30/10/2013 RAP/Cha/CZE/11(2014)

EUROPEAN SOCIAL CHARTER

11th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF CZECH REPUBLIC

(Articles 2, 4, 5, 6 of the European Social Charter
and
Article 2 and 3 of the Additional Protocol of 1988)
for the period 01/01/2009 – 31/12/2012)

Report registered by the Secretariat on 30 October 2013

CYCLE XX-3 (2014)

EUROPEAN SOCIAL CHARTER

THE ELEVENTH REPORT
ON THE APPLICATION OF THE EUROPEAN SOCIAL CHARTER

SUBMITTED BY THE GOVERNMENT OF THE CZECH REPUBLIC
(for the period up to December 31, 2012)

Articles 2, 4, 5, 6 of the European Social Charter
and
Article 2 and 3 of the Additional Protocol of 1988

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ARTICLE 2: THE RIGHT TO JUST CONDITIONS OF WORK

Article 2, Section 1

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

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

Legislation stipulating the just conditions of work:

1. **Constitutional Act No 1/1993 Coll.,** the Constitution of the Czech Republic
2. **Resolution No 2/1993 Coll.,** to declare the Charter of Fundamental Rights and Freedoms
3. **Act No 262/2006 Coll.,** the Labour Code, as amended
4. **Act No 251/2005 Coll.,** Labour Inspection Act, as amended
5. **Act No 198/2009 Coll.,** to stipulate equal treatment and legal means of protection against discrimination and amendments to certain acts (the Anti-discrimination Act), as amended
6. **Act No 435/2004 Coll.,** the Employment Act, as amended

Since 1 January 2012, the Amendment to Act No 262/2006 Coll., the Labour Code, as amended, (hereinafter referred to as the "Labour Code")

- has unified the maximum length of a shift for both equally and unequally allocated working time; newly, the length of a shift may not exceed 12 hours (Section 83 of the Labour Code).
- has newly defined equally allocated working time: the equally allocated working time is considered to be such an allocation where the employer allocates the weekly working time or part-time working time to individual weeks [Section 78, paragraph 1, item l)].
- has provided a more precise definition of an employee working at night, as follows: an employee who works, on average, no less than three hours of his working time at night - within 24 consecutive hours at least once a week while the length of a shift of the employee working at night may not exceed 8 hours within 24 consecutive hours. Where this is impossible for operational reasons, the employer is obliged to allocate the defined weekly working time in such a way as to ensure that the average length of a shift does not exceed 8 hours over a period of no longer than 26 consecutive weeks.

The calculation of the average length of a shift of an employee working at night is based on a five-day working week [Section78, paragraph1, item k), of the Labour Code.

- has extended the maximum length of the settlement period for flexible working time from 4 consecutive weeks to 26 consecutive weeks (Section 85, paragraph 4).

- has modified the option of transferring up to 120 hours worked overtime within the working time account to the very next settlement period in order to be included in the working time of that next settlement period provided that this option is only agreed in the collective agreement (Section 86, paragraph 4, of the Labour Code). This arrangement has been realised on the basis of both social partners requirement . We need to point out that this arrangement has, in no way, allowed for extending the legal limits on daily working time (Section 83 of the Labour Code), on weekly working time (Section 79 of the Labour Code) and on overtime work (Section 93 of the Labour Code) during the aforementioned next (second) settlement period.

<u>In its Conclusions on the previous report, the Committee requested answers to the following questions:</u>

The Committee recalls that daily working time should in no circumstances go up to sixteen hours per day. This is a limit which cannot be exceed even in the context of the above mentioned types of work (catering, cultural facilities telecommunication and postal services…) or despite the subsequent recovery of the lost rest hours.

The Committee asks the next report to provide updated information on the supervision of working time regulation by the Labour Inspectorate, including the number of breaches identified and penalties imposed in this area.

The examination of employers' compliance with the provisions on working time - is an area thoroughly and regularly examined by Labour Inspection bodies. Inspection bodies receive numerous proposals for inspections. The breaches found are strictly penalised. The most frequent deficiencies include failure to keep the rest periods between shifts and during a week, and failure to maintain (or correctly maintain) the records on working time. Where the findings apply to a larger number of employees over a prolonged period or where the employer's deficiencies are found repeatedly, the penalties imposed on the employers are close to the upper threshold of the penalty range.

An example of a successful examination is an extraordinary inspection carried out at one of food retail chains, with stores all over the Czech Republic, where all Regional Labour Inspectorates launched inspections on the day concerned (each of them at several selected stores lying within its competence). The inspection was primarily focused on employees' working time (compliance with the limits on working time), with the participation of a large number of inspectors. As the deficiencies in respect of working time (failure to keep the rest periods at work) were found at nearly all stores, the fines imposed were high.

The most important factors for the purposes of examination of working time are the duly maintained records on working time, where the inspector finds all information concerning the

working time of a particular employee. During their inspections, the labour inspection bodies therefore require the presentation of well-arranged and demonstrable records on working time, in accordance with the purpose of keeping such records. If the employer fails to keep such records, the Inspectorates impose relevant penalties because, if the records on working time are not kept or are kept inadequately, the inspector is unable to relate the hours actually worked to the remuneration.

Number of inspections: working time are part of every inspection where the compliance with labour law regulations is examined unless the inspection is solely focused on the occupational safety and health protection (OSH) of employees or on employment (notably illegal employment).

Total number of inspections carried out by Labour Inspection bodies in the reference period and number of findings in respect of working time:

	Number of inspections concerning labour relations and conditions	Number of findings concerning working time	Imposed Fines (current status)
2009	5,822	1,941	271 fines in total amount CZK 4,611,598
2010	6,949	2,416	304 fines in total amount CZK 7,297,708
2011	13,558	2,981	470 fines in total amount CZK 7,482,173
2012	13,238	3,718	574 fines / CZK 11,988,500
			Total 1,619 fines in total amount CZK 31,379,979

The table only includes findings concerning the maximum length of a shift:

	Number of breaches found	Fines
2009	96	Total amount of 86 imposed fines - CZK 1,355,651
2010	111	
2011	114	
2012	138	

Article 2, Section 2

"With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake: to provide for public holiday with pay;"

As concerns the dependent work remuneration, the Labour Code distinguishes between wage and salary. Wage is provided to employees in the private sector while salary is provided to employees in public services and administration.

As concerns public holidays, the wage and salary rights are identical within the meaning that employees are preferentially compensated for working on public holidays by compensatory time off from work in the scope of hours for which he worked on a public holiday. In addition, the employee is entitled to his/her attained wage (the wage to which he/she is entitled for that period) or salary. For the period of compensatory time off from work, the employees who receive wages are entitled to wage compensation in the amount of their average earnings while the employees who receive salaries will not experience any salary reductions for the period of their compensatory time off from work (the salary is provided in a flat monthly amount). The employer is obliged to provide the employee with the compensatory time off from work within no later than the end of the third calendar month following the performance of work on a public holiday or within an otherwise agreed period.

The employer and the employee may agree in an individual contract on providing an additional pay in the amount of average earnings, to be added to the wage or salary achieved, in lieu of the compensatory time off from work.

In its Conclusions on the previous report, the Committee requested answers to the following questions:

The Committee considers that work performed on a public holiday imposes a constraint on the part of worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The compensation may also be provided as time-off, in which case it should be at least double the days worked. ***The Committee asks whether the compensatory pay corresponds to at least twice the usual wage.***

The employee receives the wage or salary for working on a public holiday; in addition, the employee receives wage compensation in the amount of average earnings, or the employee's monthly salary is not reduced for the period when the employee is not working (i.e. the period of his/her time off from work). **Thus the employee receives a double remuneration for working on a public holiday compared to working on an ordinary weekday.** Where an additional pay, added to the wage or salary, is provided for working on a public holiday in lieu of the compensatory time off from work, the employee's wage or salary for working on a public holiday will increase by 100% of his/her average earnings, i.e. the wage or salary is double or even more (the average wage as well as salary is usually higher than the wage or salary concerned).

Article 2, Section 3

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

During the reference period, the legislation regulating holiday was changed as follows, as a result of the Labour Code amendment effective from 1 January 2012:

Newly, the provision of Section 218 of the Labour Code expressly stipulates the employer's obligation to determine the holiday in such a way as to ensure that the employee can take the entire holiday for the relevant calendar year, according to the holiday schedule, by the end of the calendar year in which the entitlement of leave has arisen.

Where leave taking is not determined latest until 30 June of the subsequent year, the right to determine leave taking pertains to the employee. The employee is obliged to notify the employer in writing at least 14 days in advance unless another time limit for such notification has been agreed with the employer. Thus the Labour Code newly regulates the principle of transferring the right to schedule a holiday from the employer to the employee.

