them until formation of a new work council.
The employer shall provide the work council elections with the requisite facilities. The employee/employees, the employer or the employer's representative may apply to the election commission in writing within five days from the date of announcement of the election results requesting to rectify violations of this Code that have been committed, in their opinion, during the election. The election commission shall consider the request and announce [its decision] within three days. An appeal against the decision of the election commission may be filed to court within five days from the date of its public announcement. The court may order that convening a meeting of the electing work council be prohibited until the court completes consideration of the appeal. Should the court establish a gross violation of provisions of this Code or a forgery of election documents, which, in the opinion of the court, has influenced the essential results of the election, the court shall annul the results of the work council election. Repeated election shall be held according to the terms and conditions set out in this Code no later than within one month from the effective date of the court decision.
Should the average number of employees of the employer as determined according to a procedure prescribed by the Labour Code increase by twenty percent or more, as a result of which the number of the work council members established by the Labour Code is increased, the chairperson of the work council shall initiate, according to a procedure prescribed by the Labour Code, election of a new member/members for the period until the end of the term of office of the current work council. The new member/members shall be elected by the work council election commission according to the provisions of this Article 171 mutatis mutandis.
Electronic voting may be applied in the work council election by agreement of the election commission and the employer provided that voting secrecy and expression of the true will of the employees can be ensured.

As regards **the membership of a work council**, an employee elected to the work council shall be deemed to be a work council member from the moment of announcement of the results of the work council election, according to the Article 172 of the New Labour Code. An employee on the list of reserve work council members shall replace the employee that has ceased to be a work council member from the moment of adoption of a decision of the work council whereby his powers in the capacity of a new work council member are approved.
Membership of the work council shall be terminated upon:
1) resignation from the work council;
2) termination of employment relationship;
3) death of the work council member;
4) coming into effect of a court decision whereby election of the work council member to the council is declared unlawful;

5) end of the term of office of the work council;
6) resignation from the work council where this is required in writing by at least one-third of employees with the voting right who work for the employer or the place of employment. Having received such a written request, the work council shall hold a secret ballot, and such ballot shall be lawful provided that more than one half of employees with the voting right who work for the employer or the place of employment take part in it. A member of the work council shall be recalled if more than two thirds of the employees taking part in the voting have voted for such proposal.

The first meeting of the work council shall be convened by the chairperson of the election commission no earlier than five days and no later than ten days after the announcement of the election results.
At the first meeting of the work council, the work council shall elect, by majority vote of all work council members, the chairperson and the secretary of the work council from among its members.
The chairperson of the work council shall:
1) convene and chair meetings of the work council;
2) represent the work council in its relations with the employee, employer, trade unions and third parties;
3) draft the annual report on the work council's activities to employees of an enterprise, institution or another organisation and present the approved report to the employees;
4) Exercise other rights established in this Code, other laws and the regulations of the work council which shall be approved at the first meeting of the work council.
The secretary of the work council shall manage and store documentation of the work council, inform the work council members about the date, time, place and agenda of the work council's meeting, inform the employer about the date, time and place of the work council's meeting, take minutes of the work council meeting, and fulfil other assignments given by the chairperson of the work council. Where the secretary of the work council is temporary unable to perform his duties, he shall be substituted by a work council member appointed by the chairperson of the work council.
The work council shall carry out its activities in the form of meetings. By invitation or approval of the work council (by approval of the majority of the work council members), meetings of the work council may be attended by the employer or the employer's representatives and representatives of the trade union operating in the organisation or of branch trade unions. The work council may invite experts in relevant areas to its meetings as necessary. Matters related to the organisation of the work council's activities shall be governed by the regulations of the work council, which shall be approved by the work council, for its term of office, by the majority vote of all work council members.
The chairperson of the work council shall inform, no later than within one month from the start of the mandate of the work council, the territorial office of the State Labour Inspectorate the territory of service of which covers the employer's registered office about the formation of the work council, its management bodies, and the name of the employer's enterprise, institution or other organisation in which the work council was formed.

According to the Article 174 of the New Labour Code, the work council shall be entitled to:
1) take part in information, consultation and other participatory procedures whereby the employees and the employees' representatives are involved in the employer's decision-adoption process;

2) obtain, in the cases and according to procedures prescribed by the Labour Code and other laws, information from the employer and from state and municipal bodies and institutions where such information is required for the performance of its functions;
3) make proposals to the employer for economic, social and labour issues, the employer's decisions that are relevant to the employees, and implementation of the labour law provisions;
4) initiate a collective labour dispute over law if the employer fails to comply with the labour law provisions or agreements by and between the work council and the employer;
5) where necessary discuss economic, social and labour issues relevant to the employees and convene a general meeting (conference) of the employees of the employer or a place of employment upon coordination of the date, time and place of the meeting/conference with the employer;
6) take other actions that are not in contravention of the Labour Code and other labour law provisions and actions specified in the labour law provisions or agreements by and between the work council and the employer.
The work council shall be obliged to:
1) perform its functions in accordance with the Labour Code, other laws and labour law provisions as well agreements by and between the work council and the employer;
2) in the performance of its functions, respect the rights and interests of all employees of the employer without discriminating against individual employees, employee groups and employees from different places of employment;
3) inform the employees about its activities on an annual basis by publicly presenting its annual report to the employees of an enterprise, institution or another organisation, or by another method provided for in the regulations of the work council;
4) inform the employer and the trade union operating on the employer's level about the authorised members of the work council;
5) in the case if a number of trade unions are operating on the employer's level, cooperate with all of them on mutual trust basis.

The employer and the work council may enter into a written agreement stipulating the main matters related to the realisation of the remit of the work council, organisation and funding of its activities, setting additional guarantees to the work council members during the period of their activities and other related matters promoting the cooperation by and between the work council and the employer, as it is guaranted by the Article 175 of the New Labour Code.
The agreement by and between the work council and the employer may not stipulate the employees' working conditions, wages, working time and rest time and other matters that are governed by the collective agreement applicable to the employees. The agreement by and between the work council and the employer shall be concluded for a fixed term. The term of its validity shall be no longer than by the end of one year after the end of the term of office of the work council. Any party to the agreement by and between the work council and the employer may terminate it by giving the other party a three months' written notice. This provision shall also apply in the case of election of a new work council while the agreement by and between the previous work council and the employer is still in effect.

Activities of the work council shall cease in the following cases, regulated by the Article 176 of the New Labour Code:

1) the employer terminates its operations and there is no assignee, or operations of a place of employment are terminated without transferring its employees to another place of employment run by the employer;
2) the term of office of the work council expires;
3) less than three of the work council members remain and there is no candidate entitled to become a work council member on the list of reserve work council members;
4) by decision of the work council adopted by more than a two-third majority vote of the work council members;
5) the employer is merged with or affiliated to another enterprise, institution or another organisation or the employer's business or a part thereof is transferred to another legal person and the work council agrees with the transferee's work council on the election of a new work council. In case of failure to agree, the work council shall retain its powers to represent the employees of the employer or a business or part of the business until the end of its term of office or until formation of a new work council in the transferor's enterprise, institution or another organisation, whichever is shorter.
The employer shall inform the territorial office of the State Labour Inspectorate the territory of service of which covers the employer's registered office about the termination of activities of the work council on the grounds referred to in sub-paragraphs 2 and 3 of this Article if no new work council is formed within six months.

According to the Article 177 of the New Labour Code, where the average number of employees of the employer is smaller than twenty, the employee representation rights can be exercised by **an employees' trustee** elected by them for the term of office of three years at the general meeting of the employees. Unless established otherwise, all the provisions of this Code and other laws and other labour law provisions setting the rights, responsibilities and guarantees for work councils and their members shall apply to the employees' trustee mutatis mutandis.
The employees' trustee shall be elected by secret ballot at the general meeting of employees of the employer. A general meeting of employees of the employer shall be valid provided at least two-thirds of the organisation's employees take part in it. The employees' trustee shall be deemed to be elected from the date of announcement of the election results.

Article 6§2

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

The Committee notes from the European Industrial Relations Observatory (EIRO) that approximately 20% of workers are covered by collective agreements. The Committee takes note of this low figure. In the meantime, the Committee considers that the situation is not in conformity with the Charter on the ground that it has not been established that the machinery for voluntary negotiations has been efficiently promoted.
The Committee wishes the next report to provide updated information on measures taken post 2013 to promote collective bargaining as well as information on the result of these measures.

Conclusion

Pending receipt of the information requested the Committee defers its conclusion.

