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EUROPEAN SOCIAL CHARTER

15th National Report on the implementation of the European
Social Charter

submitted by

THE GOVERNMENT OF ESTONIA

Article 2, 4, 5, 6, 21, 22, 26, 28 and 29

for the period 01/01/2013 - 31/12/2016

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EUROPEAN SOCIAL CHARTER
(REVISED)

15th Report of the Republic of Estonia on the Accepted
Provisions

For the reference period 1/1/2013-31/12/2016

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

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

Article 26

For the period 2013–2016 made by the Government of Estonia in accordance with Article C of the Revised European Social Charter, on the measures taken to give effect to the accepted provisions of the Revised European Social Charter, the instrument of ratification or approval of which was submitted on September 11th, 2000.

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

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Article 2 – The right to just conditions of work

Article 2 § 1 – Working hours

The General Legal Framework

01.07.2009 a new **Employment Contracts Act**¹ entered into force (hereinafter referred to as ECA), which section 3 of chapter 3 governs the work and rest periods of employees. Relevant information on working time and rest period was submitted to the Committee in 2009.

01.07.2014 a new **Seafarers Employment Act**² entered into force (hereinafter referred to as SEA), which chapter 3 section 4 governs the working and rest time for crew members. It is important to note, that the SEA is not applied to employment on fishing vessels under 24 metres in length. Employment on fishing vessels under 24 metres falls under the regulation of the ECA.

Furthermore, 23.02.2016 Estonia ratified the ILO's Maritime Labour Convention 2006.

We would like to note in advance, that there have also been changes regarding working time for children, but these changes will be submitted in the upcoming report during the reference period of Article 7.

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 2 § 1 of the revised Charter on the ground that the maximum allowed working hours for crew members on short sea shipping vessels is 72 hours per seven day period.

With the SEA, which came into force on 01.07.2014, weekly maximum working time was replaced with the weekly minimum rest time by the new legislation. Subsection 1 of section 49 of the SEA stipulates that an agreement by which a crew member is left with less than 84 hours of rest time over a period of seven days is void. According to subsection 2 of section 49 of the SEA, an agreement by which a watchkeeper is left with less than 77 hours of rest time over a period of seven days is void. Subsection 3 of section 49 of the SEA states that exceptions to the restriction specified in subsection 1 of this section may be made by a collective agreement, provided working will not harm the health or safety of the employee and the crew member is left with at least 77 hours of rest time over a period of seven days.

In comparison to those working on land, there are additional protective measures for seafarers. For example the annual holiday which is 35 calendar days for a crew member (SEA section 55). Also, the working time of crew members who are not watchkeepers or engaged in ensuring safety, the prevention of environmental pollution, and security shall remain within the period of time from 06:00 to 20:00 the ship's time if it is possible considering the nature of the work.

¹ Employment Contracts Act is available in English: <https://www.riigiteataja.ee/en/eli/521062017014/consolide>

² Seafarers Employment Act is available in English <https://www.riigiteataja.ee/en/eli/520032017005/consolide>

Within the period of time from 20:00 to 06:00 and on national and public holidays, the named crew members may only be required to work in order to perform urgent duties, except when the nature of the crew member's work requires working at that time (SEA section 43).

The Measures Taken to Implement the Legal Framework

Relevant measures on implementing the legal framework were introduced and submitted to the Committee on 2014. Introduced measures have been kept up to date on an on-going basis.

In addition, upon SEA entered into force, the Ministry of Social Affairs prepared explanations on the SEA and issued them in a form of a book in 2015, as it did with the ECA in 2013.

Pertinent Figures, Statistics and other Relevant Information

Table 1. The employees' average weekly working time, 2013-2016, in hours

	2013	2014	2015	2016
Employees in total	38,8	39,0	38,7	38,3
Part-time employees	20,5	20,7	20,8	21,1
Full-time employees	40,7	40,6	40,7	40,3

Source: Statistical Office, Estonian Labour Force Survey

Table 2. Employment supervision and violations, 2013-2016

	2013	2014	2015	2016
Number of inspected enterprises	623	604	523	489
Number of violations	1854	1991	2282	1734
Number of Employment Contracts Act violations	1504	1444	1761	1151
... incl. Informing of work conditions	1228	1153	1291	807
...incl. Work and rest time	191	183	251	236

Source: the Labour Inspectorate

Table 3. Work and rest time violations, 2013-2016

	2013	2014	2015	2016
§ 43 (1), (2): work time exceeds allowed norm	3	9	4	2
§ 43 § (4): minor's work time exceeds allowed norm	6	3	3	1
§ 46 (1): average work time exceeds 48 hours per 7 days	11	4	7	5
§ 46 (2): extending the accounting period without a collective agreement or more than 12 months	3	1	3	0
§ 46 (3): average work time exceeds 52 hours per 7 days	3	1	1	0
§ 46 (5): failure to maintain records on employees	9	4	5	22
§ 47 (2): break less than 30 minutes over 6 hours of work	42	47	51	107
§ 47 (3): minor's break is less than 30 minutes over 4.5 hours of work	1	1	3	0
§ 48 (1): on-call time less than 1/10 of agreed salary	1	1	0	0
§ 48 (2): on-call agreement does not guarantee rest time	2	0	1	0
§ 49: violation of restriction on requiring minor to work	5	2	4	1
§ 51 (1): violation of daily rest time requirements	45	54	66	44
§ 51 (2): violation of daily rest time requirements of a minor	6	1	7	1

§ 52 (1): less than 48 hours of consecutive rest time	15	15	20	20
§ 52 (2): less than 36 hours of consecutive rest time	31	30	53	22

Source: the Labour Inspectorate

During 2013-2016, the Labour Inspectorate has imposed a total of twenty five fines to legal persons for failing to follow work time restrictions (2013-8; 2014-8; 2015-5; 2016-4) and 89 fines to natural persons (2013-24; 2014-30; 2015-22; 2016-13) for failing to follow work time restrictions.

Question

In its previous conclusion (Conclusion 2014), the Committee asked whether situations described in Article 51(3) and (4) of the ECA (working days of over 13 hours) there is an absolute limit to daily working time, which could only be exceeded in extraordinary situations. It also asks whether there is an absolute limit on weekly working time in such situations.

In our previous report, it was explained, that work days over 13-hours long can only be performed in the cases specified in Article 17(3) and (4) of Council Directive 2003/88/EC. The ECA does not specifically state an absolute limit to daily working time in situations described in Article 51(3) and (4). However, the absolute limit to daily working time is 24 hours, as it should be interpreted in conjunction with Article 51(5), which states that employer shall give an employee who works more than 13 hours over a period of 24 hours additional time off, immediately after the end of the working day, equal to the number of hours by which the 13 working hours were exceeded. An agreement by which work exceeding 13 hours is compensated for in money is void.

Moreover, it is important to note, that under Council Directive 2003/88/EC Article 6(b) the average working time for each seven-day period, including overtime, should not exceed 48 hours. Only derogation that is allowed for Article 6(b) is stated in Article 16(b) under which Member States may lay down a different reference period for maximum weekly working time, but it can not be exceeding a reference period of four months. Therefore there is an absolute limit on weekly working time in the situations described in Article 51(3) and (4) of the ECA, which is in average 48 hours for seven-day period over a calculation period of up to four months. In the case of work days over 13-hours long, the Article 46(3) of the ECA states that the summarised working time can not exceed on average 52 hours per a period of seven days over a calculation period of four months. The employee may cancel the agreement to work over 13 hours at any time, notifying thereof two weeks in advance.

Question

In its previous conclusion (Conclusion 2014), the Committee asked what rules apply to on-call service and whether inactive periods of on-call duty are considered as a rest period in their entirety or in part.

Since the on-call time is the time when the employee is not required to perform duties, but is required to be ready to perform duties on employer's order, it is not included in working or rest periods. The part of the on-call time during which the employee is performing his duties, shall be considered as working time and the employer must pay the agreed wage to the employee. The part of the on-call time which the employee is inactive and does not perform duties, can not be considered as rest period. When applying on-call duty, the employer must provide the

employee with a daily and weekly rest period. For example it is important that the employee receives his necessary daily rest, which is 11 hours (ECA § 51) within a 24-hour period. If the employee has been working for eight hours a day and had 30 minutes for rest during the working time then the maximum time for applying on-call duty is four hours and 30 minutes ($24 - 8,5 - 11 = 4,5$ hours).

Article 2 § 2 – The right to public holiday with pay

The General Legal Framework

Relevant information was submitted to the Committee on 2009. There have been no changes to the regulation governing compensation for work performed on public holiday during the reporting period (2013-2016).

The measures Taken to Implement the Legal Framework

Relevant measures on implementing the legal framework were introduced and submitted to the Committee on 2014. Introduced measures have been kept up to date on an on-going basis.

Pertinent Figures, Statistics and other Relevant Information

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

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

Table 4. Number of violations, 2013-2016

	2013	2014	2015	2016
Uncompensated night work and/or work done on public holiday	19	26	14	1

Source: the Labour Inspectorate

Question

In its previous conclusion (Conclusion 2014), the Committee asked to next report to clarify whether the compensatory time off which is granted in replacement of the wage compensation is equivalent to or longer than the time worked on a public holiday.

According to the ECA § 45 subsection 2 the work done on a public holiday must be compensated with 2 times the wages for the work. It is and must be interpreted that in the case of using the right provided in the ECA § 45 subsection 3, which allows an employer and employee to agree on compensation for a work done on a public holiday by granting additional time off differently from the provisions of subsection 2, the employee must not lose in wage and therefore the compensatory time off must be equal with the worked hours on a public holiday. The compensatory free time must not fall on the employee's normal rest time. The compensatory free time is provided on account of the agreed working time and is remunerated as working hours.

Article 2 § 3 – The right to an annual holiday with pay

The General Legal Framework

Relevant information on holiday was submitted to the Committee on 2009, and there have been no further changes in the regulation during the reporting period (2013-2016).

The measures Taken to Implement the Legal Framework

Relevant measures on implementing the legal framework were introduced and submitted to the Committee on 2014. Introduced measures have been kept up to date on an on-going basis.

Pertinent Figures, Statistics and other Relevant Information

According to the Estonian Work Life Survey conducted in 2015 by the Statistical Office, 70,5% of employees have taken 28 or more calendar days of rest in the last 12 months (both paid and unpaid holiday, not including study leave, maternity leave and sickness leave). 15,9% of employees took less than 28 days of rest (1-27 days) and 13,6% of employees did not take any days of rest during the last 12 months.

10,5% of employees stated that they can never choose when to take holiday (9,2% of employees that had rested less than 28 days and 11,1% of employees that had rested 28+ days in the last 12 months).

Of the employees that had rested less than 28 days in the last 12 months, 6,7% were overall not satisfied with their work-time arrangements (compared to 5,5% of employees that had rested 28+ days).

Article 2 § 5 – The right to a weekly rest period

The General Legal Framework

Relevant information on the right to a weekly rest period was submitted to the Committee on 2009, and there have been no further changes in the regulation during the reporting period (2013-2016).

