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REVISED EUROPEAN SOCIAL CHARTER

7th National Report on the implementation of
the European Social Charter (revised)

submitted by

THE GOVERNMENT OF ESTONIA

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

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CYCLE 2010

EUROPEAN SOCIAL CHARTER
(REVISED)

Seventh Report of the Republic of Estonia

For the reference period
2005 – 2008

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

For the period 2005 – 2008 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 deposited on 11 September 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).

All Estonian legal acts that have been translated into English are available on the Internet at http://www.legaltext.ee/indexen.htm.

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Article 2
Article 2 (1)

General regulation

On 01.07.2009 July 2007 the new Employment Contracts Act (hereinafter the ECA) entered into force, repealing the former Working and Rest Time Act. The entire working and rest time regulation arises from the ECA (Chapter 3, Division 3). The regulation has been formulated to a considerable extent on the basis of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time as well as on the basis of relevant judgments of the European Court of Justice. Also, the new regulation of working and rest time takes into account of the requirements arising from the Revised European Social Charter.

According to § 43 (1) of the ECA, it is presumed that the employee works 40 hours per seven days (full-time work), unless the employer and the employee have agreed on a shorter working time (part-time work). It is presumed that the employee works 8 hours a day (ECA § 43 (2)).

§ 44 of the ECA provides for the regulation of overtime. Similarly to the former Working and Rest Time Act, overtime means working over the agreed time by agreement of the parties. On the basis of the ECA an employer may demand that an employee perform overtime work only due to unforeseen circumstances pertaining to the enterprise or activity of the employer, in particular for prevention of damage (§ 44 (4) of the ECA).

According to the overall working time limit of the ECA, the working time along with overtime work must not exceed on average 48 hours per seven days over a period of four months. Exceptionally, on the basis subsection 46 (2) of the ECA, the working time calculation period may be prolonged by a collective agreement to up to 12 months in the case of health care professionals, agricultural workers and tourism workers.

On the basis of subsection 46 (3) of the ECA, it is possible to agree on performance of additional overtime work. The employer and the employee may agree that the employee works, on average, 52 hours per seven days over a calculation period of four months. According to Directive 2003/88/EC, sufficient protection of employees must be ensured for application of additionally agreed overtime work. According to the directive, the safeguarding measures include separate agreements on overtime and the employee's right to cancel the agreement at any time, notifying thereof two weeks in advance.

For the purpose of protection of employees, subsection 46 (4) of the ECA contains the regulation according to which the employee has the right to refuse from additional overtime if additional overtime is unfair to the employee or working is in conflict with the requirements of occupational health and safety. For the same reasons a labour inspector has the right to prohibit performance of additional overtime. Also, for the purposes of protection of employees as well as for supervisory purposes there is a principle in subsection 46 (5) of the ECA that employers are obligated to keep separate accounts of the employees working on the basis of employees performing additional overtime work. In addition to a labour inspector, a trustee of employees and the representative of a trade union have the right to access materials allowing for verifying the observance of working time limits.

§ 51 of the ECA provides for the regulation of daily rest time. According to the ECA, the daily rest time is 11 hours, i.e. the consecutive rest period left for an employee over a period of 24 hours must be no less than 11 hours (§ 51 (1) of the ECA). Thus, an employee may, when

working full time, perform a maximum of 5 hours of overtime work by agreement (8 hours + 5 hours) and in the case of application of total working time the working time plus overtime must not exceed 13 hours. The restriction specified in subsection 51 (1) of the ECA is not applied to health care professionals and welfare workers on the basis of subsection 51 (4) of the ECA. Exceptions from subsection (1) can be made by a collective agreement in the events set out in Article 17(3) of Directive 2003/88/EC and provided that the work does not harm the employee's health or safety (subsection 51 (3) of the ECA).

According to subsection 51 (5) of the ECA, employers shall give employees who work 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. Any agreement by which work exceeding 13 hours is compensated in money is void.

Section 52 of the ECA provides for regulation of weekly rest time, which does not differ in essence or limits from the Working and Rest Time Act. The consecutive weekly rest period left for an employee over a period of seven days must not be less than 48 hours. In the case of application of total working time the consecutive weekly rest period left for an employee over a period of seven days must not be less than 36 hours.

Section 48 of the ECA provides for the definition and limits of the on-call time. Upon application of on-call time, the employer must grant the employee the daily and weekly rest time provided by law (subsection 47 (2) of the ECA). Based on subsection 48 (3) of the ECA, the part of the on-call time during which employees are in subordination to the management and supervision of the employer is considered working time.

Adherence to the requirements of working and rest time is inspected by the Labour Inspectorate whom on the basis of §§ 122 and 123 of the ECA has been given the right to initiate misdemeanour proceedings against the employer.

Measures for application of legal regulation

The adoption of the ECA was preceded by negotiations with social partners, including trade unions and confederations of employers, as a result of which an agreement on the substantive issues of the new act was made. The adoption of the ECA was followed by training in the public and private sectors. Explanations of the ECA have been prepared and made available on the website of the Ministry of Social Affairs and a more detailed manual introducing the ECA is being compiled.

Statistics

In terms of jobs there is no statistical data on average working hours.

The Labour Inspectorate inspected employment relationships in 1,727 enterprises in 2005, in 1,878 enterprises in 2006, in 1,549 enterprises in 2007 and in 1,244 enterprises in 2008. Infringements were statistically not distinguished based on acts in 2005. By acts, the gathering of infringement statistics commenced in 2006 (see the table below).

Table 1: Infringements of various legislation

Infringements of various legislation	**2005**	**2006**	**2007**	**2008**
Employment Contracts Act	-	1896	1448	1100
Working and Rest Time Act	-	612	553	440
Holidays Act	-	55	34	25
Pay Act	-	155	210	185
Other infringements (Council Regulation, Collective Agreements Act)	-	-	36	233
Total	**3182**	**2718**	**2281**	**1983**

The ECA that entered into force on 1 July 2009 binds the former Republic of Estonia Employment Contracts Act, the Working and Rest Time Act, the Holidays Act and the Pay Act into one act.

Article 2 (2)

General regulation

The procedure for compensation of work done on public holidays is established in subsections 45 (2) and (3) of the ECA. Work done on public holidays is compensated for, similarly to the former law, by granting time off or by pecuniary compensation. In the case of pecuniary compensation the employer pays the employee double wages (subsection 45 (2) of the ECA).

Measures for application of legal regulation

The adoption of the ECA was preceded by negotiations with social partners, including trade unions and confederations of employers, as a result of which an agreement on the substantive issues of the new act was reached on 23 April 2008. The adoption of the ECA was followed by training in the public and private sectors. Explanations of the ECA have been prepared and made available on the website of the Ministry of Social Affairs and a detailed manual introducing the ECA is being compiled.

Statistics

There is no statistics on work done on public holidays.

Article 2 (3)

General regulation

Similarly to the former Holidays Act, § 55 of the ECA stipulates the employee's right to a four-week annual holiday. For the purposes of simplicity the former working year-based calculation of holidays has been given up and the period of calculation of holidays based on the ECA is the calendar year (subsection 68 (5) of the ECA).

The employer must draw up a holiday schedule for each calendar year. The employee's annual holiday and unused holiday are indicated in the schedule (subsection 69 (2) of the ECA). An annual holiday must be used in the calendar year and the employee must take a holiday for no less than 14 consecutive calendar days (subsection 68 (5) of the ECA). In the year of commencement of employment the right to a holiday emerges, similarly to the former Holidays Act, after the employee has worked for six months (subsection 68 (4) of the ECA). A holiday cannot be compensated for with money or other benefits during the term of validity of the employment contract (subsection 70 (3) of the ECA).