If the employer is prevented from determining the holiday by obstacles to work on the side of the employee (temporary incapacity to work, maternity and parental leave) or by urgent operational reasons, the employer shall schedule such a leave so that it is taken latest by the end of the subsequent calendar year, unless subsection provides otherwise.

The wage (salary) compensation provided for the holiday not taken has also been modified. The previous legislation allowed for providing compensation for the holiday not taken where such holiday exceeded the minimum period of 4 weeks. The new legislation prefers taking the holiday; thus the employee is only entitled to wage compensation only on termination of his employment relationship including the holiday in excess of the standard period of 4 weeks.

The amendment to Section 220 of the Labour Code, which regulates the conditions for the determination of collectively taken holidays, admits not only the engagement of trade union organisations but also that of employee councils as concerns collectively taken holidays (only applicable where necessary for operational reasons and after having so agreed with a trade union organisation and with an employee council's consent).

Article 2, Section 4

"With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake: to provide for additional paid holiday or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;"

Act No 385/2012 Coll. expanded the range of employees who are provided with additional holidays to include workers of emergency medical services (Section 215 of the Labour Code). No other changes, except for this one, were made to the provisions on additional holidays during the reference period.

Article 2, Section 5

"With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake: to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest."

No changes were made to this legislation during the reference period.

In its Conclusions on the previous report, the Committee concluded that the situation in the Czech Republic is not in conformity with Article 2§5 of the Charter on the grounds that agricultural workers may, pursuant to collective agreement or individual contract, postpone weekly rest so as to permit an excessive number of consecutive working days.

In compliance with its previous reports and comments, the Czech Republic's response to this Committee's conclusion is that the period of uninterrupted weekly rest - may only be shortened in the agricultural sector on the basis of an individual agreement between the employer and the employee or under a collective agreement. The reasons why the Labour Code allows this option of deferring the rest period in the week are the objective specificities of agricultural jobs, which depend on the four changing seasons and on weather conditions. Nevertheless, for the sake of protecting employee's interests, i.e. to enable the employee to take a rest of an equivalent length in the week within a subsequent adequate period if the rest period has been shortened below the limit of 35 hours of rest per week to as low as the limit of 24 hours per week (i.e. not a continuous three-week work), it was necessary to find and set out such a solution in the Labour Code that would enable employees as well as employers, under extraordinary circumstances, to react in practice to the aforementioned specificities of agricultural work in a flexible manner. It is unrealistic to insist on the strict compliance with the rest periods of 'standard' length in every week for workers in agriculture, unlike for employees in other sectors, because certain agricultural works cannot be objectively deferred or postponed (such as a harvest, gathering of vegetables and fruit, etc.).

Nevertheless, by providing an equivalent rest period within the statutory compensatory period, the Czech Republic meets the requirement laid down by the Committee for providing, on average, the same statutory rest period to employees in agriculture as is provided to other employees.

Hence the Czech Republic considers that the relevant legal provision of Section 92, paragraph 4, of the Labour Code fully complies with the wording of Article 2, paragraph 5, of the European Social Charter as well as with Article 5 of Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time.

ARTICLE 4: THE RIGHT TO FAIR REMUNERATION

Article 4, Section 2

"With a view to ensuring the effective exercise of the right to a faire remuneration, the Contracting Parties undertake: to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exception in particular cases;"

An employee who is remunerated by wage (i.e. an employee in the business sector) is, under Section 114 of the Labour Code, entitled to the wage for the relevant overtime period plus an additional pay in the amount of at least 25 % of the employee's average earnings, unless the employer has reached an agreement with the employee on the provision of compensatory time off from work in the length of the overtime work in lieu of the additional pay. The employer may contractually undertake (or set out by an internal regulation) to provide a higher percentage of the additional pay, and may also negotiate other conditions under which the employee will be entitled to the higher additional pay). Unless the employer provides the employee with compensatory time off from work within 3 calendar months after the overtime work or within an otherwise agreed period, the employee will be entitled to the aforementioned additional pay on top of the wage achieved.

With effect from 1 January 2012, the employer may negotiate a wage in advance with regard to any overtime work. Until the end of 2011, the Labour Code had only allowed this for managerial employees. At present, the only difference between managerial employees and the other employees is the length of overtime work that may be reflected in their wages. For managerial employees this includes the total possible overtime work within the calendar year while for the other employee this only includes the length of overtime work that the employee may be ordered to work (maximum 150 hours within the calendar year).

A precondition of negotiating the wage that takes account of potential overtime work is that the length of the overtime work reflected in the wage will be negotiated in advance. The possibility of negotiating the wage that takes account of potential overtime work does not mean that the employee is not entitled to remuneration for overtime work; it only facilitates the administration of calculating the wage, which is practical where a lower amount of overtime work is expected or where the need for overtime work is evenly distributed over a calendar year.

The employer cannot unilaterally establish this simplified form of wage compensation for overtime work by an internal regulation or designate it in a wage assessment; the employer always has to negotiate it. The law assumes both forms of negotiation, i.e. an individual (employment or other) contract entered into directly with a particular employee, or a collective agreement. If the actual length of overtime work exceeds the length of overtime work reflected in the wage, the employee is entitled to the wage achieved and to an additional pay or, where applicable, to the compensatory time off for overtime work.

For an hour of overtime work, an employee who receives salary (i.e. an employee in public services and administration) is entitled to an adequate portion of the salary rate, of the personal bonus and the special bonus as well as the additional pay for work in a difficult working environment as paid per hour of work excluding overtime work in the calendar month in which the overtime work takes place, and an additional pay of 25 % of the employee's average hourly earnings. If the employee works overtime in the days of

uninterrupted rest periods during a week, the employee is entitled to an additional pay of 50 % of the employee's average hourly earnings. The employer may reach an agreement with the employee on the provision of compensatory time off from work in the length of the overtime work in lieu of the overtime pay. The salary is not reduced for the period of compensatory time off from work.

If the employer fails to provide the employee with compensatory time off from work within 3 consecutive calendar months after the overtime work or within an otherwise agreed period, the employee is entitled to an overtime pay (an adequate portion of the salary rate, of the personal bonus and the special bonus as well as the additional pay for work in a difficult working environment and the aforementioned additional pay of 25 % or 50 %).

The salary of an employee who is entitled to a management bonus is determined with regard to the possible overtime work of maximum150 hours per calendar year. This does not apply to overtime work at night, on a public holiday or at the time of standby. The salary of a managerial employee who is a statutory body or head of a division always takes account of any overtime work.

Provisions of Sections 13 and 26 of the Labour Inspection Act lay down misdemeanours and administrative offences concerning remuneration. Depending on seriousness, the Act imposes penalties of up to CZK 500,000, up to CZK 1,000,000 or up to the maximum penalty of CZK 2,000,000. The most serious breaches are considered to be, for example, the failure to pay wage, salary or remuneration pursuant to an agreement, unauthorised wage deductions, etc.

In its Conclusions on the previous report, the Committee requested answers to the following questions:
The Committee asks whether the new flexible system of working time introduced by the new Labour Code has influenced the calculation of overtime and asks for a clarification of the concept of overtime.

The introduction of flexible working time has not influenced the calculation of overtimes (see above).

Overtime work is defined in the provision of Section 78, paragraph 1, item j), of the Labour Code as follows:

- overtime work is work done by the employee, outside the scope of a shift schedule, at the employer's direction or with the employer's consent, on top of the standard weekly working time based on the working time allocated in advance. For employees with shorter working time, overtime work means the work exceeding the standard weekly working time; these employees cannot be ordered to work overtime. Overtime work is not the case where the employee works beyond the scope of standard weekly working time in order to make up for the time off from work provided by the employer at the employee's request.

The Committee asks how much time off is granted in compensation for overtime wok, as this is not evident from the wording of the relevant provision of the Labour Code.

Section 114, paragraph 1, of the Labour Code (wage for overtime work) expressly states that the compensatory time off from work is provided to the extent of the overtime work done. Section 127, paragraph 1, (salary for overtime work) does not include any closer specification

of the extent of the provided time off from work, but the overall context indicates that the extent is the same. The Labour Code does not require that the compensatory time off from work provided to employees for overtime work must be longer than the period of the employee's overtime work done.

The Committee asks that the next report provide a full and up-to-date description of the situation concerning such workers.

The interpretation of the specific legislation regulating the remuneration for overtime work done by managerial employees is included in the text above, in response to Article 4, paragraph 2.

It also asks the next report to provide information on the activities of the Labour Inspection on respect of any breaches related to the failure to pay overtime wages.

