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EUROPEAN SOCIAL CHARTER

12th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF BULGARIA

(Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29

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

Report registered by the Secretariat on 19 May 2014

CYCLE 2014

TWELFTH NATIONAL REPORT

For the period January 1st 2009 — December 31st 2012
Submitted to the Council of Europe by the Government of the Republic of Bulgaria in accordance with article C of the European Social Charter (revised)
regarding the measures for the implementation of the adopted provisions thereof.

Content:

Introduction

This Report was prepared after consultation and cooperation with the competent authorities.
In accordance with Article C of the ESCh (rev.), the Report was agreed with the national representative organizations of employers, employees and workers.
The Report contains information on the implementation of the following ESCh (rev.) provisions: Article 2, paragraphs 2-7, Article 4, paragraphs 2-5, Article 5, Article 6, paragraphs 1-4, Article 21, Article 22, Article 26, paragraphs 1-2, Article 28 and Article 29.
The Bulgarian national currency is lev and its exchange rate is fixed to the euro at 1,95583 lev per 1 euro (0,511292 euro per 1 lev).
The Bulgarian country remains available for any additional questions or clarifications that could arise in the process of review of this Report.

Article 2 – All workers have the right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:
1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
2. to provide for public holidays with pay;
3. to provide for a minimum of four weeks' annual holiday with pay;
4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
5. 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;
6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;
7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Appendix to Article 2§6

Parties may provide that this provision shall not apply:
a. to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;
b. where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations.

Information to be submitted:

Article 2§2

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

In relation to the last report, the following amendments have occurred in the Labour Code with regard to the number of public holidays:

"Legal Holidays"

Article 154

(1) (Supplemented, SG No. 6/1988, amended, SG No. 30/1990, SG No. 27/1991, SG No. 104/1991, supplemented, SG No. 88/1992, amended, SG No. 2/1996, supplemented, SG No. 22/1998, SG No. 56/1998, SG No. 108/1998, SG No. 15/2010) The public holidays shall be: the 1st day of January - New Year; the 3rd day of March - Day of the Liberation of Bulgaria from Ottoman Domination, National Day; the 1st day of May - Labour and International Workers - Solidarity Day; the 6th day of May - St. George's Day - Day of

Valour and of the Bulgarian Armed Forces; the 24th day of May - Day of Bulgarian Education and Culture and of Slav Letters; the 6th day of September - Bulgaria - Rumelia Union Day; the 22nd day of September - Bulgaria Independence Day; the 1st day of November - National Awakeners Day (non-study day for all educational establishments); the 24th day of December - Christmas Eve; the 25th and 26th day of December - Christmas; Good Friday, Holy Saturday and Easter (Easter Sunday and Monday) as determined for Easter celebrations in the relevant year.

(2) (Supplemented, SG No. 52/2004, amended, SG No. 15/2010) The Council of Ministers may also declare other days for one-time national public holidays, days for the commemoration of certain professions or tribute days, as well as shift the non-working days in the course of the year. In such cases the duration of the working week may not exceed 48 hours, and the weekly rest period may not be less than 24 hours.

"The right to official paid holidays, restricting work on public holidays and the right to "a payment at least twice the normal one" are guaranteed by Art. 154 (on public holidays), Art. 262, Par. 1, item 3 (on payment of an additional fee of not less than 100 percent), and Art. 264 of the Labour Code (for work on public holidays, whether it represents overtime or not, the worker or employee shall be paid as agreed, but not less than twice the amount of his remuneration). Working on a day declared a public holiday is overtime that is banned and only allowed in specified circumstances.

Decisions of the Council of Ministers during the reference period with regard to rearrangements of weekends, according to Art. 154, Par. 2 of the Labour Code:

- DECISION No. 956 of the Council of Ministers of 16.12.2009 for rearranging weekends in 2010

Publ. SG issue 101 of 18.12.2009

1. Declares May 7 (Friday) a day off, and May 15 (Saturday) a workday.
2. Declares December 31 (Friday) a day off, and December 11 (Saturday) a workday.

- DECISION No. 878 of the Council of Ministers of 16.12.2010 for rearranging weekends in 2011

Publ. SG issue 100 of 21.12.2010

1. Declares March 4 (Friday) a day off, and March 19 (Saturday) a workday.
2. Declares May 23 (Saturday) a day off, and May 28 (Saturday) a workday.
3. Declares September 5 (Monday) a day off, and September 3 (Saturday) a workday.
4. Declares September 23 (Friday) a day off, and September 17 (Saturday) a workday.