Measures for application of legal regulation

The adoption of the ECA was preceded by negotiations with social partners, including trade unions and confederations of employers, as a result of which an agreement on the substantive issues of the new act was reached on 23 April 2004. The adoption of the ECA was followed by training in the public and private sectors. Explanations of the ECA have been prepared and made available on the website of the Ministry of Social Affairs and a more detailed manual introducing the ECA is being compiled.

Statistics

There is no statistics on the use of holidays.

Article 2 (5)

General regulation

Section 52 of the ECA provides for regulation of weekly rest time, which does not differ in essence or limits from the former Working and Rest Time Act. The consecutive weekly rest period left for an employee over a period of seven days must not be less than 48 hours. In the case of application of total working time the consecutive weekly rest period left for an employee over a period of seven days must not be less than 36 hours. The ECA presumes that the weekly days off are Saturdays and Sundays (subsection 52 (3) of the ECA).

Measures for application of legal regulation

The adoption of the ECA was preceded by negotiations with social partners, including trade unions and confederations of employers, as a result of which an agreement on the substantive issues of the new act was reached on 23 April 2004. The adoption of the ECA was followed by training in the public and private sectors. Explanations of the ECA have been prepared and made available on the website of the Ministry of Social Affairs and a detailed manual introducing the ECA is being compiled.

Statistics

The Labour Inspectorate inspected employment relationships in 1,727 enterprises in 2005, in 1,878 enterprises in 2006, in 1,549 enterprises in 2007 and in 1,244 enterprises in 2008. Infringements were statistically not distinguished based on laws in 2005. By acts, the gathering of infringement statistics commenced in 2006 (see table 1, Article 2 (1)).

Article 2 (6)

General regulation

Sections 5 and 6 of the ECA set out the list of terms and conditions of employment contracts of which employees must be notified of and the procedure for presentation of terms and conditions of employment contracts. Terms and conditions of employment contracts have been divided into two sections for the purpose of giving a better overview which is ensured through the fact that the terms and conditions have been grouped according to their characteristics. Section 5 sets out the terms and conditions which must be communicated in the case of each employment contract and § 6 sets out the terms and conditions which must be presented only if respective agreements are applied between the parties (e.g. notification of the duration of a fixed-term employment contract and the reasons of entry into the contract).

The obligation to notify of the terms and conditions of employment contracts arises from Council Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. The regulation has been established also on the basis of the requirements of the Revised European Social Charter.

According to the ECA, the employer must inform the employee, among other things, of the details of the parties (e.g. the employer’s name, registry code, seat), the time of entry into the employment contract and of commencement of work by the employee, duties, pay, working time, place of work, duration of holidays, terms for advance notification of cancellation of the employment contract, and collective agreements (provided that the latter is applicable to the employee).

The employer must perform its notification obligation in written form and within a reasonable time before the employee commences work so the employee has a chance to evaluate whether the submitted information complies with the agreements made and contest them, where necessary. If an employer has not communicated the conditions upon commencement of work by an employee, the employee may at any time demand that they be submitted and the employer must submit the data within two weeks of receiving the employee's request (subsection 5 (3) of the ECA).

The employer must submit the information prudently, clearly and unambiguously (subsection 5 (2) of the ECA). The aim of the provision is to obligate employers to formulate the terms and conditions in such a manner that employees understand them in the only possible way.

Performance of the obligation to inform employees is inspected by the Labour Inspectorate whom on the basis of § 117 of the ECA has been given the right to initiate misdemeanour proceedings against the employer.

Measures for application of legal regulation

The adoption of the ECA was preceded by negotiations with social partners, including trade unions and confederations of employers, as a result of which an agreement on the substantive issues of the new act was reached on 23 April 2004. The adoption of the ECA was followed by training in the public and private sectors. Explanations of the ECA have been prepared and made available on the website of the Ministry of Social Affairs and a detailed manual introducing the ECA is being compiled.

Statistics

The Labour Inspectorate inspected employment relationships in 1,727 enterprises in 2005, in 1,878 enterprises in 2006, in 1,549 enterprises in 2007 and in 1,244 enterprises in 2008. Infringements were statistically not distinguished based on laws in 2005. By acts, the gathering of infringement statistics commenced in 2006 (see the table 1, Article 2 (1)).

Article 2 (7)

General regulation

According to subsection 45 (1) of the ECA, night means time from 10:00 p.m. to 6:00 a.m. Employers pay wages for night work exceeding the normal wages by 1.25 times, unless it has been agreed that the wages include remuneration for working at night.

Section 50 of the ECA provides for the restriction on night work. An employee who works at night for at least three hours of their daily working time or at least one third of their annual working time is a night worker. In addition to the definition, section (1) stipulates the general restriction on the working time of night workers, that is, the general rule according to which night workers are not allowed to work more than eight hours for every 24 hours over a period of seven days. According to subsection 50 (3) of the ECA, upon calculation of the average working time of night workers the 24-hour period must be excluded from the 7-day calculation period.

Based on the aforementioned, night workers can work a maximum of 48 hours over a calculation period of seven days (on average, eight hours a day over six days).

An exception to subsection 50 (1) of the ECA arises from subsection (2) of the same section. Night workers whose health is affected by a working environment hazard or the characteristics of their work are not allowed to work more than eight hours during a period of 24 hours. It is the absolute limit which means that it is of no relevance whether the shifts of a specific week fall on night time or daytime, but the number of working hours per 24 hours must not exceed 8 hours under any circumstances.

According to § 51 of the ECA, a daily rest time must be ensured for night workers. Over a period of 24 hours employees must get at least 11 consecutive hours of rest time.

The provisions of subsection 50 (1) and (2) of the ECA transpose the restriction on the length of night work provided for in Article 8 of 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time. Subsection 50 (3) of the ECA ensures compliance with the second paragraph of Article 16(c) of Directive 2003/88/EC, according to which the minimum weekly rest period of 24 hours shall not be included in the calculation of the average.

Subsection 50 (4) of the ECA allows for making exceptions from the restriction on the working time of night workers by an employment contract or a collective agreement in the events set out in Article 17(3) of Directive 2003/88/EC and provided that the work does not harm the employee's health or safety and the working time does not exceed to overall working time restriction set out in subsection 46 (1) of the ECA. Upon making the exception, the working of night workers time must not exceed on average 48 hours per seven days over a calculation period of up to four months.

According to clause 13 (1) 7^{1}) of the Occupational Health and Safety Act, employers must organise the provision of medical examinations for night workers before they start work as well as with regular intervals during work and bear the costs related thereto. According to clause 14 (5) 5^{1}) of the same act, a worker has the right to request their transfer to suitable daytime work if, by decision of a doctor, the person's working during night time is inadvisable for reasons of health and the employer has the possibility to transfer the worker to such position.

Measures for application of legal regulation

The adoption of the ECA was preceded by negotiations with social partners, including trade unions and confederations of employers, as a result of which an agreement on the substantive issues of the new act was reached on 23 April 2004. The adoption of the ECA was followed by training in the public and private sectors. Explanations of the ECA have been prepared and made available on the website of the Ministry of Social Affairs and a detailed manual introducing the ECA is being compiled.