Remuneration is addressed by all inspections except for inspections solely focused on the occupational safety and health protection of employees and on employment. Remuneration is the reason for the largest number of proposals for inspections. The most frequent deficiencies found include:

- failure to receive the wage (whether because of the employer's insolvency or because of a dispute between the employee and the employer, where the unpaid wage is used to 'cover' a compensation for damage or as a 'penalty for disobedience');
- failure to receive the additional pay (for Saturday and Sunday, for night work, for overtime hours or for a public holiday). As the employer who fails to pay the wage severely impairs the employee's rights, such a breach is adequately penalised.

-	Number of inspections	Number of findings concerning working hours	Fines (current status)
2009	5,822	4,268	651 fines amounting to CZK 15,228,249
2010	6,949	4,440	578 fines amounting to CZK 15,615,483
2011	13,558	5,829	1,219 fines amounting to CZK 21,335,284
2012	13,238	5,144	1,054 fines amounting to CZK 30,722,350
			A total of 3,502 fines amounting to CZK 82,901,366

Number of findings concerning the failure to pay for overtime work:

	Number of findings	Of which: in private sector	Of which: in public sector	Fines
2009	166	163	3	A total of 116 fines amounting to CZK 2,702,792
2010	251	244	7	
2011	227	221	6	
2012	281	275	6	

Number of findings concerning the inequality in remuneration:

	Number of findings	Total fines
2009	53	A total of 26 fines amounting to CZK 498,500
2010	134	
2011	129	
2012	82	

Inspections focused on the equal remuneration of men and women did not at all prove that the different remuneration was based on gender differences; one of the reasons was a greater work efficiency of one of the employees. Likewise, proposals for inspections do not include notifications of the different remuneration of men and women. The different remuneration for equal work or work of equal value is most frequently notified by employees of the same category (such as a female shop assistant pointing out that her wage is reputedly lower than that of her female co-worker).

Article 4, Section 3

"With a view to ensuring the effective exercise of the right to a faire remuneration, the Contracting Parties undertake: to recognise the right of men and women workers to equal pay for work of equal value;"

Legislation:
The discrimination ban and the principle of equality are stipulated by law of the Czech Republic at multiple levels: by constitutional acts [the Constitution of the Czech Republic and the Charter of Fundamental Rights and Freedoms (hereinafter referred to as the "CFRF")], by specific legislation [Act No 198/2009 Coll., on equal treatment and on legal means of protection against discrimination and on amendments to certain acts (hereinafter referred to as the "Anti-discrimination Act")] and by other laws regulating labour law relations and employment.

Article 10 of the Constitution of the Czech Republic provides that ratified and promulgated international conventions are immediately binding and take precedence over law. Citizens may directly invoke the rights arising from these conventions (including the equality between women and men) before courts of law.

Article 28 of the CFRF sets out the employee's right to a fair remuneration for work. Thus, along with Article 3, paragraph 1, of the CFRF, it forms the constitutional basis for the elimination of discrimination in the remuneration for dependent work.

The Anti-discrimination Act, to which the Labour Code refers in Section 16, defines both direct and indirect discrimination, and enumerates the actions considered to be discriminatory as well as the legal means of protection against discrimination.

The principle of equal remuneration is included in the Labour Code at three levels. Most generally, it is declared as one of the fundamental principles for labour law relations, where the obligation is imposed on the employer to adhere to the principles of fair remuneration, equal treatment of employees and to adhere to the ban on employee discrimination (Section 1a), as well as to adhere to the principles of providing equal wage, salary and other monetary benefits and benefits of monetary value, or remuneration pursuant to an agreement, for equal work and work of equal value. The second level involves provisions on equal treatment and on discrimination ban, under which employers are obliged to ensure that all employees are treated equally as concerns, inter alia, their remuneration for work and other provided monetary benefits and benefits of monetary value (Section 16).

The third most specific level is the direct expression of the principle under which all employees of a given employer are entitled to equal wage, salary or remuneration pursuant to an agreement for equal work or work of equal value (Section s 109 and 110 of the Labour Code). In addition, it is set out that equal work or work of equal value means the work of equal or comparable complexity, responsibility and strenuousness done under equal or comparable working conditions and with equal or comparable work efficiency and attained work results. The complexity, responsibility and strenuousness of the work are evaluated by the level of education, practical knowledge and skills required to carry out such work, by the complexity of the subject matter of the work and work activity, by the organisational and managerial requirements, by the degree of liability for damages, health and safety and by the physical, sensory and mental stress and the influence of the negative effects of the work. The

working conditions are assessed by the difficulty of the working arrangements arising from the allocation of working hours, for example in shifts, public holiday, night work or overtime work, by the harmfulness or difficulty arising from the influence of other negative effects of the working environment and by the risks inherent in the working environment. The work efficiency is assessed by the intensity and quality of the work done, by the work abilities and the work skills, while the work results are assessed by quantity and quality.

When assessing the value of work for the purposes of the aforementioned principle, a fixed framework is established, which makes a closer specification of the otherwise largely general principle. Moreover, the Labour Code declares the said criteria as only being applicable to the determination of remuneration for work, thus also reducing the risk of use of discriminatory practices and increasing the efficiency of inspection mechanisms.

Institutional framework:
Employees who consider themselves to be discriminated against in receiving their wages, salaries or remuneration pursuant to an agreement may apply to labour inspection bodies (the State Labour Inspection Office or the relevant Regional Labour Inspectorate) with their proposals, or may exercise their rights with courts of law. If the plaintiff states such facts before the court from which it may be inferred that the defendant/employer has committed direct or indirect discrimination for reasons enumerated in Section 133a of Act No 99/1963 Coll., the Code of Civil Procedure, as amended (on grounds of gender, race or ethnicity, religion, belief, disability, age or sexual orientation, in work activity or other dependent activity), the employee is at an advantage vis-à-vis the employer during the litigations because the defendant is obliged to prove that the principle of equal treatment was not breached (i.e. the principle of shared burden of proof will apply).

Under Section 21b, item a), of Act No 349/1999 Coll., on the Ombudsman, as amended, the Ombudsman provides methodological assistance to victims of discrimination when they apply for the initiation of proceedings on grounds of discrimination.

In its Conclusions on the previous report, the Committee requested answers to the following questions:
The Committee invite the next report to be submitted on Article 1 of the Additional Protocol, and subsequently on Article 4§3, to include all relevant information on equal pay.

Concerning equal pay for equal work and work of equal value for individual employees across different employers, the Czech Republic´s long-term position is that the application of the principle in the form as required by the European Committee of Social Rights cannot be achieved in practise.

The reason is that employers do not and cannot even have the possibility of finding the information on the particular earnings by employees of other employers or practically identifying whether particular employees of other employers do equal work or work of equal value. However, such information is indispensable for meeting that principle. Requiring the implementation of that principle without the availability of such information is purely formalistic, practically unfeasible and consequently unenforceable. Moreover, the required observance of the principle of equal pay for equal work and work of equal value across different employers would seriously affect the elementary functions of the wage (motivational, directional, allocating, compensatory), thus denying elementary economic

laws, primarily the one of supply and demand, because wage, as the cost of work, is closely linked also to the cost of living in the respective locality or region.

Based on these conditions and wage level, employees head for a higher pay for equal work and work of equal value, just like capital (investment) moves to the location with lower costs, i. e. – *inter alia* – wage cost. As a result of such migration, economic growth potential of those areas is greater, which can eventually lead to (economic as well as wage) levelling up with the previously leading region. The application of the principle of equal pay across different employers would curb this desirable movement and ultimately lead to even greater wage differences across different employers and to the underdevelopment (and thus higher unemployment) of those areas.

The effort to enforce equal pay for equal work and work of equal value in the nominal value across different employers in regions with different socio-economic conditions and different levels of the cost of living would consequently lead just to the opposite effect, i. e. to the actual wage incomparability among the employees doing equal work or work of equal value. This inequality is already evident within a single employer whose places of work are located in multiple territories with different social-economic conditions (this is strongly evident if the employer´s places of work are located in different EU countries). Thus the real wage of an employee with an equal pay for equal work and work of equal value in a region with a lower cost of living would be higher than that of an employee of the same employer in a region with a higher cost of living. The Czech Republic will appreciate more information on the application of the principle of equal pay for equal work and work of equal value and practical implementation of that principle across different employers in other countries.

Statistical data about levels of earnings:
Statistical data included in the Annex indicates that employed women in the Czech Republic earn less money than men. Although this is partly attributable to the maternal and family mission of women, the horizontal segregation of the labour market, the interruptions in women's professional careers (maternity leave, care of a child when the child is ill, etc.), and consequently a lower accumulation of professional and occupational experience or, where applicable, fewer possibilities for women to do time-consuming jobs or, where applicable, different physical (physiological) capabilities of women and men and the inappropriateness of physically demanding jobs for women, it is evident that the differences in the remuneration of women and men in the Czech Republic persist despite the measures adopted.

