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EUROPEAN SOCIAL CHARTER

13th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF ROMANIA

(Articles 2, 4, 5, 6, 21, 28 and 29)

for the period 01/01/2009 – 31/12/2012)

Report registered by the Secretariat on 25 November 2013

CYCLE 2014

THE 13th NATIONAL REPORT

ON THE APPLICATION

OF THE REVISED EUROPEAN SOCIAL CHARTER

PRESENTED BY
THE ROMANIAN GOVERNMENT

For the period 1st January 2009 - 31st December 2012

regarding article 3 of the Revised European Social Charter,
" The right to safe and healthy working conditions": 2 (paragraphs 1, 2, 4-7), 4, 5, 6, 21, 28 and 29

According to the provisions of article C of the Revised European Social Charter and article 21 of the European Social Charter on the measures adopted regarding the implementation of the Revised European Social Charter's approved provisions, ratified on 7th May 1999.

According to article C of the Revised European Social Charter and Article 23 of the European Social Charter, copies of the hereby report were communicated to:

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Article 2 – The right to fair working conditions

Paragraph 1

Art. 111 from the Labour Code was amended by the art. I point 60 from the Law no. 40/2011. Following its republication, art. 111 became 114. The regulation of this article is in accordance with the EC 2003/88 European Directive on certain aspects of the organisation of work duration.

Art.114 provides:
(1) The maximum length of the working time is 48 hours per week, over time included.
(2) By of way of exception, the length of working time, over-time included, may be extended over 48 hours per week, on the condition that the average of the working hours calculated over a reference period of **4 calendar months** do not exceed 48 hours per week.
(3) For certain economic sectors, organizations or professions listed in the national collective labour agreement, reference periods above **4 months**, but not exceeding **6 months**, may be negotiated in the applicable branch collective labour agreement.
(4) The collective labour agreements may lay down exceptions from the duration of the reference period under paragraph (3) but for reference periods up to 12 months; such exceptions are subject to the compliance of the regulations on protection of health and safety at work of the employees and may be set up due to objective, technical or organisational reasons.
(5) When setting the reference periods provided for in paragraphs **(2)** and (4), the length of the annual leave and the individual employment contract suspensions shall not be taken into account.
(6) The provisions of paragraphs (1) - (4) shall not apply to young people under the age of eighteen years.
Art. 42 from the Ministry of Health Order no. 870/2004, amended and supplemented, sets the following:
(1) On-call hours are not considered over-time hours nor plurality of offices.
(2) On-call hours do not represent seniority and seniority in the field of work.
(3) On-call hours performed outside the normal working hours and paid according to the provisions of the hereby regulation are included in the gross monthly incomes depending on which the acquired number of points per month is established, on which basis the amount of pension is determined.

By the republication of the Labour Code, art. 116 became art. 119, as following:

Art. 119
The employer is obliged to keep a record of the night shifts performed by every employee and make available such record to the labour inspection every time is required to do so.
According to art. 260 paragraph 1 letter m) of the Labour Code, republished, the non-compliance by the employer of the obligation provided for at articles 27 and 119 is subject to a fine from 1,500 lei to 3,000 lei.

After the amendments brought to the Labour Code by Law no. 40/2011, the Labour Inspectorate may supply information for the period May-December 2011 on the number of fined employers for the non-compliance of the provisions of art. 119. There were 494 employers and the value of fine was of 764,000 lei.

In the table below are listed the indicators related to the 2009-2011 period which highlights the fined employers by the Labour Inspectorate through the Local Labour Inspectorates for the infringement of the legal provisions on: overtime hours, night shifts, working during rest days and during legal holidays.

No.	INDICATORS	Year 2009	Year 2010	Year 2011
1.	- No. Of employers fined for the infringement of the legal provisions on **overtime hours**	386	382	538
	- Value of fines (lei)	583.000	626.900	860.500
2.	- No. of employers fined for the infringement of the legal provisions on **work during rest days**	978	967	1200
	- Value of fines (lei)	1.482.325	1.551.100	1.878.100
3.	- No. of employers fined for the infringement of the legal provisions on **work during legal holidays**	48	85	59
	- Value of fines (lei)	222.500	420.000	299.000
4.	- No. of employers fined for the infringement of the legal provisions on **work during night shifts**	157	150	188
	- value of fines (lei)	227.500	235.000	300.000
5	- No. of employers fined for the infringement of the legal provisions on **working hours register**	-	-	494
	- Value of fines (lei)			764.000

Paragraph 2

According to the Labour Code (Art. 142 paragraph 2) the employees working on legal holidays shall be compensated by paid hours off in the following 30 days. Should the employees do not enjoy paid hours off, due to justified reasons, they shall enjoy an extra pay for the worked performed during legal holidays which cannot be less than 100% from the

basic wage corresponding to the worked performed during regular working hours. Therefore, in such cases the employees are entitled to a double wage.

Please note that the foregoing legal provisions *are valid only for the working places where the activity cannot be interrupted* due to the production process or to the main field of activity, while for the other cases granting paid days off is mandatory.

Within the elaboration process of the specific regulations, the Ministry of Labour, Family and Social Protection shall keep in mind the proposals and the observation formulated in the report.

Paragraph 4

Law no. 31/1991 on establishing the length of working hours under 8 hours / daily for the employees working under special conditions – difficult, hard or dangerous conditions, provides criteria and procedures for reducing the length of working hours so as to ensure for the employees the conditions for maintaining their health status and to restore their work capacity.

Regarding the criteria on reducing the length of working hours, art. 2 of Law no. 31/1991 provides the following:
" (1) Establishing the staff categories, activities and working place for which the length of working hours is reduced under 8 hours/daily based on the following criteria:
a) nature of dangerous factors – physical, chemical or biological – and their way of affecting the organism;
b) intensity of harmful factors or the association of such factors;
c) duration of exposure to the action of harmful factors;
d) the existence of some working conditions which implies a bigger physical effort, under unfavourable micro-climate conditions, intense noise or vibrations;
e) the existence of some working environment under high stress conditions, a very tense and multi-lateral attention or tense concentration and intense work;
f) the existence of some working environment requiring high stress, determined by a an incident or disease risk;
g) structure and morbidity in relation to the specific working place;
h) other harmful, hard or dangerous working conditions which may lead to premature wear of the organism;
(2) The length of working hours shall be reduced by taking into account the action of the factors provided for at letter a)-h) over the health status and the work capacity and depending on how these consequences may be diminished or eliminated by reducing the exposure time."

Regarding the establishment of some procedures, according to art. 3 of Law no. 31/1991:
"(1) The existence of special – harmful, hard or dangerous conditions at the working places is determined for every unit by the statutory local labour inspectorates for labour protection based on the measurements carried out by the staff of the specialized unit of Ministry of Health which shows the exceeded limits laid down by the national legislation on labour protection.
The statutory local inspectorates on labour protection must verify if at the time when the measurements were carried out all the measurements for the normalization of working conditions were applied and if the installations for labour protection are under normal operating conditions.

(2) The duration of reduced working hours and the normalizations of the staff who enjoys a reduced working hours (under 87 hours / day) are determined by negotiations between employers and trade unions or, where appropriate, by the employees' representatives.
(3) In the units belonging to the Ministry of National Defence and those of Ministry of Interior the determinations and approvals are made by the competent bodies with specific tasks on labour protection within these ministries."

Pursuant to the provisions of art. 12 from the Unique Collective Agreement at national level 2007-2010, the employees preforming their activity under special working conditions enjoy a reduced working hours under 8 hours/day, according to the conditions provided by the law, and cannot be requested to perform overt-time, except for the justified cases expressly provided by the internal regulations or in case of some unexpected events.

The duration of reduced working hours and the staff categories who enjoy such schedule are established by the Collective Labour Agreement at sector level, group of units and units.

Reducing the working hours under 8 hours/day is not affecting the salary nor the seniority of those employees who enjoy such provisions.

Following the verifications made by the labour inspectorates at local level, for the reporting period (2009-2011), the activities where the workers enjoyed a reduced working hours under 8 hours/day, pursuant to the provisions of collective labour agreement al group of units and/or units level are:

- ***Social assistance and health –*** physician, tester, average healthcare personnel, blood transfusion personnel, radiology personnel;
- ***Vet activities –*** vets, vet assistant, auxiliary personnel from the veterinary sector
- ***Metallurgy –*** caster, coking, locksmith, bricklayer, crane operator, machinist crane, blacksmith, metal operator, welder, electrician, smelter, tester, blast-furnace operator;
- ***Terrestrial transports –*** driver;
- ***Extraction and preparation of coal –*** miner, miner assistant, locksmith, welder, shovel-man;
- ***Machine and equipment industry –*** machinist crane, coating machine operator, sandblaster, plastic products press operator;
- ***Other activities related to transport –*** air traffic controller;
- ***Lead, zinc and tin production –*** engineer, head installation, head sector, dispatcher, system operator, tester, mechanical technician, bricklayer, welder, mechanic locksmith, electro- mechanic, discharge equipment operator, operators, shot-firers, preparatory of mining concentrated products, smelter of mining concentrated products, non-ferrous metal refiner, machinist crane, pusher coach;
- ***Production and supply of electrical and thermal energy, gas and water –*** electrician, dispatcher;
- ***Fabrication of chemical substances and products –*** chemistry operator, tester, maintenance mechanic, electrician, maintenance mechanic, non-destructive control operator;
- ***Mail and telecommunications –*** junction operator, call-centre operator;
- ***Glass products production –*** glassblower, mixture preparatory, smelter, firebrick, decalator, oven suppliers;
- ***extraction and preparation of non-ferrous and rare ore –*** miner, foreman, shot-firer, assistant miner, signaler, extraction machine machinist, electrician, carpenter, electro-mechanic, shot-firer, welder, haulier, grinding operator;

- ***manufacture of weapons and ammunition –*** sandblaster, shooting operator, shooting range CTC [1] operator;
- ***construction of vessels and floating structures –*** non-destructive control engineer, non-destructive control worker;
- ***metallic constructions and metal products industry –*** sandblaster, non-destructive control operator;
- ***publishing houses, polygraphy –*** printer, book-binder;
- ***salt extraction –*** miner, underground electrician, mechanic, unskilled worker, locksmith, welder;
- ***manufacture of textile products –*** weaver, painter;
- ***manufacture of furniture –*** carpenter, spray painter, wood lacquering worker.

The table below shows the figures on the number of workers who enjoyed a reduced working schedule (under 8 hours/day) and their share on economy within the total number of employees, during 2009-2011.

YEAR	**Total number of employees on economy**	**Number of employees who enjoyed a reduced working schedule**	**Share from the total number of employees (%)**
2009	4.914.708	36.142	0,73
2010	4.664.837	31.480	0,67
2011	4.678.279	27.603	0,59

Paragraph 6

The framework of individual labour agreement approved by the Ministry of Labour and Social solidarity Order no. 64/2003, with its amendments approved by the **Order no. 76/2003 and by the Order no. 1616/2011** is **mandatory for all the employees who perform their activity under an individual labour agreement.** The individual labour agreement **must comprise** the elements provided for at art. 17 **paragraph 3** from Law no. 53/2003 – Labour Code, **republished,** and additionally those from **art. 105** related to part-time labour agreement, those from art. 18, if the employee shall perform his/her activity abroad or those from **art. 109** related to home workers.

Article 4 – The right to a fair wage

Paragraph 1

According to GD no. 1051/2008 the national minimum gross wage was set to 600 lei for the period 1st January 2009 - 31st December 2010.

According to GD no. 1193/2010 the national minimum gross wage was set to 670 lei for the period 1st January 2011 - 31st December 2011.

The nominal net wage is obtained by deducting the following components from the nominal gross wage: tax, employees contribution to health social securities, individual contribution to state social securities and the employees contribution to unemployment fund.