Responses to the questions and conclusions of the European Committee of Social Rights

To promote social dialogue, implementation of the project **„Pattern of Cooperation between Trade Unions and Employers through Social Dialogue“**, financed from the European Union structural funds, was launched. The purpose of this project is to promote cooperation between trade unions and employers by developing social dialogue and to create conditions ensuring quality coordination of social partners' interests. The project also aims assurance of monitoring of the social dialogue situation in Lithuania and assessment of results at the national scale. Project activities will strengthen representation of trade unions, promote employers and employees to develop social dialogue in companies, increase their participation in collective negotiations, which will inspire conclusion of collective agreements. Activities under implementation will promote trade unions and employers' organisations to make more active contribution to improvement of labour relations, social insurance and employment increase, will help employees to take more active participation in corporate management and joint social collective responsibility.
The project will be implemented by social partners: Lithuanian Trade Union Confederation, Lithuanian Trade Union 'Solidarumas', Lithuanian Employers' Confederation and Chamber of Agriculture of the Republic of Lithuania together with the State Labour Inspectorate under the Ministry of Social Security and Labour of the Republic of Lithuania.
During the project implementation, round table discussions will be organised, publicity means for social dialogue will be developed, research work will be carried out, methodology for development of a system of assessment of achievements in the field of social dialogue development will be created and a methodological publication will be issued. Besides, training-discussions will be held for representatives of institutions and organisations and social partners. Open training, regional conferences will be organised for public. Within the framework of the project, international conferences will be held, other international cooperation activities will be carried out, social polls in the field of social dialogue development will be conducted.
Methodological tools for collective negotiations, templates of collective agreements, etc. are planned to be developed during the project implementation. All these measures will promote smoother collective cooperation and social responsibility in the future, in Lithuania, i.e. will help to improve working conditions and environment, to include more employees into corporate management, to increase employers' responsibility in drafting and implementing collective agreements.
Methodological tools to be developed during the project will be freely accessible to all interested persons and organisations.
The commencement date of the implementation of the project activities is 10 April 2017, the end – 9 October 2020.

Article 6§3

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake 3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

Article 213 of the New Labour Code enshrines **the concept and types of labour disputes**. It is stipulated that labour disputes shall mean disagreements between the parties to labour relationships arising out of labour or related legal relationships.
According to the object of a dispute and subjects involved in a labour dispute, labour disputes shall be classified into:
(1) labour disputes over law (individual labour disputes over law and collective labour disputes over law);
(2) collective labour disputes over interests.
An individual labour dispute over law shall mean a disagreement between the employee or other participants of employment relationships, on the one hand, and the employer, on the other hand, arising from the entry into, amendment, performance or termination of the employment contract, as well as regarding failure to comply or improper compliance with labour law provisions in the employment relationships of the employee and the employer. Parties to labour disputes may include former employers, persons who were willing to conclude employment contracts where that has been refused, as well as persons entitled to an employee's wage or to other employment-related payments.
A collective labour dispute over law shall mean a disagreement between the representatives of employees, on the one hand, and the employer or employer organisations, on the other hand, regarding failure to comply or improper compliance with labour law provisions or mutual agreements.
A collective labour dispute over interests shall mean a disagreement between the representatives of employees, on the one hand, and the employer or employer organisations, on the other hand, arising out of the regulation of mutual rights and obligations of the parties or labour law provisions.

Article 214 of the New Labour Code establishes the principles of hearing labour disputes. Hearing of labour disputes shall be based on the principles of respect for legitimate interests of the other party, economy, concentration, co-operation of the parties in order to settle the dispute under the conditions most acceptable for both parties. The principles of equality and adversarial proceedings shall apply in labour disputes over law to the extent they are not contrary to the legal presumptions established by laws and labour law provisions. If an employee applies to a body hearing labour disputes regarding an individual dispute concerning law, the employer shall prove specific circumstances relevant for dispute resolution and provide evidence, if available or more easily accessible to the employer. In the cases concerning dismissal from work and unlawful refusal to employ, the employer shall prove that the dismissal from work or the refusal to employ has been lawful. Laws may also specify other cases when the burden of proof shall be distributed between the parties to a labour dispute differently.

Article 216 of the New Labour Code sets up the **bodies hearing labour disputes over law:** the Labour Disputes Commission and the court. Labour disputes over law may be heard in commercial arbitration under the Law on Commercial Arbitration of the Republic of Lithuania, if the parties to the labour dispute agree on such hearing after the dispute has arisen.

Article 236 of the New Labour Code regulates the procedure for preliminary examination of collective labour disputes over interests**.** A collective labour dispute over interests shall first of all be examined in the commission of collective labour dispute over interests formed by both parties to the dispute. Upon completion of the work of the dispute commission, the dispute commission may render the following decisions by consensus:

(1) to state that the collective labour dispute over interests has been resolved, if a collective agreement or any other agreement regarding the subject-matter of the collective labour dispute over interests is concluded;

(2) to state that the collective labour dispute over interests has not been resolved;

(3) to use a mediator to deal with the collective labour dispute over interests;

(4) to refer the collective labour dispute over interests for hearing to the Labour Arbitration.

According to the Article 238 of the New Labour Code, collective labour dispute over interests with the help of a mediator shall be resolved within ten days after the day of appointment (selection) of the mediator. This time limit may be extended by agreement of the parties.
Upon completion of mediation, the mediator may render the following decisions:

(1) to state that the collective labour dispute over interests has not been resolved;

(2) to state that the collective labour dispute over interests has not been resolved, if the parties agree to refer the collective labour dispute over interests to the Labour Arbitration;

(3) to state that the collective labour dispute over interests has been resolved, if the parties to the collective labour dispute over interests conclude a collective agreement or any other agreement regarding the object of the dispute during the mediation;

(4) to state that the collective labour dispute over interests has been resolved in part, if the parties conclude a collective agreement for some of the demands or any other agreement regarding the object of the dispute during the mediation;

Labour arbitration means an *ad hoc* institution hearing collective labour disputes over interests, according to the Article 240of the New Labour Code.The Labour Arbitration shall be formed under the territorial office of the State Labour Inspectorate where the office of employer or employers' organisation is situated. The Labour Arbitration shall consist of three arbitrators. The list of arbitrators shall be drawn up, approved and updated by the Minister of Social Security and Labour of the Republic of Lithuania. Natural persons of good repute who are impartial and have special knowledge necessary for dealing with collective labour disputes over interests may be entered on the lists of arbitrators for the term of four years with the right to renew the term of office by four subsequent years. The list of arbitrators shall be published on the website of the Ministry of Social Security and Labour of the Republic of Lithuania. The list of arbitrators shall indicate: the arbitrator's name, surname, education, working experience, arbitration or mediation experience, if any. A person on the list of mediators may also be appointed as an arbitrator. The arbitrators chosen from the list of arbitrators by the parties to a collective labour dispute over interests shall be released from their employment duties for the dispute hearing period. The amount of remuneration and travelling expenses of arbitrators as well as the procedure of payment thereof shall be determined by the Government of the Republic of Lithuania or the authorised institution thereupon. Arbitrators shall protect the confidential information they become aware of in their activities. The procedure for forming the Labour Arbitration and hearing collective labour disputes over interests at the Labour Arbitration shall be specified by the Regulations of Labour Arbitration approved by the Minister of Social Security and Labour of the Republic of Lithuania.

Article 241 of the New Labour Code regulates that when there are preconditions referred to in this Code, labour arbitration proceedings shall be initiated by both parties in mutual agreement, by submitting the decision of the disputes commission or of the mediator on hearing the collective labour dispute over interests at the Labour Arbitration to the Territorial office of the State Labour

Inspectorate. A responsible civil servant or employee of the territorial office of the State Labour Inspectorate shall in writing grant the time limit of five working days for the parties to agree on three mediators and, in case of failure to agree within this period, shall appoint one arbitrator proposed by each of the parties to the Labour Arbitration. The third arbitrator in such a case shall be chosen by the appointed arbitrators by agreement of the parties.

The chairperson of the Labour Arbitration shall be elected by the arbitrators themselves. The choice of the third arbitrator and the chairperson of the Labour Arbitration shall be communicated to the responsible civil servant or employee of the territorial office of the State Labour Inspectorate, who shall verify and make a decision to approve the composition and the chairperson of the Labour Arbitration. It shall be held that the hearing of a collective labour dispute over interests at the Labour Arbitration starts on the day the Labour Arbitration is formed. The responsible civil servant or employee of the territorial office of the State Labour Inspectorate shall be appointed by the Chief State Labour Inspector of the Republic of Lithuania.

A collective labour dispute over interests shall be heard within fifteen working days after the day of formation of the Labour Arbitration. Decisions of the Labour Arbitration shall be adopted unanimously. A decision shall be stated in writing, be substantiated and reasoned. The decision shall be signed by the chairperson and all arbitrators of the Labour Arbitration. The decision shall be submitted to the responsible civil servant or employee of the territorial office of the State Labour Inspectorate who shall send it to the parties of the collective labour dispute over interests not later than within five days.

The Labour Arbitration may render a decision:

(1) to hold the demands asserted in the collective labour dispute over interests as unreasoned and dismiss them;

(2) to hold the demands asserted in the collective labour dispute over interests as reasoned or partly reasoned and obligate to conclude an agreement or a collective agreement under the conditions set out in the decision.