The Annex includes the summary:
1. of the average and median wages and salaries of women and men in 2009-2012, sorted by sector and education; the data source is the Average Earning Information System;
2. of the remuneration of men and women, sorted by sector, occupation and education; the data source is the Czech Statistical Office's publication "Structure of Employee Wages in 2009-2012". However, it is evident from the data that the gender pay gap gradually decreases.

Article 4, Section 4

"With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake: to recognise the right of all workers to a reasonable period of notice for termination of employment;"

The provisions concerning the length of the period of notice did not change during the reference period; the period of notice must be the same for both the employee and the employer, and the Labour Code guarantees a single minimum period of notice of 2 months. The Labour Code does not limit the upper threshold of the period of notice. **Hence the upper threshold of the period of notice is unlimited.**

The period of notice may be arbitrarily extended by contract beyond the statutory minimum length. Thus it is up to the contracting parties which length of the period of notice they will agree upon while the resulting period of notice remains adequate. This enables employers to negotiate longer periods of notice with employees whose experience is longer than 15 years or for other reasons.

Likewise, the period of notice may be contractually extended even after it begins to run (for example, in order to complete a project after the date of the scheduled termination of the employment).
Thus the legislation fully respects the will of the contracting parties under their labour law relationship, and the Czech Republic believes that it fully complies with the requirements of the said Article of the Charter.

In its Conclusions on the previous report, the Committee requested answers to the following questions:
The Committee asks for examples of notice periods arising from one-to-one negotiations.

The Labour Code in Section 67 on severance pay takes account of the length of the employee's labour law relationship and stipulates:

- once average (monthly) earnings where an employment to the employer lasted less than one year;
- twice average earnings where an employment to the employer lasted at least one year and less than two years;
- triple average earnings where an employment to the employer lasted at least two years.

Even the length of the support period for receiving unemployment benefits is, pursuant to Section 43 of Act No 435/2004 Coll., the Employment Act, differentiated by the job-seeker's age:
- up to 50 years – 5 months,
- 50 to 55 years – 8 months,
- above 55 years – 11 months).

In addition, a longer period of notice may sometimes contravene the interests of an employee who wishes to change a job for serious personal reasons, such as moving to another region or health reasons. This would make the employee apply for the employment termination by

mutual agreement (with which the employer may disagree, however). In that event, the employee is not entitled to severance pay.

In effect, the length of the period of notice is often counterbalanced in collective agreements by a higher negotiated severance pay, at an amount higher than the minimum amount set out in above mentioned Section 67 of the Labour Code. According to data available to the MoLSA, this applied to 34 % of the negotiated collective agreements in 2012 (notably in the insurance and construction sectors). More detailed information about the number of individually agreed periods of notice is unavailable to the MoLSA.

As the upper threshold of the period of notice is unlimited under the Labour Code and as the Labour Code and the Employment Act cover an employee with severance pay and unemployment benefits depending on employees age and length of employment, the Czech Republic believes that the legislation stipulating the period of notice complies with the requirements laid down by Article 4, paragraph 4, of the Charter.

Article 4, Section 5

"With a view to ensuring the effective exercise of the right to a faire remuneration, the Contracting Parties undertake: to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards."

The right to remuneration for work is one of the fundamental rights of an employee doing a dependent work (The principle of an employment relationship for consideration is established by the legal force of a constitutional act, Article 28 of the CFRF. Consequently, Section 2, paragraph 2, of the Labour Code considers the provision of wage, salary or remuneration for work to be among the preconditions of doing a dependent work. The employee's right to the wage, salary or remuneration pursuant to an agreement is established by Section 109, paragraph 1, of the Labour Code). The aforementioned right of the employee is related to the employer's obligation to pay the wage, salary or remuneration pursuant to an agreement to the employee in the agreed, determined or designated amount, to which the employee has become entitled by doing the work. The employer may only use the amount allocated to payroll on grounds laid down and to the extent limited by law. This also applies to the use of other income of the employee arising from the labour law relationship.

The full list of reasons for wage deductions is set out by Section 146 of the Labour Code. This is a mandatory provision, from which the parties to a labour law relationship may not diverge. By making a wage deduction for another reason not determined by law, the employer would fail to satisfy duly the employee's right to the wage, salary or remuneration pursuant to an agreement, with all the implications arising from this. [For example, an employee in a labour law relationship might, under the conditions set out in Section 56, paragraph 1, item b), exercise the right to terminate the employment relationship immediately or might claim interest on late payments in addition to the amount outstanding.]

The range of reasons for wage deductions can be divided depending on:

- whether the employer is obliged or authorised to make the deductions regardless of the employee's will (the employee must suffer the deductions made), or
- whether the deductions require the employee's consent.

An individual agreement of the employer with the employee is required by the Labour Code for the wage deductions to settle the employee's liabilities to the employer (Section 327) or to other parties. The agreement to settle the employee's liabilities to the employer must be entered into in writing. No formal requirements are laid down for an agreement on wage deductions in favour of third parties (to settle the employee's liabilities).

A collective agreement may include an arrangement on wage deductions to pay the membership fees of an employee who is a member of a trade union organisation. The employer may also negotiate this method of paying the membership fees in a written agreement with the trade union organisation. The employee's consent is required in both of the aforementioned cases.

Regardless of the employee's will, the employer is obliged to make wage deductions for the reasons specified in Section 147, paragraph 1, items a), b), and paragraph 2, of the Labour

Code (income tax, health insurance and social security insurance contributions, contributions to the state employment policy, execution of a decision).

Without the employee's consent, the employer is also allowed to deduct the amounts specified in Section 147, paragraph 1, items c) to e), of the Labour Code from the employee's wage, i.e. the amounts that the employer has paid to the employee but the conditions for paying them were not met (for example advance on travel expenses, if the employee has failed to account his expenditures or compensatory wage or salary paid in lieu of (annual) leave to which the employee has lost the entitlement).

A specific reason for wage deductions is to secure a receivable by an agreement on deductions from the wage and other income pursuant to Section 551 of Act No 40/1964 Coll., the Civil Code, as amended. This securing facility may be used for receivables in respect of maintenance payments pursuant to Section 85 et seq. of Act No 93/1963 Coll., on family, as amended, and for other receivables where so provided for by law (however, no other statutory provision of this sort exists at the moment).

ARTICLE 5: THE RIGHT TO ORGANISE

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

On 22 March 2012, New Civil Code, the Act No 89/2012 Coll., (hereinafter referred to as the "NCC") entered into force. The NCC is scheduled to take effect on 1 January 2014. On the date of the NCC taking effect, it repeals Act No 83/1990 Coll., on association of citizens. Legal persons – associations will be newly referred to as societies (today, trade union organisation as well as employers' organisation is considered to be one of the forms of association). The NCC includes the legal provisions that govern societies in Part One (General Part), Title II (Persons), Volume 3 (Legal Persons), Section 2 (Corporations), subsection 2 (Society) in sub-sections 214-302 of the NCC.

Section 3025 of the NCC is relevant for trade union organisations and employers' organisations as one of the forms of society; it lays down the following:
"(1) Provisions of this law that governs legal persons and society shall be reasonably applied to trade union organisations and employers' organisations only to the extent to which this does not contravene their nature as representatives of employees and employers under international treaties binding on the Czech Republic and governing the freedom of association and the protection of the right to organise.
(2) A trade union organisation, an employers' organisation and their branch organisations are established on the date following the day on which the notification of their establishment was delivered to the relevant public authority."

The explanatory statement for this provision states: "Trade union organisations and employers' organisations also have the legal nature of societies. In this context, it seems to be practical to set forth explicitly that the provisions on societies do not apply to trade union organisations and employers' organisations to the extent to which this is precluded by legislation governing the freedom of association and the protection of the right to organise in trade unions. Such legislation is the Convention concerning Freedom of Association and Protection of the Right to Organise (No 489/1990 Coll.)."

Paragraph 2 of Section 3025 of the NCC makes it clear that the constitution of a society as a trade union organisation or an employers' organisation will (unlike the current situation) no longer be subject to the registration principle, and will only be subject to the registration (notification) principle instead, which fully corresponds to Article 2 of the Convention as well as to Article 5 of the Charter and its interpretation presented by the European Committee of Social Rights.

Paragraph 1 of Section 3025 subsequently indicates the precedence of the rights and principles set out in international treaties binding on the Czech Republic and governing the freedom of association and the protection of the right to organise, which, in addition to the Convention referred to in the explanatory report, also include the Charter, in the application of

the NCC provisions governing societies and legal entities to trade union organisations and employers' organisations.