- DECISION No. 834 of the Council of Ministers of 17.11.2011 for rearranging weekends in 2012

Publ. SG issue 93 of 25.11.2011

1. Declares January 2 (Monday) a day off, and January 21 (Saturday) a workday.
2. Declares April 30 (Monday) a day off, and April 21 (Saturday) a workday.
3. Declares May 25 (Friday) a day off, and May 19 (Saturday) a workday.
4. Declares September 7 (Friday) a day off, and September 29 (Saturday) a workday.
5. Declares December 31 (Monday) a day off, and 15 December (Saturday) a workday.

- DECISION No. 945 of the Council of Ministers of 15.11.2012 for rearranging weekends in 2013

Publ. SG issue 91 of 20.11.2012, amend. issue 30 of 26.03.2013, suppl. issue 100 of 19.11.2013

1. (Amend. SG. Issue 30 of 2013) Declares May 2 (Thursday) a day off, and May 18 (Saturday) a workday.
2. (New – SG issue 100 of 2013) Declares December 23 (Monday) a day off, and December 21 (Saturday) a workday.
3. (Prev. item 2 – SG issue 100 of 2013) Declares December 31 (Tuesday) a day off, and December 14 (Saturday) a workday.

- DECISION No. 192 of the Council of Ministers of 21.03.2013, amending Decision No. 945 of the Council of Ministers in 2012 for rearranging weekends in 2013 (SG issue 91 of 2012)
Publ. SG issue 30 of 26.03.2013
Item 1 amended as follows:
"1. Declares May 2 (Thursday) for a day off, and May 18 (Saturday) a workday."

- DECISION No. 698 of the Council of Ministers of 14.11.2013, amending and supplementing Decision No. 945 of the Council of Ministers in 2012 for rearranging weekends in 2013 (Publ. SG. 91 of 2012; amend. 30 of 2013)
Publ. SG issue 100 of 19.11.2013
1. A new item 2 is added:
"2. Declares December 23 (Monday) a day off, and December 21 (Saturday) a workday."
2. Previous item 2 becomes item 3.

There are no amendments in the Labour Code with regard to labour remuneration during public holidays.

Direct questions of the European Committee of Social Rights (ECSR):

Paragraph 2 - Public holidays with pay

Under Article 264 of the Labour Code, employees who work on a public holiday are entitled to double the standard wage.

The Committee considers that work performed on a public holiday imposes a constraint on the part of the 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 base salary is maintained, in addition to the increased pay rate.

Pursuant to Art. 264 of the Labour Code, work on public holidays, regardless of whether this represents overtime work or not shall be paid to factory or office workers as agreed, but not less than the double amount of the said workers' labour remuneration. For workers and employees whose work on public holidays is considered overtime, the increase is determined on a base not less than twice the amount of the remuneration agreed, i.e. they should be given no less than four times its size.

Article 2§3

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

In relation to the last report, no modifications have occurred in Art. 155 and 156 of the Labour Code.

"The right to paid annual leave of at least four weeks" is guaranteed by Art. 155, Par. 4 of the Labour Code (the basic paid annual leave is not less than 20 days). Art. 178 of the Labour Code establishes a ban on cash compensation of paid annual leave, except at termination of employment. By virtue of Art. 175, Par. 1 of the Labour Code, when during the use of paid annual leave, the worker or employee is permitted another type of paid or unpaid

leave, the use of paid annual leave shall be terminated at his request, and the remainder shall be used later by agreement between him and the employer.

Statistical information presented by the 'General Labour Inspectorate' Executive Agency:

In 2010: Established 11 559 violations related to working hours, breaks and leaves. 280 Statements of administrative offence (SAO) issued on violations related to working hours, 104 SAO on breaks and 40 SAO associated with leaves.

In 2011: Established 14 744 violations related to working hours. Violations of Art. 141, Par. 5 of the Labour Code (working two consecutive shifts) are 60, introducing reduced working hours – 246, breaks – 1 968, night time work remuneration – 828, ban on night time work by women – 8, and by minors – 17.