The measures Taken to Implement the Legal Framework

Relevant measures on implementing the legal framework were introduced and submitted to the Committee on 2014. Introduced measures have been kept up to date on an on-going basis.

Pertinent Figures, Statistics and other Relevant Information

According to the Estonian Work Life Survey, 48% of employees never worked over 48 hours per week in 2015 (56% in 2009). A little under a quarter of employees work over 48 hours per week at least once every month. It is more common among services and sales workers (43% of them work over 48 hours per week at least once a month) and least common among craft and related trades workers (21% works over 48 hours per week at least once a month).

There is no statistical data on the postponement of weekly rest time.
Statistics on violations provided below.

Table 5. The Labour Inspectorate statistics on employment supervision and violations, 2013-2016

	2013	2014	2015	2016
Number of inspected enterprises	623	604	523	489
Number of violations	1854	1991	2282	1734
Number of Employment Contracts Act violations	1504	1444	1761	1151
...incl. work and rest time	191	183	251	236

Source: the Labour Inspectorate

Table 6. Weekly rest time related violations, 2013-2016

	2013	2014	2015	2016
§ 52 (1): less than 48 hours of consecutive rest time	15	15	20	20
§ 52 (2): less than 36 hours of consecutive rest time	31	30	53	22

Source: the Labour Inspectorate

Article 2 § 6 – The right to written information upon commencement

The General Legal Framework

Relevant information on the right to written information upon commencement was submitted to the Committee on 2009, and there have been no further changes in the regulation during the reporting period (2013-2016).

The measures Taken to Implement the Legal Framework

Relevant measures on implementing the legal framework were introduced and submitted to the Committee on 2014. Introduced measures have been kept up to date on an on-going basis.

Pertinent Figures, Statistics and other Relevant Information

According to the Labour Force Survey, less than 1% of employees in years 2013-2016 said that they have a verbal contract with their employer.

Table 7. Employment supervision and violations, 2013-2016

	2013	2014	2015	2016
Number of enterprises	623	604	523	489
Number of violations	1854	1991	2282	1734
Number of Employment Contracts Act violations	1504	1444	1761	1151
...incl. Informing of working conditions	1228	1153	1291	807
...incl. Work and rest time	191	183	251	236
...incl. Wages	13	22	26	47
...incl. Fulfilling notification and consultation obligation	7	8	1	2
...incl. other	65	78	192	59

Source: the Labour Inspectorate

Article 2 § 7 – Night work

The General Legal Framework

Relevant information on the night work was submitted to the Committee on 2009, and there have been no further changes in the regulation during the reporting period (2013-2016).

The measures Taken to Implement the Legal Framework

Relevant measures on implementing the legal framework were introduced and submitted to the Committee on 2014. Introduced measures have been kept up to date on an on-going basis.

Pertinent Figures, Statistics and other Relevant Information

Table 8. The proportion of evening and night workers, 2013-2016 (%)

	2013	2014	2015	2016
Evening workers (at 18:00-24:00)	40,0%	41,4%	38,5%	36,7%
Night workers (24:00-06:00)	12,5%	13,5%	11,9%	12,2%

Note: Persons employed working between 18:00-24:00 or 24:00-06:00 often or sometimes. According to Estonian Labour Force Survey night work is between hours 24.00 - 06.00. According to ECA § 45, in Estonia, night work is work between hours 22.00 - 06.00.

Source: Statistical Office, Estonian Labour Force Survey

According to Estonian Work Life Survey conducted in 2015, 27% of employees (of enterprises and establishments which employed more than five employees) worked in the evening (18:00-22:00) and 11% worked at night (22:00-06:00). Of the enterprises and establishments 26% had employees working regularly between 18:00-22:00 and 16% had employees working regularly between 22:00-06:00.

Table 9. Number of night work related violations, 2013-2016

	2013	2014	2015	2016
Not compensating for night work and/or work done on public holiday	19	26	14	1
Violating night work limitation	16	22	25	11

Source: the Labour Inspectorate

Question

In its previous conclusion (Conclusion 2014), the Committee asked to next report indicate whether there is regular consultation with the workers' representatives on the use of night work, the conditions in which it is performed and measures taken to reconcile workers' needs and the special nature of night work.

There are no specific regulations on regular consultation with the worker's representatives on the use of night work. The consultation on the use of night work is governed with the consultations of working environment. Subsection 2(6) of section 13 of the **Occupational**

Health and Safety Act³ states, that the employer has an obligation to notify the employees, through working environment representatives, members of the working environment council and employees' trustees, of hazards, of the results of risk assessments of the working environment and of the measures to be implemented in order to prevent damage to health. Therefore there is no specific data collected which indicates how regular are the consultations with the workers' representatives on the use of night work. However, Estonian Working Life Survey 2015 showed, that 76% of employees found that they can participate sufficiently in the discussions over working time and holidays.

³ Occupational Health and Safety Act is available in English
<https://www.rigiteataja.ee/en/eli/505052017007/consolide>

Article 4 – The right to a fair remuneration

Article 4 § 2 – The right to an increased remuneration rate for overtime work

The General Legal Framework

Relevant information on the right to an increased remuneration rate for overtime work was submitted to the Committee on 2009, and there have been no further changes in the regulation during the reporting period (2013-2016).

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 4 § 2 of the revised Charter on ground that time off granted in lieu of increased remuneration for overtime is not sufficient.

The ECA § 44 subsections 6 and 7 establish the conditions and procedure for compensation of overtime. An employer shall compensate overtime work by time off equal to the overtime, unless it has been agreed that overtime is compensated in money (submitted to the Committee on 2009). It is and must be interpreted that in case of compensating overtime with free time, the free time must not fall on the employee's normal rest time. The compensatory free time is provided on account of the agreed working time and is remunerated as working hours. It means that overtime is well compensated. It gives employee an opportunity to have extra time off and also gives financial compensation.

The measures Taken to Implement the Legal Framework

Relevant measures on implementing the legal framework were introduced and submitted to the Committee on 2014. Introduced measures have been kept up to date on an on-going basis.

Pertinent Figures, Statistics and other Relevant Information

Table 10. Proportion of employees working overtime, 2013–2016 (%)

	2013	2014	2015	2016
TOTAL	3,5%	3,2%	3,8%	5,0%
The proportion of employees financially compensated for overtime	2,0%	2,1%	2,4%	3,1%
The proportion of employees financially uncompensated for overtime	1,5%	1,1%	1,4%	1,9%

Note: Proportion of employees that worked overtime on the week of the study.

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

According to the Estonian Work Life Survey conducted in 2015, 57% of employees had worked overtime in the last 12 months (compared to 51% in 2009). 60% of the employees that had worked overtime had been financially compensated for it, 49% had gotten time off work. The percentage of employees who claim that they are not compensated for working overtime has decreased from 24% in 2009 to 13% in 2015.

87% of employees said in 2015 that they are willing to work overtime if requested by the employer. 23% of employees said that they would have problems with their employer if they refused to work overtime.

In 2015 51% of enterprises/organisations had employees that had worked overtime in the last 12 months. 92% of employers said that their employees are usually willing to work overtime, 7% thought that the employees agree to work overtime against their will.

Table 11. Number of violations by not compensating for overtime work or for compensating to a lesser extent than prescribed, 2013-2016

	2013	2014	2015	2016
Number of violations	12	11	10	1

Source: the Labour Inspectorate

Article 4 § 3 – The right to equal pay without discrimination on grounds of sex

The General Legal Framework

Relevant information was submitted to the Committee on 2014. There have been no further changes in the regulation governing compensation for work done on public holiday during the reporting period (2013-2016).

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 4 § 3 of the revised Charter on ground that unadjusted pay gap is manifestly too high.
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Gender Pay Gap in Estonia according to the latest Eurostat statistics is 26,9%. As the pay gap is too high and reflects unequal opportunities for men and women in the society, tackling the gender pay gap has been a priority. The relevant legal framework is there, but Estonia faces problems with the implementation of some of the aspects. The latest developments include The Welfare Development plan that has gender equality as one its top priority and sets out activities for gender pay gap audits to help implement obligations foreseen in the Gender Equality Act. In addition, Estonia is planning changes to the parental leave system with one of the focuses being raising fathers participation with childcare and taking out parental leave.

The measures Taken to Implement the Legal Framework

In October 2013, the Government of the Republic established the Gender Equality Council, an advisory body to the Government set forth in the GEA. Its main responsibilities are advising the Government in matters related to strategies for the promotion of gender equality, approving general objectives of gender equality policy and presenting opinions to the Government concerning the compliance of national programmes with the obligation of gender mainstreaming. The Council consists of 25 members. Among the members are main umbrella organisations of employers, of employees and of local authorities, main women's organisations, the Network of Estonian Non-profit Organizations, main organisations of pupils and students, a representative of rectors of public universities, national bodies for statistics, health development, lifelong learning and employment support, Gender Equality and Equal Treatment Commissioner and all political parties represented in the parliament.

In 2012-2016, a 2 000 000 EUR programme for mainstreaming gender equality and work-life balance is carried out with financing from the Norway Grants 2009-2014, co-ordinated by the Ministry of Social Affairs. Different projects were implemented under the programme, including one aimed at developing a new concept for gathering and analysing gender pay gap statistics by the Statistics Estonia and the other targeted inter alia at raising rights awareness and helping victims of discrimination directly through strategic litigation as well as increasing the capacity of officials assisting discrimination victims, carried out by the Gender Equality and Equal Treatment Commissioner.

On 30th of June 2016, Estonian Government adopted the Welfare Development Plan for 2016-2023 and an action plan for its implementation. The Welfare Development Plan is the first comprehensive social and labour policy strategy document. It has two main aims: high employment rate and long and high quality working life and gender equality, higher social inclusion and decrease of inequality and poverty.

The development plan has four sub-goals, one of which is gender equality. Under this sub-goal, the plan targets issues of equal economic independence of women and men; reducing gender pay gap; balanced participation of women and men in all levels of decision-making and management in politics and public and private sectors; reducing negative impact of gender stereotypes on decisions and everyday life of women and men; enhancing rights protection concerning equal treatment of women and men and guaranteeing institutional capacity to promote gender equality, including gender mainstreaming. Measures planned into action plan vary from awareness raising to legislative initiatives.

Pertinent Figures, Statistics and other Relevant Information

When comparing the hourly earnings of women and men taking into account the fields of economic activity, in 2013⁴, the gender pay gap was 22.49%, in 2014 slightly larger again – 23.64%. Among economic activities the gender pay gap continued to differ considerably. The gap was the largest in financial and insurance activities (45.68% in 2013, 39.57% in 2014), industry (33.89% in 2013, 28.82% in 2014) and trade, transportation, accommodation and food service activities (27.79% in 2013, 28.01% in 2014), and the smallest in agriculture, forestry and fishing (20.73% in 2013, 14.61% in 2014), construction (17.09% in 2013, 15.33% in 2014) and professional, scientific and technical activities, administrative and support service activities (13.95% in 2013 and 15.89% in 2014).