Statistics

The Labour Inspectorate inspected employment relationships in 1,727 enterprises in 2005, in 1,878 enterprises in 2006, in 1,549 enterprises in 2007 and in 1,244 enterprises in 2008. Infringements were statistically not distinguished based on laws in 2005. By acts, the gathering of infringement statistics commenced in 2006 (see the table 1, Article 2 (1)).

Article 4

Article 4 (2)

General regulation

Section 44 of the ECA provides for the definition of overtime. Overtime means working over the agreed time either by agreement between parties or at the unilateral request of the employer, provided that it is justified due to unforeseeable circumstances, in particular for prevention of damage.

Subsections 44 (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 (subsection 44 (6) of the ECA). If an employer and an employee have agreed on compensation of overtime in money, the employer shall pay the employee wages exceeding the normal wages by 1.5 times (subsection 44 (7) of the ECA).

Measures for application of legal regulation

The adoption of the ECA was preceded by negotiations with social partners, including trade unions and confederations of employers, as a result of which an agreement on the substantive issues of the new act was reached on 23 April 2004. The adoption of the ECA was followed by training in the public and private sectors. Explanations of the ECA have been prepared and made available on the website of the Ministry of Social Affairs and a detailed manual introducing the ECA is being compiled.

Statistics

The Labour Inspectorate inspected employment relationships in 1,727 enterprises in 2005, in 1,878 enterprises in 2006, in 1,549 enterprises in 2007 and in 1,244 enterprises in 2008. Infringements were statistically not distinguished based on laws in 2005. By acts, the gathering of infringement statistics commenced in 2006 (see the table 1, Article 2 (1)).

Article 4 (4)

General regulation

Section 97 of the ECA sets out minimum advance notification terms for employers that have to be followed upon cancellation of employment contracts (terms of advance notification upon cancellation).

Upon establishment of the regulation concerning advance notification of cancellation of employment contract, the conclusions of the European Social Rights Committee that exercises supervision over adherence to the requirements of the Revised European Social Charter regarding Estonia in 2007 have been taken into account. The terms of advance notification of cancellation of employment contracts have been determined on the basis of the duration of the employee's length of employment. According to the underlying idea of the advance notification term based on the length of the employment relationship, employees who have worked for an employer longer are granted stronger protection against cancellation than employees whose employment relationship has lasted for a shorter period.

Employers are obligated to give employees at least 15 calendar days of advance notice if the employee's employment relationship with the employer has lasted less than one year of employment; at least 30 calendar days if it has lasted one to five years of employment; at least 60 calendar days if the employment relationship has lasted five to ten years of employment; and at least 90 calendar days if the employment relationship has lasted ten and more years of employment.

If the employer gives shorter notice of the cancellation, the employee has the right to, according to subsection 100 (5) of the ECA, receive compensation to the extent that it would have had the right to receive upon adherence to the advance notification term. Thus, the remuneration that the employee would have received while working in the term of advance notification must be compensated to the employee.

Section 99 obligates employers to grant employees to a reasonable extent time off to find a new job within the term of advance notice.

Measures for application of legal regulation

The adoption of the ECA was preceded by negotiations with social partners, including trade unions and confederations of employers, as a result of which an agreement on the substantive issues of the new act was reached on 23 April 2004. The adoption of the ECA was followed by training in the public and private sectors. Explanations of the ECA have been prepared and made available on the website of the Ministry of Social Affairs and a detailed manual introducing the ECA is being compiled.

Article 4 (5)

General regulation

Section 78 of the ECA regulates set-off with remuneration in employment relationships. The regulation resembles that of the deductions from wages set out in §§ 36 and 37 of the former Pay Act.

Employers can make set-offs with employees' remuneration only upon consent of the employee given in a format that can be reproduced in writing (subsection 78 (1) of the ECA). For instance, upon demanding that damage be compensated or upon recovery of sums transferred to the employee without any legal basis. If the employee does not consent to it, the employer has the right to enforce its claims through a labour dispute body, i.e. a court or a labour dispute committee.

On the basis of subsection 78 (3) of the ECA, an employer may, without an employee's consent, withhold from the employee's wages any advance payments made to the employee, which the employee is obligated to repay as well as, upon termination of the employment contract, the remuneration for used yet unearned annual holidays.

Special legislation for seizing employees' income arises from § 132 of the Code of Enforcement Procedure. Income is not seized if it does not exceed the amount of minimum wages payable for one month or a corresponding share of income for a week or day. If a maintenance support claim of a child has not or presumably will not be completely satisfied out of the other property and assets of a debtor, up to a half of the aforementioned income may be seized. If, arising from law, a debtor maintains another person or pays maintenance support to them, the amount not subject to seizure increases by one-third of the minimum monthly wage per dependant, unless a maintenance support claim of a child is enforced. Up to two-thirds of an amount equivalent to five times the minimum wages may be seized, and all the income which exceeds an amount equivalent to five times the minimum wages may be seized out of the share of income exceeding the amount not subject to seizure, provided that the amount subject to seizure does not exceed two-thirds of the total income. The provision is not applied if a maintenance support claim is being enforced.

Measures for application of legal regulation

The adoption of the ECA was preceded by negotiations with social partners, including trade unions and confederations of employers, as a result of which an agreement on the substantive issues of the new act was reached on 23 April 2004. The adoption of the ECA was followed by training in the public and private sectors. Explanations of the ECA have been prepared and made available on the website of the Ministry of Social Affairs and a detailed manual introducing the ECA is being compiled.

Article 5

General regulation

The regulation concerning employees' right of association has not changed during the reporting period.

Questions asked in the ECSR summary

In reply to the question asked in the ECSR summary of 2006 we declare that according to the legislation in force all trade unions are equal.

Measures for application of legal regulation

Based on the new programming period of 2007-2013 of the European Social Fund we are carrying out and encouraging social partners to carry out activities that increase awareness of the freedom of association and of the opportunity to collectively agree on the working conditions.

Statistics

Table 2: Labour union coverage (among persons of 15-74 years of age) (%)

	2003	2004	2005	2006	2007	2008
Proportion of employees working in a workplace where is a labour union	21,7	19,4	19,3	18,3	18,5	17,7
Proportion of employees belonging to labour union	11,1	9,3	8,5	8,4	7,6	6,2

Source: Estonian Statistical Office, Estonian Labour Force Survey

According to the website of the Estonian Employers Confederation, as of the start of 2008 the confederation comprised 23 associations and cooperated with five more industry associations. In total the confederation united directly and through branch associations over 1,500 enterprises which employed 145,000 employees. Considering that as of the start of 2008 there were approx. 43,136 enterprises that had at least two employees and the total number of salaried employees was 605,900, the confederation united 3.5% of the employers who employed a total of 23.9% of the employees.

Article 6

Articles 6 (1), 6 (2) and 6 (3)

General regulation

The regulation concerning joint consultations, negotiations and labour disputes between employees and employers has not been amended during the reporting period.

Questions asked in the ECSR summary

In reply to the questions asked about Article 6 (1) in the ECSR summary of 2006 we announce that the last time the Socio-Economic Council gathered in 2005 when four sessions were held. The Socio-Economic Council decided to suspend its meetings because the output of the work of the council was not considered sufficiently influential. The Ministry of Social Affairs has searched and is searching for opportunities for updating the formal side of the council. The assignment of administration of the council to the State Chancellery that is responsible for development of civic society and that already coordinates other similar councils has been considered.

All in all, the focus has shifted from the use of formal institutions to closer communication and consultation in the form of *ad hoc* meetings. Thus, in 2008 very intensive negotiations were held with social partners in the course of which an agreement on the new Employment Contracts Act was reached, but in the interests of flexibility it was decided that negotiations be held outside the formal negotiation institutions in the interests of flexibility, i.e. not in the framework of the Socio-Economic Council or delegations approved in prior tripartite negotiations.