Another legislative change associated with Article 5 of the Charter was the adoption of the Labour Code Amendment. This Act No 365/2011 Coll. (hereinafter referred to as the "Amendment") entered into force on 6 December 2011 and took effect on 1 January 2012. In paragraphs 3 and 4 of Section 286 of the Labour Code, the Amendment includes a closer specification of the competence of trade union organisations at their respective employers as follows:

"(3) A trade union organisation operates at its employer and is only entitled to act if it is so authorised pursuant to constitution of an association and if at least 3 of its members are employed with the employer; under these conditions, only the trade union organisation or its division that is authorised to act on behalf of the trade union organisation may bargain collectively and enter into collective agreements.
(4) The trade union organisation's authorisations vis-à-vis the employer shall arise on the date following the day when the organisation made the employer aware of its compliance with the conditions pursuant to paragraph 3; if the trade union organisation ceases to comply with those conditions, the organisation is obliged to make the employer aware of this without undue delay."

The explanatory statement on the Amendment states: "The legislation in force and effect does not stipulate expressly when a trade union organisation operates at its employer and consequently when the organisation's authorisations vis-à-vis the employer and the employer's obligations vis-à-vis the trade union organisation arise. In effect, problems and disputes arise in particular where the trade union organisation has its members from multiple employers and where a very small trade union organisation is involved in the collective bargaining while, by law, it negotiates on behalf of all employees. The trade union structure is very diverse and the number of trade union organisation's members varies. The constitution of an association of trade union organisations are not accessible to public.

The Ministry of Interior keeps the records on associations and their divisions that are authorised to act on their own behalf. However, this is no public list. It only contains the name, address of the registered office and, since 2001, also the identification number of the association. Sometimes, an employer is not aware of the existence of its trade union organisation until disputes and problems occur. This is why it is proposed to make a closer specification as to when a trade union organisation operates at its employer and to lay down that the trade union organisation's authorisations do not arise until the organisation demonstrates to the employer that it complies with the defined conditions (note: "prove" was replaced by "notifies" in the legislative process). The establishment of a unincorporated association requires at least three members, who must be identified. Hence it is fair to put in place a similar condition for the possibility of a trade union organisation to operate at its employer, and the obligation to demonstrate that the condition has been met."

The last major change pertaining to Article 5 of the Charter was the adoption of the Anti-discrimination Act, the Act No 198/2009 Coll., which came into force on 29 June 2009 and took effect on 1 September 2009.

In its Conclusions on the previous report, the Committee requested answers to the following questions:

The Committee observes that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted the divergence of views between, on the one hand, the International Trade Union Confederation of Trade Union (ITUC) and the Czech – Moravian Confederation of Trade Unions (CMKOS) which claims that there are frequent anti-union practices, especially in newly established companies, and, on the other, the Labour Inspectorate which had not registered any proven case of discrimination. In view of this divergence, the CEACR asked for comments from the Government. Likewise, the Committee asks for information to be provided in the next report.

Provisions of Sections 10 and 23 of the Labour Inspection Act lay down the misdemeanours and administrative offences in respect of cooperation by the employer and the body acting on behalf of employees. A penalty of up to CZK 200,000 may be imposed for breaching these provisions. This primarily includes breaching the obligations relating to the creation of the conditions for activities of employee representatives, provision of information to employees, consultations with employees and trade union organisations, etc.

The entities that submit their proposals for inspections to Labour Inspectorates also include trade union organisations. Although trade union organisations are not authorised by law to participate in the inspection unless explicitly approved by the employer (they are not inspection bodies), they are entitled to be notified of the commencement of the inspection. This also applies to the employee council and the health and safety protection at work representative if these operate at the employer.

From August 2011 to June 2013, the State Labour Inspection Office received a total of 67 proposals submitted by representatives of trade union organisations, pointing out breaches of labour law regulations (one proposal might point out multiple areas):

- **24 proposals applied to the cooperation by the employer and the body acting on behalf of employees;**
- **1 proposal pointed out the employer's reluctance to bargain collectively (the collective agreement was concluded through an arbitrator in this case);**
- **1 proposal pointed out the bossing of trade unionists (not proved to be justified; it was an organisation of 3 employees who misused that position to protect themselves from being dismissed);**
- 17 proposals pointed out unequal treatment, notably in respect of remuneration;
- 26 proposals applied to the creation, change and termination of an employment relationship or agreements on work done outside employment;
- 24 proposals applied to remuneration;
- 6 proposals pointed out compensatory income issues;
- 22 proposals applied to working time;
- 3 proposals applied to holiday;
- 10 proposals applied to health and safety protection at work;
- 20 proposals pointed out other issues of various kinds.

Of the aforementioned 67 proposals, 9 proposals were justified, 15 proposals were partly justified while the inspections in response to 12 proposals failed to prove what the proposals pointed out. 9 additional proposals were unjustified; 8 proposals were resolved by means other than inspection; 14 proposals are still under investigation.

The Labour Inspectorate bodies imposed 19 fines, totalling CZK 423,000, for the deficiencies found (numerous employers proved to face more than one deficiency). Where a deficiency is found, the Labour Inspectorate body also imposes measures on the employers to eliminate the deficiencies found, with follow-up inspections carried out in selected cases.

As the Committee's question includes no details regarding the described practices against trade unions, the MoLSA has no possibility to examine how the individual cases were handled, how they were investigated or what the result was. If such information is available, a meeting of the stakeholders (MoLSA, State Labour Inspection Office, Czech-Moravian Trade Union Confederation) may be convened in order to discuss and resolve the disputes specified.

Number of proposals submitted by trade union organisations in the reference period

Year	Proposals for inspections submitted by trade union organisations	All proposals for inspections (for the sake of comparison)
2009	43	6,052
2010	49	6,169
2011	37	5,930
2012	50	11,131
Total	**179**	**29,282**

ARTICLE 6: THE RIGHT TO BARGAIN COLLECTIVELY

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

1. ***To promote joint consultation between workers and employers;"***

No changes were made to the relevant legislation in the reference period.

<u>In the Conclusions of its previous report, the Committee required answers to the following questions:</u>

The Committee asks that the next report provide a full and up-to-date description.

This is detailed in the comment on Article 2 of the Additional Protocol.

Article 6, Section 2

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

2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers' organisations and workers' organisations, with a view to regulation of terms and conditions of employment by means of collective agreement;

No change has been made to the legislation governing the conclusion and expansion of higher-level collective agreements since the last report. Act No 2/1991 Coll., on collective bargaining, governs the expansion of higher-level collective agreements to apply to more employers in the relevant sector under precisely defined conditions.

The contracting parties to a higher-level collective agreement may jointly propose the promulgation, in the Collection of Laws of the Czech Republic, of a notification by the Ministry of Labour and Social Affairs that their higher-level collective agreement is also binding on other employers predominantly operating in the sector designated by the code according to the Classification of Economic Activities. The notification by the MoLSA will be promulgated in the Collection of Laws if the higher-level collective agreement has been concluded

- by an employers' organisation whose employers have the largest number of employees in the sector where the expansion of the binding nature of the higher-level collective agreement has been proposed, or
- by the relevant superior trade union body which acts for the largest number of employees in the sector where the expansion of the binding nature of the higher-level collective agreement has been proposed.

The proposal to expand the binding nature of the higher-level collective agreement must be submitted in writing, signed by the contracting parties on the same document, and must contain the designation of the higher-level collective agreement and the sector where its binding nature should be expanded to apply to more employers.

In addition, the proposal must include:

- the lists of employers on whom the higher-level collective agreement is binding, including the total number of their employees; the lists of employers who are members of the other employers' organisations in the same sector, including the total number of their employees, and the codes according to the Classification of Economic Activities, or
- the total number of employees whom the relevant superior trade union body represents, i.e. the list of employers where this body is active through the relevant trade union bodies and the total number of their employees, as well as the number of employees represented by a different relevant superior trade union body which is active in the same sector, i.e. the list of employers where this body is active through the relevant trade union bodies, the number of their employees and their code according to the Classification of Economic Activities.

For these purposes, the employers' organisation is obliged to communicate, on request and in writing, the list of employers who are its members and the total number of their employees to the MoLSA and to the employers' organisation operating in the same sector. For these

purposes, the superior trade union body is obliged to communicate, on request and in writing, the total number of the employees it represents and the list of employers where the relevant trade union organisation operates to the MoLSA and to the superior trade union body operating in the same sector.

If the proposal fails to comply with the defined requirements, the MoLSA will request that the parties eliminate any deficiencies or supplement the proposal, as appropriate, and will set an appropriate deadline for this. In addition, the MoLSA will instruct the parties that the failure to eliminate the deficiencies or to supplement the proposal, as appropriate, will prevent the MoLSA from promulgating the notification. The contracting parties to the higher-level collective agreement may withdraw their proposal within 15 days from delivering it.