Table 12. Average gross hourly earnings of male and female employees in Estonia by economic activity, 2014¹

2014	Average hourly gross wages of males, euros	Average hourly gross wages of females, euros	Gender pay gap, %
Economic activities total	6.43	4.92	23.43
Agriculture, forestry and fishing	5.23	4.47	14.61
Industry	6.46	4.6	28.82
Construction	5.89	4.99	15.33
Trade, transportation, accommodation and food service activities	6.02	4.34	28.01
Information and communication	9.42	7.03	25.35
Financial and insurance activities	13.03	7.88	39.57
Real estate activities	4.95	3.6	27.19

⁴ The calculation of the gender pay gap is based on the combined database created by Statistics Estonia. The combined database combines the data of the Estonian Labour Force Survey and the Estonian Social Survey. Wage data from the register of taxable persons of the Estonian Tax and Customs Board have been linked to the combined database. Data for 2014 are based on the Structure of Earnings Survey.

Professional, scientific and technical activities, administrative and support service activities	6.49	5.46	15.89
Public administration, education, human health and social work activities	6.91	5.27	23.72
Arts, entertainment and recreation, other service activities	5.1	4.02	21.01

¹ Data for 2014 are based on the Structure of Earnings Survey.

Source: Statistics Estonia, Gender Equality Indicators

With the regard to the gender pay gap by occupation, then in 2014, Estonian women in all major occupational groups earned less by work hour than their male colleagues (based on the Structure of Earnings Survey, Statistics Estonia). The average gender pay gap across occupations is 23.48% in favour of men. Percentage-wise, the highest gender pay gaps are among craft and related trades workers and professionals; the lowest pay gap for female workers compared to their male colleagues was among skilled agricultural, forestry and fishery workers. The gender pay gap among male and female managers is also relatively small, compared to many other occupations. Additional information needs to be collected to explain the wage gap. Therefore the Statistics Estonia has drafted "Strategy of Pay Gap Statistics 2016-2023" and will continue to move towards using various registries to produce statistics. The next step is to establish and ensure necessary variables for joining together different registries. This work is part of the project called „Aruandlus 3.0“. The aim of this project "Aruandlus 3.0" is to reduce administrative burden of enterprises for submitting data to the Tax and Customs Board, Statistics Estonia and to Bank of Estonia. The first focus is on the wage and employment data (including gender pay gap statistics).

Table 13. Average gross hourly earnings of male and female employees in Estonia by major group of occupation, 2010 and 2014

	Average gross hourly earnings of males, euros		Average gross hourly earnings of females, euros		Gender pay gap, %	
	2010	2014	2010	2014	2010	2014
Occupations total	5.44	6.43	4.17	4.92	23.34	23.43
Managers	8.51	9.03	7.09	7.61	16.70	15.68
Professionals	7.92	9.19	5.95	6.68	24.87	27.27
Technicians and associate professionals	6.03	7.34	4.58	5.47	24.02	25.50
Clerical support workers	4.75	5.61	3.70	4.53	21.97	19.17
Service and sales workers	3.43	4.29	2.74	3.39	20.13	21.03
Skilled agricultural, forestry and fishery workers	3.62	4.65	3.35	4.39	7.48	5.41
Craft and related trades workers	4.47	5.60	3.07	3.84	31.24	31.46
Plant and machine operators, and assemblers	4.28	5.24	3.17	4.09	25.86	21.96
Elementary occupations	3.08	4.10	2.33	3.02	24.50	26.36

Source: Statistics Estonia, Structure of Earnings Survey

Earnings of women and men also differ by age group. Women's earnings have been lower in the period of 2006-2014 in every age group. The biggest gender differences⁵ in gross hourly earnings appeared in the age group of 35-44 year olds (26.55% in 2014), that is when women participate in the labour market and can further their professional careers most likely rather sporadically due to parenting. However, the gap was over 23% also in the age group of 45-54. The gender differences in earnings were however the smallest among the youngest age groups (persons less than 34 years old) – 15.24% for 15-24-year olds and 19.86% for 25-34-year olds.

Average gross hourly earnings also have a correlation with the level of education. Despite of the same educational level, women still earn less than men. For example in 2014 women with the secondary education earned 30.92%, and women with first or second stage of tertiary education 27.26% less of the salaries of their male counterparts. Unfortunately this data shows that although higher education has a role to play in both men's as well as women's higher earnings, it is more advantageous for men.

According to the Gender Equality Monitor that was carried out in 2016, 58% of Estonian people agreed with the opinion that women's work is less valued than men's. 72% of women and 55% of men who had heard the gender pay gap agreed with the opinion that the gender pay gap is a big problem. 95% of people (3 pp more than previous monitors) agree that the wage paid for equal work should not be dependent on the worker's sex. Compared to men, women expressed slightly more often that men and women should be paid equally for the same work. Thus, compared to the two previous surveys in 2009 and 2013, the share of men who are agree with the opinion that wage paid for equal work should not be dependent on the worker's sex, have increased.

Question

In its previous conclusion (Conclusion 2014), the Committee asked for more precise information regarding the legislation that explicitly guarantees the right to equal pay of men and women for equal work or work of equal value.

According to the Gender Equality Act direct and indirect discrimination based on sex, including giving orders therefor, is prohibited

It is also discriminatory if the employer

- establishes conditions for remuneration or conditions for the provision and receipt of benefits related to the employment relationship which are less favourable regarding an employee or employees of one sex compared with an employee or employees of the other sex doing the same work or work of equal value;

⁵ [http://pub.stat.ee/px-](http://pub.stat.ee/px-web.2001/Dialog/varval.asp?ma=WQS01&ti=AVERAGE+HOURLY+GROSS+WAGES+AND+GENDER+PAY+GAP+BY+GROUP+OF+PERSONS&path=../_Databas/Social_life/19Worklife_quality/03Gender_equality/&lang)

[web.2001/Dialog/varval.asp?ma=WQS01&ti=AVERAGE+HOURLY+GROSS+WAGES+AND+GENDER+PAY+GAP+BY+GROUP+OF+PERSONS&path=../_Databas/Social_life/19Worklife_quality/03Gender_equality/&lang](http://pub.stat.ee/px-web.2001/Dialog/varval.asp?ma=WQS01&ti=AVERAGE+HOURLY+GROSS+WAGES+AND+GENDER+PAY+GAP+BY+GROUP+OF+PERSONS&path=../_Databas/Social_life/19Worklife_quality/03Gender_equality/&lang)
=1

To tackle gender pay gap, Ministry of Social Affairs is planning amendments to the Gender Equality Act. The amendments shall foresee measures for supervision over implementation of the requirement of equal pay for women and men for the same work and work of equal value.

Question

In its previous conclusion (Conclusion 2014), the Committee recalls that when the dismissal is the consequence of a worker's complaint concerning equal wages, the employee should be able to file claim for unfair dismissal. In this case, the employer has to pay compensation, which must be sufficient to compensate the worker and to deter the employer. Courts should have the competence to fix the amount of this compensations, not the legislator (Conclusions XIX-3, Germany). The Committee asks what rules apply in this regard.

According to the GEA discrimination disputes are resolved by a court or a labour dispute committee. Both Court and labour dispute committee have the right to reduce or increase the compensation as they see reasonable. There is no law that restricts this competence.

Question

In its previous conclusion (Conclusion 2014), the Committee asked to next report to provide information regarding the adjusted pay gap.

According to Praxis (2010), the gender pay gap in Estonia comprises mostly of unadjusted pay gap. The general gender pay gap in Estonia was on years 2000-2008 averagely 28,7%, whereas only 4,4% of it was adjusted and 24,3% unadjusted. Variables that make up the adjusted part of the gap are for example different positions and fields of work (vertical and horizontal segregation), education, working time etc. However, the impact of these variables on the general pay gap is very small, explaining only about 15% of the gap. Therefore, the challenge for Estonia lies in the unadjusted gender pay gap.

Question

In its previous conclusion (Conclusion 2014), the Committee wished to be kept informed of the new developments in the regard of pay comparisons in equal pay litigations.

In 2013, the Gender Equality and Equal Treatment Commissioner received 116 complaints, memorandums and requests for explanation, 61 of which concerned gender equality. 44 contacts of 116 concerned the area of work. In 15 cases the Commissioner established occurrence of discrimination. In 2014, the number of complaints, memorandums and requests for explanation was 192, 90 of which concerned gender equality. 114 contacts of 192 concerned the area of work. In 39 cases the Commissioner established occurrence of discrimination. In 2015, the number of complaints, memorandums and requests for explanation received by the Commissioner was 209, 70 of which concerned gender equality. 98 contacts of 209 concerned the area of work. No data is yet available concerning the number of cases regarding which the Commissioner established occurrence of discrimination. No statistical information is gathered by the Commissioner concerning regional distribution of the complaints.

The number of cases proceeded by the Chancellor of Justice (CoJ) in matters of equal treatment and discrimination has been relatively stable during the years. Only a few of them concern gender equality. In 2013, the CoJ was contacted on 39 occasions with the issues concerning equality and equal treatment. Mostly, these concerned the general fundamental right to equality. Five proceedings concerned different treatment due to a specific attribute of discrimination. The CoJ made a recommendation to comply with legality and good administrative practice in two cases and a proposal to eliminate the violation in one case. In 20 proceedings, the matter concerned conformity of a legal act with the Constitution. In 2014, the CoJ was contacted on 51 occasions with the issues concerning equality and equal treatment. Of these, 34 cases concerned the general fundamental right to equality and 17 concerned discrimination. The CoJ made a recommendation to comply with legality and good administrative practice in one case. In 28 proceedings, the matter concerned conformity of a legal act with the Constitution. Three complaints concerned conformity of legislative acts with the principle of gender equality, two of these focusing on rights and obligations of men. No violation of the Constitution was established. In 2015, the CoJ was contacted on 51 occasions with the issues concerning equality and equal treatment. Of these, 30 cases concerned the general fundamental right to equality and 21 concerned discrimination. The CoJ made a recommendation to comply with legality and good administrative practice in one case. In 24 proceedings, the matter concerned conformity of a legal act with the Constitution. One of the cases concerned rules of a local government which entitled only a mother to receive childbirth allowance. The CoJ did not initiate proceedings because that would not have been effective to protect the rights of the applicant taking into account the expected time of birth of the child. The applicant was explained which remedies were available. Another complaint concerned issues of salary of a male prison official. The CoJ did not establish a gender-related difference in treatment. During the reporting period 2013-2015 no conciliation proceedings were carried out. As the proceedings are voluntary, very often the reason is reluctance of the respondent to consent to participate in the proceedings.

The number of labour disputes proceeded in Labour Dispute Committees was 17 in 2013, 28 in 2014 and 25 in 2015. While in 2013, the complaints were lodged only in two biggest regions, in 2014 the regional distribution included 5 regions and in 2015 already 8. Respectively 6, 10 and 12 of the complaints concerned unequal treatment of an employee on grounds of sex or based on becoming a parent or parenting small children. In 2013, 2 applications were withdrawn, in 3 cases discrimination was established. A compensation of 1,000 EUR was decreed in accordance with the Gender Equality Act in one of the cases. In 2014, 3 applications were withdrawn, in 4 cases discrimination was established. Compensation decreed varied from 900 to 2,100 EUR. In 2015, discrimination was established in 7 cases, with compensation varying from 100 to 3,000 EUR.