6. An appeal against a decision of the Labour Arbitration may be lodged only if it is contrary to the public order established by the Constitution and laws of the Republic of Lithuania.

The decision of the Labour Arbitration shall be binding to the parties of the collective labour dispute over interests. The decision may state the effects of failure to enforce this decision in favour of the other party to the dispute and set forth that failing to enforce the decision upon the expiry of the enforcement term specified in the decision of the Labour Arbitration, will lead the breaching party to the obligation of paying a fine in favour of the other party in the maximum amount of EUR 500 for each delayed week from the end of the term specified in the decision until the day, when the decision is enforced, but no longer than for six months.

A decision of the Labour Arbitration shall be an instrument permitting enforcement according to the procedure prescribed by the Code of Civil Procedure of the Republic of Lithuania.

If the Labour Arbitration recognises the demands asserted in the collective labour dispute over interests as unreasoned and dismisses them, it shall be allowed to assert such demands not earlier than at the expiry of one year after the adoption of the decision of the Labour Arbitration.

Article 6§4

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

The Committee asked for information in its previous conclusion (Conclusions 2010) on the criteria used to determine whether a minimum service should be introduced in view to its assessment of the restrictions with reference to Article G.

The report states that the minimum service shall be determined by the parties to a collective dispute within three days from the day on which the trade union notifies the employer about the strike. The parties only have to inform the Government in writing or the relevant municipal executive. The employer must be given a written notice at least 14 days in advance in such cases.

The Committee considers that this information does not reply to the question asked by the Committee. The question concerned the criteria used to determine whether a minimum service should be introduced at all, not the procedural requirements surrounding the setting up of a minimum service.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with Article 6§4 of the Charter.

Responses to the questions and conclusions of the European Committee of Social Rights

According to the Article 244 of the New Labour Code, strike means a cessation of work by the employees organised by the trade union or their organisation in order to resolve a collective labour dispute over interests or ensure the enforcement of the decision rendered during the hearing of such dispute. By length, a strike can be a warning strike, which lasts not less than two hours or a true strike.

The right to adopt a decision to declare a strike shall be vested in the trade union or their organisation according to the procedure laid down in their regulations in the cases provided for by Article 243 of the Labour Code. In order to declare a strike on the employer's level, consent of at least one fourth of the members of the trade union shall be obtained according to a procedure prescribed by law. In order to declare a strike on the sector (manufacture, services, professional), a decision of the representing body shall be adopted.

A warning strike may be held before the true strike. A warning strike shall be declared by a written decision of the managing body of the trade union or the managing body of the organisation of trade unions operating in the enterprise, institution or organisation respectively without any separate consent of the members.

The decision of the trade union or their organisation to call a strike shall specify:

(1) demands with respect to which the strike is called;

(2) the date, beginning and place of the strike (enterprises where the strike will take place);

(3) intended number of the employees on strike;

(4) committee of the strike;

(5) voting documents of the trade union members proving the number of the trade union members who have agreed with the strike.
All documents, including ballot papers, the voting protocol and other related documents shall be stored by the trade union for three years.

The employer and employers' organisation and its separate members – employers shall be notified of the beginning of a future warning strike in writing not later than three working days in advance and, in case of a true strike – not later than five working days in advance by sending the decision of the trade union or their organisation to call the strike, according to the Article 246 of the New Labour Code.
The employer and employers' organisation and its separate members – employers shall be notified of the beginning of a future warning or true strike in the enterprises or sectors which provide emergency (vital) services to the public in writing not later than ten working days in advance by sending the decision of the trade union or their organisation to call the strike. When a strike is declared, only the demands considered at the dispute commission, during mediation or at the Labour Arbitration may be put forward.

Article 247 of the New Labour Code regulates the declaration of a Strike in the enterprises and sectors where emergency (vital) services are provided. According to this Article, if the enterprises and sectors of employers provide emergency (vital) services to the public, minimum provision of these services to the public shall be ensured during the true and warning strike. **The minimum services** to be provided shall be determined by the parties to the collective labour dispute over interests by their agreement within three days after submission of a notification about the true strike to the employer and shall be communicated to the Government of the Republic of Lithuania and, respectively, municipal institutions in writing. In case of failure by the parties to agree regarding the provision of minimum services, the minimum services to be provided shall be determined by the body hearing the labour dispute over law within five working days after the application of one of the parties.The provision of minimum services shall be ensured by the strike committee, the employer and the employees appointed by them. If the parties to the collective labour dispute over interests believe that to be necessary, they shall, prior to the beginning of the strike, draw up a list of employees who will have to work during the strike and thereby ensure the provision of minimum services.
The following services shall be held as emergency (vital) services for the public:
(1) health care services;
(2) electric power supply services;
(3) water supply services;
(4) heat and gas supply services;
(5) sewage and waste disposal services;
(6) civil aviation, including flight control, services;
(7) telecommunication services;
(8) railway and urban public transportation services.

According to the Article 248 of the New Labour Code, it shall be prohibited to call a strike for employees of ambulance services and other employees whose right to strike is limited by laws. The demands put forward by these employees shall be settled by the bodies hearing collective labour disputes over interests. Strikes shall also be prohibited in natural disaster areas, regions where

mobilisation, state of martial law or state of emergency has been declared according to the established procedure until the liquidation of the consequences of natural disaster or, demobilisation or lifting of the state of martial law or state of emergency. It shall be prohibited to declare a strike regarding the requirements or working conditions regulated in the collective agreement during the term of the agreement. This restriction shall not apply to collective labour disputes over interests which have not been settled according to the procedure prescribed by this Code in collective bargaining regarding a collective agreement.

Article 249 of the New Labour Code regulates the course of a strike. A strike shall be led by the strike committee formed by the subject who has put forward demands for the employer. The strike committee and the employer shall ensure the protection of property and people. The strike committee and the employer may agree in writing regarding the actions to be taken during the strike in order to preserve the employer's equipment, technological systems and devices in the condition to be able to resume the activities of the enterprise immediately after the end of the strike and protect the production, raw materials and other resources used by the enterprise. Strikers may hold rallies, pickets demonstrations, marches and other peaceful assemblies according to the procedure prescribed by the Law on Meetings and other laws of the Republic of Lithuania.

According to the Article 250, no one may be forced to join a strike or to refuse to take part in a strike. Where there is a strike, the performance of the employment contract with respect to striking employees shall be suspended, whereas their service shall be treated as continuous and they shall retain their right to social insurance according to a procedure prescribed by legal acts. Employees who are parties to a strike shall not be paid any wage, they shall be released from their obligations to perform their work functions. An agreement may be reached during the negotiations for the breaking off of the strike that the striking employees will be paid the full amount or part of their wage. Trade unions or their organisations may set up special monetary or insurance funds to provide financial support to employees on strike. Non-striking employees who are unable to perform their work by reason of the strike shall be paid for the involuntary idle time or they may be transferred upon their agreement to another job. Once the decision on strike is passed and during the strike the employer is restricted from the following:
1) taking any unilateral decision to terminate in full or in part the activities (performance) of the enterprise, office, organisation or a structural division;
2) preventing all or the appointed employees from coming to their work places, and refusing to give work or working tools;
3) creating other conditions or taking decisions that might lead to suspending in full or in part the activities (performance) of the entire enterprise, office, organisation or their separate divisions.
During the strike the employer is restricted from hiring new employees for replacing the employees on strike, except in cases, when it is essential to ensure the provision of minimal services, but the procedure and provisions of this Code do not stipulate for such possibility. These restrictions shall not be applied in the case of lockout declared following the procedure set in the Labour Code.

Lawfulness of a strike. According to the Article 251 of the New Labour Code, upon receipt of a notice from the trade union or organisation of trade unions about the decision to call a strike, the employer or employers' organisation shall have the right to apply to the court regarding the lawfulness of the strike within five working days after the day of receipt of the notice. The

application of other interim measures specified by other laws, except those referred to in Article 252 of the Labour Code, shall be prohibited.
The court shall dispose of the case regarding the lawfulness of the strike within five working days. Economic and social considerations of the demands asserted may not be the subject-matter of the case regarding the lawfulness of the strike. The court shall declare a strike as unlawful if its objective contravenes the Constitution of the Republic of Lithuania, the Labour Code and other laws. A strike may also be held as unlawful, if it:
(1) has been declared in disregard of the procedure and requirements laid down in the Labour Code:
(2) has been declared in the cases when the Labour Code and other laws prohibit strikes;
(3) has been declared with regard to the demands that have not been put forward under the established procedure, with regard to political or other demands not related to the work and related interests of striking employees.
Upon the coming into effect of the court decision to recognise the strike as unlawful, the strike may not be commenced and the strike already in progress must be broken off immediately, if such decision has been referred for immediate enforcement.