[1] Technical Quality Control

The average monthly wage represents the ratio between the amounts paid to the employees by the economic agents during the reference period, regardless the period they are due for, and the average number of employees. The average number of employees represents a simple arithmetic average calculated on the daily number of employees from that reference period. The part-time employees are included in the average number proportional with the working schedule provided for in the labour agreement. In the number of employees taken into consideration only the persons paid for that reference period are included. The following staff is not included: employees who were on unpaid leave, on strike, seconded abroad and those whose labour agreement was suspended.

According to the provisions of Art. 164 from Law no. 53/2003 – Labour Code, republished, the employer may not negotiate and set basic wages under the national minimum hourly basic wage.

The employer must guarantee to payment a monthly gross wage at least equal with the national minimum gross wage. These provisions are valid also in the events when the employee is present at work, during his/her schedule, but cannot perform his/her activity for reasons not related to him/her, except for strike.

The compliance with the national minimum gross wage guarantee to payment is mandatory both for the the budgetary sector and for the competitive sector.

Setting the basic wage under the national minimum gross wage guarantee to payment represents violation of law and is punished with a fine ranging from 1,000 lei to 2,000 lei (Art. 3 paragraph (1) from GD no. 23/2013).

Setting the national minimum gross wage is made by considering the evolution of the macro-economic indicators.

The evolution of the minimum and average, gross and net wage is presented as following:

Year	The period from that year	Government Decision (G.D.)	National minimum **gross** wage (lei)	National minimum **net** wage (lei)	National minimum **gross** wage– Euro /month *)	National minimum **net** wage– Euro /month *)	Annual average exchange rate (lei/Euro) according to the National Bank of Romania
2009	Jan. – Dec.	G.D. no. 1.051/2008	600	461	141,51	108.73	4,24
2010	Jan. – Dec.	G.D. no. 1.051/2008	600	461	142,52	109.5	4,21
2011	Jan. – Dec.	G.D. no.. 1.193/2010	670	509	158,02	120	4,24
2012	Jan. – Dec.	G.D. no. 1.225/2011	700	531	157,30	119.3	4,45

***)** The values of the national minimum gross/net wage guarantee to payment assessed in Euro / month were calculated based on the annual average exchange rate (Euro/lei) according to the National Bank of Romania.

The values of national minimum net wage guarantee to payment were set for the tax-payer who did not have dependents.

Year	**Gross** average monthly wage*) (Lei)	**Net** average monthly wage *) (Lei)	**Gross** average monthly wage***)** (Euro)	**Net** average monthly wage *)(Euro)
2009	1.845	1.361	435,14	320,99
2010	1.902	1.391	451,78	330,40
2011	1.980	1.444	466,98	340,57
2012	2.134 ****)**	1.547 ****)**	479,55 ****)**	347,64 ****)**

Year	**Net** average monthly wage*) (Lei)			**Net** average monthly wage *)(Euro)		
	Total	**Women**	**Men**	**Total**	**Women**	**Men**
2009	1.361	1.310	1.405	320,99	308.96	331,36
2010	1.391	1.308	1.466	330,40	310,68	348,21
2011	1.444	1.349	1.530	340,57	318,36	348,21

****)*** *Source: National Institute of Statistics*
****)** *provisional data*

Year	The ratio between the national minimum **gross** wage (lei – RON) and the **gross** average basic wage (lei - RON)
2009 (Jan. – Dec.)	32,5 %
2010 (Jan. – Dec.)	31,5 %
2011 (Jan. – Dec.)	33,8 %
2012 (Jan. – Dec.)	32,8 %

The foregoing figures show that the national minimum gross wage guarantee to payment has increased every year during this period.
During 2009-2012, the evolution of national minimum gross wage guarantee to payment was in accordance with the evolution of macro-economic indicators.

Paragraph 2

Pursuant to art. 122 and art. 123 from Labour Code – republished – over-time hours are compensated by paid days off in the following **60 days** after performing the overt-time. Under these conditions, the employee enjoys a corresponding wage for the working hours performed over the regular working schedule. During the periods when the activity is reduced the employer may grant paid days off from which the over-time hours that shall be performed in the following 12 months can be compensated. *Should the compensation by paid days off is not possible within the previously mentioned period, the overt-time shall be paid to the employee by adding a properly pay rise to the wage, a rise which shall be set by negotiation within the collective labour agreement or, where appropriate, within the individual labour agreement and which cannot be less than 75% from the basic wage. Moreover, for overt-time hours*

performed during legal holidays, the pay rise added to the basic wage cannot be less than 100% of the basic wage.

For the budgetary sector staff, the normative which regulated the wage during 2009-2012 are:

- for the year 2009 - Government Ordinance no. 10/2008 (art. 18) for the staff under contract
  – Government Ordinance no. 6/2007, with its subsequent amendments and supplements, (art. 13) for civil servants
- for the year 2010 – Framework Law no. 330/2009
- for the year 2011 – Framework Law no. 284/2010
  – Law no. 285/2010
- for the year 2012 – Framework Law no.284/2010
  – Law no. 283/2011

The regulation regarding the overt-time hours is contained by the above-mentioned normative.

For the year 2009, regarding the staff under contract from the budgetary sector, the Government Ordinance no. 10/2008 (art. 18) provided that the work performed over the regular working schedule by the personnel employed in execution or management positions is considered overt-time and is compensated with corresponding paid days off. Should the paid days off are not granted in the following 30 days after their performance, the overt-time shall be paid during the next month by a pay rise added to the basic wage, as following:

a) 75% from the basic wage, for the first two hours exceeding the regular working schedule;

b) 100% from the basic wage, for the further hours and for the hours worked during the weekly rest days or during other free days according to the regulations in force,

For the workplaces where the regular work schedule was reduced under 8 hours/day, according to the law, exceeding the approved length of working hours can be made only temporary for special situations and the compensation by paid days off is mandatory.

For the year 2009, regarding the civil servants, the Government Ordinance no. 6/2007, with its subsequent amendments and supplements, provided at art. 13 that for the hours performed over the regular working schedule by the civil servants appointed in execution or management public positions or by the high-ranking civil servants, a pay rise shall be added to the basic wage, as following:

a) 75% from the basic wage for the first two hours exceeding the normal length of working hours;

b) 100% from the basic wage for the following hours. The working hours performed during the weekly rest days or during other days considered free days according to the regulation in force are included.

In the year 2010, for all the personnel categories from the budgetary sector, the Framework Law no. 330/2009 provided at art. 19 that:

- the working hours exceeding the regular working schedule by the personnel occupying execution or management positions are compensated with paid days off.
- Should the working hours performed over the regular working schedule could not be compensated with paid days off, according to paragraph (1), the overt-time hours are paid

during the following month by a 75% pay rise added to the basic wage.
- The working hours performed over the normal working schedule and the pay rise provided for at paragraph (2) may be paid only if the performance of overt-time hours was ordered by the hierarchical superior, without exceeding 360 hours on an yearly basis. For the performance of more than 180 overt-time hours on a yearly basis the approval of the representative trade unions or, where appropriate, the approval of the employees' representatives is required, according to the law.
- At the working places where the normal length of working hours was reduced under 8 hours/day, according to the law, exceeding the so approved working schedule can be made only temporary and the compensation by paid days off is mandatory.

Starting from 2011, the wage of the budgetary personnel is regulated by the Framework Law no. 284/2010 which, according to art. 18, provides the following:
- For the overt-time performed over the normal length of working hours by the personnel from the budgetary sector employed in execution or management positions, as well as the worked performed during weekly rest days, legal holidays and during other free days according to the regulation in force, during the normal working shift, the provisions of Law no. 53/2003 with its subsequent amendments and supplements are applied.
- The payment of overt-time hours performed over the normal length of working hours is made only after the performance of the overt-time ordered by the hierarchical superior, without exceeding 360 hours on a yearly basis. For the performance of more than 180 overt-time hours on a yearly basis the approval of the representative trade unions or, where appropriate, the approval of the employees' representatives is required, according to the law.
- At the working places where the normal length of working hours was reduced under 8 hours/day, according to the law, exceeding the so approved working schedule can be made only temporary and the compensation with paid days off is mandatory.

According to the provisions of art. 7 from the Framework Law no. 284/2010, the provisions of such law are gradually applied, through annual special implementation law.

For the year 2011, the special implementation law of the Framework Law no. 284/2000 was the Law no. 285/2010, which according to art. 9 paragraph (1) provides that: in the year 2011, the overt-time hours performed over the normal length of working hours by the personnel from the budgetary sector occupying execution or management positions, as well as the worked performed during weekly rest days, legal holidays or during other free days according to the regulation in force, during the normal working shift, shall be compensated by paid days off only.

For the year 2012, the special implementation law of Framework Law no. 284/2010 was the Law no. 283/2011 which according to art. 7 paragraph (1) provided that: in the year 2012 the overt-time hours performed over the normal length of working hours by the personnel from the budgetary sector occupying execution or management positions, as well as the worked performed during weekly rest days, legal holidays or during other free days according to the regulation in force, during the normal working shift, shall be compensated by paid days off only.

Paragraph 3

According to art. 5 paragraph (1) from Law no. 53/2003 – Labour Code, republished, within the framework of the employment relationships operates the principle of equal treatment towards all the employees and employers. According to article 6 paragraph (3) from the

Labour Code – republished – any discrimination based on sex shall be prohibited for equal work or work of equal value.
Therefore, **within the framework of the employment relationships operates** the principle of equal treatment towards all the employees and employers.

Paragraph 4

According to the provisions of art. 75 from the Law no. 53/2003 – Labour Code, republished, the persons dismissed on the basis of art. 61 letter c) and d), of art. 65 and 66 are entitled to a notice of at least 20 working days.
The persons dismissed on the basis of art. 61 letter d), under a probationary period, shall be excepted from the provisions of paragraph (1). In the event that, during the notice period, the individual labour agreement is suspended, the notice period shall be suspended accordingly, except for the situation provided for at art. 51 paragraph (2).
In conclusion, the notice period is same for all the employees, regardless their seniority.

Termination of labour agreement other than dismissal
Pursuant to art. 31 paragraph (3) from Law no. 53/2003 – Labour Code, republished, during or at the end of the probationary period, the individual labour agreement may cease by a written notification on the initiative of any party.

Paragraph 5

According to art. 169 from Law no. 53/2003 – Labour Code no withholdings from wage shall be operated outside the cases and conditions provided by law. Pursuant to art. 169 paragraph (4) from Law no. 53/2003 – Labour Code, republished, the cumulated withholdings from the wage may not exceed half of the monthly net wage.

Pursuant to art. 257 from the same normative, paragraphs 1 and 2, the instalments withheld from the wage on a monthly basis for covering the damages caused by the employee may not exceed a third from the net monthly wage and without exceeding, together with other amounts retained from the person concerned, half of the net wage.

The withholdings set to cover the damages caused to the employer may be operated only if the employee's debt is due to payment and outstanding and was ascertained by virtue of a definitive court's ruling.

In the event of a plurality of creditors of the employee the following order shall be complied with:
a) maintenance obligations;
b) state’s due contribution and taxes;
c) damages caused to public properties by illegal actions;
d) coverage of other debts.
The cumulated withholdings from the wage may not exceed half of the net monthly wage.

Article 5 – Trade union right

Legislative evolution:

During the reporting period (1st January 2009 - 1st January 2012), the innovative element was the strengthening of the legislative framework within the social dialogue field through a unitary approach within a single law, of the reviewed provisions regarding the trade unions, private employers, collective labour disputed, collective negotiation, institutionalized tripartite consultation and CES[2]. After 4 years of consultations with the social partners, in May 2011 the **Law no. 62/2011** on the social dialogue was adopted and published in the Official Journal of Romania, Part I no. 322 from 10th May 2011.