Article 4 § 4 – The right of all workers to a reasonable period of notice for termination of employment

The General Legal Framework

Relevant information on the right of all workers to a reasonable period of notice for termination of employment was submitted to the Committee on 2009, and there have been no further changes in the regulation during the reporting period (2013-2016).

Conclusion

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

- general notice periods are insufficient beyond three years of service;
- the wages due up to the end of the temporary contract may be withdrawn in the event of early termination on other than economic grounds.

Regarding the non-conformity on the ground of insufficient general notice periods beyond three years of service, we would like to elaborate, that the ECA, which regulates general notice periods of extraordinary cancellation of employment relationship, was drafted in close cooperation with social partners. The ECA § 85 subsection 5 states, that an employer may not cancel an employment contract ordinarily. The employment contract can be cancelled from the employer's initiative only extraordinarily, which according to the ECA means, that only when the reason of the cancellation arises from the employee or for economic reasons.

Furthermore there are other measures constituted by law to help employee overcome the loss of job. The employer has the obligation to grant the employee who has been dismissed on economic grounds, within the period of advance notice, time off to a reasonable extent to find new employment. It is important to emphasize that this free time is given at the expense of the working time and must be paid on the average wages of an employee.

The employee who has worked for four years and has been dismissed on economic grounds has also right to receive severance pay equivalent to one month's wages.

According to the subsection 1 of section 8 of Unemployment Insurance Act an insured person has the right, in the case where employment contract was cancelled not because of employees serious offence, to receive an unemployment insurance benefit during the whole period when he or she is registered as unemployed, but not longer than:

- 1) 180 calendar days if the insurance period of the insured person is shorter than 5 years;
- 2) 270 calendar days if the insurance period of the insured person is 5–10 years;
- 3) 360 calendar days if the insurance period of the insured person is 10 years or longer.

Although an employee has a valid employment relationship, in the case where she or he has received the cancellation notice, the person has access to the additional labour market services. According to the clause 4 of subsection 1 of section 7 of Employment Programme

2016 – 2017 a job-seeker who has received a notice of termination of employment or service relationship due to redundancy will have the Individual Action Plan. On the basis of this plan she or he has the access to the labour market services such as the labour market training, work practice, business start-up subsidy, receiving career information, job-search consultation etc.

The aim of the abovementioned measures, which does not depend on the employee's length of service, is to provide the employee with diverse opportunities for successfully find new employment.

Regarding the non-conformity on the ground of the possibility to withdraw the wages due up to the end of the temporary contract in the event of early termination on other than economic grounds, we would like to elaborate.

The ECA allows the employer to cancel the employment contract only when the reason of the cancellation arises from the employee or for economic reasons.

In the case where an employer feels the need to cancel a contract, on other than on an economic reasons, the reason is usually a serious offence from the part of employee. We find that in cases where the reason for the cancellation is directly linked to employees unwanted actions it would be unjustified to require from an employer to pay the wages to the extent that corresponds to the wages that the employee would have been entitled to until the expiry of the contract term.

Subsection 1 of section 100 of ECA states that upon cancellation of an unspecified term employment contract due to lay-off an employer shall pay an employee compensation to the extent of one month's average wages of the employee. At the same time, the employer upon cancellation of fixed term contract for economic reasons, an employer shall pay an employee compensation to the extent that corresponds to the wages that the employee would have been entitled to until the expiry of the contract term. The regulation is based on the nature of a fixed-term employment contract, according to which the fixed-term contract expires at the end of the agreed term, and its cancellation prematurely must be exceptional. Already upon the conclusion of a fixed-term contract, the employer must ensure employee with work for the agreed term, otherwise it would be reasonable to hire the employee for unspecified term.

Insolvency, liquidation and force majeure lead to the termination of the employer's activities, and its resources. They are considered as situations that are accompanied by business risks and could not be influenced by the employer or, based on the principle of reasonableness, could not be expected of him to exceed or prevent. In those cases it is not possible to establish the duration of the presumed employment of an employee with an unspecified term contract. On the same principle it would be unjustified to require from an employer to pay the wages to the extent that corresponds to the wages that a fixed-term employee would have been entitled to until the expiry of the contract term.

In both cases, whether the reason of the premature cancellation arises from the employee or for economic reasons, the unemployment insurance system provides financial help for the employee.

The measures Taken to Implement the Legal Framework

Relevant measures on implementing the legal framework were introduced and submitted to the Committee on 2014. Introduced measures have been kept up to date on an on-going basis.

Pertinent Figures, Statistics and other Relevant Information

Table 14. Number of persons receiving insurance benefit in case of lay-offs, 2013-2016

	2013	2014	2015	2016
Number of persons	6 251	6 350	7 481	7 864

Note: insurance benefit shall be paid to an employee or public servant whose employment or service relationship with an employer has lasted for at least 5 years.

Source: Estonian Unemployment Insurance Fund

In 2016, the most common reasons for termination of an employment contract according to the national Employment Register were:

- mutual agreement (ECA § 79, 32% of all terminations)
- employee's own will (ECA § 85, 28% of all terminations)
- end of a temporary contract (ECA § 80 subsection 1, 21% of all terminations)
- lay-off (ECA § 89 subsection 1, 7% of all terminations).

Question

In its previous conclusion (Conclusion 2014), the Committee asked to next report provide information on the practical application of dismissal without notice, or compensation provided for by section 97, paragraph 3 of the ECA, where it cannot reasonably be required that the contract will run to completion or to the end of the statutory notice period.

The ECA § 88 subsection 1 states number of cases on which an employer may extraordinarily cancel an employment contract with good reason arising from the employee as a result of which, upon respecting mutual interests, the continuance of the employment relationship cannot be expected. The explanations to the Employment Contracts Act, which derive from the legislator and the decisions of the Estonian Supreme Court, provide explanations to the grounds for extraordinary cancellation of an employment contract, which may cause the dismissal without notice for the cases where it cannot reasonably be required that the contract will run to completion or to the end of the statutory notice period.

1. The employee has for a long time been unable to perform his or her duties due to his or her state of health which does not allow for the continuance of the employment relationship (decrease in capacity for work due to state of health). A decrease in capacity for work due to state of health is presumed if the employee's state of health does not allow for the performance of duties over four months. The law assumes long-term liability. Therefore it is considered as a long time, when the employee has been unable to perform his or her duties within four months. The four-month period will be taken into consideration both sequentially and summed.

2. The employee has for a long time been unable to perform his or her duties due to his or her insufficient work skills, non-suitability for the position or inadaptability, which does not allow for the continuance of the employment relationship (decrease in capacity for work). In this case each particular case must be considered separately.

However, the ECA § 88 subsection 2 states, that before cancellation of an employment contract, in particular on the basis specified above, the employer shall offer other work to the employee, where possible. The employer shall offer other work to the employee, including organise, if necessary, the employee's in-service training, adapt the workplace or change the employee's working conditions if the changes do not cause disproportionately high costs for the employer and the offering of other work may, considering the circumstances, be reasonably expected. In addition, ECA § 93 subsection 2 prohibits the cancellation an employment with a pregnant woman or a woman who has the right to pregnancy and maternity leave due to a decrease in the employee's capacity for work.

In addition to above, the employer may extraordinarily cancel an employment contract under ECA § 88 subsection 1 when an employee:

- disregards the employer's reasonable instructions or breaches his or her duties, in spite of a employers' warning;
- is at work in a state of intoxication. in spite of the employer's warning;
- commits a theft, fraud or another act bringing the loss of the employer's trust in the employee;
- causes a third party's distrust in the employer;
- wrongfully or by intent, or negligence, including gross negligence, causes significant damages to the employer's property or causes a threat of such damage;
- violates the obligation of maintaining confidentiality or restriction of trade (ECA § 22 and 23).

The ECA § 97 subsection 3 allows the employer to cancel an employment contract without adhering to the term for advance notice if, considering all circumstances and mutual interests, it cannot be reasonably demanded that the performance of the contract be continued until the expiry of the agreed term or term for advance notice without the compensation to the extent to which the employee would have been entitled to upon adhering to the term for advance notice.

Question

In its previous conclusion (Conclusion 2014), the Committee asked to next report provide information regarding:

- the deviatory notice periods established by collective agreements in pursuance of section 97, parahraph 4 of the ECA;
- the notice periods and/or compensation applicable to fixed term contracts;
- the notice periods and/or compensation applicable to workers subject to the Civil Service Act of 13 June 2012 and the Seafarers Act of 8 February 2001.

Collective agreements

The ECA § 97 section 4 allows collective agreements to prescribe different notice periods for termination of employment contracts. It is mandatory to register collective agreements in

Estonian Collective Agreements Register (hereinafter referred to as ECAR). But the validity of the contract does not depend on whether the contract is registered or not. Therefore, we can not guarantee that all collective agreements are registered and we do not have exhaustive information. In the process of registering, it is indicated in the registration form, whether the agreement prescribes different notice periods for termination of employment contracts than provided with the ECA. Unfortunately we do not have all necessary data to give profound conclusions but we can give some examples from the ECAR. For example there is an agreement, that the notice period for termination of employment contract that has been valid less than two years with an employee who has reached the age of the retirement, raises a disabled child, or has got work injury or received occupational disease, is one month longer than stated in the ECA. As another example there is an agreement in which the minimum notice period is four months except when the termination arises from the violation of the contract by the employee.

Fixed term contracts

As a general rule, when the employment contract is cancelled, the employer must apply a notice period stated in the subsection 4 of section 97 of the ECA. The subsection 5 of section 85 of ECA prohibits an employer from cancelling the employment contract ordinarily. Therefore a fixed-term employment contract usually ends upon expiry of the term or its pre-term cancellation in exceptional circumstances. Notification is not required when the contract ends upon expiry of the term. For pre-term cancellation the same rules apply for the fixed term and unspecified term contracts. The only exception is, that upon cancellation of fixed term contract for economic reasons, (except in cases of insolvency, liquidation and force majeure as mentioned above), an employer shall pay an employee compensation to the extent that corresponds to the wages that the employee would have been entitled to until the expiry of the contract term. The regulation is based on the nature of a fixed-term employment contract, according to which the fixed-term contract expires at the end of the agreed term, and its cancellation prematurely must be exceptional. Already upon the conclusion of a fixed-term contract, the employer must ensure employee with work for the agreed term, otherwise it would be reasonable to hire the employee for unspecified term.

Workers subject to the Civil Service Act

The Civil Service Act (CSA) applies to the officials of state and local government authorities and in the cases provided for by the CSA to the employees of a state and local government authority. The Employment Contracts Act (ECA) doesn't apply to officials, except in the cases provided for by the CSA. The employment relationships of the employees in an authority are governed by the ECA and other acts regarding the governing of employment relationships. This means that the notice periods and compensation for employees working under an employment contract are covered by the ECA. The notice periods and compensation for the officials of state and local government authorities are covered by the CSA, but the respective regulation is the same as it is in the ECA.