Violations of working hours of public servants are 7, breaks – 2, leaves – 20.

4 SAO issued on assigning work on two consecutive work shifts, 26 – on introducing reduced working hours, 287 – on breaks, 62 – on night time work remuneration, 4 – on non-observance of the ban on night time work by women, and 13 – by underage workers and employees, 3 – on paid annual leave of minors.

In 2012: Working hours violations are a total of 18 223, violations of the ban of assigning work in two consecutive work shifts are 47, violations on introducing reduced working hours – 632. Violations related to work breaks are 2 056, night time work remuneration – 838, ban on night time work by women – 8, and by minors – 10.

Violations of working hours of public servants are 15, on breaks – 1, on leaves – 11, night time work remuneration – 5.

4 SAO issued on violation of the ban on assigning work on two consecutive work shifts, on introducing reduced working hours – 59, on breaks – 342, on night time work remuneration – 77, on non-observance of the ban on night time work by women – 1 and 6 for underage workers and employees, 11 – on paid annual leave of minors.

Direct questions of the ECSR:

Paragraph 3 - Annual holiday with pay

Under Article 155§4 of the Labour Code, employees are entitled to at least 20 days of paid annual leave. Some categories of worker are entitled to at least another 5 days of leave because of the special nature of their work.

The Committee considers that annual leave exceeding two weeks may be postponed in particular circumstances prescribed by domestic law, the nature of which should justify the postponement. It asks for information in the next report on the rules on the postponement of annual leave.

The Committee asks whether workers who suffer from illness or injury during their annual leave are entitled to take the days lost at another time.

According to Article 176, Par. 1 and 2 of the Labour Code (LC), for important production reasons the employer may postpone for the next succeeding calendar year the use of part of the paid annual leave in the amount of not more than 10 working days. For compelling reasons and upon written request by the factory or office worker and with the consent of the employer the use of a part of the paid annual leave in the amount of not more than 10 working days may be postponed for the next succeeding calendar year. According to Article 176, Par. 3 of the LC, in the cases of Par. 1 and 2 it could be postponed the use of a part of the paid annual leave in total amount of no more than 10 working days for the next calendar year.

But there is no obstacle for remaining unused more than 10 days to be used in accordance with Art. 176, Par. 1 of the Labour Code until the expiration of two years from the end of the year for which they are due, regardless of the reasons for that.

According to the provision of Article 176, Par. 4 of the LC, the use of the paid annual leave may be also postponed where during the calendar year for which it was due the factory or office worker has not had the opportunity to use it fully or partially as a result of using a leave for temporary disability, for pregnancy, maternity and adoption or for raising a young child, as well as a result of using a leave on other legal grounds.

When the paid annual leave is deferred under the terms and provisions of Art. 176, Par. 4 of the Labour Code, the right of the worker or employee to use it shall be subject to a limitation period of two years from the end of the year in which the reason for its non-usage is no longer valid – Art. 176a, Par. 2 of the Labour Code. In cases under Art. 176, Par. 4 of the Labour Code, the limitation period for using the deferred paid annual leave shall start from the end of the calendar year in which the worker or employee has returned to work – Art. 38a of the Regulation on working time, breaks and annual leaves.

In the implementation of the employer-approved schedule of the annual leave of workers and employees in the enterprise for the respective calendar year, there may be instances when this schedule cannot be met – for example, when prior to or from the date of paid annual leave, according to the approved schedule, the worker or the employee is allowed a leave for temporary loss of working capacity.

In this case, the employee may use his due paid annual leave in the full amount set out in the schedule at other times within the same calendar year pursuant to Art. 173, Par. 3 of the Labour Code, i.e. outside the approved schedule.

When the worker or employee is on leave due to temporary loss of working capacity during the use of his paid annual leave, there is a discontinuance in the sense of Art. 175 of the Labour Code. In these cases the use of paid annual leave shall be terminated at his request, and the remainder shall be used later by agreement between him and the employer. Besides discontinuing the use of paid annual leave due to permitting another leave, the leave of the worker or employee may be interrupted by mutual consent of the parties expressed in writing. In both cases the remainder of the interrupted leave may be used outside the approved schedule.

Article 2§4

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Workers and employees whose work is related to the use, servicing and maintenance of machines and other technical equipment, as well as workers and employees engaged in activities that endanger their health and life, must be instructed, trained and tested on the rules ensuring healthy and safe working conditions.