Please note that ***after*** the reporting period, Law no. 62/2011 was amended in *July 2013* with the adoption of a *separate law regarding the operation and organization of the Economic and Social Council* (**Law no. 248/2013** on the operation and organisation of CES).

The Law no. 62/2011 on social dialogue amended, supplemented or included in a single normative the provisions contained by the following normative totally or partially repealed:

- Trade unions law no. 54/2003;
- Employers Law no. 356/2001
- Law no. 130/1996 on the collective labour agreement.
- Law no. 109/1997 on the operation and organisation of Economic and Social Council.
- Government Decision no. 369/2009 on the setting and operation of the social dialogue committee at central public administration and at local level.
- Law no. 168/1999 on labour disputes resolution;
- Law no. 261/2007 for the amendment and supplement of Law no. 168/199 on labour disputes resolution.

Regarding the *trade unions rights and freedoms*, the strengthened provisions of Law no. 62/2011 focus on the expansion of trade union freedom of association with as many categories of employees (apprenticeships, cooperative members and farmers), facilitation of the procedures for setting up trade unions, trade unions members and leaders protection, strengthening of the organisations' autonomy and increase the amount of applied penalties (Title I, art. 2-53, Title IX Sanctions).

At the same time, regarding the **non-conformity situation identified by CEDS3** regarding the Romanian citizenship condition, Law no. 62/2011 amended and supplemented the regulation provisions of the operation and organisation of the Economic and Social Council, included through *the repealing of the requirement on the Romanian citizenship for the representation within CES (Law no. 62/2011,* Title V, Chapter 1, Section 2, art. 94 points a), b), c) and *Law no. 284/2013* on the Economic and Social Council).

Conditioning the right of trade union freedom of association does not aim the civil staff from the mentioned structures, but only the *military personnel* or those with *military status.*

Regarding the freedom of association, ***the Romanian Constitution*** guarantees to its citizens the right to association. Thus, pursuant to art. 40 paragraph (1) of the fundamental law "the citizens may freely associate in political parties, in trade unions, in private employers and in other associations forms. Pursuant to the provisions of art. 9 from the Constitution, trade unions are set up and perform their activity according to their statutes and to the legislation in force. They contribute to the defence of rights and the promotion of professional, economic and social interests of their members." The right to association is not an absolute right; the

[2] Economic and Social Council

[3] Social Dialogue Economic Committee

fundamental law also provides the possibility to limit the sphere of persons who may wish to set up or join a trade union. Therefore, according to art. 53 paragraph (1) the right of association may be limited only by law and only if enforced, where appropriate, for: the defence of national security, order, health or public moral, rights and freedom of citizens, conducting the criminal training, prevention of natural disaster's consequences or those of an disaster or of an extremely dangerous event." Paragraph 2 of the same article provided that "the restriction may be disposed only if necessary within a democratic society. The measure must be proportional with the situation which caused it, to be applied in a non-discriminatory way and without affecting the existence of right or freedom."
The fundamental law does not expressly prohibit the trade unions organization of soldier but the exercise of such right is restricted by law during the period while the soldiers are performing their activity.

Art. 29 letter e) from the ***Law no. 80/1995 regarding the status of military staff,*** with its subsequent amendments and supplements, prohibits the right of active military staff to associate in trade unions, as following: "the incorporation under different form of association of professional, technical-scientific, cultural, sporting – recreational or charity character except for the trade unions or which are contrary to the unique military order, to the specific military discipline, is allowed only in the conditions laid down by the military regulations." In addition to the aforementioned text are included also the provisions of art. 31 of the same normative according to which the officers, the non-commissioned officers and the NCO's in reserve may remain members of the political parties, organisations or formations as well as of the trade unions they belong to, as long as they are concentrated and deployed in military units but they are forbidden to perform any activity with political or trade union character within the military units.

In the defence sector, public order and national security, the right to trade union association is restricted for the soldiers only; the other staff categories may organize themselves according to the law. Thus, under the provisions of art. 29 from the ***Law no. 188/1999 on the status of civil servants,*** those are guaranteed the right to trade unions. The civil servants may freely set up trade unions, may join them and may exercise any mandate within such organisations" and may associate in professional organisations or in other types of organization aiming to protect the professional interests."

Also, in accordance with art. 3 from the ***Law no. 62/2011 on social dialogue,*** with its subsequent amendments and supplements, the civil servants and the high-ranked ones have the right, free from any restrictions or previous approval, to set up and/or to join a trade union" according to the legislation in force, and "no person may be restricted to join or not to join, to withdraw or not from a trade union."

The restriction of freedom of association is regulated by art. 4 of the same law, according to which "the publicly appointed office-holders, like magistrates, military staff from the Ministry of National Defence, Ministry of Administration and Interior, Romanian Intelligence Service, units and/or sub-units from under their coordination may not set up and/or join a trade union."

Regarding the specific normative, subsequent, we note that by art. 11 paragraph (1) letter m) from the ***Order of national defence ministry no. M 17/2012 on the approval of the Internal Regulation applied to the civil personnel from the Ministry of National Defence*** was provided that the civil personnel is entitled to "set up or join a trade union or a social-professional organization according to the law."

The statutory provisions of the staff categories from the Ministry of Interior – civil servants[4], civil servants with special status[5], contract staff[6] and military staff do not restrict *the freedom of association, including the exercise of trade union rights,* except for those of the military staff[7].
For the same purpose, under **art. 3** of the Law no. 62/2011 on social dialogue, with its subsequent amendments, is laid down the right to set up, namely to join a trade union, only for those persons employed under an individual labour agreement, the civil servant, the civil servants with special status in compliance with the law, except for the military staff from the Ministry of Interior, according to **art. 4.**

In this background, we mention the fact that at the groups of units' level within the Ministry of Interior which employ civil servants with special status – policeman – the following trade unions are representatives:

- National Trade Union Federation of the Romanian Policemen and Contract Staff;
- "A.I. Cuza" Democratic Trade Unions Federation of the Romanian Policemen;
- SED LEX Police National Trade Union Federation;
- "Forţa Legii" Trade Unions Federation of Contract Staff and Civil Servants.
- National Trade Union of the Staff working in Prisons.

Also, the civil personnel from the defence structure is organised within the *Free Trade Union Federation of the Civil Employees from the Ministry of Interior Units.*

Regarding the civil employees from the **Foreign Intelligence Service,** according the provisions of Law no. 51/1191 on the national security of Romania and those of the Law no. 1/1998 on the organization and operation of the Foreign Intelligence Service, with its subsequent amendments and supplements, are subject both the provisions of Labour Code and to those of the normative and the specific regulations of the Service.

The civil personnel within the **Security Service** enjoy all the rights provided for by the legislation in force, including the freedom of association for promoting the professional, economic and social interests.

Regarding the civil personnel within the **Romanian Intelligence Service,** is subject to the provisions of Law no. 53/2003 on Labour Code, republished, and to the other legal and regulatory provisions of the Service (art. 27 paragraph 4 from the Law no. 14/1992).

At the same time, regarding the guarantees of the right to join trade unions related to the civil personnel of SRI (Romanian Intelligence Service) the following are provided: "The principle of the implementation of such guarantees to the military force staff and the extent to which such rights shall apply to this categories of personnel are also determined by the national legislation and regulation."

The conjunction of the provisions of art. 118 from the Constitution related to the military force with the provisions of art. 1 paragraph (1) of the Law no. 14/1992 on the organization and operation of the Romanian Intelligence Service, with its subsequent amendments and supplements, results that SRI is a component of the national defence system. The Romanian intelligence Service personnel has "all the rights and obligations provided for the Romanian army soldiers by the legal regulations, the statutes and the military regulations"-art. 27

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4 Law no 188/1999 regarding the status of civil servants
5 Law no 360/2002 regarding the status of the policemen
6 Law no. 53/2003, Labour Code
7 Law no .80/1995 regarding the status of military staff

paragraph (3) of the Law no. 14/1992, including the restriction of the exercising other fundamental rights and freedoms.

Given the above, we consider that although the Law no. 80/1995 on the status of military staff, with its subsequent amendments and supplements, expressly provides the prohibition of the right to set up/join trade unions – art. 29 letter e), such provisions are not contrary to the provisions of art. 5 of CSER, viewing the exception laid down for the army members – issues that are also included in the CEDS conclusions.
In the enforcement of Law no, 53/2003 the Service approved, through the manager's order, the "Internal Regulation for civil employees of the Romanian Intelligence Service" which regulates the right of the civil employees to form trade unions, according the law (Law no. 62/2011), without being required some restriction / constraints conditions in exercising such right.

On the other side, the internal regulation provides that the head / commander of units to ensure the exercising of such right under legal conditions, without influencing the civil employees decision on the accession or non-accession to the trade union.

In the event that, within some units trade unions were formed, the head / commanders of units must oversee that the employee which did not acceded to trade unions are not discriminated regarding some staff-related rights (like rank-promotion or professional steps, non-granting some pay rise and so on).

At the same time, according to the provisions of art. 7 from the Law no. 62/21011 republished:
(1) Trade unions have the right to elaborate their own regulations, to freely elect their representatives, to organise their management and activity and to lay down own action programmes, in compliance with the law.
(2) Any intervention from the public authorities, from the employers and from their organisations which aims to limit or obstruct the exercising of rights provided for at paragraph (1) is forbidden.

According to the provisions of art. 217 from the above mentioned law, Labour Inspectorate punishes the violation of the provisions of art. 7 paragraph (2).

Since the Law 62/2011 has entered into force and until 2012, 54 trade unions federations at district 5 level, 5 trade union confederations at national level as well as 8 private employers federations at local level, 7 private employers federation at activity sector level and 9 private employers' confederation at national level obtained representativity on the basis of the new law.

The cases of trade union related discrimination may be subject to the referrals addressed to the Labour Inspectorate, in court or to the National Council for Combating Discrimination.

Until now, we do have information on the cases reported by the Labour Inspectorate or by the *court's ruling* regarding the trade union related discrimination. Also, we do not have genuine information related to the "practice of some foreign companies which hire personnel depending on the affiliation or non-affiliation to trade unions."

Also, the Labour Inspectorate punishes according to the provisions of art. 260 paragraph c) from the Labour Code, republished, the prevention or forcing by threats or violence of some employee or a group of employee to take part to the strike or to work during strike.

Article 6 – The right to collective negotiation

Paragraph 1

Law no. 62/2011 on social dialogue was adopted which meets and reviews the old legislation on social dialogue.

As regarding the representativity of trade unions and employers within the tripartite dialogue, the legal provisions (Law no. 62/2011) do not bring significant amendments related to representation, being targeted the *social partners*, namely *representative* trade union confederation and employers *at national level*, according to the regulation.
Law no. 62/2011 sets up the National Tripartite Council for Social Dialogue, a functional structure at Government level, playing as a consultant on the minimum wage policy, on the national strategies and programmes, in the negotiation of social agreements and in the *approach of the extension related to the provisions of the collective labour agreements concluded at activity sector level* (art. 75-81).

At the same time, the law reviews the provisions on the operation of the *Economic and Social Council*, following the European Economic and Social Committee template. The Economic and Social Committee is set up as an autonomous dialogue structure between the social partners' representatives and those of the *organized civil society*, the last one replacing the 15 members of the Government. The advisory permit of CES remains mandatory within the legislative process; CES is an advisory body for the Government and the Parliament (2012 year: Law no. 62 art. 82-102).

Concerning the *right to collective negotiation*, such right is recognized for *all the legally set up trade union organizations* (Law no. 62/2011, art. 27, art. 153).

The regulation of the organisations' *representativity* aims the legitimate and proper representativity of the employees' and employers' interests both *within the tripartite social dialogue (social partners) and within the collective negotiations* at activity sector and unit level.

The fulfilment of the representativity conditions by the trade unions and employers is ascertained upon their request by the court which granted them legal personality, through bringing in court the documentation provided by the law.