Workers subject to the Seafarers Act

The Seafarers Act is void since 01.07.2014 when the SEA (Please see answer to Article 2 paragraph 1) came into force. The ECA, including the regulations regarding notice periods and

compensations applies also to workers to the subject to the SEA, except when the SEA states otherwise.

The SEA states following:

- In the case of a shipwreck the operator⁶ has the right to cancel a seafarer's employment contract without adhering to the terms for advance notice provided for in § 97 of the ECA. (SEA § 66 subsection 2);
- In the case a ship becomes unseaworthy due to a marine casualty, the operator shall notify a crew member of the cancellation of the seafarer's employment contract at least five calendar days in advance. (SEA § 66 subsection 3);
- A crew member shall notify the operator of the cancellation of the seafarer's employment contract on the ground of the right to disembark at least five calendar days in advance, except when considering all the circumstances and the interests of both parties it cannot be reasonably requested that the contract be continued until the end of the period for advance notice. (SEA § 69 subsection 2);
- When a crew member is cancelling a seafarer's employment contract under the right to disembark or due to a fundamental breach of the employer's obligation under the ECA , the operator shall pay the crew member a compensation to the extent of his or her three months' average wages. The court or a labour dispute committee may change the amount of compensation, taking into account the circumstances of the cancellation of the seafarer's employment contract and the interests of both parties. (SEA § 69 subsection 4).

⁶ § 5 of the SEA states that "For the purposes of this Act, an operator is a person specified in the Maritime Safety Act or another person who assumes in an employment relationship the rights, obligations and liability of the employer by entering into a seafarer's employment contract."

Article 4 § 5 – Wage deductions

The General Legal Framework

Relevant information on the wage deductions was submitted to the Committee on 2009. There have been no changes in the regulation during the reporting period (2013-2016).

Conclusion

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

In addition to the information reported prior we submit to the Committee information as follows.

The only claim, which allows to seize debtor's minimum wage, is a support for a child (no other claim allows to seize debtors wage in a way that it would leave a debtor with salary less than minimum wage).

According to § 132 (1) of Code of Enforcement Procedure, income shall not be seized if it does not exceed the amount of minimum wages prescribed for one month or a corresponding proportion of income for a week or day. According to § 132 (11) of Code of Enforcement Procedure, if making a claim for payment on other assets of a debtor has not led to or presumably does not lead to complete satisfaction of a claim for child support, up to fifty per cent of the income specified in subsection (1) of this section may be seized. If the amount seized out of the income of the debtor for the fulfilment of a claim for support of child is less than a half of the amount specified in subsection (1) of this section, up to one-third of the income of the debtor may be seized.

That means that up to fifty per cent of the income specified in subsection (1) may be seized only in case making a claim for payment on other assets of a debtor has not led to or presumably does not lead to complete satisfaction of a claim for child support.

According to § 132 (2) of Code of Enforcement Procedure, if, pursuant to law, a debtor maintains another person or pays alimony to him or her, the amount not subject to seizure increases by one-third of the minimum monthly wages per each dependant unless a claim for child support is subject to compulsory execution.

According to Estonian Code of Enforcement Procedure and its principles, enforcement of child support claims is a priority. According to Estonian Family Law Act, parents must support their minor child. Court considers all the relevant facts before determining the amount of monthly child support. According to § 101 (1) of Family Law Act, the monthly support payment for one child shall not be less than half of the minimum monthly wage established by the Government of the Republic. According to § 102 of Family Law Act § 102 (1) person is released from the obligation to provide maintenance in so far as he or she is, considering his or her other

obligations and financial situation, unable to provide maintenance to another person without damage to his or her own usual maintenance. According to § 102 (2) of Family Law Act, parents shall not be released from the obligation to provide maintenance to their minor child pursuant to subsection (1). If a parent is in a situation specified in subsection (1), he or she shall use the assets at his or her disposal for the maintenance of himself or herself and his or her child similarly. With good reason, a court may, however, reduce the amount of support to less than the amount provided for in subsection 101 (1) of this Act. A good reason is, inter alia, incapacity for work of a parent or a situation where a parent has another child who would be financially less secure than the child receiving support if the amount of support provided for in subsection 101 (1) of this Act were ordered.

To have decent standard of living, the debtor can also ask social benefit from state, if his or her income is too low. Clause 3 of subsection 1 of section 131 of the Code of Enforcement Procedure prescribes that social benefits cannot be seized for any claim.

The committee brings out in its reasoning that the minimum wage in Estonia is insufficient to ensure a decent living for workers and their family. And if we understand correctly that is also one of the reason for negative conclusion on this article. It's true that even so there has been steady raise of minimum wage in past years, about 10% a year, the minimum wage is still below the social charter standards. Since 2012 it is raised from 290 euros to 470 euros. The minimum wage is continually the main labour and social issues which is dealt annually.

Besides that we are fighting the undeclared wages. Since 2014 all the natural and legal persons providing the work are required to register the persons employed by them in the employment register. It has improved employers tax behavior but employees whose salary is partly undeclared are still quite common. And those employees who hide part of their income, form also the big part of the employees from whose minimum wage the child support is deducted.

The measures Taken to Implement the Legal Framework

Pertinent Figures, Statistics and other Relevant Information

Question

In its previous conclusion (Conclusion 2014), the Committee asked to next to complete the list of circumstances (such as tax debts, social contributions, civil claims, maintenance claims, fines, union dues) and the operations (assignments) liable to result on deductions of wages. It asks in particular for information on the limits on deductions from wages applied pursuant to agreements on the protection of working tools provided for by section 75 of the ECA.

The Committee pointed out that under Article 4§5 of the Charter, the way in which deductions from wages are determined should not be left to the discretion of the parties to the employment contract and that, while such negotiations are not prohibited as such, they must be subject to legal rules established by legislation, case law, regulations or collective agreements (Conclusions XIV-2 (1998), United Kingdom). It is important to elaborate, that the parties of the employment contract are not allowed to agree on deduction of wages as they please. The article 75 of the ECA allows the parties to agree on proprietary liability, but the proprietary liability does not automatically include the right for deduction from the wage if the employer should have a claim against the employee under the Article 75. Article 78 of the ECA states that the employer may set off its claims against an employee's wage claim by the employee's consent given in a format which can be reproduced in writing. In addition, with the employee's consent the employer still has to take into account the provisions concerning making a claim for payment provided for in section 132 of the Code of Enforcement Procedure.

Question

In its previous conclusion (Conclusion 2014), the Committee asked to next report to provide information on the limits on deductions of wages applicable to employees covered by the Civil Service Act of 13 June 2012 and the Seamen Act of 8 February 2001.

The Seafarers Act is void since 01.07.2014 when the SEA (Please see answer to Article 2 paragraph 1) . There are no additional limits on deductions of wages applicable to employees covered by the CSA or by the SEA.

Article 5 – The right to organise

The General Legal Framework

Relevant information on the right to organise was submitted to the Committee on 2014. There have been no changes in the regulation during the reporting period (2013-2016).

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 5 of the Charter on the grounds that it has not been established that:

- the right to form trade unions is guaranteed in practice;
- the right to join a trade union is guaranteed in practice.

The non-conformity arises from the reasoning that outside the reference period 4 appeals have been lodged before the labour dispute committee in the case of discrimination because of trade union membership.

The four appeals were the affairs of the Human Right Center and after verifying these appeals, we have found there were actually 3 cases on the grounds of the right to form and join a trade union. All of those appeals were submitted against the same employer. Two of the appeals were dismissed because it was not proved that the employment contract was terminated due to the employees' membership of a trade union. Therefore we cannot deny that occasionally appeals on grounds of discrimination because of trade union membership are submitted to the labour dispute committee. Despite that we find the conclusion, that discrimination of persons on that ground is a widespread problem, misleading.

Forming and joining a trade union is a fundamental right. Foundation of a trade union is really easy. A trade union may be founded by at least five employees by approving and signing a memorandum of association. In order to assure freedom of association, the **Penal Code**⁷ was amended and 01.01.2015 section 155 of the Penal Code entered into force. The section provides that preventing founding of a trade union or compelling of a person to join it or preventing of a person from joining it, is punishable by a pecuniary punishment or up to one year of imprisonment. The same act, if committed by a legal person, is punishable by a pecuniary punishment.

The measures Taken to Implement the Legal Framework

Relevant measures on implementing the legal framework were introduced and submitted to the Committee on 2014. Introduced measures have been kept up to date on an on-going basis.

⁷ The Penal Code is available in english <https://www.riigiteataja.ee/en/eli/524072017009/consolide>

Pertinent Figures, Statistics and other Relevant Information

Table 15. Trade union membership among salaried workers, 20013-2016

	2013	2014	2015	2016
Proportion of trade union members among salaried workers	5,6%	5,3%	4,5%	5,0%

Source: Estonian Labour Force Survey

According to the Estonian Work Life Survey conducted in 2015, 7,2% of employees (in enterprises and establishments with 5 and more employees) are members of a trade union and 6% of employers said that there is a trade union in their organization. Trade union membership is more common in mining and quarrying (28% of employees are in a trade union), electricity, gas, steam and air conditioning supply (19%), human health and social work activities (19%), transportation and storage (15%) and education (15%).

Question

In its previous conclusion (Conclusion 2014), the Committee requested that the next report indicate whether domestic law clearly prohibits all pre-entry or post-entry closed shop clauses and all union security clauses (automatic deductions from the wages of all workers, whether union members or not, to finance the trade union acting within the company).

The deductions from the wages could be made only under the ECA. Moreover, the Article 19 (3) of the Trade Unions Act prohibits restriction of the rights of an employee and a person seeking employment on the ground of their membership in a trade union or absence thereof, of being elected a representative of a trade union, or of other legal activities related to trade unions. This includes prohibiting reducing remuneration, wages or additional remuneration due to activities related to trade unions.

Question

In its previous conclusion (Conclusion 2014), the Committee referred to a past conclusion (Conclusions 2004) for a detailed description of trade union activities and asked the next report, to provide a detailed and up-to-date description of the situation in this respect.

There is no statistical data collecting on the trade union activities, since the trade unions operate within the private companies.

Article 6 – The right to bargain collectively

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

The General Legal Framework

There have been no changes in the regulation during the reporting period (2013-2016).

The measures Taken to Implement the Legal Framework

Pertinent Figures, Statistics and other Relevant Information

Question

In its previous conclusion (Conclusion 2014), the Committee asked to next report to provide more detailed information demonstrating that social partners are in practice well involved in social dialogue and report to provide further information on the matters covered by joint consultation.

In addition to the information submitted to the Committee in 2014, we provide more detailed descriptions regarding consultations with social partners.

The involvement of social partners in legislation making procedures has become a good practice in Estonia and is extensively used in practice. Social partners are involved during asking for input and opinions regarding legislative improvements in areas affecting them. Social partners are invited in different working groups and different meetings with interest groups. Furthermore, social partners are involved in different legislative stages: at the drafting intention of the law (intention of the law is a document that precedes the the actual drafting of the law and indicates the possible changes and impact), input collection for the drafting of the law and in the work of respective working group to draft the law.