If the defined conditions are met and the proposal contains the defined essential elements, the MoLSA will send the notification to be promulgated in the Collection of Laws without undue delay, but not before the expiry of a 15-day period. The notification will also specify where to read the higher-level collective agreement the binding nature of which has been expanded to apply to more employers. In addition, the MoLSA will electronically send the higher-level collective agreement to regional offices of the Labour Office of the Czech Republic and will publish it in a manner which allows remote access. A regional office of the Labour Office of the Czech Republic enables everybody who requests so to view the higher-level collective agreement the binding nature of which has been expanded to apply to more employers.

The higher-level collective agreement is binding from the first day of the month following its promulgation in the Collection of Laws on other employers predominantly operating in the sector concerned, with the exception of employers

- who have been declared bankrupt as of no later than that date;
- whose employees include more than 50 % of natural persons with disabilities as of that date;
- who employ less than 20 employees as of that date;
- who have experienced an extraordinary event the consequences of which persist as of that date, or
- on whom a different higher-level collective agreement is binding.

Number of concluded higher-level collective agreements (HLCAs):
Higher-level collective agreements filed with the MoLSA from 2009 to 2013

Year	Number of HLCAs
2009	11 + 1
2010	5 + 1
2011	9 +3
2012	8
Until June 2013	13

Note: Higher-level collective agreements are often concluded for longer periods of time (such as 2009-2012). Amendments to these collective agreements are also subject to filing. Amendments to the already-filed higher-level collective agreements that extend the collective agreement for another period concerned are specified in the table behind the '+' sign. The aforementioned statistics do not include agreements that have been expanded to apply to more employers; these are specified separately in the table below.

Expansion of the binding nature of collective agreements to apply to more employers

Year	Number of expansions of the binding nature of HLCAs or amendments to HLCAs
2009	4
2010	5
2011	5
2012	3
Until June 2013	5

<u>In the Conclusions of its previous report, the Committee required answers to the following questions:</u>
The Committee asks the next report to indicate how often the procedure of higher-level collective agreements extension is used in practise and what impact it has on the coverage of the workforce by collective agreements.

The Committee requests that the next report contain an up-to-date overview of the situation, including information on how many of the total number of employees and employers in the Czech Republic are covered by collective agreements.

The MoLSA lacks the data as to how many of the total number of employers and employees in the Czech Republic are subject to collective agreements. The Committee also requests information regarding the frequency of expanding the collective agreements and the impact of their expansions on the number of workers who are subject to collective agreements. From 2009 to 2013 (until June), the binding nature of 22 higher-level agreements was expanded. As higher-level collective agreements are expanded to apply to an indefinite number of employers, who are determined by generic features (employers predominantly operating in a sector designated by a code according to the Classification of Economic Activities) rather than to individually designated employers, the MoLSA has neither the data about the number of employers to which the binding nature of the agreements has been expanded, nor the data about the number of their employees.

Article 6, Section 3

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

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

No changes were made to the relevant legislation in the reference period.

<u>In the Conclusions of its previous report, the Committee required answers to the following questions:</u>
It asks that the next report provide a full and up-to-date description of the situation.

<u>Appointment of conciliator and arbitrator</u>
Proceedings before a conciliator are governed by Section 11 et seq. of Act No 2/1991 Coll., on collective bargaining. These are proceedings where the conciliator suggests and recommends possible solutions to the conflict and serves as an unbiased person in a dispute where the parties are unable to reach a compromise by themselves. The parties may choose their conciliator by themselves after they so agree. If the contracting parties fail to agree on who should be their conciliator, either party to a dispute about the conclusion of a collective agreement and to a dispute about the performance of obligations under a collective agreement may apply to the MoLSA to appoint a conciliator.

The proposal to appoint a conciliator to resolve a dispute about the conclusion of a collective agreement may not be submitted before the expiry of 60 days from the submission of a written proposal to conclude the collective agreement; the proposal to appoint a conciliator to resolve a dispute about the performance of obligations under a collective agreement may be submitted anytime if the contracting parties have failed to agree as to who should be their conciliator.

The conciliator will communicate its proposal to resolve the dispute to the contracting parties in writing. The conciliator cannot issue a binding decision in a dispute. The conciliator is only authorised to submit proposals for a solution, and it is only up to the parties to the dispute whether they will accept such a solution.

If the proceedings before the conciliator fail, the contracting parties may agree to apply to an arbitrator to resolve their dispute. The application for resolving the dispute should be submitted in writing. The subject matter of the dispute must be exactly defined, including the specification of the previous efforts to resolve the dispute, documented by written materials. The other party's opinion must also be enclosed with the application. The arbitration proceedings cannot be initiated without the aforementioned agreement. Only if the contracting parties fail to agree on the arbitrator in a dispute about the conclusion of a collective agreement at a workplace where strikes are prohibited or in a dispute about the performance of obligations under a collective agreement, the arbitrator will be appointed by the MoLSA on a proposal from either contracting party. The arbitrator will decide the dispute within the scope of proposals put forward by the contracting parties.

If the collective agreement is not even concluded after proceedings before a conciliator and the contracting parties fail to apply for the dispute resolution by an arbitrator, a strike may be

called as an extreme instrument in a dispute about the conclusion of a collective agreement (see below – paragraph 4).

Number of applications to appoint a conciliator / arbitrator:

Year	Conciliators	Arbitrators
2009	3, of which 1 was discontinued	0
2010	2, of which 1 was discontinued	0
2011	10, of which 1 was discontinued	0
2012	12, of which 1 was discontinued	0
Until June 2013	9, of which 1 was discontinued	2

Article 6, Section 4

"With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake and recognise:

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

The right to strike is set forth in Article 27 of the CFRF as one of the fundamental economic, social and cultural rights.

A strike in a dispute about the conclusion of a collective agreement is governed by Section 16, paragraphs 1 and 2, of the Collective Bargaining Act, and is defined as a partial or full interruption of employees' work.
Solidary strike is a strike to support the requirements of employees who are striking in a dispute about the conclusion of a different collective agreement (Section 16, paragraph 3, of the Collective Bargaining Act).

However, in the CFRF is not specified exactly which of those strikes to protect such interests are considered to be lawful. As a result, the lawfulness of the strikes not specifically determined by law (i.e. the strikes outside the negotiation process to conclude a collective agreement) is not precluded, and this fully complies with the principle set forth by Article 2, paragraph 4, of the Constitution as well as by Article 2, paragraph 3, of the CFRS, which provides that everybody may do what is not prohibited by law and nobody may be compelled to do what is not prescribed by law.

The legal assessment of the lawfulness of a strike is the responsibility of courts of law; in one case, it has already been inferred that the right to strike may also be exercised outside collective bargaining where the protection of economic and social interests is concerned, and that the exercise of such right is not subject to the restrictions otherwise imposed by law on the exercise of the right to strike in a dispute about the conclusion of a collective agreement.

"If law only governs the rules of strike in relation to collective bargaining, the conclusion is that there is no other (statutory) restriction on the right to strike in Czech law. Hence the right to strike is guaranteed (Article 27, paragraph 4, of the CFRF) and, in accordance with constitutional principles, the right is not restricted (except for strikes in relation to collective bargaining)." (Judgement 21 Cdo 2104/2001 *by the Supreme Court of the Czech Republic).*

In the Conclusions of its previous report, the Committee noted that:
Strikes are unlawful for certain categories of workers listed in Section 20 (g) to (k) of the Collective Bargaining Act. These include, inter alia, employees in nuclear power stations, oil or gas pipelines, air traffic controllers or fire-fighters.
In order to assess whether the situation is in conformity with Article 6§4 of the Charter, the Committee asked in its previous conclusions whether the strike ban extends to all the employees within the aforementioned categories regardless of their particular functions and further repeated its request for information what interpretation was given in practice to the restriction on the right to strike of the following groups of employees:

- *employees of health care and social care establishments ("should such strike endanger the life and health of citizens);*

- *employees working in telecommunication operations ("should their strike endanger citizens' lives, health or property").*

The Committee requests the information as to how the restrictions on the right to strike in selected categories of employees are interpreted in practice.

Article 44 of the CFRF restricts the right to strike for those occupations that are directly essential in protecting life and health. Section 20 of the Collective Bargaining Act enumerates the cases where strike is illegal. The strike ban subsequently needs to be interpreted in the individual cases in such a way that the strike would have to threaten the life, health or property directly.