There are similar trends in the public sector. Bilateral negotiations and consultations with appointed delegations which were more frequent in the past are being replaced with *ad hoc* meetings aimed at more specific subjects. Thus, trade unions hold negotiations over the pay structure of public servants directly with the Ministry of Finance who is responsible for the remuneration policy of public servants. In matters concerning the draft Public Service Act, including in the matter of the prohibition on strikes by public servants, negotiations are held directly with the Ministry of Justice who works on the respective draft.

The use of *ad hoc* meetings has thereby not limited the circle of issues discussed. Meetings are held pursuant to the need in each area ranging from the occupational health and working environment strategy to drafting acts concerning specific employees. Also, negotiations are held for the purpose of ensuring the sustainable management of the Unemployment Insurance Fund.

In reply to the question asked about Article 6 (2) in the ECSR summary of 2006 we declare that the improvement of collective labour law was not reached during the reporting period, because making changes requires thorough preliminary work and analyses. However, the Ministry of Social Affairs has commenced preparations for making amendments. The first legal expert assessment of collective labour law problems in Estonia was prepared in 2008 in cooperation with the European Social Fund, a timetable for making amendments has been prepared and consultations with social partners have been launched. Possible amendments include modification of the definition of a collective agreement from the aspect of bilateral and tripartite collective agreements.

In reply to the question asked about Article 6 (3) of the ECSR summary of 2006 we declare that according to Article 21 of the Collective Labour Dispute Conciliator Statutes, in the event of conciliation of the parties, minutes of the agreement that are mandatory for the parties are made. According to Article 22 of the Statutes, the conciliator may submit to the parties in writing a draft of the conciliation agreement if an agreement is not reached in the conciliation meeting and recommend that it be accepted within three working days. In the event of disagreeing with the draft the conciliator decides whether to continue or terminate conciliation. According to Article 23, minutes of dissenting opinions are made in the event of non-reconciliation of the parties and they shall be signed by representatives of the parties and the conciliator and the conciliation procedure is terminated. Thus, the conciliator does not have the right to force an agreement on the parties to a labour dispute or make an agreement binding upon them without their consent.

Measures for application of legal regulation

Based on the new programming period of 2007-2013 of the European Social Fund we are carrying out and encouraging social partners to carry out activities that increase awareness of the freedom of association and of the opportunity to collectively agree on the working conditions.

Statistics

Table 3: Collective bargaining coverage by economic activity (NACE rev1.1) 2005

	Total	Male	Female
A; B	1159	993	166
C	1890	1202	688
D	18390	7831	10559
E	4933	4111	822
F	3521	2899	622
G	4938	2267	2671
H	415	0	415
I	8648	5443	3205
J; K	8033	1295	6738
L; M; N; O	19132	3529	15603
TOTAL	71059	29570	41489

Source: Estonian Statistical Office, Estonian Social Survey 2005

Article 6 (4)

General regulation

The legislation concerning the right to strike has not changed during the reporting period, but the new Public Service Act which will amend the prohibition on strikes of public servants has been prepared by the Ministry of Justice and it has been submitted to the Riigikogu (parliament) for approval.

According to the draft the prohibition on strikes will remain in force with regard to officials, but the circle of officials will be reduced significantly. According to § 4 of the draft act, an official is defined as follows:

(1) "Official" means a person who has a public service and trust relationship with the state, local authority or the Defence League.
(2) In a position of the authority set out in § 5 of this act where public authority is exercised a person may be employed in service only as an official. The position in which an official is employed in service must be included in the staff plan specified in § 6 of the act.
(3) For the purposes of subsection (2) of this section the following functions are deemed the exercise of public authority:
    1) management of an authority;
    2) exercise of supervision;
    3) ensuring substantive national security;
    4) substantive preparation of administration of justice;
    5) application of coercive measures;
    6) representation of public prosecution and substantive preparation thereof;
    7) extrajudicial misdemeanour procedure;
    8) diplomatic representation of the state;
    9) preparation of policymaking decisions of the area of the ministry or the Government of the Republic.
(4) A person exercising public authority means a person performing key functions arising from an act in a constitutional institution or authority servicing it. A person performing auxiliary functions in an authority works on the basis of an employment contract in a constitutional institution or authority servicing it.
(5) Subsection (4) of this section is not applicable to local authorities.
(6) A person who performs assistant or advising functions with the President of the Riigikogu, Vice President of the Riigikogu, the Prime Minister, minister, chairman or vice chairman of a council, mayor of a rural municipality or city or member of a rural municipality or city government until the end of the term of office of the person. The person performing assistant or advising functions is employed on the basis of a fixed-term employment contract.

According to the explanatory memorandum of the draft Public Service Act, the amendment of the definition 'official,' 45% of the former public servants who do not have the right to strike at the moment receive the right to strike. It is a significant reduction of the restriction of the right to strike.

Questions asked in the ECSR summary

In reply to the question asked in the ECSR summary of 2006 we declare that the new regulation has not yet entered into force, but has been drafted in the aforementioned form. The entry into force of the new wording of the Public Service Act depends on the processing

of the draft in the Riigikogu. According to the latest information it has been planned for 01.07.2010.

Measures for application of legal regulation

Based on the new programming period of 2007-2013 of the European Social Fund we are carrying out and encouraging social partners to carry out activities that increase awareness of the freedom of association and of the opportunity to collectively agree on the working conditions.

Statistics

According to the Public Conciliator, 74 labour disputes that needed conciliation took place through 2004-2008.

Table 4: Major strikes

Strikers	Type of strike	Year	Duration	Participants
Health care professionals	Warning	2000	1 hour	8700
Railway workers, etc.	Support	2002	1 hour	247
Locomotive drivers	Strike	2004	6 days	198
Locomotive drivers	Support	2004	2 days	58
Transport workers	Warning	2007	1 hour	400
Seafarers	Strike	2008	1 hour	400

Source: Confederation of Estonian Trade Unions

According to information available to us the Government of the Republic has not used the opportunity to suspend or stop a strike or a lockout.

Article 21

General regulation

In connection with the transposition of Directive 2002/14/EC the new Employees Trustee Act (hereinafter the ETA) was adopted on 13.12.2006 and it entered into force on 01.02.2007. The act establishes a general framework for informing and consulting employees. The adoption of the act was caused mainly by the need to transpose the directive. The new act ensures the compliance of Estonian law with the directive and amends the system of trustees of employees. According to the former act, the trustee of employees represented only employees that did not belong to a trade union, but according to the new act, the trustee of employees represents all employees, which should ensure that each employee is informed and represented better.

According to the act, the general meeting of employees elects at least one trustee who represents the entire body of employees. A trustee of employees has the right to receive the information necessary for the performance of their duties from the employer and consult the employer on the basis of such information (subsection 9 (2) of the ETA). In addition, the act provides for a clear obligation of the trustee of employees to participate in informing and consulting (subsection 10 (1) of the ETA). Employees' trustees have these rights and obligations regardless of the number of employees working for the employer. Also, employees' trustees have these rights in the public and private sectors alike.