If the development of the intention of the draft or the drafting is completed and sent to other ministries in accordance with the rules of procedure for coordination, it is also sent to the social partners for comments. All drafts are available in public information system and accessible to everyone during their proceedings, and everyone has the right to express their views and send comments. In situations where social partners have controversial opinions or positions with the legislator, meetings with the social partners take place so that the parties can explain their views and reach a compromise before the draft law is adopted.

If the law is passed to the parliament, then before the adoption of the law, social partners who are affected or likely to be influenced by the law, are invited to the discussions in the parliament.

For example, the consultations of the SEA (which came into force on 1 July 2017), with the social partners and other maritime industry interest groups were launched by the Ministry of Social Affairs already in 2010. The aim of the consultations was to discuss the compatibility of the existing legislation with the requirements of the Maritime Labor Convention and the Fisheries Convention. In the same year, the Marine and Fisheries Task Force was set up under the leadership of the Ministry of Social Affairs to analyze the possibilities for harmonization of national law.

As another example in 2013 the Ministry of Social Affairs started the consultations for amending the legislation of resolving individual labour disputes. In 2014 the intention of the draft was published and sent for coordination and commenting. Based on the feedback a meeting with social partners and interest groups took place to collect more input. Meanwhile, social partners held the topic in the agenda and expressed the need for amendments in the media. In 2016 the first draft based on earlier input was completed. Since there were numerous and controversial opinions, the draft was followed with two meetings for consultation with social partners and other interest groups and numerous amendments were made. In 2017 when the draft reached the parliament, which again involved all social partners and other interest groups to the discussions, the draft was supported by the partners without substantial needs for amendments and new Labour Dispute Resolution Act was adopted in June 2017.

As for more permanent body there is a Steering Committee, together with the numerous social partners, for Welfare Development Plan. The task of the Steering Committee is to manage the development plan and its implementation, including the objectives, measures and implementation plan of the development plan, as well as doing annual reports.

Also in the public sector the bilateral negotiations and consultations with appointed delegations are mostly being replaced with ad hoc meetings aimed at more specific subjects. The most debatable topics are about remuneration – the minimum salary of different target groups, the request to raise the payroll etc. Such consultations are, for example, annual joint consultations, organized by the Ministry of Culture, for remuneration of the cultural workers.

Article 6 § 2 – Promotion of the right to collective bargaining and conclusion of collective agreements

The General Legal Framework

Relevant information on the promotion of the right to collective bargaining and conclusion of collective agreements was submitted to the Committee on 2014. The amendments to the Collective Agreements Act were not adopted as the procedure was interrupted by the annual elections of the parliament. There have been no further changes in the regulation during the reporting period (2013-2016).

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 6 § 2 of the revised Charter on the ground that the promotion of collective bargaining is not sufficient.

The ECA established derogations that can be made by a collective agreement. For example, the calculation period for summarised working time (up to 4 months) may be extended by a collective agreement to up to 12 months in certain sectors.

Those derogations offer employers and employees a chance to agree on more suitable terms by concluding a collective agreement in compare with ECA, provided that working does not harm employee's health and safety. Also, it enables employees to promote their interests more easily since there is employers' interest in concluding collective agreement. Therefore, it encourages parties to enter into a collective agreement.

The government has supported, using different monetary funds like European Social Fund, Norway Grants, the administrative development of social partners to raise their capacity as social partners to each other and to government and to educate their members and trade unions shop-stewards about labour law and to raise their negotiation skills. The government continues this support.

It is important to add that the representatives of social partners are involved more and more in work of different governmental work groups and reform committees. They are represented for example in The Estonian Qualifications Authority (developing the occupational qualifications system), Social Insurance Reform Committee and Work Ability Reform Committee. They are also consulted in relation to drafts that in some way are connected with workers or employers' rights and obligations (please see answers to Article 6 (1)). They continue to steer the work of Estonian Unemployment Insurance Fund and Health Insurance Fund. So social partners are very much involved in composing new regulations and in choosing new directions for Estonian labour and social policy at the same time they are free to conclude extended collective agreements.

However, in March 2017 the Ministry of Social Affairs published a collection of articles⁸ which purpose was to analyze the organization of work, employment relationships, employee involvement, collective employment relationships and the state of health and safety at work and trends in Estonia. The collection of articles are based on the National Survey of Work Life of the Statistical Office, which was carried out for the second time in 2015, the first working life survey was carried out in 2009. The results of the working life survey confirm the results of previous surveys, according to which the level of trade union membership in Estonia is low and has decreased over the years. Compared to 2009, the percentage of employees belonging to a trade union has decreased by a third (from 11% to 7%). On the other hand, the percentage of companies and institutions with an operating trade union has not decreased over the last six years, i.e. the number of trade unions has not dropped but the existing unions are losing their members and are thus increasingly becoming weaker negotiation partners for employers.

The biggest changes in collective employment relationships have occurred at large companies and institutions with at least 250 employees. Trade union membership among the employees of these organisations has dropped by a half (from 22% to 11%) and the percentage of companies/institutions with a functioning trade union has also declined, i.e. it may be concluded that both the number of trade unions and the number of members of the existing existing trade unions have dropped. As the representation of employees has weakened, it is understandable that the prevalence of entering into collective agreements has declined. The percentage of large companies and institutions with collective agreements has dropped from 39% to 27%. Conclusively, significant changes have occurred in the collective employment relationships of organisations with at least 250 employees over the past six years. In medium and small companies/institutions, collective employment relationships are significantly less common than among the companies/institutions with at least 250 employees and no such significant changes have occurred there either.

The peculiarity of the age structure of the members of trade unions may be deemed as one of the reasons for the decrease in trade union membership and thereby collective negotiations in general. In Estonia as well as in other countries, trade union membership is more common among older employees, which means that when these employees reach pensionable age, it has a significant negative impact on collective negotiations, unless they are replaced by new generations of young employees who are interested in joining trade unions and holding collective negotiations. According to the working life study, young employees in Estonia are not joining trade unions – only 2% of the 15–29-year-olds belonged to trade unions in 2015; the percentage was 5% in 2009. Even though it is possible that these employees will become interested in joining trade unions at an older age, it may still be one of the significant reasons for why the prevalence of collective negotiations will continue to drop in Estonia in the future.

The future of trade unions and collective negotiations is also influenced by their image in society. The percentage of the employees aware of the activities of trade unions has dropped over the past six years; thereat, the change is somewhat more extensive among those who are not trade union members themselves compared to those who are. In 2015, only 11% of the employees not belonging to trade unions were aware of the activities of trade unions. This awareness is especially low among young employees, only 4% of whom are aware of the

⁸ Collection of Articles available in Estonian (conclusions in English): http://sm.ee/sites/default/files/content-editors/Ministeerium_kontaktid/Uuringu_ja_analuusid/eesti_tooelu_uuring_2015.pdf

activities of trade unions. On the other hand, it is interesting that employees' assessments of the coping of trade unions with representing employees have improved in the course of six years – the percentage of those finding that trade unions are able to cope has increased from 16% to 27% among those not belonging to trade unions. Such change in the assessments may be the result of the economic situation, i.e. in the conditions of the 2009 economic crisis, the coping of trade unions was assessed more critically compared to a period of higher economic stability. On the contrary, the percentage of employers finding that trade unions managed to represent the opinions of employees well was higher in 2009. The economic crisis probably also influenced employees' assessment of the necessity of trade unions, as the percentage of those who do not deem trade unions as necessary in representing the interests of employees increased by 2015, from 17% to 26% among trade union members and from 31% to 42% among other employees.

The results of the working life survey show the extent of the changes in collective employment relationships in Estonia in the comparison of 2009 and 2015, but do not provide answers as to why such changes have occurred. There may be several reasons for why the prevalence of collective employment relationships has decreased compared to 2009. As the working life survey only allows comparing two points in time, it is difficult to assess whether the differences between the two years are caused by a general trend or one of the years has been remarkably different from other years. Keeping in mind that 2009 was one of the most difficult years of the economic crisis, this certainly also had an impact on collective employment relationships. The results of an annual labour force survey show that trade union membership peaked during the economic crisis and has dropped slightly below the pre-crisis level thereafter. Thus, the changes observed based on the working life survey may also be caused by the fact that the number of trade union members was higher than usual in 2009. Using other surveys for background, however, we must admit that the decrease in trade union membership and collective negotiations is a long-term trend in Estonia, which will continue in the future without significant changes.

The measures Taken to Implement the Legal Framework

Relevant measures on implementing the legal framework were introduced and submitted to the Committee on 2009. It should be noted, that in the process of electing a Public Conciliator the social partners are also involved and the Public Conciliator must be approved by both employee's representatives and employers' representatives. Therefore the collective bargaining is mediated by a person who both parties trust.

Pertinent Figures, Statistics and other Relevant Information

Collective agreements' coverage

According to the Estonian Work Life Survey (2015), 19% of employees say that their working conditions are regulated by a collective agreement and about 4% of organizations with over five employees have collective agreements. The number of collective agreements is significantly higher in organizations with more than 250 employees - collective agreements have been concluded in 27% of those organizations.

According to the collective agreements' database maintained by the Ministry of Social Affairs, by estimate, about 14% of salaried workers were covered by collective agreements in 2016

(although it is possible that the collective agreement database does not include all the collective agreements).

Question

In its previous conclusion (Conclusion 2014), the Committee asked which measures are taken to promote collective bargaining.

Please see the answers to Article 6(2) above.

Article 6 § 3 – Promotion of conciliation, mediation and arbitration procedures

The General Legal Framework

26.10.2015 the amendments to the Collective Labour Dispute Resolution Act came into force. Since the election of national conciliator has been very problematic before, the amendments included the regulation covering the election, functions and proceedings of national conciliator. The Act was drafted in collaboration with social partners and government.

The measures Taken to Implement the Legal Framework

In 2014 the Draft of Collective Agreement and Collective Labour Dispute Resolution Act was submitted to the parliament by the government. The first reading took place, but in march 2015 draft act was dropped in parliament upon the expiry of the mandate of the parliament, since the proceedings were not completed before the expiry of their mandate. Therefore, unfortunately the law was not adopted. The reason why the procedure stopped after first reading was probably because there were some disagreements between the government coalition parties regarding the draft.

However, to improve the legal framework of conciliation and mediation, in September 2015 the amendments to the Collective Labour Dispute Resolution Act were adopted. The amendments include the regulation covering the election, functions and proceedings of national conciliator. The election of national conciliator have been very problematic for last decade. The draft was an agreement between social partners and government and lead to the election of new national conciliator in February 2017.

Pertinent Figures, Statistics and other Relevant Information

24 inquiries for conciliation were submitted to the Public Conciliator during the period 2013-2016 (until October), varying yearly from 4 to 10 applications.

Question

In its previous conclusion (Conclusion 2014), the Committee asked to next report prove full and up-to-date description of the situation.

Please see answers above under the measures taken to implement the legal framework.

Question

In its previous conclusion (Conclusion 2014), the Committee asked to next report to provide information on any developments concerning the arbitration procedure.