In this regards, the provisions of Law no. 62/2011 do not amend the old provisions *related to the organisations' representativity at national and activity sector level*, but *set up the majority criteria* for the recognition of the trade union representativity at unit level, in order to grant legitimacy of representation within the collective negotiations by taking into account the *application of "erga omnes" of the concluded collective labour agreements' provisions:*

C. at unit level:

a) Have the legal status of a trade union;
b) Have organisational and patrimonial freedom;
c) *The trade union members' number represents at least half plus one from the number of the unit's employees.*

In the public sector, *institutionalized tripartite consultation* targets the social partners and the *consultation on specific field problems and the* ***collective negotiation*** targets the

representative trade union federation at every institution level, recognized as such according to the legal provisions.

Regarding the social dialogue, at Ministry of Interior level such dialogue is made for the purpose of information, consultation and collective negotiation with the representative trade unions. Considering the provisions of **art. 120 paragraph (1) and (2),** as well as those of **art. 125 paragraph (1)** of Title VI from the Law no. 62/2011, through the Ministry of Administration and Interior Order no. 67/2011[8] and further through the Ministry of Administration and Interior Order no. 162/2011[9] the **Social Dialogue Committee at Ministry of Interior level** was set up.
The committee's activity has an advisory characters and focuses on the following issues related to the Ministry of Interior activity field:
a) ensuring some social partnership relations between the administration, the employers and the trade unions which allow a permanent mutual information on the problems belonging the interests of the administration or the social partners;
b) the mandatory advisory of social partners on the legislative or other type of initiative with economic-social character;
c) other issues which aim the ministry's field of activity.

Also, the Committee debates all the normative documents drafts with economic and social impact initiated by the Ministry of Interior and submit to the Economic and Social Council and to the Ministry of Labour, Family, Social Protection and Elderly People the minute of the committee's meeting where such normative drafts were discussed.

During **1st January 2011 – 1st January 2012,** at the Ministry of Interior level, **7 meetings** on the *Social Dialogue Committee* level and **6 meeting** on the *Social Dialogue Sub-committee for the field of Order and Public Security* level were organised.

At the same time, in compliance with the provisions of Government Decision no 833/2007[10] and for the purpose of ensuring the social dialogue the *Joint Committee* was set up formed by representatives of the Ministry of Interior and of the representative trade unions organisations.

The Joint Committee has the following tasks:

- **a)** Proposes improvement measures regarding the institution's activity, on a regular basis;
- **b)** Analyses and approves the annual plan for training, as well as any other measures on the training of the civil servants to the extent that such training comprises the using of the budgetary funds of the institution;
- **c)** Analyses and, if necessary, formulates proposals on the flexibilisation of the working time of civil servants which are then subject to the management approval;
- **d)** Takes part, with an advisory role, to the negotiation of the collective labour agreement carried out by the institution with the representative trade unions of the civil servants or with their representatives and elaborates the collective agreement draft;
- **e)** Is constantly monitoring the fulfilling of collective labour agreements concluded between the institution and the representative trade unions of the civil servants or with the representatives of the civil servants;

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8 Published in the Official Gazette of Romania, Part I, no. 252 from 11th April 2011

9 Published in the Official Gazette of Romania, Part I, no. 569 from 10th August 2011

10 Regarding the organisation and operation norms of the joint committee and the conclusion of collective agreements, with its subsequent amendments

f) Draws quarterly reports regarding the compliance of the agreements concluded according to the law, which submits them to the management as well as to the representative trade unions management of the civil servants or to the representatives of the civil servants.

During 1st January 2011 – 1st January 2012, at the Ministry of Interior level, a meeting of Joint Committee was organised during which an agreement was signed between the Ministry of Interior and certain trade unions.

Regarding the consultation from the public sector, under art. 153 from the Law no. 62/2011 on social dialogue, republished with its subsequent amendments, at the Ministry of Interior / trade unions level, in the 2012 year an agreement was concluded registered under no. 4257/12th March 2012 according to which the Ministry of Interior recognizes the free exercising of the trade union right, in compliance with the regulations in force.
Although this is not a Collective Agreement under the law, has regulated issues related to:

- Creation and using of funds for the improvement of labour conditions;
- Occupational health and safety;
- Daily working time;
- Professional training;
- Other protection measures other than those provided for by t art. 10 and 11 from the Law on social dialogue.

Viewing the provisions of art. 128 from the Law no. 62/2011, according to which the *collective labour agreement may be negotiated at unit, group of units and activity sector levels*, at the Ministry of Interior group of units level a *Collective labour agreement at group of units level from the Ministry of Interior (applicable to a number of approximately 7,400 contract staff)* was concluded in 2012. At the same time, the *Collective agreement regarding the labour agreements of the civil servants with special status – policemen – from the Ministry of Interior (applicable to a number of approximately 75,000 policemen)* was concluded.

Both the *Collective labour agreement at group of units level from the Ministry of Interior* and the *Collective agreement regarding the labour agreements of the civil servants with special status – policemen – from the Ministry of Interior* may be amended or supplemented, according to the law, by addenda subject to the same procedures considered when the basic documents were concluded.

Paragraph 2

The amendments brought by the Law no. 62/2011 on the social dialogue regarding the *collective negotiation procedure* aims the clarification of the legitimacy of representation within collective negotiations, *mainly* at enterprise level.

The unique collective labour agreement at national level ceased by right according to the legal provisions in force during 2010.

According to the provisions of Law no. 62/2011 the collective negotiation is performed at activity sector level, unit and/or group of units level, according to the procedure under Title VII, art. 127-133, namely art. 140-147, with the *exceptions* laid down under art. 137-139 for the *budgetary sector (civil servants and other categories of personnel paid from public funds).*

The activity sectors are set by the social partners and adopted by government decisions. The negotiation of collective agreements for the civil servants is made under the specific legal provisions (*Law no. 188/1999 and GD no. 833/2007 on collective agreements*).

The collective negotiation procedure (art. 127-133, namely 140-147, above mentioned) provides the fact that during negotiation and conclusion of collective agreements at all levels the parties are equal and free and any form or way of intervention from the public authorities during the negotiation, conclusion, execution, amendment and termination of collective labour agreements is prohibited.

The collective negotiation is mandatory only at unit level, except for the situation in which the unit has less than 21 employees.
The negotiation initiative belongs to the employer or to the employer organisation which starts the collective negotiation at least *45 calendar days before the expiry date of the collective labour agreements* or the expiry date of the applicability period of the provisions laid down in the addenda attached to the collective labour agreement. Should the employer or the employer organisation does not start the negotiation, such negotiation shall begin upon the written request of the representative trade union or the employee's representatives within maximum 10 calendar days from the request.

The duration of the collective negotiation may exceed 60 calendar days only by the consent of the parties. The collective labour agreements may provide the regular renegotiation of any clause agreed between the parties.

Within 5 calendar days from the date of commencing the negotiation procedure, the employer or the employer organisation must call all the parties entitled to the collective labour agreement negotiation.

On the first negotiation meeting the public information and the confidential ones which the employer shall made available to the trade union representatives or to the employee's representative are laid down, according to the law and also the period within such obligation must be fulfilled.

The information which the employer or the employer organisation shall made available to the trade union representatives or to the employee's representatives, as the case may be, shall contain at least the information regarding the current economic-financial and the employment situation.

Also on the first negotiation meeting the parties shall lay down the nominal composition of the negotiation teams, the nomination of the designated persons to sign the collective labour agreement, the maximum duration of the negotiation agreed by the parties, the place and the meetings schedule, the evidence of the representativity of the parties taking part to negotiation, the document which proves the calling of all parties entitled to take part at the negotiation, other details on negotiation.

The parties of the collective labour agreement are: the employers and the employees, *represented at the collective negotiation* as following*:*

A. on behalf of the employers:
a) at unit level, by the management body of the undertaking, laid down by law, statute or operating regulation, as the case may be;

b) at group of units level, by the employers who have the same object of activity, according to NACE, voluntarily constituted or in accordance with the law;

c) at activity sector level, by the legally constituted employer organisation and representative ones, according to the law;

B. on behalf of the employees:

a) at unit level, by the legally constituted and representative trade union according to the legislation in force or by the employees' representatives, as the case may be;

b) at group of units level, by the legally constituted and representative trade union at the group's member units level

c) at activity sector level, by the legally constituted and representative trade union according to the legislation in force;

For the units which do not have representative trade unions, the collective labour agreement negotiation shall be made as following:

a) if there is a trade union established at unit level, affiliated to a representative trade union federation in the activity sector which the unit is part of, the negotiation is made by the trade union federation's representatives upon the request and according to the trade union mandate, together with the employee's elected representatives;

b) if there is a trade union which is not affiliated to a representative trade union federation in the activity sector which the unit is part of or if no trade union is established, the negotiation is made only by the employee's representatives.

According to art. 135, if there are no representative trade union organisation at enterprise level to represent at least half of the total number of employees of the group of units, during the negotiation procedure the employees are represented as following:

a) by the authorized representatives of the trade union organisations within each unit who decided to set up the group;

b) for the member units of the group where there are no representative trade unions but there are trade unions affiliated to representative trade union federation within the sector of activity in which the group was set up, the employees are represented by the respective trade union federations upon request and according to the trade unions' mandate and by the employees representatives from such units.

According to the hereby law, the representative trade union federations at sector of activity level may participate to the negotiation of collective labour agreement at group of units level which have affiliated trade unions, upon request and according to the mandate issued by the respective group of units.

The collective labour agreement must observe the legality and may not contain clauses which lay down rights under the minimum limit of those provided by the applicable collective labour agreement concluded at higher level.

The provisions of the collective labour agreements shall apply for:

a) all the employees, for the collective labour agreement concluded at this level;

b) all the employees performing their activity within the group of units for which the collective labour agreement has been concluded;

c) all the employees performing their activity in the units from the sector of activity for which the collective labour agreement has been concluded and which are part of the employers' organisation who sign the agreement.

According to the law, the applicability of the collective labour agreement concluded at sector of activity level may be extended upon the approval of the National Tripartite Council for Social Dialogue.

Within *the budgetary sector*, the parties of the collective labour agreement are the employers and the employees, represented as following:

A. of behalf of the employers:

a) at unit level, by the manager of the budgetary institution or by the authorized person in this regard;

b) at group of units level, by the legal representative of the Chief Authorising Officer;

c) at sector of activity level, by the legal representative of the competent central public authority;

B. on behalf of the employer, at unit, group of units or sector of activity level, by the legally constituted and representative trade union organisations in compliance with the provision of the hereby law, otherwise the provisions of art. 135 shall apply.

Through the collective labour agreements concluded within the budgetary sector the clauses related to cash or in-kind rights other than those provided for by the legislation in force for the respective category of personnel.

The wage rights from the budgetary sector are laid down by law within the precise limits which cannot form the object of the negotiation and may not be amended by the collective labour agreements. Should the wage rights are laid down by special laws within the minimum and maximum limits, the *concrete wage rights are established by collective negotiation,* but only within the legal limits (Law no. 62/2011, art. 138 paragraphs (1) and (3)).

In conjunction with the provisions of the *Framework Law no. 284/2010 on unitary wage of the personnel paid from public funds* (art. *12, 21-23 and 32*), with the observance of the minimum and maximum legal limits, other wage rights, pay rises, bonuses and funds may also be negotiated according to the legal provisions and the special laws, within the limit of the institution's budget and together with the representative trade union federations.

With reference to the requested information on the coverage of the collective agreement, the information are irrelevant for the reference period of the report as a consequence of entering into force of the new law on social dialogue and due to the transition period necessary for the adaptation to the new legal requirements, including the contracts expired on 31st December 2011.

Paragraph 3

The settlement of the collective labour disputes is regulated by chapter III from the Law no. 62/2011 on social dialogue.