If an employer employs more than 30 employees, it shall apply a procedure for informing and consulting that has been regulated in greater detail (Chapter 5 of the ERA). According to this procedure the informing and consulting has been defined as follows:

- 'informing' means the informing of the employees trustee or, in their absence, the employees on an appropriate level which allows the employees to receive a clear and sufficiently detailed overview of the structure and economic and employment situation of the employer on time, and the possible development of the structure and situation and other circumstances affecting the interests of employees, and to understand the effects of the situation and other circumstances on the employees (subsection 19 (1) of the ETA);
- 'consulting' means exchange of views and the establishment of dialogue between the trustee or, in his or her absence, the employees and the employer on an appropriate level which allows the trustee or the employees to express opinions and receive reasoned responses to the expressed opinions from the employer with a view to reaching an agreement on the provisions of clauses 20 (1) 2) and 3) of this Act (subsection 19 (2) of the ETA).

Thereby an employer must inform and consult employees at least of the following circumstances pertaining to employees (§ 20 of the ETA):

- the structure of the employer, the staff, changes therein and planned decisions which significantly affect the structure of the employer and the staff;
- planned decisions which are likely to bring about substantial changes concerning organisation of work;
- planned decisions which are likely to bring about substantial changes concerning the employment contract relationships of employees, including termination of the employment relationship;
- annual report made in accordance with the Accounting Act.

Upon informing and consulting employees, employers must take into account the following: (§ 21 of the ERA):

- employers must provide information in a manner which enables in-depth examination of the information and, if necessary, preparation for consultations with the employer. The employer must provide information in writing or in a format that can be reproduced in writing unless the parties have agreed otherwise;
- the trustee of employees or, in their absence, the employees have the right to present a written opinion or make a proposal concerning the information received from the employer or notify of the intention to commence consulting within fifteen working days as of the date of receipt of the information;
  if the employer does not take the proposals into consideration, the reasons therefore must be given at the earliest opportunity in writing or in a format that can be reproduced in writing;
- the employer must commence consulting within seven working days as of receipt of the request for consulting.

Employers are obligated to apply a procedure for informing and consulting which has been regulated in greater detail regardless of whether the trustee of employees has been selected or not. Upon absence of a trustee of employees the employer is obligated to inform and consult each employee.

Although as a general rule employers are obligated to inform and consult trustees of employees and trustees of employees are obligated to communicate the information to employees, the act provides for specifications with regard to employers concerning information of special importance.

The act has given employers the possibility to communicate some information to employees trustees as confidential information (subsection 15 (1) of the ETA). At the same time the employer is required to justify the confidentiality if the trustee of employees does not agree with the confidentiality of information (subsection 15 (2) of the ETA). Employees' trustees are prohibited to disclose and use information which has become known to them clearly as confidential information.

In addition, employers have been given the right to refuse to provide information if the disclosure of the information seriously harms or may harm the employer's activities (subsection 16 (1) of the ETA). In that case employers are obligated to give justification based on objective criteria why the provision of information seriously harms or may harm the activities of the employer (subsection 16 (2) of the ETA).

Violation of the procedure for informing and consulting is punishable by a fine (§ 24 of the ETA). Also, violation of the obligation to maintain confidentiality of information is punishable by a fine (§ 25 of the ETA). These violations are misdemeanours whose extrajudicial procedure is conducted by the Labour Inspectorate.

The implementing provisions of the ETA also amended the regulation of informing and consulting employees trustees of trade unions formerly contained in the Trade Unions Act (hereinafter the TUA). In the course of the amendment a separate regulation effective in the TUA was repealed and a reference was added that employees' trustees of trade unions are informed and consulted on the conditions and pursuant to the procedure provided for in the ETA in order to ensure equal informing and consulting of employees' trustees.

The ETA is applicable to all employers and employees in Estonia regardless of their nationality. The ETA is applicable throughout Estonia.

Given that the ETA has been in force for a short period there is no relevant case law.

Informing and consulting employees in the European company and in European Works Councils has not changed in comparison with the past. Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees and Directive 2005/56/EC on cross-border merger of limited liability companies were transposed in 2007 by adoption of the Community-scale Involvement of Employees Act.

The Community-scale Involvement of Employees Act is applicable to everyone throughout the territory of Estonia.

Given the small number of Community-scale undertakings in Estonia, there is no relevant case law.

During the reporting period the regulation of occupational health and working environment informing and consulting has not substantively changed in comparison with the former.

Questions asked in the ECSR summary

In reply to the question asked in the ECSR summary of 2007 we declare that more detailed regulation of informing and consulting in collective agreements is not widespread. Unfortunately, we lack content analyses of collective agreements which would allow for evaluating as to what extent these regulate informing and consulting in greater detail. At the same time the new ETA has been consciously prepared as a framework act which sets out only the principles, leaving the practical informing and consulting for the parties to regulate. One such regulation opportunity is to discuss informing and consulting in a collective agreement. We hope that the activities aimed at increasing the awareness of employees and employers will result in greater awareness of the possibilities of regulating informing and consulting in a collective agreement.

Measures for application of legal regulation

For the purpose of encouraging informing and consulting the ETA has consciously been prepared as a framework act. It only stipulates the general principles of informing and consulting, giving each specific employer and its employees the chance to make an agreement on the conditions and procedure of informing and consulting corresponding to the characteristics of their work organisation.

In cooperation with the European Social Fund the Ministry of Social Affairs carried out a campaign introducing the ETA and related informing and consulting in 2007 and 2008. In the course of the campaign articles were published in newspapers, a website introducing the ETA was created, the ETA was introduced in seminars to trustees of employees and to trade union members. Also, a commentary to the ETA was published.

Statistics

There is no accurate statistics on informing and consulting of employees or on the channels used for informing and consulting. Relevant information should be provided by the Employment Survey whose results will be published in 2010.

Article 22

General regulation

The Occupational Health and Safety Act (hereinafter the OHSA) has not changed during the reporting period.

The Employees Trustee Act (ETA) was adopted on 13.12.2006 and it entered into force on 1 February 2007. The new act made two main changes to the working environment rights of employees' trustees. First, subsection 9 (6) gives employees trustees the right to inform a trade union and a federation or central federation of employers or trade unions of violation of working conditions by the employer. Secondly, subsection 10 (3) obligates employees trustees to 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.

Section 4 of the ETA provides for the general principle according to which the employees' trustee and the employer shall cooperate in a spirit of mutual trust and in good faith, taking into account the rights, obligations and interests of the employees and employer. Thus, the ETA gives employees the opportunity to influence their working environment.

Questions asked in the ECSR summary

In reply to the question asked in the ECSR summary of 2006 we declare that in a collective agreement it is possible to agree on the conditions of the working environment and in the manners of improvement of the working environment. Unfortunately, we lack an analysis of the content of all collective agreements made and therefore it is not possible to evaluate in how many collective agreements and to what extent this opportunity has been seized. Based on the database of collective agreements and the data of the Estonian Statistical Office 9.6% of employees were covered with collective agreements in 2005 and 11.3% of employees in 2007.

The OHSA separately provides for the obligation of employers and employees to cooperate in creating a safe working environment (§ 12). In addition, § 14 of the OHSA sets out employees' rights, specifying, among other things, employees' right to demand that the employer provide working conditions and collective and personal protective equipment conforming to the occupational health and safety requirements; receive information on risk factors present in the working environment, the results of risk assessments of the working environment, the measures implemented to prevent damage to health, the results of health surveillance, and precepts of the labour inspector addressed to the employer. Also, in the event of a serious or unavoidable risk of accident, employees have the right to stop work and leave their workplace or the danger area; they have the right to refuse to carry out work or to stop work if it is dangerous to their health or that of other persons or does not allow to comply with environmental safety requirements, and promptly notify the employer or the employer's representative and working environment representative thereof. Employees have the right to, on the decision of a doctor, demand that the employer transfer them to another position temporarily or permanently or that the employer ease their working conditions temporarily and request their transfer to suitable daytime work if, by decision of a doctor, the person's working during night time is inadvisable for reasons of health and the employer has the possibility to transfer the employee to such position. Employees have the right to contact working environment representatives, members of the working environment council, employees trustees and the labour inspector of the location of the enterprise if, in their

opinion, the measures implemented and the equipment provided by the employer do not ensure the safety of the working environment (§ 14).