In 2014 the Draft of Collective Agreement and Collective Labour Dispute Resolution Act was submitted to the parliament by the government. In March 2015 draft act was dropped in parliament upon the expiry of the mandate of the parliament, since the proceedings were not

completed before the expiry of the mandate. Therefore, unfortunately the law what included improvements in the arbitration procedure was not adopted.

However, as an addition to the national conciliator, there are other general measures for solving disputes. The **Conciliation Act**⁹ governs conciliation proceedings in civil matters, including the legal consequences of conciliation proceedings conducted in accordance with the procedure prescribed in the Act which allows parties to solve the dispute in a voluntary process by an impartial third party.

Furthermore, the **Code of Civil Procedure**¹⁰ regulates arbitral tribunal and arbitral agreements. The recognition and enforcement of arbitral agreements are guaranteed with the law. Decision made in a proceeding of a permanent arbitral tribunal operating in Estonia is to be recognized and enforced without separate recognition and declaration of enforceability by the court and a decision of an other arbitral tribunal is recognised in Estonia and enforcement proceedings based on the decision of the arbitral tribunal are carried out only if the court has recognised the decision and declared the decision to be subject to enforcement. Subsection 2 of section 713 of the Code of The Civil Procedure states that he court refuses to satisfy a petition for declaring a decision of an arbitral tribunal to be subject to enforcement and annuls the decision if a cause for annulment of the decision of the arbitral tribunal exists, thus the rights of the employers' and employees' in the arbitral agreements are protected.

⁹ The Conciliation Act is available in English <https://www.riigiteataja.ee/en/eli/530102013028/consolide>

¹⁰ The Code of Civil Procedure is available in English <https://www.riigiteataja.ee/en/eli/524072017001/consolide>

Article 6 § 4 – The right to call and participate in a strike

The General Legal Framework

Relevant information on the right to call and participate in a strike was submitted to the Committee on 2014. There have been no further changes in the regulation during the reporting period (2013-2016).

Conclusion

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

There have been no further changes in the regulation during the reporting period (2013-2016). For information if public servants are exercising functions which involve authority in the name of State, please see the answer to the question below.

The measures Taken to Implement the Legal Framework

Pertinent Figures, Statistics and other Relevant Information

There are no statistics on strikes between 2013 and 2016.

Question

In its previous conclusion (Conclusion 2014), the Committee asked to next report to provide information on any development in the respect of specific restrictions to the right to strike.

There have been no further changes in the regulation during the reporting period (2013-2016).

Question

In its previous conclusion (Conclusion 2014), the Committee asked detailed information on the situation in respect to each category of public servants and if they are exercising functions which involve authority in the name of State.

Public servants are divided into two main categories - officials and employees. Officials exercise official authority. Employees are recruited for the jobs which do not involve the exercise of official authority but only supporting of the exercise of official authority. Primarily in accounting, human resource work, records management, activities of procurement specialists, activities of administrative personnel, activities of information technologists or other work in support of the exercise of official authority. The restrictions on the right to strike is not applicable to employees in public service.

Article 21 – The right to information and consultation

The General Legal Framework

No legislative changes occurred in employees' right to information and consultation from 2013 to 2016.

The measures Taken to Implement the Legal Framework

Relevant measures on implementing the legal framework were introduced and submitted to the Committee on 2014.

Pertinent Figures, Statistics and other Relevant Information

According to the 2015 Estonian Working Life Survey by the Statistical Office, employees are informed of organization's activities, work organization and working conditions in almost all organizations with more than five employees (99%), in 94% of organizations such subjects are discussed with non-manager employees and in 66% of organizations non-manager personnel are involved in the decision-making process. Almost all employees say that they are informed of the organization's activities, work organization and working conditions (98%) and that they participate in related discussions (89%). 36% of employees say that they have the right to participate in making decisions regarding organization's activities, work organization and working conditions.

Question

From its previous conclusion (Conclusions 2010) the Committee notes there is no detailed information available on the nature of the rules on information laid down in general collective agreements. In this respect, the current report refers to the Employees' Trustee Act of 2006 and specifies that information and consultation issues are covered by enterprise-level collective agreements. The Committee wishes the next report to provide detailed information on the material scope of the right to be informed and consulted in both the above mentioned Act and enterprise-level collective agreements.

The right to be informed and consulted rises from the ETA. Article 20 from the ETA states that the contents of informing and consulting are:

- 1) the structure of the employer, the staff, including the employees performing duties by way of temporary agency work, changes therein and planned decisions which significantly affect the structure of the employer and the staff;
- 2) planned decisions which are likely to bring about substantial changes in the work organisation;
- 3) planned decisions which are likely to bring about substantial changes in the employment contract relationships of employees, including termination of employment relationships.
- 4) annual report prepared pursuant to the Accounting Act no later than within 14 days after the approval of the annual report.

There are no other specific nature of the rules on information and consultations, which are laid in enterprise-level collective agreements. The parties cannot agree on giving up the right for information and consultation of the abovementioned contents.

Question

In its previous conclusion (Conclusion 2014), the Committee noted that under the Employee's Trustee Act of 2006 the Labour Inspectorate is still responsible for enforcing employees' the right to information and consultation. The entry into force of this Act resulted in the increase of the fine imposed on employers. The fine limit for a legal person violating this right may go up to €3 200. The Committee asked that the next report provide information on the concrete implementation of this Act in this respect.

There have been only one misdemeanor procedure from 2014 and one from 2016. In 2014 the Labour Inspectorate fined the employer as it was established that the employer did not inform the staff in writing of significant changes in the organization of work. In 2016 the Labour Inspectorate fined the employer with 200 units (€ 800) as it was established that the employer did not inform employees of an annual report prepared pursuant to the Accounting Act within 14 days after the approval of the annual report.

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

The General Legal Framework

Relevant information was submitted to the Committee on 2014. There have been no further changes in the regulation during the reporting period (2013-2016).

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.
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In its previous conclusions (Conclusion 2014), the Committee asked for more information. We provide the information by answering Committee's questions below.

The measures Taken to Implement the Legal Framework

Pertinent Figures, Statistics and other Relevant Information

The collection of articles on the Estonian Work Life Survey in 2015 of the Statistical Office, which was published in 2017 brought out that employees consider receiving information somewhat more important than being consulted. Compared to 2009, the two indicators are deemed as somewhat less important, which may be due to the impact of the economic crisis (incl. the resulting shortage of jobs). In the case of employers, however, the opposite was true.

By the respective indicators of the organisation, the importance of discussing matters with employees was deemed as higher if the provision of information was deemed as more important. Thus, the provision of information may be deemed as a prerequisite for expressing opinions. The heads of organisations, employers who wish to increase the involvement of their employees in discussions and in the decision-making processes at their organisations, are first advised to review the procedure and content of the provision of information at the organisation.

In practice, the provision of information is the most common channel of involvement: this is used by almost all organisations with at least 5 employees in Estonia. The biggest difference was found in examining the participation processes of employees: while slightly more than two thirds of employers claimed that they involve employees in the decision-making processes, slightly more than a third of employees claimed the same. The difference refers to selectivity, which shows that not all employees are involved in the decision-making processes, but it is executed selectively.

The extent of being able to have a say was most often deemed as sufficient regarding the issues of rest and working time, the organisation of work and occupational safety, as well as in-service training. The result was the same in 2009. The opportunity to have a say was deemed as the lowest in issues related to remuneration, recruitment, and action plans. Men deemed the opportunities to have a say regarding the issues of occupational safety, the organisation of work, working time and holidays as sufficient more often than women. Among

women, the figure was considerably higher regarding having a say in the issues of in-service training. The largest difference regarded having a say in the issue of remuneration, where women had less opportunities than men. Thus, it is hereby important to grant female employees more opportunities for taking part in discussing the issues related to remuneration.

Both in 2009 and in 2015, being represented by a working environment representative was common in Estonian organisations: more than half of the organisations had a working environment representative in 2015, which is more than in 2009. The percentage of organisations that have a trustee and a working environment council has also slightly increased. The awareness of employers about various forms of representation may be highlighted as one of the reasons for the increase, due to which such people are being recruited to organisations more often with the aim of increasing the involvement of employees. The percentage of involvement of trade union trustees has decreased a bit compared to the results of 2009, which may be due to the end of the economic crisis and the improvement of employees' position in the labour market, as a result of which being connected to a trade union is no longer deemed as particularly necessary.

Conclusions of the articles are also available in English: http://sm.ee/sites/default/files/content-editors/Ministeerium_kontaktid/Uuringu_ja_analuusid/eesti_tooelu_uuring_2015.pdf

Table 16. Employees' assessment of whether they have been allowed to participate in discussions on various topics to a sufficient degree (% employees)

	Yes, I can participate sufficiently
Working time and holidays	76%
Work organization	67%
Occupational safety	64%
In-service training	52%
Earnings	37%
Action plans	33%
Hiring	28%

Source: Statistical Office, Estonian Working Life Survey 2015

Question

In its previous conclusion (Conclusion 2014), the Committee asked to next report to indicate precisely what legal remedies are available for workers or their representatives in case of violation of the right of workers to take part in the determination and improvement of working conditions and the working environment.

According to the **Collective Agreements Act**¹¹ (§ 6) a legally binding collective agreement entered into by the parties may determine whichever working conditions and work organization-related issues (including working environment conditions), also the provision of social and cultural services; one of the parties to a collective agreement is a trade union, which represents all the employees, or, in the absence of a trade union, an employees' trustee; employees have unlimited options in matters related to (although it is true, that they are not always realized) working conditions and working environment conditions for reaching an agreement, which would satisfy the parties. Therefore the violation of the right of workers to take part in the determination and improvement of working conditions and the working environment can be, and in practise it generally is, a violation of the collective agreement.

Collective Labour Dispute Resolution Act states, that in the case of the violation or a dispute the employers and representatives of employees are required to hear submitted demands within seven calendar days after the date of their submission and to notify the persons who submitted the demands of their decision in writing on the date following the date of the decision. The parties shall also consult the Public Conciliator in writing if an agreement is not reached through negotiations and a threat of a disruption of work arises. Failing agreement in the event of collective labour disputes, the employer and the representative of the employees have the right of recourse to a federation of employers and a federation of employees. A federation of employers and a federation of employees shall, within three days after the date following the receipt of an application, establish a committee on the basis of parity for the resolution of a labour dispute and notify the Public Conciliator thereof. If an agreement is reached by a federation of employers and a federation of employees, the agreement is binding on the parties to the dispute.

In addition, according to the Occupational Health and Safety Act (§7) a working environment representative, as a representative elected by employees in occupational health and safety issues, has the right to contact a labour inspector of the location of the enterprise or submit his or her observations to the labour inspector during inspection visits by the inspector. Therefore the working environment representatives have the right to inform the labour inspector and make a complaint towards the violation of employee's rights and employers' obligations stated in the Occupational Health and Safety Act. The labour inscpector is obligated to investigate the complaint and use legal penalties if necessary.