According to the Article 252 of the New Labour Code, if there is a direct threat of non-performance of an agreement of the parties to the collective labour dispute over interests or a decision of the Labour Arbitration regarding the provision of minimum services in the enterprises, institutions, organisations and sectors that provide emergency (vital) services during the strike and if that is likely to endanger human life, health and security, the court shall have the right to postpone the strike which has not yet commenced in such enterprises, institutions, organisations and sectors for fifteen working days and to suspend the strike which has commenced for the same period of time.
The employer or employers' organisation shall have the right to apply to court regarding postponement or suspension of a strike in the cases referred to above.

As it is stipulated in the Article 253 of the Nwe Labour Code, a strike shall end after the employer or their organisation adopts the decision to satisfy the demands; after the parties agree to break off the strike or after the trade union or organisation of trade unions recognises that it is inexpedient to continue the strike. After the end of the strike, work shall be resumed not later than on the next working day (shift).

In case of an unlawful strike the losses incurred by the employer shall be compensated by the trade union or their organisation with its own funds or from its assets, if it declared the strike. If the funds of the trade union or their organisation prove insufficient to compensate for the losses, the employer may by its decision use the funds set aside under the collective agreement for the payment to the employees of bonuses, other additional benefits and compensatory payments not provided for by laws. Damage inflicted by the strike on other natural or legal persons shall be compensated for in accordance with the laws in force.

Article 255 of the New Labour Code regulates **the lockout.** Within the meaning of this Article, lockout means a temporary suspension declared by the employer or employers' organisation in the performance of the employment contracts of striking employees of one or several employers.

According to the Article 256 of the New Labour Code, if there are the preconditions set out in this Labour Code, a lockout shall be declared by the employer or employers' organisation. A lockout

shall be applied by the employer to its employees who are members of the trade union or their organisation who is a party to a collective labour dispute over interests or to striking employees. The employer may declare a lockout not earlier than after seven calendar days after the beginning of the strike. Before declaring a lockout, the employer or employers' organisation shall warn the trade union or their organisation involved in the collective labour dispute over law thereabout not later than five working days in writing.The warning notice shall indicate:
(1) the beginning of the lockout;
(2) the reasons and objectives (demands) of the lockout;
(3) the list of employees to whom the lockout will apply.
Each employee to whom the lockout will apply shall be warned about the lockout by the employer individually not later than three working days until the beginning of the lockout.

According to the Article 257 of the New Labour Code, performance of the employment contracts with the employees to whom the lockout will apply shall be suspended until the end of the lockout. The employer may hire new employees under temporary employment contracts to the vacant working places, use temporary employees or offer to other employees of the enterprise, institution or organisation to undertake additional work without breaching the requirements for maximum working tie and minimum rest time set out by the Labour Code. No wage shall be paid to the employees with suspended performance of the employment contracts during the lockout, except in the cases when the parties to the collective labour dispute over interests or the labour law provisions provide otherwise. Uninterrupted calculation of the duration of employment relationship as well as the length of employment in order to get annual leave shall be suspended for these employees, however, their right to social insurance according to a procedure prescribed by law shall be preserved.
Regarding the Article 258, lockouts shall be prohibited in ambulance services, in natural disaster areas as well as in the regions where mobilisation, state of martial law or state of emergency has been declared in accordance with the established procedure, as well as in public administration institutions and in other cases provided for by laws.

A lockout shall end:
(1) after the parties to the collective labour dispute over interests reach an agreement on the end of the lockout;
(2) after the employer recognises that it is inexpedient to continue the lockout.
2. After the end of the lockout, the performance of employment contracts shall be resumed within three working days after the employer's decision regarding the end of the lockout.

Upon receipt of a notice from the employer about the decision to declare a lockout, the trade union or their organisation shall have the right to apply to the court regarding the recognition of the lockout as unlawful within five working days after the day of receipt of the notice. The court shall dispose of the case regarding the lawfulness of the lockout within five working days.The court shall declare a lockout as unlawful if its objective contravenes the Constitution of the Republic of Lithuania, the Labour Code and other laws. A lockout shall also be recognised as unlawful, if it has been declared in disregard of the procedure and requirements laid down in the Labour Code or if the employer abuses the right of lockout. Upon the coming into effect of the court decision to recognise the lockout as unlawful or referral of the decision regarding the recognition of the lockout as unlawful for urgent enforcement, the performance of employment contracts of the employees shall

be resumed within three working days and they shall get payment of the entire unpaid wage and other payments due under the collective agreement, other agreements or internal legal acts from the beginning of the lockout until the renewal of the contract performance. Damage inflicted by the lockout on other natural or legal persons shall be compensated for according to a procedure prescribed by law.

Article 21

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 employment situation in the undertaking.

The Committee notes that the report provides no information regarding the results of investigations, that is the number of established violations for the period 2009-2012, and requests that the next report provide updated information in this regard.
In previous conclusions the Committee requested information on the framework and implementation of fines for employers who fail to observe the workers' representatives' right to information. The report provides no information concerning such sanctions for employers. Therefore, the Committee repeats its request for further details in this regard.

Conclusion
The Committee concludes that the situation in Lithuania is in conformity with Article 21 of the Charter.

Responses to the questions and conclusions of the European Committee of Social Rights

Article 103 of the Code of Administrative Offences of the Republic of Lithuania (hereinafter referred to as the "CAO") imposes administrative liability on employers and other liable persons for the failure to apply guarantees to the representatives of employees provided for in the Republic of Lithuania Law on the Involvement of Employees in Decision Making in European Companies in the amount from one hundred to three hundred euros; if the offence is committed repeatedly, the penalty amounts from three hundred to five hundred and eighty euros. Employers and other liable persons who fail to fulfil the obligation to initiate negotiation as well as to organise the setting up of a work council of a European company as established in the aforementioned law shall incur the penalty in the amount from one hundred and forty to six hundred euros; if the administrative offence is committed repeatedly, the penalty amounts from three hundred to two thousand seven hundred euros.
Article 104 of the CAO imposes administrative liability on employers and other liable persons for the failure to ensure guarantees to the representatives of employees as provided for in the Republic

of Lithuania Law on Employee Participation in Decision Making in European Cooperative Societies. This administrative offence leads to the penalty in the amount from one hundred and twenty to three hundred euros to be paid by the offenders; if the administrative offence is repeated, the imposed penalty ranges from three hundred to five hundred and eighty euros. Failure to initiate negotiation and to organise the setting up of a work council of a European Cooperative Society incurs the penalty specified in the CAO, namely from one hundred and forty to six hundred euros, and where the administrative offence is repeated – from three hundred to seven hundred euros, to be paid by employers or other liable persons.

Article 105 of the CAO imposes administrative liability on employers and other liable persons for the failure to ensure guarantees to the representatives of employees as provided for in the Republic of Lithuania Law on Employee Participation in the Company after the Cross Border Mergers of Limited Liability Companies. According to this law, the penalty ranges from one hundred to three hundred euros, if the administrative offence is repeatedly committed, the penalty ranges from three hundred to five hundred and eighty euros. The failure to initiate negotiation incurs the penalty from one hundred forty to six hundred euros, and where the administrative offence is repeated, the penalty amounts from three hundred to seven hundred euros.

The State Labor Inspectorate didn‘t identify employers who violated this article during the reporting period.

Article 22

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.

The Committee refers to its previous conclusion (Conclusion 2010) and reiterates its request for information on the legal basis for ensuring employees' right to participate in the organisation of social and cultural facilities in the workplace. The Committee wishes to know whether there are any legal remedies available to enforce this right.

The Committee notes that Article 41 of the Code of Administrative Violations of Law of the Republic of Lithuania provides for fines to be imposed for violations of labour law and health and safety law. The Committee understands this to apply to violations of the right to contribute to the determination and the improvement of the working conditions, work organisation and working environment, in addition to health and safety provisions, and asks for confirmation of this 31 understanding. The Committee also asks for further details on which bodies are capable of imposing a fine under these laws.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Lithuania is in conformity with Article 22 of the Charter.

Responses to the questions and conclusions of the European Committee of Social Rights

Article 193 of the New Labour Code regulates the content of collective agreements. In a collective agreement, the parties shall stipulate the working, social and economic conditions for the employees as well as mutual rights and obligations and the parties' liability. The parties shall define the content of a collective agreement following the principles of fairness, reasonableness and good faith. The labour law provisions of collective agreements concluded on a national, branch or territorial level may deviate from the imperative rules set out in the Labour Code or other labour law provisions except for the rules related to the maximum working time and minimum rest time, conclusion or termination of an employment contract, minimum wage, health and safety at work, gender equality and non-discrimination on other grounds, provided that a balance of interests of the employer and the employees is reached by the collective agreement. Disputes over the lawfulness of such provisions shall be considered according to procedures established for the disputes over law. Should it be established that a provision of the collective agreement contradicts the imperative rules set out in the Labour Code or other labour law provisions or that no balance of interests of the employer and the employees is reached by the collective agreement, such provision shall not be applied and shall be replaced with a rule of the Labour Code or the labour law provisions. In any case, a collective agreement may improve the employees' position compared with the position established by the Labour Code or the labour law provisions.