“Chapter III
Conciliation of collective labour disputes
ART. 166
In all such cases, the notification regarding the settlement of the collective labour disputes is made in writing and must contain the following:
a) information on the employer or the employer organisation regarding the head office and contact details;
b) the object of the collective labour dispute and its justification;

c) the evidence for meeting the requirements provided for at art. 161 – 163;
d) the nominal appointment of the authorized persons to represent the trade union or, where appropriate, the employees representatives within the conciliation procedure.
ART. 167
Settlement, mediation and arbitration of collective labour disputes are made only between the parties involved in the dispute.
ART. 168
(1) The conciliation procedure is mandatory.
(2) Within 3 business days from the registration of the notification, the Ministry of Labour, Family and Social Protection – in case of collective labour disputes at group of units level or at district level, namely the Local Labour Inspectorate – in case of collective labour disputes at unit level, appoints its representative to take part at the conciliation of the collective labour dispute and notifies the contact details of their representative both to the trade union or the employees representatives and to the employer or the employer organisation.
(3) The Ministry of Labour, Family and Social Protection, namely the Local Labour Inspectorate, where appropriate, calls the party at the conciliation procedure within maximum 7 business days from the date when the representative was appointed.
ART. 169
(1) For supporting their interests during conciliation, the representative trade unions or, where appropriate, the employees representatives appoints a delegation composed of 2 – 5 persons which shall be authorized in writing to take part at the conciliation organised by the Ministry of Labor, Family and Social Protection or by the Local Labour Inspectorate, where appropriate. The trade union delegation may include representatives from the federation of from the trade union confederation at which the trade union is affiliated.
(2) Any persons who meet the following conditions may be elected as a representative of the trade unions or, where appropriate, of the employees' representatives:
a) has full legal capacity;
b) is an employee of the company or represents the federation or the representative trade union confederation at which the trade union who initiated the disputed is affiliated.
ART. 170
For supporting their interests during conciliation, the employer or the employer organisation appoints by a written power of attorney a delegation made of 2 – 5 persons who shall take part to the conciliation.
ART. 171
(1) Upon the date set for conciliation, the delegated person of Ministry of Labour, Family and Social Protection or of the Local Labour Inspectorate, where appropriate, verifies the power of attorneys belonging to the delegated parties and requires them to make the settlement.
(2) The arguments of the parties and the debates' results are registered in a minute signed by the parties and by the delegated person of Ministry of Labour, Family and Social Protection or the Local Labour Inspectorate, where appropriate.
(3) The minute is draw up in an original copy, one for each party who took part at the conciliation and one copy for the delegated person of the Ministry of Labour, Family and Social Protection or the Local Labour Inspectorate, where appropriate.
ART. 172
In the case that following the debates an agreement of the conciliation of the formulated claims is reached, the collective labour dispute is deemed to be terminated.
ART. 173
In the event that the agreement on dispute conciliation is only partial, the minute shall comprise the claims upon which the agreement was concluded and those which remained unsolved together with the opinions of each party regarding such claims.
ART. 174

The conciliation's results shall be communicated to the employees by those who submitted the notification regarding the settlement."

Chapter IV from the Law no. 62/2011 comprises the provisions related to mediation and arbitration.
Therefore, according to art. 175, "for the purpose of reaching an amicable settlement of the collective labour disputes the Mediation and Arbitration Office of the Collective Labour Disputes attached to the Ministry of Labour, Family and Social Protection shall be established."
Within the Mediation and Arbitration Office of the Collective Labour Disputes the mediators department and arbitration department of collective labour disputes shall be set up (art. 176 paragraph (2)).

Paragraph 4

The new provisions of Law no. 62/2011 review the regulations regarding the settlement of collective labour agreement (Title VIII, Chapter II-V, articles 156- 180) in order to *promote the amicable settlement.*

The provisions of Law no. 62/2011 repeal the old provisions related to strike suspension and mandatory arbitration. The conciliation is still a mandatory procedure and the parties may use mediation and arbitration whenever they want to.

The strike is regulated through the provisions of Law no. 62/2011, Chapter V, articles 181-207. Strike means any form of collective and freely consented termination of work within a company. The strike may be triggered due to professional, economic and social interests of the employees and may not aim the fulfilling of political purposes. The strike can be declared only after the development of the warning strike on the condition that its organiser have previously informed the employers (at least two business days before) regarding the strike date

The participation to strike is free. No one can be constrained to take part at the strike or to refuse to participate. The employees who are on strike must restraint themselves from any action which may prevent the continuity of the activity by those who do not participate at the strike and by the management.

During the entire period of participation, the individual labour agreement is suspended de jure. During the suspension period only the health insurance related rights are valid. The participation to strike or its organisation, under the provisions of the hereby law, does not represent a violation of the work requirements and does not involve in any way the possibility of punishment. The provisions shall not apply if the strike is declared illegal.

During the strike, its organisers must protect the goods of the company and together with the management must ensure the continuous operation of the machines and installations whose stopping may threaten the people's life or health.

During the strike, its organisers continue the negotiation with the management regarding the settlement of the claims forming the collective labour dispute object. During negotiations, the organisers may agree with the employer upon the strike temporary suspension. If the negotiations fail, the strike can be retaken without being necessary to follow all the preliminary procedural steps provided by the law.

If the employer considers that the strike was declared or is active without observing the law, he is entitled to address the court in whose jurisdiction the unit where strike takes place is located by submitting a written application requesting the court to stop the strike.

The court assesses the application requesting to stop the strike and pronounce an emergency decision according to which rejects the employer's request or accepts his request, where appropriate, and orders the termination of the strike as being illegal.

The staff from the aerial, terrestrial or any type of transport may not start a strike from the moment of their departure on duty and until they return.

According to art. 183 from Law no. 62/2011:

(1) The decision to start a strike is taken by the trade unions participating at the collective labour dispute with the written consent of at least half of the number of the respective trade unions members.

(2) For the employees of the units which do not have *representative trade unions,* the decision regarding the strike is taken by the *employees' representatives* based on the written approval of at least one quarter of the unit's employees or those of the sub-unit or department, as the case may be.

(3) The decision to start a strike pursuant to the conditions provided for at paragraph (1) is communicated in writing within the term provided by the law.

Also, regarding the restrictions applied in the public sector, we mention the fact that following the legislative amendments now are relevant, for the reporting period, the provisions of art. 202 from Law no. 62/2011, according to which: *"The following personnel cannot start a strike: prosecutors, judges,* ***military staff and the personnel with special status within the*** *Ministry of National Defence, Ministry of Interior, Ministry of Justice and from the institutions and structures subordinated or coordinated by such ministries, including the staff within the National Administration of Prisons, of Romanian Intelligence Service, of External Intelligence Service, of Special Communications Service, the personnel employed by the foreign army forces situated on the Romanian territory as well as other categories of personnel to whom this right is forbidden by law."*

Regarding the *non-conformity situation on the representativeness conditions of the trade unions for starting the collective labour disputes and strike* we note that, according to the provisions of Law no. 62/2011 on social dialogue, the employees are entitled to start collective labour disputes regarding the commencing, the development and the conclusion of the negotiation of collective labour agreements (art. 156 Chapter II).

According to art. 134 point B a), at the negotiation of the collective labour agreement at unit level shall take part the legally constituted and representative trade union according to the hereby law or the employees representatives, where appropriate. Following the articles 134 and 156 and according to art. 160, "in case of collective labour dispute *the employees are represented by the representative trade unions or by the employees representatives, where appropriate, who are participating to the collective negotiation of the applicable collective labour agreement."*

In conjunction with articles 156 and 160 the decision upon starting a strike is taken by the representative trade unions participating at the collective labour dispute, upon the written consent of at least half of the number of the respective trade unions members.

For the employees of units which *do not have representative trade unions* the decision to start a strike is taken by the *employees' representatives based on the written approval of at least one quarter of the unit's employees or those of the sub-unit or department, as the case may be.* (Chapter V, Article 183 paragraphs (1) and (2)).

The civil servants start the collective labour dispute according to the procedure provided for by the law.

If no collective labour agreement at unit level is concluded, there are no restrictions regarding the decision to start the collective action.

Regarding the *second non-conformity notification,* we note that Law no. 62/2011 *eliminates the provisions of article 62 of Law no. 168/1999 regarding the employer's possibility to call for the mandatory arbitration if the strike exceeds 20 days.*

The parties involved in the dispute may decide *at any moment during a collective labour dispute,* that the formulated claims to be subject to mediation, namely to arbitration.
The mediation and arbitration are mandatory only if the *parties agree so* at the beginning of the dispute or during its development. (Chapter IV, articles 179-180).

Also, Law no. 62/2011 *repeals the articles 55 and 58 of Law no. 168/1999, related to the decision on strike suspension over 30 days on the grounds of threatening the "humanitarian interest".*
According to the new provisions, the *decision on strike suspension exclusively to the court* if is ascertained that the strike which was started or still active fails to comply with the law. The court examines the application requesting to stop the strike and pronounce a decision according to which rejects the application to stop the strike or admits the application and orders to stop the strike as being illegal, as the case may be (Law no. 62/2011, Chapter V, articles 198-200).

The organizers of the strike may agree with the employer the temporary suspension of strike. If the negotiation fails, the strike shall be retaken without being necessary to follow all the preliminary procedural steps provided by the law.

Regarding the restrictions applicable within the *key sectors,* Law no. 62/2011 provides the right to start a strike provided that at least *one third of the activity* is ensured in order to guarantee some minimum services so as to protect the life and health of peoples and/or for the safety operation of equipment (art. 205-206).

At the same time, **Law no. 62/2011 on social dialogue,** with its subsequent amendments and supplements, regulates, by way of exception, the prohibition of the right to start a strike for some categories of personnel from the defence, public order and national security field. The restrictions aim only the personnel of the Ministry of National Defence, by laying down the conditions and by making a difference between the categories of personnel depending on the nature or their level of responsibility. Therefore, according to the provisions of art. 202 of the above mentioned law, "the prosecutors, the judges, the military staff and the personnel with special status within the Ministry of National Defence, Ministry of Administration and

Interior, Ministry of Justice and from the institutions or structures subordinated or coordinated by such ministries, including the personnel within the National Administration of Prisons, of Romanian Intelligence Service, of External Intelligence Service, of Special Communications Service, the personnel employed by the foreign army forces situated on the Romanian territory cannot start a strike as well as other categories of personnel to whom this right is forbidden by law."

The prohibition of the right to start a strike for the military staff was laid down by the provisions of art. 28 letter c) from the **Law no. 80/1995 regarding the status of military staff** with its subsequent amendments and supplements, according to which "the active military staff are forbidden the following rights: to start and take part to strike."

Also, the soldiers and petty officers are forbidden by default to take part to strike by the provisions of art. 25 from the **Law no. 384/2006 regarding the status of soldiers and petty officers,** with its subsequent amendments and supplements, according to which "they are forbidden or restricted the exercising of some rights and freedoms pursuant the conditions set by the law related to active military staff."

Regarding the contractual civil personnel, we note that in this case the provisions of art. 233 and art. 234 from the **Law no. 53/2003 on Labour Code,** with its subsequent amendments and supplements, are applicable according to which "the employees have the right to start a strike for defending their professional, economic and social interests" and "the limitation or prohibition of the right to strike may interfere only for the cases and for the categories of personnel expressly provided by the law", namely by **Law no. 62/2011.** In a similar manner, according to the provisions of art. 30 paragraph (1) from the **Law no. 188/1999 regarding the status of civil servants,** with its subsequent amendments and supplements, "the civil servants have the right to strike, in compliance with the law."

Also, the **Law no. 62/2011 on social dialogue** lays down the activity sectors from the national economy for which collective agreements may be negotiated and concluded, among which the Ministry of National Defence is not part of and as a consequence the provisions of the *Collective Agreement* are not applicable to the military and civil staff from the military units.