¹¹ Collective Agreements Act is also available in English
<https://www.riigiteataja.ee/en/eli/505052017005/consolide>

Pursuant to the **Trade Unions Act**¹²(§ 17), trade unions have the right to participate in informing and consulting employees and making decisions, also, (under § 21) elected representative of trade union is required to co-operate with the working environment representative and working environment council. The section 25 of the Trade Unions Act states, that in case of a violation, the individual labour disputes between employees or elected representatives of a trade union and an employer shall be resolved pursuant to the procedure for the resolution of individual labour disputes, and disputes arising in public service shall be resolved pursuant to the procedure provided for in the Code of Administrative Court Procedure. Other disputes shall be resolved in court. A trade union, which rights have been violated, also has the right to demand termination of the violation, performance of the obligation, and compensation for proprietary and non-proprietary damage.

Pursuant to the **Employees' Trustee Act**¹³ § 4 provides an obligation of co-operation between trustee and employer, § 9 provides the rights of trustee to freely examine the working conditions, including the work organization, to stop the collective cancellation of an employment agreement, to notify the interested trade union and federation or confederation of employers and trade unions of violation of working conditions by the employer. § 10 of the same Act requires the trustee to communicate information to the employer and to employees, monitor compliance with working conditions and notify the employer and, if necessary, the labour inspector of the place of business of the employer, of violation, co-operate with a shop steward, the working environment representative and working environment council.

Question

In its previous conclusion (Conclusion 2014), the Committee asked to next report to provide information on penalties imposed on employers who do not respect the right of employees to take part in the determination and improvement of all matters covered by Article 22 when trade union is involved.

Relevant penalties imposed on employers who do not respect the right of employees to take part in the determination and improvement of matters covered by Article 22 were submitted to the Committee in 2014.

¹² Trade Unions Act is also available in English: <https://www.riigiteataja.ee/en/eli/505052017003/consolide>

¹³ Employees' Trustee Act is also available in English: <https://www.riigiteataja.ee/en/eli/505052017006/consolide>

Article 26 – The right to dignity at work

Article 26 § 1 – Prevention of sexual harassment

The General Legal Framework

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

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

Accounting period faced developments at the legislative level. Sexual harassment is prohibited and penalised in the **Estonian Penal Code** (§ 153¹) subsection 1 and 2). According to the Penal Code which entered into force on 06 of July 2017, an intentional physical act of sexual nature against the will of another person committed against him or her with degrading objectives or consequences is punishable by a fine of up to 300 fine units or by detention. The same act, if committed by a legal person, is punishable by a fine of up to 2000 euros.

In addition, In December 2014, Estonia signed **the Council of Europe Convention** on preventing and combating violence against women and domestic violence, as well as sexual harassment. The preparations for ratifying the Convention in 2017 are currently in progress.

The measures Taken to Implement the Legal Framework

The implementation of the legislation takes place in co-operation with state, non-governmental organisations and employee associations, as well as entrepreneurship organisations. The definition and the meaning of the sexual harassment have been disseminated and explained. For example, the definition of sexual harassment clarified on the related section of the Work Life Portal¹⁴. Material to prevent sexual harassment is presented on Gender Equality and Equal Treatment Commissioner webpage¹⁵ in section explaining discrimination. Examples of sexual

¹⁴ Work Life Portal <http://www.tooelu.ee/et/Tooandjale/Tookeskkond/Tookeskkonna-ohutegurid/Psyhholoogilised-ohutegurid/Seksuaalne-ahistamine>

¹⁵ Gender Equality and Equal Treatment Commissioner webpage <http://www.vordoigusvolinik.ee/equality/gender-equality/what-is-gender-discrimination/direct-gender-discrimination/sexual-harassment/?lang=en>

harassment described in the same webpage. NGO Estonian Sexual Health Association¹⁶ presenting videos which helps to recognize and prevent sexual harassment. In addition, Strategy for Preventing Violence for 2015-2020 were adopted. The Strategy for Preventing Violence discusses violence, including harassment and sexual harassment, prevention in its wider meaning, at three prevention levels encompassing universal prevention, victim protection and work with consequences of violence. First, the Strategy addresses awareness-raising and educating of the general public; second, the Strategy focuses on people at risk of becoming a victim or committing an offence; and third, the Strategy is used for working with consequences of violence, offering support measures to victims as well as interventions concerning perpetrators of violence.

Pertinent Figures, Statistics and other Relevant Information

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

In 2014, the Praxis - Center for Policy Studies conducted a complex study and analysis on gender-based and sexual harassment in the labour market with multiple objectives, including:

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

¹⁶ NGO Estonian Sexual Health Association <https://www.estl.ee/seksuaalv%C3%A4givald-1/seksuaalne-ahistamine>

The questionnaire was piloted in order to create an overview of the prevalence of sexual harassment in the workplace and the beliefs related to it.

The main results showed, that 56% of interviewees have experienced some kind of sexual harassment in the workplace. The most common forms of harassment are lewd jokes and inappropriate comments on co-workers' looks and personal lives. Most interviewees find harassment unacceptable, but don't usually interfere with it. Most interviewees believe that the employer, not the victim is responsible for solving harassment-related problems in the workplace. The study gives suggestions on how to further educate the public on sexual harassment in the workplace.

Question

In its previous conclusion (Conclusion 2014), the Committee asked the next report to provide updated information on the measures effectively taken, in consultation with social partners, to raise awareness of sexual harassment issues and prevent it in the workplace.

The Welfare Development Plan 2016-2023 and the Strategy for Preventing Violence for 2015-2020 foresee measures to raise awareness on gender equality of employers as well as Labour Dispute Committee members and inspectors. The measures include trainings and learning materials. Also, it can be observed, that sexual harassment has become more common debate topic in public discussions and less of a taboo than it used to be.

Question

In its previous conclusion (Conclusion 2014), the Committee asked the next report to clarify, in the light of any relevant example of case law, whether the employer's liability can also be engaged in respect of sexual harassment involving, as a victim or as a perpetrator, a third person (such as independent contractors, self-employed workers, visitors, clients).

According to the Gender Equality Act § 11 subsection 4 it is an employer's responsibility to ensure that employees are protected from gender-based harassment and sexual harassment in the working environment. The same act disputes in § 6 subsection 5, that if an employer harasses a person in relation to the sex of the person or sexually, or fails to perform the obligation provided for in clause 11 (1) 4) of this Act, an employer is responsible for failure to perform the duty of care if the employer was aware or should have been aware that gender-based harassment or sexual harassment occurred and failed to apply the necessary measures to terminate such harassment.

Therefore it is the employer's responsibility to create a harassment-free working environment, which includes employees as well as third parties, be it other employees, clients, visitors or other. The GEA attributes to also those still applying for the job.

Question

In its previous conclusion (Conclusion 2014), the Committee asked the next report to provide any relevant examples of case law, including in particular as regards the range of damages

awarded in cases of sexual harassment, and clarify whether reinstatement is possible when employees have been forced to resign because of the sexual harassment.

There are no examples of relevant case law. In cases in which the causality between ending the employment contract and sexual harassment or any other harassment can be detected, it is possible for the victim to demand for compensation and voidness of the cancellation of the employment contract. If the cancellation has been found void, then at the request of the employer or the employee the court or labour dispute committee shall terminate the employment contract as of the time when it would have expired in the case of validity of the cancellation. If the employee does not request the termination of the contract, then the court or labour dispute committee shall not satisfy the employer's request if, at the time of the cancellation, the employee is pregnant or has the right to pregnancy or maternity leave or has been elected as the employees' representative, unless it is reasonably not possible considering mutual interests.

Article 26 § 2 – Prevention of other forms of harassment

The General Legal Framework

Relevant information was submitted to the Committee on 2014. There have been no further changes in the regulation during the reporting period (2013-2016).The measures Taken to Implement the Legal Framework

Vision of the Strategy for Preventing Violence for 2020 is to achieve that the Estonian society does not tolerate violence. Violence is noticed and intervened in. Violence victims are protected and supported. In order to prevent further violence, effective work is performed with perpetrators of violence and for prevention of violence among children and youths.

Pertinent Figures, Statistics and other Relevant Information

Question

In its previous conclusion (Conclusion 2014), the Committee noted that violence and harassment in the employment relationship is contrary to the “principle of good faith” and the “principle of reasonableness”, enshrined in the Law of Obligations Act (Subsections 6 and 7 of the General Part). The Committee understands that these provisions can be used in case of harassment, which would not necessarily qualify as discrimination under the grounds identified by the ETA, it asked whether any relevant example of case law exists in this respect.

There are no examples of relevant case law.

Question

In its previous conclusion (Conclusion 2014), the Committee asked the next report to provide further information on the procedures available to victims of harassment. In particular it asked, in the light of any relevant example of case law, whether the employer’s liability can be engaged in respect of harassment involving, as a victim, or as a perpetrator, a third person (independent contractors, self-employed workers, visitors, clients etc.).

There are no examples of relevant case law.

Question

In its previous conclusion (Conclusion 2014), the Committee asked the next report to provide any relevant examples of case law, including as regards of particular the range of damages awarded in case of harassment, and clarify whether reinstatement is possible when employees have been forced to resign because of the harassment.

Please see answer to the question under § 26 (1).

Article 28 – The right of workers’ representatives to protection in the undertaking and facilities to be accorded to them

The General Legal Framework

Relevant information was submitted to the Committee on 2014. There have been no further changes in the regulation during the reporting period (2013-2016).

The measures Taken to Implement the Legal Framework

Relevant measures on implementing the legal framework were introduced and submitted to the Committee on 2014. Introduced measures have been kept up to date on an on-going basis.

Pertinent Figures, Statistics and other Relevant Information

Article 29 – The right to information and consultation in collective redundancy procedures

The General Legal Framework

Relevant information on the right to information and consultation in collective redundancy procedures was submitted to the Committee on 2014, and there have been no further changes during the reporting period (2013-2016).

The measures Taken to Implement the Legal Framework

Relevant measures on implementing the legal framework were introduced and submitted to the Committee on 2014. Introduced measures have been kept up to date on an on-going basis.

Pertinent Figures, Statistics and other Relevant Information

Table 17. Number of collective cancellations, 2013-2016

	2013	2014	2015	2016
Number of collective cancellations	98	63	109	78

Source: Estonian Unemployment Insurance Fund

Question

The Committee 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.

In addition to the information submitted to the Committee in 2014, we would like to elaborate, that the requirements stated in the ECA for the procedure of collective cancellation (§ 101-103) of employment contracts must be fulfilled in the order of the procedure.

When the employer submits the verified data regarding the final decision on the number of redundancies and the date of termination of employment to the Estonian Unemployment Insurance Fund and a copy of the data to the trustee or the staff, then the trustee has seven calendar days to submit an opinion regarding the cancellation. Therefore it is possible to submit a complaint in case of violation of the rights of the workers.

During the procedure the employees or their representatives have the right to submit a complaint over the violation of the right of workers to be informed and consulted to the Labour Inspectorate. Labour Inspectorate therefore carries out the state supervision over compliance with the obligation to inform and consult upon the collective termination of employment contracts.

Subsection 1 of the section 104 of the ECA states, that cancellation of an employment contract without a legal basis or in conflict with the law is void. Therefore the employer must fulfill the regulation of collective cancellation of employment contracts in order to be able to enforce the cancellation. Otherwise the cancellation would be void.