The parties may consider, in a national (inter-branch), territorial or branch (production, services, professional) collective agreement:
1) matters related to the setting of wages for employees of several employers or employers operating within the same branch or territory, working norms and other wage-related matters;
2) health and safety at work;
3) matters related to the employees' employment, professional training and requalification;
4) social partnership support measures enabling the avoidance of collective labour disputes;
5) other working, social and economic conditions relevant to the parties;
6) procedures for making amendments and additions to the collective agreement, its term of validity, enforcement system and procedures, and other organisational matters related to the conclusion and carrying out of the collective agreement.

The parties may consider, in an employer-level collective agreement or a collective agreement on a level of a place of employment:
1) terms of conclusion, amendment and termination of employment contracts;
2) remuneration conditions;
3) working and rest time conditions;
4) health and safety at work measures;
5) conditions of providing one another with information;
6) procedures for the exercise of the rights to information, consultations and other participation of employees' representatives in the employer's decision adoption process, without reducing the statutory powers of the work council;

7) other working, economic and social conditions relevant to the parties;
8) procedure for the carrying out of the collective agreement;
9) procedures for making amendments and additions to the collective agreement, its term of validity, enforcement system and procedures, and other organisational matters related to the conclusion and carrying out of the collective agreement.

The Code of Administrative Offences of the Republic of Lithuania was repealed when on 1 January 2017 the new edition of the CAO came into force. Liability for the violation of labour laws, occupational safety and health regulating normative legal acts is provided for in Article 96 of the new CAO. This article of the CAO imposes administrative liability on the heads of legal persons and other authorised/liable persons for the violation of labour laws, occupational safety and health regulating normative legal acts (penalty from eighty to eight hundred eighty euros) and for the violation of labour laws, occupational safety and health regulating normative legal acts where this could have caused an accident at work or any other severe outcomes (penalty in the amount from five hundred to two thousand euros). The employer or the authorised person who violates the requirements for occupational safety and health laid down in the Law on Occupational Safety and Health and other legislation where such violation resulted in an accident at work or caused any other severe outcomes, in accordance with Article 176 of the Criminal Code of the Republic of Lithuania (hereinafter referred to as the "CC)" is imposed a penalty or faces imprisonment up to eight years.

The right to open proceedings in cases of administrative offences, to carry out an investigation into the administrative offences and to draw up reports on administrative offences pursuant to the CAO is granted to the officers/officials of the State Labour Inspectorate under the Ministry of Social Security and Labour. They also examine administrative offences cases with regard to the violation of labour laws, regulations of occupational safety and health, meanwhile, the cases where such offences could have caused accidents at work or any other severe outcomes are considered by the court. Criminal cases on crimes/offences specified in Article 176 of CC are examined by the court.

The State Labor Inspectorate is capable of imposing a fine under Article 41 of the Code of Administrative Violations of the Republic of Lithuania.

Article 26§1

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;

The Committee previously noted that the Law on Equal Opportunities for Women and Men requires employers to take appropriate measures to prevent sexual and moral harassment of employees. The Committee asks the next report to clarify how this obligation is implemented.
The report does not provide information on prevention measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) undertaken during the reference period in order to combat sexual harassment. The Committee asks the next report to provide

updated information in this respect and to indicate how and to what extent the social partners are involved in the adoption and implementation of such measures.
It also asks whether any liability of the employer applies when a third person (independent contractors, self-employed workers, visitors, clients, etc.) is victim of harassment by a person under the employer's responsibility.
The Committee asks what liability applies to employers who fail to protect an employee from retaliation.
It asks the next report to clarify the situation and to explain whether a shift in the burden of proof applies in sexual harassment complaints when these are examined respectively by the Ombudsperson, the labour disputes commissions, the administrative or civil courts. In the meantime, it reserves its position on this issue.
Committee reiterates its question concerning the amounts effectively awarded as compensation in cases of sexual harassment.
It also asks that the next report provide examples of cases concerning dismissals occurred in the framework of sexual harassment complaints. It furthermore asks whether there are any examples of claims for reinstatement of employees who have been pressured to resign for reasons related to sexual harassment.

Conclusion
Pending receipt of the information requested, the Committee defers its conclusion.

Responses to the questions and conclusions of the European Committee of Social Rights

Employers' Liability and Remedies
Liability for a criminal offence specified in Article 152 of the CC is incurred only when a co-worker or a subordinate is subjected to harassment and when a complaint by the victim or statement by their authorised representative or a claim by the prosecutor is made. The CC does not provide for the employer's liability for the failure to protect employees from harassment by their colleagues or third persons. The CC also fails to impose any liability on the employer when an employee harasses third persons. To incriminate this criminal offence a direct intent by the guilty party is required, for this reason, the employer would not be held liable for the acts which occur in the absence of his/her intent, meanwhile, it is impossible to incriminate the criminal offences specified in Article 152 of the CC where the acts of the employer do not contain negligent fault (recklessness or serious negligence), which could occur due to improper supervision of employees.
Liability for violations of the Law of the Republic of Lithuania on Equal Opportunities for Women and Men and the Law of the Republic of Lithuania on Equal Treatment is regulated in Article 81 of the CAO.
The Law on Equal Opportunities for Women and Men regulates what acts by the employer or employer's authorised representative are recognised as infringing on equal rights of women and men with regard to a person's sex. Article 11 of this Law stipulates that the employer's or employer's authorised representatives acts are recognised as infringing on equal rights of women and men, if they persecute employees, representatives of employees or employees who testify or provide explanations as a reaction to the complaint or another legal procedure concerning discrimination and if they fail to protect employees or persons seeking to be admitted from harassment and sexual harassment.

The Burden of Proof

In accordance with Article 1(4) of the Code of Civil Procedure of the Republic of Lithuania, to implement the legislation of the European Union and international laws, laws of the Republic of Lithuania may set the rules for case examination, issuance of rulings (decisions), enforcement of any other procedural rules that are different from the provisions of the Code of Civil Procedure. Accordingly, both the Law on Equal Treatment and the Law on Equal Opportunities for Women and Men establish that when examining complaints, claims, requests, statements or lawsuits with regard to discrimination in courts or other competent institutions, it is presumed that the fact of direct or indirect discrimination, harassment or instruction(s) to discriminate has occurred. The person against whom the complaint is lodged must prove that the principle of equal opportunities has not been violated.

Pursuant to Article 567(3) of the CAO, when investigating administrative offences or examining cases on administrative offences, the burden of proof cannot be transferred onto the person that is subject to administrative liability.

In 2011–2016, the Ministry of Social Security and Labour coordinated the Interinstitutional Action Plan for Promotion of Non-discrimination (hereinafter referred to as the "Plan"). The purpose of this Plan was to ensure the implementation of educational measures of non-discrimination promotion and equal opportunities, raise legal consciousness, increase mutual understanding and tolerance on the grounds of **gender**, race, nationality, language, origin, social status, faith, convictions or views, age, sexual orientation, disability, ethnicity and religion, raise public awareness of manifestations of discrimination in Lithuania and its negative impact on opportunities for certain groups of society to actively participate in social activities under equal conditions. After the Government of the Republic of Lithuania decided that the Plan and its measures should be approved by the order of the Minister of Social Security and Labour, the Action Plan for Promotion of Non-discrimination 2017–2019 was approved.

In the Section IV, article 1.4 of the 2017-2019 Action Plan for Promotion of Non-discrimination Plan, a measure is envisaged – to execute activities assigned for the mitigation of discrimination and the prevention of discrimination in the labour market provided for on the grounds on the Law on Equal Opportunities. Actions of the envisaged measure: the establishment, monitoring and presentation of online platform designed for remote work by the subject of discrimination; the preparation of an online teaching material assigned for the discrimination provided for on the grounds on Law on Equal Opportunities; the installation of equality plans infor the management of socially liable undertakings; preparation and spread of information package / memos for the employers and employees about the manifestations, aftermath and actions of discrimination in order to prevent it etc.

Furthemore, it is important to mention some changes in the Law on Equal Opportunities. Since the year 2003 – the adoption of the Law on Equal Opportunities – article 2 of the law explicitly states that harassment is a form of discrimination. Since the adoption of the law it has stated that the employer by implementing equal opportunities on grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views, age, sexual orientation, disability, ethnic origin, religion, must ensure that the employee or civil servant would not experience harassment and would not be given instructions to discriminate in the workplace. On 25 July 2017 an article 7(7) of the

law of Equal opportunities was altered and supplemented – the employer must secure that not only the employee, civil servant would not experience sexual harassment but also a person who is seeking to employ.