The Labour Inspectorate checks in the course of supervision whether enterprises have elected working environment representatives and whether a working environment council has been formed in an enterprise with over 50 employees.

Measures for application of legal regulation

The aforementioned provisions on the participation of employees in creating safe and suitable working conditions have been discussed and approved by organisations representing employees and employers upon coordination of the draft act.

In the course of supervision labour inspectors pay great attention the creation and functioning of cooperation opportunities in the enterprise (incl. to the existence of a working environment representative, their level of awareness and the activities of the working environment council). Where necessary, precepts are made for elimination of deficiencies.

The working environment council submits annual reports on its activities to the Labour Inspectorate, describing who occupational health and safety issues are resolved in the enterprise and frequently giving examples of good practice. The Labour Inspectorate gathers examples of good practice and makes the best of them available to their website www.ti.ee for others to see.

The Occupational Health and Safety Strategy until 2013 also focuses on cooperation between employees and employers and increasing the awareness of the parties O:\TAO\TTTO Strateegia 2009-2013\Töökeskkonna strateegia 2009-2013_toimetatud_160909.doc. The action plan made on the basis thereof foresees various activities whereby employers and employees can and must cooperate to improve the working environment. Various actions are funded by the ESF.

Statistics

The Occupational Health and Safety Act is applicable, above all, to employees working under an employment or service contract.

Among other things, the act is also applicable to the following:

1. the work of prisoners with the specifications provided for in the Imprisonment Act;
2. the work of pupils and students during practical training;
3. the work of members of the management board or a body substituting for the management board of a legal person.

According to statistics, employees with an employment or service contract accounted for 88.8% of the employed in 2005, 89.8% in 2006, 89.1% in 2007 and 90.25% in 2008. These figures do not include members of management board or bodies substituting for management boards of legal persons.

Total number of the employed:
2005 – 607,400;
2006 – 646,300;
2007 – 655,300;
2008 – 656,500.

Incl. under an employment or service contract:
2005 – 539,100 -> 88.8%;
2006 – 580,200 -> 89.8%;
2007 – 583,900 -> 89.1%;
2008 – 592,500 -> 90.25%.

Article 28

General regulation

Protection of representatives of employees has been set out in the ECA and special provisions arise from the acts that regulate employees' representatives in greater detail, i.e. from the Employees' Trustees Act, the Trade Unions Act, the Occupational Health and Safety Act and the Community-scale Involvement of Employees Act.

The ECA somewhat changed the general rights of employees' representatives.

Changes:

1. The ECA gives employees representatives the right to demand accounts kept of employees whose working time does not exceed on average 48 hours per seven days over a calculation period of four months (subsection 46 (5) of the ECA).
2. If an employer wants to cancel a contract with an employee, the employer must justify it. If the employer cancels a contract with the representative of employees, it is deemed that the employment contract has been cancelled for the reason that the employee represents other employees on legal grounds. Cancellation for such reasons is unlawful (subsection 92 (3) of the ECA).
3. The ECA changed the prerequisites of cancellation of the employment contracts of employees' representatives. Formerly, one had to obtain permission from the Labour Inspectorate. According to the ECA, no separate permission needs to be applied for. It has been replaced with asking an opinion from the employees elected to represent employees or from the trade union. The employer must justify the disregarding of the opinions given (§ 94 of the ECA). The change arises from the fact that the Labour Inspectorate does not have any possibilities of substantively assessing the cancellation of employment contracts with employees' representatives and therefore the asking of approval from the Labour Inspectorate is rather a formal obligation and does not serve the purpose of protecting the representative of employees.
4. The ECA gives the employer the opportunity to apply, upon identification of the unlawfulness of the cancellation of the employment contract, for termination of the employment contract by paying additional compensation for it. In the case of a representative of employees the court does not satisfy such a request, unless the continuance of the employment relationship is not reasonably possible when considering mutual interests (subsection 107 (3) of the ECA).
5. In the case of identification of the unlawfulness of the cancellation of the employment contract of a representative of employees and termination of the employment contract in court, the ECA prescribes a compensation that exceeds that of an ordinary employee by two times (three months in the case of an ordinary employee and six months in the case of a representative of employees) (subsection 109 (2) of the ECA). The court is allowed to change the amount of compensation.

The ECA is applicable to everyone throughout Estonia.

Given the fact that the ECA has been in force for such a short time, case law has not developed yet.

In connection with the transposition of Directive 2002/14/EC the new Employees Trustees Act (hereinafter the ETA) was adopted on 13.12.2006 and it entered into force on 01.02.2007. The act establishes a general framework for informing and consulting employees. The adoption of the act was caused mainly by the need to transpose the directive. The new act ensures the compliance of Estonian law with the directive and amends

the system of trustees of employees. According to the former act, the trustee of employees represented only employees that did not belong to a trade union, but according to the new act, the trustee of employees represents all employees, which should ensure that each employee is informed and represented better.

In the new acts the benefits of trustees of employees changed as follows:

1. the off-work time granted to trustees of employees became longer. According to subsection 13 (3) of the ETA, it is as follows:
   1) if the trustee represents 5 to 100 employees – a minimum of 4 hours per working week;
   2) if the trustee represents 101 to 300 employees – a minimum of 8 hours per working week;
   3) if the trustee represents 301 to 500 employees – a minimum of 16 hours per working week;
   4) if the trustee represents over 500 employees – a minimum of 40 hours per working week.

2. employees trustees were granted the clear right to undergo training to a reasonable extent for performance of their duties.

The representative of trade unions who participate in informing and consulting enjoy the same off-work time as trustees of employees (subsection 21 (2) of the TUA). Thereby it is important to emphasise that the time off work depends on the number of represented employees, i.e. in the case of a representative of a trade union not the number of employees employed by the employer as is the case with trustees of employees, but the number of employees of the employer who belong to the same trade union as the representative of the trade union.

The ETA is applicable to everyone throughout Estonia.

Since the ETA has been in force for a relatively short time, there is no developed case law.

The rights of the representatives of the employees of the European company and European Works Councils have not changed. Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees and Directive 2005/56/EC on cross-border merger of limited liability companies were transposed in 2007 by adoption of the Community-scale Involvement of Employees Act. Thus, the rights and benefits of employees' representatives have been transposed in these cases as well.

The Community-scale Involvement of Employees Act is applicable to everyone throughout the territory of Estonia.

Given the small number of Community-scale undertakings in Estonia, there is no relevant case law.

Protection of representative of employees regarding occupational health and safety and the special regulation of benefits has not virtually changed during the reporting period.