Under the current legislation conditions at the level of Ministry of National Defence the ***Committee on Social Dialogue*** was established made up of employer's representatives and representatives of the civil personnel's trade unions, as well as representatives of the trade union organisations and employer's organisations at national level. Within the meetings of the Committee are approached mainly the issues regarding the improvement of working conditions, labour security and health and the Internal Regulations applicable to the civil personnel from the Ministry of National Defence.

Statistical data regarding the strikes and the number of participants during 2009-2011:

Type of strike	Number of strikes		Number of employees					
			Total			**From which: participants to strike**		
	2009	**2010**	**2009**	**2010**	**2011**	**2009**	**2010**	**2011**
Total	**1**	**0**	**400**	**0**	**0**	**360**	**0**	**0**

Warning strike	1	0	400	0	0	360	0	0
Warning strike followed by the effective strike	-	0	-	0	0	-	0	0
The effective strike	-	0	-	0	0	-	0	0

Article 20

Equal rights

Art. 41 paragraph (4) from the Romanian Constitution provides that women and men have equal rights at equal work.

Art 5 paragraph (2) from the Law no. 53/2003 republished provides that any direct or indirect discrimination towards an employee based on gender, sexual orientation, genetic characteristics, age, national affiliation, race, colour, ethnicity, religion, political option, social origin, disability, family situation or responsibility, trade union affiliation or activity shall be prohibited.

Art. 159 paragraph (3) from the Law no. 53/2003 republished provides that when setting and granting the wage any discrimination based on gender, sexual orientation, genetic characteristics, age, national affiliation, race, colour, ethnicity, religion, political option, social origin, disability, family situation or responsibility, trade union affiliation or activity is forbidden.

In the Framework no. 284/2010 on the unitary wage of the personnel paid from public funds there are no regulation that may set wage differences depending on the gender.

According to its dutis, the National Agency for Employment must comply with the legal provisions on social protection of ***all persons seeking for a job.***

According to art. 3 letter d) from the *Law no. 76/2005 on the unemployment insurance system and the employment stimulation, with its subsequent amendments and supplements,* equal opportunities in the labor market are insured for all the interested categories. In the application of the hereby provisions any discrimination based on political opinion, race, nationality, ethnicity, language, religion, social category, beliefs, gender and age are forbidden.

According to Law no. 76/2005 the persons who present themselves to the employment agencies in order to get a job are registered and have access to the stimulation measurements of employment provided by the law so as to find a job.

Based on the provisions of Law 76/2002 on the unemployment insurance system and the employment stimulation, the National Agency for Employment implements, on a yearly basis, the "*National Programme for Employment"* which aims to apply the policies and strategies from the employment field.

Among the *employment programme objectives* we may include: ensuring the equal opportunities on the labor market of all categories of persons seeking for a job and the elimination of any discrimination within the employment field, the social interference of the vulnerable groups on the labour market, ensuring the required professional skills necessary for employment or re-employment.

The employment programme was designed so that the measures which shall be implemented to be directed towards a balance representation of all the categories of persons seeking for a job, focusing on the mediation and information measures and on professional consultancy/orientation, consultancy and assistance for starting an independent activity or for starting a business, the supply of custom packages containing active measures for employment, strengthening the relationships with social partners.

Regarding the statistical information on the employment and unemployment rate differentiated on gender, during 2009-2011 the following situation was registered:

	Unemployment rate			Employment rate		
Year	**Total**	**Women**	**Men**	**Total**	**Women**	**Men**
2009	7.8	7.1	8.4	60.6	58.9	62.2
2010	7.0	6.3	7.6	59.6	57.9	61.2
2011	5.2	4.9	5.5	59.6	58.4	60.7

Source: National Institute of Statistics, Work force balance

The women situation related to employment and training and the promotion measures of equal opportunities

The verification made by the Labour Inspectorate according to the Law no. 202/2002, republished, registered the following results:

INDICATORS	**Year 2009**	**Year 2010**	**Year 2011**
No. verified employers	33.434	36.920	38.923
No. of fined employers	3.327	4.679	3.723
Total value of fines (lei)	6.000	14.000	6.000

Generally, the verification activity of the labour inspectors on the application of Law no. 202/2002, republished, with its subsequent amendments and supplements is a prevention activity and as a consequence the majority of the applied sanctions were consisting of warnings.

Also, the sanctions were applied by taking into consideration the seriousness of the action, the circumstances as well as if the employer was sanctioned before for the same offence.
During the verifications, the labour inspectors are verifying how the employer fulfils its obligation regarding equal opportunities, namely:
a) how the internal regulations are created, the disciplinary sanctions under the conditions provided by the law for the employees who infringe the personal dignity of other employees by creating uncomfortable environments, intimidation, hostility, humiliation or offending through discriminatory actions provided for at art. 4 letter a)-d) and at art. 11 from the law;
b) how is ensured the information of all employees on the prohibition of harassment and sexual harassment at the work place, including by displaying in visible places the provisions of the internal regulations so as to prevent any discrimination action based on gender criteria;
c) how the employer includes in the collective labour agreement concluded at unit level clauses of prohibition of discrimination actions and, namely, clauses on the settlement of referral/claims formulated by the injured person by such actions.

In Romania the equal opportunities and treatment between men and women is a fundamental principle of the human rights, implemented both at legislative level and within public policies. The principle is set in the draft normative, namely Law no. 202/2002, republished in June

2013, which regulated the measures for promoting the equal opportunities and treatment between men and women within all public spheres from Romania and defines terms as: equal opportunities between men and women, discrimination based on gender, direct and indirect discrimination, harassment and sexual harassment, equal payment for work of equal value, positive actions, multiple discrimination.

Also, the law has distinctive chapters in which are presented the measures on observing the equal opportunities and treatment between men and women on the labour market, the participation to the decisional process, to education, the elimination of roles and gender stereotypes.

The respective legislative frame was constantly upgraded and improved.
Law no. 202/2002 on equal opportunities and treatment between men and women, republished in June 2013 pursuant to art. II from the Government Emergency Ordinance no. 83 from December 2012 regarding the amendment and supplementation of Law no. 202/2002 on equal opportunities and treatment between men and women approved with its amendments and supplements by Law no. 115 from April 2013 contains the following amendments and supplements:

- Integration within the law text of some provisions of the new community acquis, mainly those of the EU 2010/41 Directive of the European Parliament and Council on the application of the principle of equal treatment between men and women performing and independent activity and the repeal of EEC 86/613 Directive.
- Upgrading the administrative fines for violating the law.
- Upgrading some name of the institutions following the new national normative provisions.
- Correlation with the new upgraded provisions of some articles related to the National Committee on equal opportunities between women and men (CONES) and the County Commissions, namely that from Bucharest regarding the equal opportunities between women and men (COJES)

The Ministry of Labour, Family, Social Protection and Elderly People (MMFPSPV) through its specialized department established following the dissolution of ANES agency and the ministry's reorganisation from 2010, namely the Directorate on Equal Opportunities between Women and Men (DESFB), implements the Government's public policy on equal opportunities and treatment between women and men.
According to the provisions of the Government Decision (G.D.) no. 10/2013 on the amendment and supplement of G.D. no. 11/2009 regarding the organisation and operation of Ministry of Labour, Family, Social Protection and Elderly People (MMFPSPV), DESFB has the following duties:

1. elaborates the Government's national action policies and plans on equal opportunities between women and men and coordinates their enforcement;
2. approves the draft normative initiated by the other ministries and other specialized bodies of the central public administration for the purpose of integration and observance of the equal opportunities between women and men principle;
3. receives claims / complaints regarding the violation of the normative provisions related to equal opportunities and treatment between women and men and to the non-discrimination based on gender criteria, ranging from natural and legal persons to public and private institutions and submits them to the competent bodies for the settlement and enforcement of sanctions and provides consultancy to the victims according to the law;

4. elaborates reports, studies, analysis and forecasts regarding the applicability of equal opportunities and treatment between women and men within all the fields of activity;
5. provides the information exchange with the European bodies and other international bodies and institutions to which Romania is part of, regarding the equal opportunities between women and men.

According to the published Law no. 202/2002 on equal opportunities and treatment between women and men, the National Committee on equal opportunities between women and men (CONES) develops its activity within MMFPSPV coordination; the state secretary coordinating the activity in the field of equal opportunities between women and men is the CONES's president.

CONES is made up by the ministries' representative and the representative of other specialized bodies of the central public administration subordinated to the Government or of autonomous administrative authorities, of trade unions and of representative employer's organisation at national level, as well as by the representatives of non-governmental organisations with recognized activity in the field, appointed by written consent.

According to the law, the duties of CONES are laid down in its organisation and operation regulation, drawn by DESFB, approved by the member of CONES and approved by Government's decision. CONES has also operated during 2006-2010 under the coordination of the former National Agency for Equal Opportunities between Women and Men (ANES) and had a constant contribution to the elaboration and implementation of the first two National Strategies for equal opportunities between women and men during 2006-2009 and 2010-2012. CONES has also supported other activities performed by the former institution ANES playing an important role in the introduction of such perspective within the policies and programmes carried out at national level.

From this point of view, through the Government Programmes carried out so far, objectives were taken in the field and were implemented by some specific measures laid down in the two strategy documents: National Strategy on equal opportunities between women and men for the 2006-2009 period and that for the 2010-2012 period.

Is important to note that both strategies were drawn by the former ANES agency, were approved by Government Decisions and were implemented both by the former ANES, until the 2010 year, and by DESFB from 2010 year until now.

The National Strategy for equal opportunities between women and men for the 2010-2012 period was drawn to provide continuity of the policies from the equal opportunities and treatment between women and men field, developed until 2009 within the old strategy document for the 2006-2009 period. The strategy aimed to respond the problematic situations identified over time on certain specific intervention areas like education, labour market, social life, roles and stereotypes, participation to the decisional process through definite measures and activities.

The National Strategy on equal opportunities between women and men for the 2010-2012 period and the General Action Plan for the implementation of the Strategy approved by G.D. no. 237/March 2010 were drawn in the context in which ANES had legal personality, sufficient and enough human resources and had its own revenue and expenditures budget which could support from a logistic and financial point of view the actions provided by the general action plan.

In the context of budgetary expenditures rationalisation and the new status of the national mechanism in the field, namely of specialized department within MMFPS, a series of action which were previously included in the Strategy and in the General Action Plan required human resources and materials, including financial resources as well as a high intervention flexibility are now difficult to reach.

MMFPS, through DESFB, participated and still participates in its capacity of beneficiary and partner to the implementation of some projects financed by European Social Fund through the Sectoral Operational Programme for the Development of Human Resources and by other non-refundable European funds for the implementation of the activities proposed through the National Strategy on equal opportunities between women and men for the 2010-2012 period and the General Action Plan for the implementation of the Strategy.

Following, a series of FSE financed projects within which MMFPSPV is beneficiary and partner are presented:
1. The Fem.RRom Project – improvement of the Roma women access on the labour market and supporting the social economy: promoting and developing some integrated services by creation of some cooperatives for women, providing access to training and the development of some specialized and custom employment services (beneficiary).

General objectives: promoting and supporting the creation of new work places within cooperatives for the Roma women by increasing their employment rate, increasing their skills and their employment opportunities. The projects targets 1,550 of Roma women of which: 550 shall be trained in specific fields and jobs, 1,000 shall receive information services, consultancy and mediation on the labour market. 3 Employment Workshops and 5 Cooperatives for the supply of goods and services have been established. The project is still developing.