Burden of proof

According to Article 1(4) of the Code of Civil Procedure of the Republic of Lithuania, other laws, implementing European Union or international law, may provide for different procedural rules than those provided for by this Code. Accordingly, both the Law on Equal Opportunities for Women and Men of the Republic of Lithuania and the Law on Equal Opportunities of the Republic of Lithuania provide that when examining the complaints and applications of natural persons, as well as the disputes of persons concerning discrimination on grounds of sex, *in courts or other competent institutions, it shall be presumed that the fact of direct or indirect discrimination occurred*. A person or institution against whom a complaint was filed must prove that the principle of equal rights has not been violated.

Article 26§2

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:

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.

The Committee previously noted that the Law on Equal Opportunities for Women and Men requires employers to take appropriate measures to prevent sexual and moral harassment of employees. The Committee asks the next report to clarify how this obligation is implemented. The Committee asks that the next report provide information on the prevention measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) undertaken during the reference period in order to specifically inform workers about the nature of moral harassment and the available remedies to combat it. The Committee furthermore asks the next report to indicate how and to what extent the social partners are involved in the adoption and implementation of such measures.

The Committee considers that the civil and criminal provisions mentioned do not adequately cover the phenomenon of moral harassment at work, although they can be relevant in certain cases. The Committee asks for clarifications on the available remedies against moral harassment under administrative, civil and criminal law as well as under the Equal Opportunities Act. It also asks the next report to provide relevant examples of case law concerning cases of moral harassment.

The Committee also recalls that it must be possible for employers to be held liable towards persons employed or not employed by them who have suffered sexual harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc. The Committee asks whether the employer can be held liable for failing to protect an employee from moral harassment perpetrated by a collegue of the victim or by a third person, in relation to the workplace. It also asks whether any liability of the employer applies when a third person (independent contractors, self-employed workers, visitors, clients, etc.) is victim of moral harassment by a person under the employer's responsibility. It asked for information on the kinds and amount of compensation

awarded. It also asked whether the right to reinstatement of employees who have been unfairly dismissed for reasons related to moral harassment is guaranteed.
The report does not contain the information requested concerning the amounts effectively awarded as compensation in cases of moral harassment. The Committee accordingly does not find it established that in Lithuania employees are given appropriate and effective protection against moral harassment in the workplace or in relation to work.
It asks that the next report provide examples of cases concerning dismissals occurred in the framework of moral harassment complaints. It furthermore asks whether there are any examples of claims for reinstatement of employees who have been pressured to resign for reasons related to moral harassment.

Conclusion
The Committee concludes that the situation in Lithuania is not in conformity with Article 26§2 of the Charter on the ground that it has not been established that employees are given appropriate and effective protection against moral harassment in the workplace or in relation to work.

Responses to the questions and conclusions of the European Committee of Social Rights

Employers' Liability and Remedies
Article 7 of the Law on Equal Treatment establishes the duty of the employer to implement the equal treatment at the workplace, (and) in the civil service. Paragraph 6 of Article 7 stipulates that when implementing equal treatment the employer, without regard to gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion must take measures to prevent harassment or instructions to discriminate against any employee or civil servant at the workplace. Article 6(4) of the Law on Equal Opportunities for Women and Men regulates that in implementing equal rights for women and men at workplace, the employer or his representative must take measures to prevent sexual harassment of the employees or persons seeking to be admitted. Liability for breaching the provisions of the Law on Equal Opportunities for Women and Men and of the Law on Equal Treatment is regulated in the aforementioned Article 81 of the CAO.
Administrative offences proceedings on administrative offences specified in Article 81 of the CAO shall be commenced, an investigation in administrative offences shall be conducted and reports on administrative offences shall be drawn up by the officials of the Office of the Equal Opportunities Ombudsperson. They also examine cases of administrative offences on the commitment of administrative offences specified in Article 81 of the CAO and issue decisions in administrative offences cases.
One of the employer's duties indicated in Article 7 of the Law on Equal Treatment is the duty to take measures to ensure that an employee or civil servant who has filed a complaint relating to discrimination or is participating in discrimination proceedings, his representative or any person who is testifying or making statements are not subjected to persecution and are protected from any adverse treatment or adverse consequence. Discrimination in the sense of the Law on Equal Treatment means any direct or indirect discrimination, harassment, instruction to discriminate on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion. Harassment in the same law is defined as any unwanted conduct which occurs with the purpose, or effect, of violating the dignity of a person, and of creating an intimidating, hostile, humiliating or offensive environment on the

grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.
Article 6 of the Law on Equal Opportunities for Women and Men provides for the duty of the employer or employer's representative to take measures to ensure that an employee, a representative of an employee or an employee who testify or provide explanations would be protected from hostile treatment, adverse consequences and any other type of persecution as a reaction to the complaint or another legal procedure concerning discrimination. Discrimination in the Law on Equal Opportunities for Women and Men is understood as any direct or indirect discrimination, sexual harassment, harassment or an instruction to directly or indirectly discriminate against persons on grounds of sex. Harassment is defined in this Law as unwanted conduct related to the sex of a person that occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, humiliating or offensive environment.
Given the provisions of the aforementioned laws, it could be stated, that they are also applicable in terms of moral harassment.

Liability of employers and remedies
According to the Law on Equal Opportunities for Women and Men of the Republic of Lithuania and the Law on Equal Opportunities of the Republic of Lithuania, a person who has suffered discrimination (including – on grounds of sexual harassment or harassment) shall have the right to demand that the liable persons compensate for the pecuniary and non-pecuniary damage in the manner prescribed by the laws. The conditions for civil liability are provided for by the Civil Code of the Republic of Lithuania (e. g. Articles 6.246-6.250) and they are applied together with the provisions of the afore-mentioned laws. Additionally, Article 2.24 of the Civil Code of the Republic of Lithuania provides for the special rules related to protection of honour and dignity.

The Article 30 of the New Labour Code establishes **the principle of protection of honour and dignity of employees**. The employer must create such a work environment where an employee or a group of employees would not suffer any hostile, unethical, demeaning, aggressive, insulting, or offensive actions, which violate the honour and dignity of an individual employee or group of employees, physical or psychological personal integrity or are aimed at intimidating, degrading an employee or a group of employees or to pushing him or them into an unarmed or powerless situation. The employer shall take all necessary measures to ensure the prevention of psychological violence in the work environment and to provide assistance to persons who suffered psychological violence in the work environment.

Principles of hearing labour disputes are set out in the Article 214 of the New Labour Code. According to this article, hearing of labour disputes shall be based on the principles of respect for legitimate interests of the other party, economy, concentration, co-operation of the parties in order to settle the dispute under the conditions most acceptable for both parties. The principles of equality and adversarial proceedings shall apply in labour disputes over law to the extent they are not contrary to the legal presumptions established by laws and labour law provisions. If an employee applies to a body hearing labour disputes regarding an individual dispute concerning law, the employer shall prove specific circumstances relevant for dispute resolution and provide evidence, if available or more easily accessible to the employer. In the cases concerning dismissal from work and unlawful refusal to employ, the employer shall prove that the dismissal from work or the refusal

to employ has been lawful. Laws may also specify other cases when the burden of proof shall be distributed between the parties to a labour dispute differently.

According to the Article 151 of the New Labour Code, each party to the employment contract shall indemnify the other party for material and non-material damage caused by a violation of its work-related duties due to its fault.

Article 218 of the New Labour Code stipulates that if an employee is suspended from work without any lawful basis, the body hearing labour disputes shall render a decision to reinstate the employee in work and award the average work pay for the employee for the period of involuntary idle time and award the property and non-property damage inflicted. If an employee is dismissed from work without a valid basis or in breach of the procedure established by laws, the body hearing labour disputes shall render a decision to recognise the dismissal from work as unlawful and reinstate the employee in former work as well as award the average wage for the period of involuntary idle time from the day of dismissal until the day of enforcement of the decision, not exceeding one year, and award the property and non-property damage suffered. The employee shall be reinstated in work not later than on the next working day after the decision of the body hearing labour disputes to regarding the reinstatement in work becomes enforceable. If the body hearing labour disputes ascertains that the employee may not be reinstated in his previous job due to economic, technological, organisational or similar reasons, or because he may be provided with conditions not favourable for work, or when the employer requests not to reinstate the employee, the body hearing the labour dispute shall render a decision to recognise the dismissal from work as unlawful, award him the average wage for the period of involuntary idle time from the day of dismissal from work until the effective date of the court decision, not exceeding one year, and award the property and non-property damage suffered. The employee shall also be awarded a severance pay, the amount whereof shall be equal to one average wage of the employee for every two years of employment, not exceeding six average wages of the employee. The remedies specified above for violated employee rights shall also apply when that is requested by the employer who normally employs up to ten employees, when the body hearing labour disputes decides to recognise the employee's dismissal from work as unlawful. In these cases the employment contract shall be considered terminated by the decision of the body hearing labour disputes as of the day the decision becomes enforceable.