The restriction on the right to strike is justified in the events of activities required for securing such operations or such activities the interruption or halt of which might directly threaten human life and health or property. Thus the strike ban only applies to those employees individuals of undertakings, healthcare institutions or social care institutions where the strike would directly threaten the life, health or property of people (intensive care units, emergency rescue teams, air traffic control, members of fire brigades). **The relevant workplaces or employees of a particular employer are determined according to features generally set out by law.**

The MoLSA has received no signals of any problems arising from the aforementioned provisions in practice. Strikes in the Czech Republic are rare, with social cohesion being successfully maintained. In the event of a strike, effort is always made to ensure that minimum services, depending on circumstances, are provided.

REPORT ON THE APPLICATION OF ADDITIONAL PROTOCOL TO THE EUROPEAN SOCIAL CHARTER

Article 2

Right to information and consultation

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

a. to be informed regularly or at the appropriate time and in a comprehensive way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and
b. to be consulted in good time on proposed decision which could substantially affect the interest of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking."

The right of employees to be informed and consulted in the labour law relationship is governed by the provisions of Section 276 - 299 of the Labour Code. The employer is obliged to inform its employees and to deal with them in a straightforward manner unless a trade union organisation, employees council or an occupational safety and health protection (OSH) representative operates at the employer. The rights of the employee representatives must not be disadvantaged and these representatives must not be discriminated against because of doing such activity.

Consultations of employers with employees also take place via the Government's advisory body for occupational safety and health protection (Government's Council for OSH, hereinafter referred to as the "Council"), where public administration bodies and organisations of employers and employees, including selected experts in that field, are represented. The Council is chaired and its meetings are presided by the Minister of Labour and Social Affairs. The Council has its standing working committees, which are thematically focused on the individual areas of labour law and convened on a regular basis.

Labour law consultation and information are primarily provided by the State Labour Inspection Office, Occupational Safety Research Institute, public research institution, as well as by individual trade union organisations.

In the pursuit of their activities, Labour Inspectorate bodies cooperate with employers as well as employee representatives, of whom they are most frequently in talks with representatives of trade union organisations. Employee councils and OSH representatives are not established very often by employees.

In its Conclusions on the previous report, the Committee requested answers to the following questions:

The Committee asks the next report to provide information on the material scope of information and consultation.

The Committee asks the next report to provide updated information on enforcement of the right to information and consultation and remedies available to workers where their rights have not been respected, it also asks the next report to provide the number of inspections carried out by the Labour Inspectorate as well as the number of sanctions imposed in this particular field.

To the question from the European Committee of Social Rights concerning the material scope of information and consultations, no changes were made to the legislation regulating information and consultation during the reference period.

To the question from the European Committee of Social Rights concerning the remedial actions in the event of failure to comply with the aforementioned obligations, we respond as follows:

The failure to comply with the obligation to inform or consult may constitute an misdemeanour or an administrative offence pursuant to Act No 251/2005 Coll., on labour inspection.

This includes misdemeanours in respect of cooperation by the employer and the body acting on behalf of employees. A natural or legal person who commits an misdemeanour concerning the cooperation by the employer and the body acting on behalf of employees, by breaching the aforementioned obligations vis-à-vis the relevant trade union bodies, employee councils or occupational safety and health protection representatives, may be fined up to CZK 200,000.

If the Labour Inspectorate has carried out an inspection on the basis of a written proposal, the Labour Inspectorate will notify the result, in writing, to the person who submitted the proposal. The relevant procedural regulations are the Act No 255/2012 Coll., on inspection (Inspection Rules) and, alternatively, Act No 500/2004 Coll., the Code of Administrative Procedure.

Provision of information means providing the necessary data from which the status of the fact notified can be clearly ascertained and, where appropriate, a view on it can be taken. The employer is obliged to provide information properly and in sufficient time for the employees to be able to assess the information and, where applicable, to prepare for a consultation and to express their view before the measure is taken.

Consultation means a discussion between the employer and employees, exchange of views and explanations in order to reach an agreement. The employer is obliged to ensure that the consultation takes place properly and in sufficient time for the employees to be able to express their views on the basis of the information provided and for the employer to be able to take them into account before the measure is taken. Employees are entitled to obtain a reasoned reply to their views during the consultation.

Before the measure is taken, employees are entitled to request additional information and explanation. Employees are also entitled to request a personal meeting with the employer at the relevant management level, depending on the nature of the item to be discussed. The employer, employees and employee representatives are obliged to cooperate and to act in accordance with their legitimate interests.

The employer is obliged to inform its employees about:
a) the employer's economic and financial situation and its likely developments;

b) the employer's activity, its likely developments, its environmental impacts and the employer's environmental measures;

c) the employer's legal status and its changes, the internal structure and the person authorised to act on behalf of the employer in labour law relations, the employer's predominant activity designated by a code according to the Classification of Economic Activities and the changes made to the subject matter of the employer's activity;

d) essential issues of working conditions and their changes;

e) matters to the extent as set out at the consultation;

f) the measures by which the employer ensures that male and female employees are treated equally and that no discrimination occurs;

g) the offer of vacancies of indefinite duration where such vacancies could be filled by employees working for the employer in fixed-term employment relationships;

h) occupational safety and health protection;

i) matters to the extent as set out by the arrangement on the establishment of the European Works Council or on the basis of a different negotiated procedure for information and consultation at the transnational level or to the extent as set out in the Labour Code.

The obligations set out above under items a) and b) do not apply to employers with fewer than 10 employees.

The employer is obliged to discuss the following with its employees:
a) the employer's likely economic developments;

b) the employer's contemplated structural changes, its streamlining or organisational measures, its measures with an impact on employment, notably those relating to collective dismissals;

c) the latest status and structure of employees, likely employment developments with the employer, essential issues of working conditions and their changes;

d) transfer of the undertaking;

e) occupational safety and health protection;

f) matters to the extent as set out by the arrangement on the establishment of the European Works Council or on the basis of a different negotiated procedure for information and consultation at the transnational level or to the extent as set out in the Labour Code.

The obligations set out above under items a) to c) do not apply to employers with fewer than 10 employees.

The Labour Code provides trade union organisations with broader rights to information and consultation than such rights provided to employees or, where applicable, to employee councils and occupational safety and health protection representatives because only trade union organisations are authorised to bargain collectively.

In addition, the employer is obliged to inform a trade union organisation about the development of wages and salaries, of the average wage or salary and of their individual components, including the sorting by individual professional groups unless agreed otherwise.

Moreover, the employer is obliged to discuss the following with a trade union organisation:

a) the employer's economic situation;

b) the amount and pace of work;

c) changes in the work organisation;

d) the system of employee remuneration and evaluation;

e) the system of employee training and education;

f) the measures to generate conditions for employing natural persons, notably the young, people caring for a child younger than 15 and natural persons with disabilities, including the essential matters of employee care, measures to improve hygiene and health conditions at work and working environment, organisation of employees' social, cultural and physical culture needs;

g) other measures concerning a larger number of employees.

Inspection activity

As stated above, the right to information and consultation is set forth in the Labour Code while the Labour Inspection Act also defines an misdemeanour and an administrative offence for the employer breaching its obligation to inform its employees or employees representatives about the matters set out by the Labour Code or breaching the obligation to consult the aforementioned matters.

In the pursuit of their inspection activities, labour inspection bodies most frequently come across trade union organisations operating at employers while they rarely see employee councils or occupational safety and health protection representatives operate there (employees do almost not at all use the possibility of establishing these).

Found breaches of the employees' right to information and consultation, and the penalties imposed:

	Number of breaches found	Fines
2009	17	A total of 7 fines of CZK 108,333
2010	10	
2011	6	
2012	15	

Article 3

Right to take part in the determination and improvement of the working conditions and working environment

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

- ***a. to the determination and improvement of the working conditions, work organisation and working environment;***
- ***b. to the protection of health and safety within the undertaking;***
- ***c. to the organisation of social and socio-cultural services and facilities within the undertaking;***
- ***d. to the supervision of the observance of regulation on these matters.***

The right of employees to take part in the determination and improvement of the working conditions and working environment is included in the provisions of Sections 106 and 108 of the Labour Code.

The supervision is the responsibility of the State Labour Inspection Office and the Regional Labour Inspectorates in keeping with the Labour Inspection Act, which lays down the constituent elements of misdemeanour and administrative offences, corresponding to the aforementioned obligations, in Section 17, paragraph 1, items b) and w), and in the provisions of Section 30, paragraph 1, items b) and w). Penalties of up to CZK 300,000 may be imposed for such misdemeanours and administrative offences.

The rights and obligations of employees are governed by the provisions of Section 106 of the Labour Code, which provides:

(1) The employee is entitled to the securing of his occupational safety and health, to receive the information on the risks which his work entails and the information on measures having been taken as a prevention (protection) against the effects of such risks; the information must be comprehensible for the employee.