2. Empowerment of the Roma women on the labour market Project (partner)
General objective: the development of trade unions' capacity to promote equal opportunities on the labour market for the women belonging to vulnerable groups. 80 trade union leaders, NGO's representative and those of relevant institution from the participatory and mobilizing management were trained, an intra-professional network of at least 30 relevant experts and actors acting with and for the Roma women was established, information and awareness action on the rights on labour market of more than 1,000 employees occupying vulnerable position on the labour market are developing. The project is still developing.

3. "National public awareness campaign on equal opportunities and gender on labour market and institutional support for the development of stakeholders' activity in equal opportunities and gender issue" Project – S.A.N.S.A. (partner)
General objective: public awareness on equal opportunities and gender on the labour market and granting support for the development of stakeholders' activity in equal opportunities and gender issue. The project's main activity is: "The week of equal opportunities" which took place in all 8 development regions of Romania. The activity included the organization and development of workshops for the workers of the structures implied in the social protection system, in the entrepreneurial and public system, jobs fairs, public debates with opinion makers, roundtables with mass-media representatives. Representatives of territorial departments of MMFPSPV, of city halls, local and county councils, employer's organisations and trade unions, of active NGO in the equal opportunities and gender field, associative structures representing vulnerable groups, social assistants have also participated to such actions. The project in still developing.

Other projects developed between 2009-2010 period and concluded in 2010:
4. The "Lawyers for Equality" Project financed by the Royal Netherlands Embassy through the FSA Grant programme.
Main objective: development of awareness courses for lawyers on the principle of equal opportunities between women and men within the judicial system practice, aiming to enhance the understanding and interpretation capacity of lawyers from the perspective of equal opportunities between women and men principle and the compliance with the corresponding national and community legislation in the judicial practice. The target group was composed by lawyers from 8 counties. Based on 60 questionnaires the training needs of the target group were identified, a manual was drawn up and more than 30 learners participated to the training and awareness course on equal gender field.

5. The Entrepreneurial Project and equal opportunities. An inter-regional model of entrepreneurial school for women.
Main objective: promoting equal opportunities in the entrepreneurial field by stimulating the women, in general, and the rural women, to get involve especially in the initiation and development of their own business within the sustainable development context of the communities from the counties located over the Romanian West border.

A diagnostic of the social-economic situation from the target region was made (6 counties) related to the employment rate, the unemployment rate, the number of SME's, the number of commercial companies administrators , the number of NGO; the mentioned figures are divided based on gender criteria. An analysis of the gender relations in the employment sphere was made, focusing on the correlation of some multiple variables which may contribute to understand the phenomenon of female entrepreneurship within the above mentioned region.

6. "Empowerment of women belonging to ethnical minorities within trade unions structure" Project developed with the financial support of Royal Netherlands Embassy through the FSA Grant Programme and United States of America Embassy through the Democracy Small Grants Programme.
Main objectives: the development of a leadership programme for 20 Roma and non-Roma women members of trade union; the creation or reorganization of departments within two National Trade Unions Confederation (BNS and CNSRL Fraternity) in order to approach the issue of vulnerable groups on the labour market; the development of a national campaign regarding the employees' rights on labour market, promoting equal opportunities at work place.
The project's results: a common action platform regarding the vulnerable groups on the labour market; action plan with specific measures for trade unions and NGOs; leadership programme for Roma and non-Roma women; 2 departments within the trade union confederation in order to approach the issue of vulnerable groups on the labour market; a campaign on equal opportunities and rights on the labour market.

Activities developed for the implementation on National Strategy for equal opportunities between women and men for the 2010-2012 period and the General Action Plan for implementing the Strategy: In order to implement the objectives comprised by this strategy document, during 2009-2012 meetings, reunions and debates were organized which dealt with: balanced participation of women and men to the decisional process, removal of gender stereotypes, the role of the rural woman, reducing the wage difference. To this events participated representatives of social partners, of public administration and NGO organisations. On the development of all the respective activities the members of the County

Councils, namely those from the Bucharest County Council in the equal opportunities between women and med field (COJES) had an active role, whose Organisation and Operating Regulation was approved by the Decision no. 1,054 from 8th September 2005.

At these events more information materials were disseminated on topics like: maternity protection, labour normative, flexibilisation of work, elimination of gender violence, of trafficking in persons and harassment and sexual harassment.

Regarding the labour market and encouraging the conciliation of family life with professional life:

- Participation at the technical conference titled: "From Cairo to Beijing and after: the unfinished agenda of equal gender in the Eastern Europe and Central Asia region" organized by UNFPA, the regional office for Eastern Europe and Central Asia, during 20-22 October 2010.

Within this conference a DESFB representative conducted a debate workshop on: "Engaging men in promoting gender equality." Following the debates, the DESFB representative elaborated a Report including the conclusions and recommendations resulted from the debate as well as the possible actions in order to support men's engagement in promoting such perspective.

The DESFB host report was taken over by UNFPA – the regional office for Eastern Europe and Central Asia – and was included in the Conference's final report and then published by UNFPA in a brochure.

Information and awareness for the fathers regarding the necessity of their engagement in the raising and education of their own children:

- In 4 development region of Romania (West, South-West, North-East and South-Muntenia), within the "CHANCE – National public awareness campaign on gender equality and equal opportunities on labour market and institutional support for the development of the stakeholders' activity in the gender equality and equal opportunities issue" project the "Week of equal opportunities" caravans took place (October – November 2011).

In the wider framework of presentations on fighting all the discrimination forms and implementing the values of gender equality discussion were held related to the conciliation of family life with the professional life, namely the increasing engagement of fathers in raising and educating their own children.

On the reunions which were held over 250 representatives of local public administration, of NGOs, trade unions, employer's organization and regional mass media participated.

Following the discussions, the structure of the Guideline on Information and Awareness of fathers regarding their role in raising and educating children was established (the topics are to be introduced in the guide) and the channels by which the guide can be disseminated were highlighted (through the familial planning centers, city halls and NGOs).

Social life. Promoting the gender perspective in the social life:

- Every year, following the decision taken in 1995 during the fourth International Conference of Women from Beijing, on 15th October is celebrating the "International Day of Rural Women"

Within the background of this holiday, the Ministry of Labour, Family, Social Protection and Elderly People, through the Directorate of Equal Opportunities between women and men, during the month of October 2011 has organised simultaneous meetings with rural women in the villages of Hîrşeşti, Arges County and Gorgota, Prahova county, both conducted by women mayors. At the two events participated both women and men citizens of the above mentioned villages, the mayors of the two villages and other representatives of local authorities, representatives of County Agencies for Employment from Arges and Prahova and of NGOs developing activities on local market or implementing projects regarding the rural environment.

During the meetings, were highlighted and discussed subjects like the multiple roles of the rural woman – that of a mother, worker in the family household, main caretaker of children and elderly persons, preserved and successor of the local customs and traditions – and the specific problems every woman everywhere is dealing with in the wider process of de facto application of gender equality: economic independence, discrimination within employment and wage, family violence and sexual harassment, access to culture, education and decisional process. Also, there was made an information regarding the specific legislation and the activity that MMFPS is performing through the specialized department.

The reunions occasioned exchanges of ideas, point of views and positive experiences on interest topics for the rural women: principles and values of equal opportunities between women and men within the family, home care facilities and specialized centres for children and sick elderly people, employment opportunities in the rural environment, access to culture and professional training, forms and modalities of participating to the community life, results of some NGOs initiatives on promoting women's rights. The reunions enjoyed a large participation and were highly appreciated.

Roles and gender stereotypes:

- O good collaboration of DESFB was the one with UNFPA – Romania, in its capacity as a permanent member to the work group reunions on the organisation of Gender Equality Observatory from Romania.

The main target areas of such Gender Equality Observatory are: labour market, education, health, migration, social inclusion and elimination of roles and gender stereotypes.

The objective was to register the public policies within the gender equality field and to analyse the results of such measures, of legislation from the anti-discrimination field, of academic publications in the gender equality field, of studies and researches as well as the elaboration of some database regarding the NGOs developing their activity within the gender equality field and for defending the human rights.

Mass-media awareness regarding the equal opportunities and treatment between women and men principle:

- In 4 development region of Romania (West, South-West, North-East and South-Muntenia), within the "CHANCE – National public awareness campaign on gender equality and equal opportunities on labour market and institutional support for the development of the stakeholders' activity in the gender equality and equal

opportunities issue" project the "Week of equal opportunities" caravans took place (October – November 2011).

The fifth day of "Week of equal opportunities" caravans was dedicated to mass-media meetings. The meetings, which enjoyed the participation of more than 70 regional media operators, aimed the analysis and debate of mass-media role in fighting the stereotypes towards women and men and towards the vulnerable persons.

Movies were projected in which were reflected the situation met within the recruitment processes organized by employers (cases of discrimination). The audio-video presentation mode was extremely useful for the precise exemplification on how the promoted stereotypes, including by mass-media, are influencing the employers and the candidates in the labour market specific relations.

Was discussed the mass-media role in fighting the discrimination at work place as well as the messages template which they should promote. Was analysed how family and school education may create and strengthen the rejecting attitude that children and young people may have towards the discriminatory / humiliating situations in which, by mass-media, some social categories are exposed.

Especially in the development regions from South-East and South-Muntenia, the mass media participated in large numbers and was opened to discussions regarding the general topic on equal opportunities and treatment, topic considered to be insufficiently covered. The "Week of equal opportunities" caravans were promoted at local level in 60 written articles by the written press, 10 radio news, 10 TV news as well as a TV show.

The "Situation of women and men occupying decisional positions within the central public administration" study was elaborated for the year 2011. The starting point was represented by the request of European Commission for upgrading its online database regarding the situation of women and men occupying decisional positions within public administration field. The study was elaborated based on the figures and information communicated by all the central public administrations of Government: ministries and department headed by dignitaries with ministry rank.

The study was published on MMFPS website, equal opportunities sub-field (http://www.mmuncii.ro/nou/index.php/ro/familie/egalitate-de-sanse-intre-femei-si-barbati) as well as at MASS-MEDIA section – Press release, on 10th November 2011 and enjoyed the mass media attention, being mentioned both in central and local press.

The study was presented in the "Week of equal opportunities" caravans which took place in the 4 Development Regions within the "CHANCE – National public awareness campaign on gender equality and equal opportunities on labour market and institutional support for the development of the stakeholders' activity in the gender equality and equal opportunities issue" project, was disseminated towards many active NGOs interested in its conclusions as well as towards all the County Councils for Equal Opportunities with the recommendation that its issue to be included in the next quarterly meeting agenda of COJES.

Balanced participation of women and men in the decision making process. Encouraging the balance participation of women and men in the decision making process:

- The "Supporting the UNDP Romania initiative to adopt a Declaration on transposition of global target of no. 3 Objective regarding the Millennium Development related to the presence of women within the parliament" project was developed over a 3 months

period, namely July-September 2010. During such project the DESFB experts participated to the organisation of some workshops and roundtables regarding the stimulation of women participation in the decision making process.

The workshops were organized during more phases in the months of July and August 2010 at the UNDP headquarter and, besides the UNDP and DSFB representatives, brought together representatives of civil society, of academic environment and of political parties. Within such workshops were discussed the options of women's representation percentage in the Parliament as a target objective assumed by Romania by 2015 as well as the methods and tools to reach the objective.

With the support of DSFB experts, the Report regarding the setting of global targets of no. 3 Objective on the Millennium Development was drafted underpinning an analysis of the women's participation rate in politics as well as a gender analysis on the population's beliefs regarding the increase of women's representation in the decision making process at political level.
The final report of such project was disseminated by UNDP to the decision makers from Government and Parliament.

In September 2010, UNDP in collaboration with DESFB organised at the House of Parliament a roundtable on "Women in Parliament" topic during which the UNDP Report regarding the proposal of target objective within the no. 3 Objective on Millennium Development was presented. At the reunion participated representatives of the parliament parties.