In 2016, seeking to ensure more efficient protection of individuals against discrimination, proper implementation of the decisions of the Court of Justice of the EU, amendment to the Law on Equal Opportunities for Women and Men was aapproved by the Seimas of the Republic of Lithuania. This amendment specifies that discrimination also includes women’s discrimination on grounds of pregnancy or maternity leave, and that besides sexual harassment in the workplace, harassment in the workplace is also prohibited.

Seeking to implement initiatives aimed at addressing the issues of equality between women and men, the fourth National Programme of Equal Opportunities for Women and Men 2015–2021 was approved in early 2015. The purpose of the Programme is to address the issues of equality between women and men in all areas in a systematic manner and ensure the implementation of the provisions of the Law with regard to the EU and international commitments in the area of gender equality. The order of the Minister of Social Security and Labour of 13 April 2015 approved the Action Plan to be implemented by municipalities, the Office of the Equal Opportunities Ombudsperson, the National

Courts Administration, the Association of Local Authorities in Lithuania, non-governmental organisations, social partners (trade unions and employers' organisations), and university centres for gender studies.
The programmes approved in 2010–2014 and in 2015 focus on the promotion of all opportunities for women and men in employment and work, seeking for the balanced number of women and men in decision-making and highest positions, development of the mechanisms and methods for the implementation of equality between women and men, and fulfilment of EU and international cooperation commitments.
In 2015, when implementing the Programme, a training program for the employers on gender equality planning was developed by the NGOs and "train the trainers" of 13 persons was implemented accordingly. In both 2015 and 2016 NGOs organised training sessions for the employers (directors, assistant directors, human recourse personnel) of public and private organisations. The content of the sessions covered gender equality planning process, principles and measures to be applied in the organisations. Prevention of the sexual harassment was included into the agenda of training.

Ministry of Defence organised training for specialists, to enable them to consult and train on the situations of women in cases of armed conflicts as well as to work as advisors on issues related to equality between women and men whilst deployed on international operations (missions). One of the key training topics - Conflict Related Sexual and Gender Based Violence.

Article 28

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 their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

The Committee notes that in Lithuania no further protection, above the level of protection given to all employees, is afforded to workers' representatives after the period of their mandate. The Committee therefore finds that the situation is not in conformity with the Charter.
The Committee requests that the next report provide information on collective agreements in practice which contain provision for training costs.

Conclusion
The Committee concludes that the situation in Lithuania is not in conformity with Article 28 of the Charter on the ground that the protection afforded to workers' representatives does not extend to a period after the mandate.

Responses to the questions and conclusions of the European Committee of Social Rights

Article 165 of the New Labour Code regulates **the employee representation system.** It is stipulated that representation of employees shall mean the protection of employees' rights and interests and their representation in the relations with other parties to social partnership, bodies

hearing labour disputes and social partnership institutions, the creation of and amendments to the their rights and responsibilities or another participation, with the setting of the employees' labour, social and economic rights and responsibilities according to procedures prescribed by the labour law provisions. The employees' representatives shall include a trade union, a work council and an employees' trustee.

Trade unions shall collectively represent in a collective employment relationship, in the cases established in the Labour Code and other laws, its members – employees and persons working on the grounds of legal relationships treated as an employment relationship. Trade unions may also represent third-party nationals in judicial or administrative proceedings according to a procedure prescribed by law. Trade unions shall also defend their members on an individual basis and represent them in individual employment relationships. Collective bargaining, entering into collective agreements and initiating collective labour disputes over interests shall be an exclusive right of trade unions.

A work council and an employees' trustee shall be independent bodies representing, in the cases and according to a procedure prescribed by the Labour Code, all employees on the employer's level or, if prescribed by the Labour Code or stipulated in social partners' agreements, also on the level of a place of employment, in information, consultation and other participatory procedures whereby employees and employees' representatives are included in the employer's decision-adoption process. Unless labour law provisions or social partners' agreements state otherwise, the employees' representatives on an employer's level shall be deemed to be the employees' representatives on the level of a place of employment.

Activities of the employees' representatives shall be organised and implemented through cooperation and in a way that ensures the most effective protection of common interests and rights of the employees. A work council shall not perform employees' representation functions that are deemed to be exclusive rights of trade unions under the Labour Code.

Article 166 of the New Labour Code establishes **the guarantees of independence of employees' representatives**. Employees' representatives shall act freely and independently from other parties to social partnership. Employers or other social partners shall be prohibited from influencing decisions of employees' representatives or otherwise interfering into activities of employees' representatives. Employers and their legal representatives as well as persons authorised by employers shall be prohibited from determining a person's hiring for work or offering to maintain an employee's job on condition that the employee will not join a trade union or will withdraw from it. Employers and their legal representatives as well as persons authorised by employers shall be prohibited from setting up and financing organisations aiming at hindering, terminating or controlling trade union activities. State and municipal institutions shall refrain from interfering with the activities of employees' representatives except for cases where this done according to the law due to commission of an offence.

Employees' representatives shall have the right to apply to bodies hearing labour disputes and other competent institutions concerning unlawful interference with their activities and to request that the relevant body orders termination of such actions, taking of certain actions or indemnification for the damage. Employers or other social partners shall be entitled to apply to court requesting to terminate actions of employees' representatives that violate their rights, the Constitution of the Republic of Lithuania, this Code or other laws, or agreements between the parties. Activities of employees' representatives may only be stopped and terminated by a court decision. In the event of violation of the provisions of the Constitution of the Republic of Lithuania or the Labour Code by

an employees' representative, the prosecutor may apply to court for the suspension of the activities of the employees' representatives for a period up to three months. If the violation is not rectified during this period, activities of the employees' representatives may be terminated on proposal by the prosecutor and by decision of the court. The mandate of the trade union, the work council or the employees' representative shall be deemed to expire on such grounds.

Article 167 of the New Labour Code establishes the **guarantees of activities of employees' representatives**. The employer shall allot a room, free of charge, for the performance of the functions of members of trade union management bodies and work councils as well as the functions of the employees' trustee, and shall permit such persons to use the available work equipment. Other conditions of provision with facilities shall be set in social partners' agreements.
Social partners may allot funds, according to a procedure prescribed by law and labour law provisions and under social partners' agreements, for the activities of employees' representatives. Such allocation shall not be used as the grounds for violating the guarantees of independence of employees' representatives. The employees' representatives shall be entitled to apply, according to a procedure prescribed by law, to bodies hearing labour disputes and other competent authorities concerning infringements of their rights and legitimate interests. Any person that has caused damage to employees' representatives by his unlawful acts shall be liable to indemnify for such damage according to a procedure prescribed by law.

Article 168 sets up the guarantees and protection against discrimination for persons representing employees on the employer's level. Members of trade union management bodies and work councils as well as the employees' trustee (hereinafter referred to as the 'persons representing employees') normally perform their functions during working hours. For this purpose, persons representing employees' shall be released from work for at least sixty working hours per year for the performance of such functions. They shall be paid their average wages for these hours.
The employer shall enable persons representing employees to take part in training and education. For this purpose they shall be granted at least five working days per year at the time coordinated with the employer. The employees shall be paid their average wages for at least two working days unless the labour law provisions and social partners' agreements state otherwise. The period allotted for the performance of representation functions may also be used for training and education.
Persons representing employees shall not be dismissed from work on the initiative or at the discretion of the employer during the period for which they were elected and six months after the expiry of the term, and the essential conditions of their employment contract shall not be worsened in comparison with the previous essential conditions of their employment contract or as compared with the essential conditions of the employment contract of other employees in the same category without the consent of the Manager of the Territorial labour inspectorate, authorized by the Republic of Lithuania State Labour Inspector, in the territory of which the workplace of the employer is located. The Manager of the Territorial Office of the State Labour Inspectorate shall analyze the reasoned application of the employer for approving the request on terminating the employment contract or changing the essential conditions of the employment contract and submit the response to the employer within twenty working days from the day of the receipt of the application. Employees or their representatives are entitled to submit their opinion on their own initiative or upon the request of the Manager of the Territorial Office of the State Labour Inspectorate. The Manager of the Territorial Office of the State Labour Inspectorate approves the request of the employer on terminating the employment contract or changing the essential

conditions of the employment contract, provided the employer submitted data to prove that the termination of the employment contract or the change of essential conditions in the employment contract are not related with the representation activities performed by the employee and that there is no discrimination of the employee on the grounds of his/her representation activities or membership in the trade union. Having received the reasoned application of the employer, the Manager of the Territorial Office of the State Labour Inspectorate shall inform about that the representative body of employees and the employee concerned, defining the term of no less than five days for submitting the opinions of the representative body and the employee concerned. The decision of the Manager of the Territorial Office of the State Labour Inspectorate may be appealed in the procedure set by the Republic of Lithuania Law on Administrative proceedings. Employment contract with persons representing employees shall not be terminated during the period of ongoing labour disputes. Within ten days from the enforcement of the Labour Code trade unions acting on the level of the employer shall submit to the employer in writing the lists of members in the management, for whom guarantees of this paragraph apply, and the newly established trade unions – no later than within ten days from the date of the establishment.