Questions asked in the ECSR summary

In reply to the question asked in the ECSR summary of 2007 we declare that according to the Employment Contracts Act in force until 01.07.2009, the burden of proof of representatives of employees is similar to that of any other employees when referring to a

court. Upon identification of the unlawfulness of cancellation of an employment contract, the representative of employees has the right to return to work and receive remuneration which they were deprived of. If the representative of employees does not wish to return, they have the right to receive compensation to the extent of their wages of up to six months. According to the ECA, the burden of proof is reversed in disputes concerning cancellation of employment contracts, i.e. on the employer. Upon identification of the unlawfulness of cancellation of an employment contract, the representative of employees usually has the right to return to work and receive remuneration which they were deprived of. If the representative of employees does not wish to return, they usually have the right to receive compensation to the extent of their wages of up to six months. The court is allowed to change the amount of compensation.

Measures for application of legal regulation

In cooperation with the European Social Fund the Ministry of Social Affairs carried out a campaign introducing the ETA in 2007 and 2008. In the course of the campaign articles were published in newspapers, a website introducing the ETA was created, the ETA was introduced in seminars to trustees of employees and to trade union members. Also, a commentary to the ETA was published. We find that the campaigns have increased the awareness of employees' trustees as well as employers of the rights of employees' trustees.

Statistics

There are no accurate statistics of the guarantees or benefits of representatives of employees. The Employment Survey to be completed in 2010 should provide us with adequate information.

Article 29

General regulation

The legislation concerning employees' right to information and consultation in the event of collective cancellation of employment contracts has not substantively changed in the reporting period. The Parliament did adopt a new Employment Contracts Act on 17.12.2008 which regulates employees' right to information and consultation in the case of collective cancellation of employment contracts, but the new acts copies the old one in these respects and does not make any substantive amendments.

Questions asked in the ECSR summary

According to § 128 of the ECA, failure by an employer to perform the notification and consultation obligation upon collective cancellation of employment contracts is punishable by a fine of up to 6,000 Estonian kroons in case the employer is an individual and up to 20,000 Estonian kroons in case the employer is an entity.

The new Employees Trustees Act adopted by the Parliament on 13.12.2006 which entered into force on 01.02.2007 imposes a fine of up to 12,000 Estonian kroons for failure to perform the general obligation of informing or consulting by an employer who is an individual and of 50,000 Estonian kroons by an employer who is an entity.

Measures for application of legal regulation

In cooperation with the European Social Fund the Ministry of Social Affairs has carried out and is carrying out activities for increasing the awareness of employees and their trustees of employment relationships. These activities include matters pertaining to collective cancellation of employment contracts as well.

Statistics

There is no accurate statistics on informing and consulting of employees in the case of collective cancellation of employment contracts. The ongoing Employment Survey should provide relevant information, but its results will become available in 2010.

Appendix 1

Sotsiaalministeerium 16.12.2009 nr 1-9/73

Gonsiori 29

15027 Tallinn

EAKLi arvamus Vabariigi Valitsuse aruande juurde

Parandatud ja täiendatud Euroopa Sotsiaalharta (ESH) täitmisest

Eesti Ametiühingute Keskliit tänab arvamuse küsimise eest ning teatab vastuseks järgmist:

Artikkel 2 (4)

Eesti ei ole käesoleva ajani ratifitseerinud ESH artikli 2 lõiget 4, mille kohaselt tuleb kõrvaldada ohtlikele või tervistkahjustavatele kutsealadele omaseid ohtusid, ja kui neid ohtusid pole veel võimalik kõrvaldada või piisavalt vähendada, tagada sellistel kutsealadel hõivatud töötajate tööaja lühendamine või tasustatava lisapuhkuse andmine.

Kuni 30.06.2009 kehtinud töösuhteid ja -tingimusi reguleerivate õigusaktidega tagati vaadeldavas artiklis kehtestatud põhimõttest kinnipidamine järgmiselt:

- Töö- ja puhkeaja seaduse § 5 lg 1 p 4 ja lg 4 kohaselt oli lühendatud täistööaeg töötajatel, kes töötavad allmaatöödel, tervistkahjustavatel ja eriiseloomuga töödel - kuni 7 tundi päevas ehk kuni 35 tundi nädalas, kui nad töötasid neis tingimustes vähemalt 30 tundi nädalas.
- Puhkuseseaduse § 10 nägi ülalmärgitud töötajagruppidele ette õiguse lisapuhkusele.

01.07.2009 jõustus uus töölepingu seadus (TLS), millega muutusid kehtetuks viidatud õigusaktid, sh ülalnimetatud tagatised. TLS ei näe ette ohtlikel või tervistkahjustavatel kutsealadel hõivatud töötajate tööaja lühendamist ega tasustatava lisapuhkuse andmist. TLS

väljatöötamisel lähtuti teoreetilisest ideest, et tööandja kohustus on tagada töötajatele ohutud ja tervislikud töötingimused, mistõttu ei peetud eelkirjeldatud tagatiste sätestamist vajalikuks ega põhjendatuks.

Praktikas ei ole viidatud kutsealadel töötavate töötajate töötingimused oluliselt paremaks muutunud, kuna tööandjad ei ole piisavalt investeerinud töötingimuste parendamisse ning riiklik järelevalve töökeskkonna üle on üsna hambutu. Samas on selge, et maa all, vee all ja õhus töötavate inimeste puhul polegi võimalik muuta nende spetsiifilisi töötingimusi, mistõttu erisuste kaotamine on täiesti põhjendamatu. Seega on Eesti riik uue regulatsiooni kehtestamisega tööõiguse kaasajastamise sildi all sisuliselt halvendanud töötajate töötingimusi, käitunud risti vastupidiselt harta põhimõtetele ning asunud rikkuma ESH artikli 2 lõikes 4 kirjeldatud töötajate õigust õiglastele töötingimustele, mida Eesti seni täitis.

Artikkel 6 (3)

Eesti ei ole käesoleva ajani täitnud artiklis ettenähtud nõuet soodustada vabatahtliku vahekohtumehhanismi loomist ja kasutamist kollektiivsete töövaidluste lahendamisel.

Kollektiivse töötüli lahendamise seadus (KTTLS) näeb ette kolm võimalikku mehhanismi kollektiivse töötüli lahendamiseks: a) töötüli lahendamine tööandjate liidu ja töötajate liidu poolt; b) töötüli lahendamine riikliku või paikkondliku lepitaja vahendusel; c) töötüli lahendamine kohtus.

Töötüli poolel on võimalus ülalmärgitud meetoditest valida endale sobivaim. Esimesel juhul (variant a) on vajalik mõlema poole vaba tahe, mistõttu kasutatakse seda võimalust väga harva – viimase 10 aasta jooksul praktikas vaid ühel korral (vedurimeeste streik 2004.a septembris). Enim pöördutakse kollektiivse töötüli lahendamiseks riikliku lepitaja poole, kelle tegevust kirjeldatakse lühidalt ka käesoleva arvamuse aluseks olevas aruandes. Samas ei ole ei lepitaja institutsioon ega ka kaks ülejäänud vaidluste lahendamise meetodit alati ja igas olukorras sobivaimad, jättes teatud juhtudel töötajad ilma nende põhiõigusest oma huvisid efektiivselt kaitsta: vaidluste lahendamine lepitaja või kohtu vahendusel võib osutuda väga pikaajaliseks; vaidluste lahendamine tööandjate liidu ja töötajate liidu poolt saab toimuda vaid poolte ühisel tahtel.

Kõige haavatavamaks vaadeldaval juhul on avalikud teenistujad ning oluliste ja elutähtsate teenuste osutajad, kelle aktsiooniõigust võib piirata ning teatud juhtudel keelata. Tegemist on valdkondadega, kus riik saab ja praktikas tihti halvabki töötajate/teenistujate võime ja võimaluse saada neid puudutavat asjakohast informatsiooni ja osaleda konsultatsioonidel ning pidada kollektiivläbirääkimisi ja sõlmida oma töö- ja palgatingimuste parendamiseks kollektiivlepinguid.