The final version of UNDP Report underpinned the official Memorandum signed by the Prime-Minister of Romania in September 2010 according to which Romania assumed as a target within no. 3 Objective on Millennium Development a 30% women's representation in Parliament, until 2015.

For the purpose of upgrading the online database of the European Commission regarding the women and men situation as decision makers, on a yearly basis, starting from 2011 was drafted an analysis of the situation of women and men as decision makers, 1 and 2 degree decision, for the public administration field.

The main conclusions were:

1. At national level, more than half of the decision maker position within central public administration are taken by women.
2. In ministries, the majority of decision maker positions are taken by women.
3. In ministries, the women weight in decision maker position both 1 and 2 degree decisions is higher than the one existing at national level.
4. The women weight in occupying the decision maker positions corresponding to 2 degree decision is higher than those of women occupying corresponding 1 degree decision.
5. The women weight occupying decision maker positions is higher in ministries rather than in its deconcentrated units from local level, its institutions subordinated/coordinated and other specialized bodies subordinated to ministries.

The petitions situation addressed to DESFB during 2009-2012:
In the 2009 year a single referral was registered which was alerting a discrimination situation based on sex criteria, In 2010 and 2011 the number of referral was higher, but only 9 of this were related to discrimination based on sex criteria.

A explanation on the low number of addressed petitions may be the fact that the specialized department from MMFPSPV, according to its legal duties, may receive complaints on the violation of normative provisions related to equal opportunities and treatment between women and men principle and to the non-discrimination based on sex criteria, but has no legal competences for the resolution and enforcement of sanctions, if applicable,

According to the legal duties, such complaints are being forward to the competent institution for resolution and enforcement of sanctions, institutions appointed by Law no. 202/002 on equal opportunities and treatment between women and men, republished.
These institutions are:

- Labour Inspectorate, through its local labour inspectorates, if the discrimination based on sex criteria occurred at the work place;
- National Council for Fighting Discrimination, for all the discrimination forms, including those based on sex criteria.
- trade unions or NGOs which have as main object of activity the human rights protection as well as other legal persons which have a legal interest in the observance of equal opportunities and treatment between women and men principle and which can, upon victims' request, to represent/assist them within administrative procedures.
- Competent judicial bodies.

The persons who have evidence leading to the presumption of a discrimination based on sex criteria may address directly to the competent judicial bodies for the application of the provisions of Law no. 202/2002. According to the law, within 3 years from the date when the supposed discriminatory offence was committed , the persons who submit the evidence leading to the presumption of a direct or indirect discrimination based on sex criteria, in other field than that of labour, is entitled to address to the competent judicial body, according to the common law, to request material and/or moral indemnities as well as the elimination of the consequences related to the discriminatory offence and their requests are exempt from stamp.

It is important to note that for the offence which allow to presume the existence of a direct or indirect discrimination, the burden of proof must shift back to the person against which the referral/claim was formulated or, where appropriate, the request for summons; he/she will need to prove the non-violation of the equal opportunities and treatment between women and men principle.
During the elaboration of the hereby report, the National Council for Fighting Discrimination reported that in 2009 from the total 9 files related to gender discrimination, in 4 cases was singled situations connected with the field of employment and occupation. Among those 4 no discrimination cases were recorded.

In 2010 from the total number of 18 files based on gender criteria discrimination, 6 files were subject to discrimination at work place, two cases were subject to discrimination and in both situation a fine was applied (6,000 lei and 2,000 lei).

In 2011 from the total number of 15 files based on gender criteria, 7 files were subject to discrimination at work place, in 3 cases the discrimination was recorded and the fine was applied (600 lei, 1,000 lei and 3,000 lei).

Article 21

The legislative framework was not amended.

Whereas Law no. 467/2006 does not make a distinction, *all the employees* are part *of the total number of employees*, defined according to the *Labour Code*, as citizens working on the Romanian territory under an *individual labour agreement* (regardless its form and period) or under *apprenticeship agreement* (which may include different forms of insertion on the labour market). *The framework agreement and the conventions concluded by schools and enterprises* for the purpose of strengthening the theoretical knowledge of pupils and students through practical activities, not covered by labour contracts and labour relations, are not included.

The employees' information and consultancy is regulated by the provisions of Law no. 67/2006. The ways of information and consultancy are implemented according to the law and the collective labour agreements.

The employers must inform and consult the employees' representatives. The employees' representatives may be the representatives of trade unions or of the persons elected and appointed to represent the employees according to the law, in case no trade union is established.

The trade unions are established according to the provisions of law on social dialogue and those of Labour Code and the persons are elected and appointed to represent the employees according to provisions of art. 221-222 from Labour Code.

Pursuant to art. 5 from Law no. 467/2006:

(1) The employers must inform and consult the employees' representatives, according to law in force, on:

a) information on recent and probable development of the undertaking's activity and economic situation;

b) information and consultation on the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular when there is a threat to employment;

c) information and consultation on decisions likely to lead to significant changes in work organisation or in contractual relations, including those covered by the Community provisions regarding the specific information procedures and consultation in the event of collective redundancies and protection of employees' rights, in case the undertaking is being transferred.

(2) the information is made in a proper moment, way and with a proper content so as to allow the employees' representatives to examine de problem accordingly and to prepare, if necessary, the consultation.

(3) The consultation takes place:

a) in a proper moment, way and with a proper content so as to allow the employees' representatives to examine de problem accordingly and to draw a point of view;

b) at a relevant level of representation of management and the employees' representatives, depending on topic;

c) based on the information supplied by the employer according to the provisions of art. 3 letter e) and in compliance with the point of view which the employees' representatives have the right to elaborate;

d) so as to allow the employees' representatives to meet with the employer and to get a justified answer for any opinion that they may elaborate;

e) in order to negotiate an agreement regarding the decisions which fall in the employer's duties provided for at paragraph (1) letter c).

According to art. 7 from Law no. 467/2006:

(1) The employees' representatives as well as the experts assisting during the development of any collective consultation or negotiation procedure are prohibited to disclose to employees

or third parties any information which, having regard to the legitimate interest of undertaking, were expressly supplied as being confidential. This obligation shall survive for the representatives and experts even after the termination of their mandate. The type of information subject to non-disclosure is agreed by the parties within the collective agreements or under any other form agreed by the partners and forms the object of a Non-Disclosure Agreement.

(2) The employer is not required to provide information or to carry out consultation if such information or consultation may seriously harm the undertaking's operation or might be considered prejudicial to its interests. The decision not to provide such information or not to carry on consultation must be justified towards the employees' representatives

(3) Should the employees' representatives consider unjustified the employer's decision to invoke confidentiality or not to provide relevant information or not to carry out consultation under the conditions of paragraphs (1) and (2), they may address to the competent judicial bodies of common law.

The provisions of Law no. 467/2006 on establishing the general information and consultation framework of the employees is valid for the undertakings having their headquarter in Romania and minimum 20 employees.

For the purpose of the provisions of Law no. 467/2006, undertaking mean any public or private entity engaged in an economic activity, whether profit-making or not.

Article 28

The employees' representatives may by represented by trade unions or, if there is no trade union, by elected and appointed persons to represent the employees according to the law.

During the reference period, Labour Code – Law no. 53/203, republished, was supplemented with the provisions of Law no. 62/2011 on social dialogue.

Trade unions are established according to the provisions of Law no. 62/2011, republished, on social dialogue and Law no. 53/2003 and the persons are elected and appointed to represent the employees according to the provisions of art. 221-222 from Labour Code.

Therefore, Law no. 62/2011, in conjunction with the provisions of Labour Code, provides protection measures for the employees' representatives (*trade unions and elected representatives of the employees)* against dismissal based on the trade union activity as well as benefits granted to them, like free moveable and unmoveable assets for the purpose of carry out the trade union's activity and a reduced monthly working schedule by a number of days for trade union's activity, negotiated with the employer (Law no. 62/2011, art. 9-12, art. 22, art. 35 in conjunction with Labour Code, art. 225 and art. 226).

Other benefits granted to the employees' representatives (trade unions, elected representatives) are laid down by collective negotiation at a level agreed with the employer.

According to the provisions of Labour Code, republished, article 221 sets the following:
1) In case of the employers with more than 20 employees where are not set up representative trade unions according to the law, the employees' interests may be promoted and defended by their representatives, elected and appointed for this purpose.

(2) The representatives of the employees shall be elected in the general assembly if the employees with the vote of at least half of the total number of employees.
(3) The employees' representatives may not carry out activities recognized by law as belonging exclusively to trade unions.

According to the provisions of art. 220 paragraph 2 and art. 226 from the Labour Code, republished, during their mandate the representatives elected in the management bodies of trade unions, namely the employees' representatives, shall not be dismissed for reasons related to the fulfilment of the mandate received from the employees in the organization.

The cases are solved in court, the burden of proof for labour disputes shifts to the employer.

At the same time, according to art. 61 from Government Decision no. 1425/2006 on the approval of Methodological Norms for application of law no. 319/2006 on health and safety at work, with its subsequent amendments and supplements, the employer undertakes to provide each representative of the employees within the Occupational Health and Safety Committees, the necessary time for carry out the specific duties. This period of time is considered working time. Also, the necessary training for being member of the Occupational Health and Safety Committee must be done during work schedule and at the expense of the undertaking.

Article 29 – The right to information and consultation in collective redundancies

In the Law no. 53/2003, republished – Labour Code, there is a distinct chapter regarding collective redundancy: employees' information and consultation and the collective redundancy procedure.

Art. 69 from Labour Code, republished:
(1) In case the employer considers a collective redundancy, it shall initiate, in good time and in order to reach an agreement, under the terms provided for in the law, consultations with the trade union or, where appropriate, with the employees' representatives on at least the following:
a) Methods and means for avoiding collective redundancies or reducing the number of employees subject to the redundancy.
b) mitigation of the collective redundancy consequences by relying on social measures aiming, among others, at the retraining and professional redeployment of the dismissed employees.
(2) During consultations, according to paragraph (1), to allow the trade union or the employees' representative to draft proposals in good time, the employer shall provide all relevant information and notify them in writing of the following:
a) the total number and categories of employees;
b) the reasons leading to the considered collective redundancy;
c) the number and categories of employees to be affected by the dismissal;
d) the criteria taken into account, according to the law and/or collective labour agreements for prioritizing the dismissal;
e) the measures considered in order to limit the number of dismissal;
f) the measures to reduce the consequences of the collective redundancy and the compensations to be granted to the dismissed employees, according to the legal provisions and/or the applicable collective labour agreement;
g) date or timeframe of the dismissals;
h) the deadline for the proposals of trade union or, where appropriate, of the employees' representatives, to avoid or reduce the number of dismissed persons;

(3) The criteria mentioned in paragraph (2) letter d) shall be applied categorizing the employees by measuring the achievement of performance.

(4) The obligations provided for at paragraphs (1) and (2) shall be observed whether the decision determining the collective redundancies is taken by the employer or by an undertaking controlling the employer.

(5) Should the decision leading to collective redundancies is taken by an undertaking controlling the employer the latter cannot invoke, in not observing the obligations provided for in paragraphs (1) and (2), the fact that the undertaking has not provided it the necessary information.

Art. 78 – A dismissal decided by infringing the procedure provided for in the law shall be null and void.

Art. 79 – In the event of a labour dispute, the employer may not plead in court other reasons in fact or law than those mentioned in the decision of dismissal.

Art. 80

(1) If the dismissal was groundless or illegal, the court shall order its cancellation and shall require the employer to pay a compensation equal to the indexed, increased and updated wages and other rights the employee would have enjoyed.

(2) Upon the employee’s request, the court having ordered the cancellation of the dismissal shall put the parties back in the state before issuing the dismissal document.

(3) If the employee does not request the reinstatement of prior situation before the notice of dismissal was issued, the individual labour agreement shall be terminated by law on the date when the court’s decision will be final and enforceable.