The employer may appeal against a decision to refuse to give consent to the termination of an employment contract taken by the head of the territorial office of the State Labour Inspectorate within thirty days according to a procedure prescribed by the Republic of Lithuania Law on Administrative Proceedings. Upon coming into effect of a court ruling on the decision to refuse to give a consent to the termination of an employment contract taken by the head of the territorial office of the State Labour Inspectorate, the employer shall have the right to initiate the procedure of termination of the employment contract within one month according to a procedure prescribed by the Labour Code. The coming into effect of a court ruling on the decision to refuse to give a consent to the termination of an employment contract taken by the head of the territorial office of the State Labour Inspectorate shall not automatically mean that termination of the employment contract is legitimate.

Guarantees set in this Article shall be applied to the number of members in the management body of the trade union acting on the level of the employer equal to the existing/potential number of members in the work council, considering the average number of employees working for the employer.

Other guarantees may be provided for by the labour law provisions or agreements between social partners. An employee's membership of a trade union or participation in a trade union's activities or employees' representative bodies shall not be treated as a breach of the employee's work duties.

Regarding the information on collective agreements which contain provision for training costs.

Some signed collective agreements stipulate that the costs of the improvement of employees' qualification can be borne at the expense of the employer. For example, the collective agreement of the Lithuanian National Health System Branch establishes that the qualification of the members represented by trade unions and (or) management bodies which is required for the fulfilment of employees' representatives' functions can be funded by the employer under the terms and conditions and in accordance with the procedure established in the collective agreement of the specific institution. Regular improvement of qualification shall be ensured on an annual basis, and shall be no shorter than three days long a year, unless the collective agreement of the institution stipulates otherwise. Specific terms and conditions on qualification improvement are set forth in the

agreement between the trade union and the employer or in the collective agreement of the institution.
The collective agreement of the Tauragė County Police Headquarters stipulates that the employer undertakes to provide employees with conditions for the improvement of their professional qualification according to the employer's/organisation's financial capacity, the needs of the police institution and on the basis of a reasoned employee's request.
The collective agreement of the State Social Insurance Fund Administration Branch stipulates that the employees of administrative agencies of the Fund have the right to improve their qualification, given the procedure of their performance, terms and conditions as well as legislation that recommends qualification improvement. The Board of the Fund undertakes to allocate costs for employees' qualification improvement in the budget of the State Social Insurance Fund in the amount no less than one per cent on all assignations intended for remuneration of employees of administrative agencies of the Fund.

According to the details provided by economic entities via the System of Electronic Services to Employers, in 2016, employees were represented in almost 39 % of economic entities in Lithuania (in 3.8 % of them employees were represented by trade unions, in 0.3 % of them the functions of representation and protection/defence of employees were assigned to branch trade union(s), in 4.9 % of them a work council was set up, and in 30.1 % of them the functions of a work council were performed by the elected employees' representative), collective agreements were concluded in 10.8 % of economic entities.

Article 29

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.

The Committee asks what sanctions exist if the employer fails to notify the workers' representatives about the planned redundancies. It also asks what preventive measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers' representatives has been fulfilled.

Conclusion
Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with Article 29 of the Charter.

Responses to the questions and conclusions of the European Committee of Social Rights

The Article 63 of the New Labour Code states, that the dismissal of a group of employees shall be deemed as the termination of the employment contracts when, within thirty calendar days on the initiative of the employer without the fault of the employee (Article 57 of this Code), at the discretion of the employer (Article 59 of this Code) or by agreement of the parties to the employment contract (Article 54 of this Code), which is initiated by the employer, or due to the

bankruptcy of the employer (Article 62 of this Code), the following employees are intended to be dismissed:

1) ten and more employees in a place of employment where the average number of employees is twenty to ninety-nine;

2) at least ten percent employees in a place of employment where the average number of employees is one hundred to two hundred and ninety-nine;

3) thirty and more employees in a place of employment where the average number of employees is three hundred and more.

When calculating the number of employment contracts to be terminated, the termination of the employment contracts of at least five employees shall be calculated. Cases when it is planned to dismiss employees from work upon the expiry of the term of an employment contract shall not be considered dismissal of a group of employees.

Prior to taking a decision for terminating an employment contract or for initiating the termination of an employment contract, the employer shall inform the work council or, where it is not available, the trade union operating on the level of an employer, consulting therewith on measures for mitigating the consequences of the future dismissal from work of a group of employees (re-training, transfer to other workplaces, changes to the working time arrangement, higher severance pay than provided for in this Code, extension of notice periods, free time for job search, etc.). During consultations the parties shall seek to conclude an agreement regarding actual mitigation of potential negative consequences thereto.

The employer shall report about the planned dismissal of a group of employees to the territorial labour exchange following the procedure established by the Republic of Lithuania Minister of Social Security and Labour by the end of consultations with the work council or the trade union operating on the level of an employer, and not later than thirty days before the expiry of labour relations, but not later than giving notice to the employees of the group on their dismissal. The employer shall provide a copy of such a notification to the work council, which may provide its observations and proposals to the territorial labour exchange.

Employment contract shall not be terminated by violating the duty of reporting to the territorial labour exchange about the planned discharge of a group of employees or the duty to consult with the labour council or a trade union on the level of the employer.

Article 207 of the New Labour Code regulates the information and consultations procedures in case of collective redundancy. Prior to adopting a decision on a collective redundancy (under Article 63 of this Code), the employer shall inform and consult the work councils. The employer shall provide the following information to the work councils in writing no later than seven working days prior to the planned start of the consultations:

1) reasons for the planned redundancy;

2) total number of employees and number of employees being made redundant, by categories;

3) time limit within which employment contracts will be terminated;

4) criteria for the selection of employees for redundancy;

5) conditions of termination of employment contracts and other important information.

Where an enterprise, institution or another organisation has no work council or an employees' trustee implementing its functions, the employer must provide the information, within the time limits stated therein, to the employer-level trade union and to the employees, either directly or at a

general meeting of employees of the employer. The trade union shall be entitled to express its opinion to the employer concerning the employer's future decisions.
Consultations between the employer and the work council shall start on the basis of the information provided, no later than within five working days from the date of receipt of the information, and the aim of the consultations shall be to agree on the methods and means of avoiding the collective redundancy or reducing the number of employees being made redundant and mitigating the consequences of the redundancy by additional social measures intended, among other things, for the requalification or reemployment of the redundant employees. The employer-level trade union shall be kept informed about progress of the consultations and shall be entitled to express its opinion on such information to the employer.
The employer shall conduct consultations during at least ten working days from the first day of the consultations unless the work council agrees with another term.

Territorial Labour Exchange, having received notification about the planned dismissal of a group of employees:
• assesses the impact of dismissal on the local labour market;
• provides for the possibility of mitigating the consequences of dismissal through employment support measures;
• organizes meetings with employees, in which they are informed about the situation in the labour market and the rights and duties of employees.

Territorial labour exchanges, in coordination with employers, prepare targeted preventive action programs in order to mitigate the consequences of dismissal in enterprises. In order to reduce the psychological stress of persons who have been warned about dismissal and to help locate their place in the current situation, information, consulting, planning of individual employment activities and employment intermediation services are also provided. Informative meetings are held in all companies, which reported about dismissal of a group of employees. During the consultations with the dismissed employees, information is provided on employment, vocational training opportunities, situation in the labour market. Also the motivation of dismissed employees are found out, employees are helped in job search and being prepared for the integration into the labour market.

During the period 2013-2016, territorial labour exchanges have prepared 150 preventive action programs (54 preventive programs in 2013, 25 in 2014, 27 in 2015 and 44 in 2016 years), in which it was provided to include in active labour market measures 881 warned about dismissal employee, to employ 1750 warned about dismissal employee in vacancies registered in labour exchanges(fixed-term and open-ended), and for 2801 person information, consultation, planning of individual employment activities and employment intermediation services were provided.

Article 209 of the New Labour Code regulates the **liability for failure to fulfil the information and consultation duties**. In the case the employer has violated his duties of information and consultation, the work council or the trade union shall be entitled to initiate a labour dispute over law within 2 months after finding out about the breach. Unless otherwise stipulated by the Labour Code a body hearing labour disputes over law shall have the right to reverse the employer's decisions and to obligate to take certain actions as well as to apply liability provisions under the Labour Code or the Republic of Lithuania Code of Administrative Offences. The State Labour Inspectorate shall exercise control over the fulfilment of the information and consultation duties by

employers. A person that has breached the employees' information and consultation duties or has disclosed confidential information to third parties shall be held to account according to the law.

This kind of infringement (failure to notify the worker‘s represantatives about the planned redundancies) is considered as breach of Article 41 of the Code of Administrative Violations of the Republic of Lithuania (violations of labour law and health and safety law). Still during the reference period State Labour Inspectorate didn‘t investigate any case of such violation.