(2) The employee has the right to refuse to do work which he reasonably considers as posing direct and significant threat to his life or health, or the lives or health of other individuals; this refusal may not be regarded as the employee's failure to fulfil his obligation.

(3) The employee has the right and obligation to participate in the creation of a safe and healthy working environment, in particular by applying determined (and by the employer taken) measures and by his participation in the solution of issues related to occupational safety and health.

(4) Every employee shall take all possible care of his own safety and health, and also of the safety and health of other persons (individuals) on whom his conduct or negligence at work has an immediate effect. The knowledge of fundamental obligations arising from statutory provisions and regulations and from the employer's requirements concerning occupational

safety and health shall form an integral and permanent part of the employee's qualification prerequisites. The employee shall:

(a) participate in training, arranged by his employer, aimed at occupational safety and health and have his knowledge checked;

(b) undergo preventive medical checkups (relating to his occupational health), examinations or vaccinations prescribed by other statutory provisions;

(c) comply with the statutory provisions and other regulations and the employer's instructions concerning the safeguarding of occupational safety and health with which he has been duly acquainted and follow the principles of safe conduct at the workplace and the employer's information;

(d) observe the determined working (operating) procedures, use specified means of work and transport, personal protective and safety working aids and protective equipment (devices) and not wilfully alter them or put them out of use (operation);

(e) not consume alcoholic drinks or not abuse addictive substances at the employer's workplaces and during his working hours also outside such workplaces, not enter the employer's workplaces while under their influence, and not smoke at workplaces and other premises where non-smokers would be exposed to the effects of smoking.
The prohibition of consumption of alcoholic beverages shall not apply to those employees working in unfavourable microclimatic conditions provided that they consume beer with a reduced alcohol content and to those employees, whose consumption of alcoholic drinks is an integral part of their performance of working tasks or is usually associated with performance of these tasks;

(f) inform his superior of any irregularities and defects at his workplace which endanger, or might endanger, immediately and substantially occupational safety or health of other employees, in particular of occurrence of an imminent event (a disaster), irregularities in organizational measures, or defects or breakdowns in technical equipment and safety systems to prevent such breakdowns;

(g) participate in removal of irregularities which have been ascertained by inspections carried out by inspectorates or other agencies (bodies) authorized thereto under other statutory provisions ; the employee's participation therein shall depend on the type of his work and his possibilities;

(h) immediately inform his superior of an industrial injury sustained by him provided that his condition of health enables him such reporting, or immediately inform his superior of an industrial injury sustained by another employee or another natural person (individual) if he witnessed the injury, collaborating in the explanation of its causes;

(i) undergo a test if instructed to do so by his superior, who is authorized in writing by the employer to give such instruction, for the purpose of establishing whether the employee is not under the influence of alcohol or other addictive substances.

The contribution of employees to the protection of health and safety within the undertaking is governed by the provisions of Section 108 of the Labour Code:

(1) Employees may not be deprived of their right to participate in the solution of occupational safety and health issues through their trade union organization and their representative for occupational safety and health.

(2) The employer shall enable the trade union organization and the representative for occupational safety and health or directly his employees:

(a) to participate in a consultation on occupational safety and health or shall provide them with the information about the consultation;

(b) to present information, comments and proposals for taking measures concerning occupational safety and health, in particular proposals for the elimination of risks or restriction of their effects if such risks cannot be eliminated;

(c) to consult

1. substantial measures concerning occupational safety and health,

2. the assessment of risks, adoption and implementation of measures to reduce their effects, performance of work in risk-monitored (risk-controlled) areas and classification of jobs into categories in accordance with other statutory provisions,

3. the organizing of training courses on statutory provisions and other regulations aimed at safeguarding occupational safety and health,

4. the determination of a qualified person (individual) to deal with risk prevention in accordance with the Act on Ensuring Other Conditions for Occupational Safety and Health Protection.

(3) The employer shall further inform the trade union organization and the representative for occupational safety and health or directly his employees of:

(a) those employees determined to organize providing first aid, calling medical assistance (ambulance), the Fire Brigade and the Police of the Czech Republic and to organize the evacuation of employees;

(b) the selection and provision of occupational medical services;

(c) the determination of a qualified person to deal with risk prevention in accordance with the Act on Ensuring Other Conditions for Occupational Safety and Health Protection;

(d) any other matter which may have a substantial impact on occupational safety and health.

(4) The trade union organization and the occupational safety and health representative or employees shall cooperate with the employer and individuals qualified to deal with risk prevention under the Act on Ensuring Other Conditions for Occupational Safety and Health Protection so that the employer can ensure safe and non-hazardous working conditions (to

the employees' health) and meet all duties prescribed by other statutory provisions and measures taken by authorities (agencies) concerned with the inspection of occupational safety and health under other statutory provisions.

(5) The employer shall organize at least once a year checks on occupational safety and health at all workplaces and facilities of his undertaking, acting thereby in agreement with the trade union organization and with consent of the representative of the employees for occupational safety and health, and rectify any ascertained irregularities.

(6) The employer shall arrange training for the trade union organization and the employees' representative for occupational safety and health and thus enable them the proper exercise of their function, and he shall also make available to them the statutory provisions and other regulations on occupational safety and health together with:

(a) the documents on the search and assessment of risks, measures taken to eliminate risks or to reduce their effects on employees, and measures concerning the suitable organization of employees' occupational safety and health;

(b) records and reports of industrial injuries (occupational accidents) and recognized occupational diseases;

(c) the documents of inspections carried out and measures taken by authorities (agencies) concerned with occupational safety and health pursuant to other statutory provisions.

(7) The employer shall enable the trade union organization and the employees' representative for occupational safety and health to make comments when inspections are performed by authorities (agencies) concerned with the supervision of occupational safety and health pursuant to other statutory provisions.

In its Conclusions on the previous report, the Committee requested answers to the following questions:

The Committee asks for information concerning the involvement under the new Labour Code of workers or their representatives in matters covered by Article 3 of the Additional Protocol other than health and safety, i.e. working conditions, work organisation and working environment, as well as the organisation of social and socio-cultural services and facilities.

Proposals for inspections pointing out the breaches of this rule do to occur (if they do, they are occasional). Nevertheless, findings in this area sometimes occur during inspections:

	Number of breaches found	Fines
2009	4	None
2010	0	
2011	6	
2012	5	

Note: As concerns fines, it should be noted that most of the fines imposed by labour inspection bodies are cumulative, i.e. fines imposed for several breaches found (with the monitored breach being one of them).

To the question from the European Committee of Social Rights concerning the "contribution of workers or their representatives, under the new Labour Code, to the matters, pursuant to Article 3 of the Additional Protocol, other than health and safety, i.e. working conditions, work organisation and working environment, as well as the organisation of social and socio-cultural services and facilities," we respond as follows:

General as well as specific provisions have been added to the new Labour Code to encourage the contribution of employee representatives to the determination and improvement of the working conditions and working environment; moreover, these provisions are often laid down as the "employer's obligation to make this possible," under a possible penalty for a breach or invalidity of such action.

Examples:
Section 320 of the Labour Code

(1) Bills (draft legislation) and other proposed regulations concerning important interests of employees, in particular economic, production, working, remuneration, cultural and social conditions, shall be consulted with the competent trade union organizations (bodies) and the competent employer organizations.

(2) The central administrative authorities (agencies) which issue implementing labour (employment) regulations shall do so after consulting the competent trade union organization and the competent employer organization.

(3) The competent government authorities shall consult the trade union organizations on the issues concerning working and living conditions of employees and shall supply the trade union organizations with the necessary information.

(4) Those trade union organizations which represent in labour (employment) relations employees (civil servants) employed by the Government , or employed by organizations receiving contributions , by state funds and by self-governing local area entities shall in particular have the right:

(a) to discuss and express opinions on the draft documents concerning the employment conditions of the said employees and their numbers;

(b) to submit proposals, discuss (negotiate) and express opinions on the draft documents regarding the improvement of the conditions for performance of work and remuneration.

Section 321 of the Labour Code
Trade union organizations (bodies) shall ensure compliance with this Code, the Employment Act, statutory provisions on occupational safety and health protection and other labour statutory provisions.

Section 306 of the Labour Code
"Work rules" (or "work regulation") shall be a special type of internal rules (internal regulations); work rules shall detail the provisions of this Code or other statutory provisions, taking regard to specific conditions at a certain employer's undertaking, concerning the

employer's and his employees' obligations arising from labour relations. Where a trade union organization exercises activity within an undertaking, the employer may issue or modify the work rules (work regulations) only with a prior written consent of the trade union organization, or else the issue or modification of such work rules shall be null and void.