Eeltoodud asjaolude tõttu on EAKL korduvalt teinud riigile ettepaneku töötada välja kiire ja efektiivne vahekohtumehhanism, kollektiivsete töövaidluste lahendamiseks nendele töötajate kategooriatele, kelle aktsiooniõigust seaduse alusel piiratakse või keelustatakse. Sellise vahekohtu otsus peab olema pooltele täitmiseks kohustuslik, et tagada küllaldane võimalus realiseerida põhiõigusi kõigile töötajaile.

Artikkel 6 (4)

Uus avaliku teenistuse seaduse eelnõu (ATS E) piirab teiste hulgas ka selliste ametnike streigiõigust, kes ei teosta riigivõimu. Nt ATS E § 4 lg-s 3 loetletud:

- *substantive preparation of administration of justice;*

- *preparation of policymaking decisions of the area of the ministry or the Government of the Republic;*

ILO praktika lähtub printsiibist, mille kohaselt võib streigiõiguse keelustamist lugeda põhjendatuks vaid sellistele ametnikele, kes teostavad riigivõimu. Paljud eelnõu § 4 lõikes 3 osundatud ametnikugrupid ei teosta avalikku võimu, mistõttu nendele laienev streigikeeld on põhjendamatu ning vastuolus ILO põhimõtetega. Näiteks eelnõusid ette valmistavad ametnikud (nõunikud, konsultandid, (vanem, pea)spetsialistid jms) ei teosta ei otseselt ega kaudselt avalikku võimu vaid teevad tehnilist tööd, mille üle neist kõrgemalseisev ametnik järelevalvet teostab. Viimasel lasub vastutus eelnõu kvaliteedi eest ning seda võib nimetada kaudseks avaliku võimu teostamiseks, kuivõrd otsest seadusandlikku võimu teostab parlament.

Tulenevalt ESH praktikast[1] on Euroopa Nõukogu kõnealuses küsimuses esitanud järgmise seisukoha:

> „Mis puutub avalike teenistujate streigiõigusse, siis komitee (Euroopa sotsiaalharta Euroopa sotsiaalõiguste komitee) tunnistab, et streigiõigust võib piirata teatud avalike teenistujate kategooriate suhtes, sealhulgas politseinikud ja kaitsevägi, kohtunikud ja riigi vanemametnikud. Teiselt poolt on komitee seisukohal, et streigiõiguse keelustamist avalike teenistujate suhtes tervikuna ei saa lugeda kokkusobivaks hartaga.“

Ülaltoodud põhimõtet eirab otseselt ATS E § 58, mis keelab ametnikul streikida ja osaleda muudes surveaktsioonides. Kuna eelnõus ei tehta vahet ametnikel, kes teostavad riigivõimu ja kes mitte, siis laieneb streigikeeld faktiliselt kõigile ATS E § 4 lg-s 3 loetletud ametnikegruppidele. Selline lähenemine ei lahenda ka KTTLSi § 21 lg 1 vastuolu EV Põhiseadusega, mille likvideerimise vajadust rõhutas 26.01.2006 ettekandes Riigikogule ka õiguskantsler. EAKL on enam kui 10 aasta jooksul korduvalt esitanud eelnõusid probleemi lahendamiseks, paraku pole need leidnud valitsuse toetust ning menetlemist Riigikogus.

Olgu rõhutatud, et ATS E §-s 58 kasutatud termin “muud surveaktsioonid” on lubamatult abstraktne. Isegi juhul, kui ametnike mõiste oleks kooskõlas ILO ja EN põhimõtetega, jääb küsitavaks, millega on põhjendatud riigi soov jätta ametnik ilma õigusest osaleda oma vabast ajast avalikel koosolekutel, pikettidel jms rahumeelsetel üritustel. Tegemist on ebaproportsionaalse põhiõiguse riivega, kusjuures ka sellel juhtumil on riigil kavas halvendada ametnike senist olukorda, sätestades neile täiendavad keelud.

Artikkel 21

Käesoleva arvamuse aluseks olevas aruandes selgitatakse informeerimise ja konsulteerimise regulatsiooni üldiselt. Samas jäetakse tähelepanuta töötajate usaldusisiku seaduses (*ERA*) sisalduv põhimõtteline viga, mis on praktikas tekitanud olukorra, kus avalikus sektoris hõivatud teenistujad/töötajad on sisuliselt jäetud ilma õigusest saada informatsiooni neid puudutavates küsimustes ning olla kaasatud konsultatsioonidesse.

ERA 5. peatükk sätestab informeerimise ja konsulteerimise mõiste ja sisu (vastavalt §-d 19 ja 20) ning viisi (§ 21). *ERA* § 17 lg 2 kohaselt ei kohaldata aga avalikus teenistuses 5. peatükis sätestatut, sh informeerimise ja konsulteerimise mõistest ja sisust lähtumise kohustust. Sellest järeldub, et avalikus teenistuses tähendab informeerimine ja konsulteerimine midagi sellist, mille kohta puudub selge arusaam nii seadusandjal kui ka töötajail ja tööandjail, samuti jääb määratlematuks teemade ring ja sisu. De facto on tegemist olukorraga, kus seadusest

[1] Fundamental social rights. Case law of the European Social Charter. 2nd edition. 2002, lk 152.

tulenevalt peaks ka avaliku sektori tööandjal olema kohustus teenistujaid ja töötajaid informeerida ja nendega konsulteerida, kuid selleks pole sätestatud mingit protseduuri ning töötajate esindajatel praktiliselt puudub õigus nõuda tööandjalt mistahes teavet, samuti konsulteerimist. Lühidalt taandub informeerimine ja konsulteerimine avalikus sektoris tööandja suvale.

Seevastu sätestab *ERA* § 9 p 2 usaldusisiku õiguse saada tööandjalt oma ülesannete täitmiseks vajalikku teavet ning konsulteerida selle teabe alusel tööandjaga ning *ERA* § 10 p 1 usaldusisiku kohustuse osaleda informeerimisel ja konsulteerimisel. Nii jääbki arusaamatuks, kuidas saab avalikus teenistuses tegutsev usaldusisik oma ülesandeid täita, kui tööandjal puudub *ERA* § 17 lg-st 2 tulenevalt kohustus teda informeerida ja temaga konsulteerida §-des 19 ja 20 näidatud teemadel.

Vastuolulise regulatsiooni tulemusena ei toimu avalikus teenistuses faktiliselt teenistujate/ töötajate informeerimist teemadest, mille teadasaamiseks on neil õigustatud huvi. Veel vähem (kui üldse) praktiseeritakse avalikus teenistuses konsulteerimist. Leiame, et selline regulatsioon on vastuolus ESH artikli 21 mõttega, mistõttu ei ole sisuliselt tagatud artikliga taotletav eesmärk.

Kuna avalikus teenistuses puudub teenistujail/töötajail suuresti võimalus kaitsta oma õigusi ja huve kollektiivsete meetmetega, sh aktsioonide abil, on äärmiselt oluline, et riik tagaks teenistujaile ja töötajaile avalikus teenistuses reaalse õiguse ja võimaluse saada tööandjalt asjakohast teavet ning konsulteerida saadud teabe põhjal tööandjaga viisil, mis võimaldaks pooltel jõuda mõistliku konsensuseni.

Lugupidamisega

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