Machines, other equipment and technological processes of increased risk shall be serviced only by qualified workers and employees. Their capacity shall be governed by special regulations. The list of increased risk facilities and activities shall be approved by the relevant departments.

Persons lacking the necessary knowledge and skills provided for in the rules ensuring healthy and safe working conditions in the enterprise shall not be allowed to work.

The employer shall organize periodic training or instruction of workers and employees on the rules ensuring healthy and safe working conditions within the terms and conditions set by the Minister of Labour and Social Policy.

The employer shall be obliged to provide free special workwear and personal protective equipment to workers and employees who work with or close to hazardous or harmful machines, facilities, liquids, gases, molten metals, hot objects, etc.

Employees and workers who work in companies with specific character and labour organization shall receive from the employer free meals and/or dietary supplements.

For work in particularly harmful and dangerous industries and types of work, there shall be set a maximum number of years, after which the worker or employee must be moved to another suitable job.

All workers and employees are subject to mandatory preliminary and periodic medical examinations.

By virtue of Art. 137, Par. 1 of the Labour Code, reduced working hours are established for: workers and employees who work under specific conditions and the risks to their life and health cannot be eliminated or reduced, despite the measures taken, but the reduction of working hours leads to a limitation of the risks to their health. The worker or employee is entitled to additional paid annual leave for work under specific conditions and risks to life and health, which cannot be eliminated, restricted or reduced, despite the measures taken – not less than 5 working days.

Statistical information presented by the 'General Labour Inspectorate' Executive Agency:

In 2009: Persons working in adverse health conditions who have not received any part of their due compensation are 2372, and part of the compensation due has been received as follows: by 309 workers (additional fee), 320 (reduced working hours), 506 (additional annual paid leave) and 719 (free protective food).

In 2010: Persons working in adverse health conditions who have not received any part of their due compensation are 1 978, and part of the compensation due has been received as follows: by 525 workers (additional fee), 626 (reduced working hours), 872 (additional annual paid leave) and 1808 (free protective food).

In 2011: Persons working in adverse health conditions who have not received any part of their due compensation are 1 111, and part of the compensation due has been received as follows: by 461 workers (additional fee), 435 (reduced working hours), 622 (additional annual paid leave) and 1 950 (free protective food).

In 2012: Persons working in adverse health conditions who have not received any part of their due compensation are 2 217, and part of the compensation due has been received as follows: by 2 777 workers (additional fee), 4 158 (reduced working hours), 28 511 (additional annual paid leave) and 24 085 (free protective food).

More detailed information is provided in Appendix 5.

Direct questions of the ECSR:

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

Elimination or reduction of risks

The Committee would point out that the first part of Article 2§4 of the Revised Charter requires states to eliminate risks in inherently dangerous or unhealthy occupations. This part of Article 2§4 is closely linked to Article 3 of the Charter (right to safe and healthy working conditions), under which the states undertake to pursue policies and take measures to improve occupational health and safety and prevent accidents and damage to health, particularly by minimising the causes of hazards inherent in the working environment.

Introduction of reduced working hours and additional paid annual leave for employees

To fully implement the commitments and practical application of the system for the prevention of occupational risks, the employer may introduce *reduced working hours* a*nd/or additional paid leave to employees* when it is not possible to completely prevent or significantly reduce the risks to their life and health.

The legal grounds for the reduction of working hours and additional leave are set out in the Labour Code (Art. 137 and Art. 156), and the terms and conditions for their establishment – by the relevant regulations:

Regulation to Determine the Types of Work for Which Reduced Working Hours are Established (SG 103 of 2005) under Art. 137, Par. 2 of the Labour Code;

Regulation to Determine the Types of Work for Which an Additional Paid Annual Leave is Established (SG 103 of 2005) under Art. 156, Par. 2 of the Labour Code;

There are two criteria on the basis of which certain types of work acquire part-time and/or additional paid annual leave – specific conditions and risks to life and health, which cannot be eliminated, restricted or reduced, regardless of measures. The aim is to limit the adverse effects of the working environment.

Reduction of working hours leads to reduction of the risks to the health of the employees. The specific scope and duration of reduced working hours are established by the Regulation to Determine the Types of Work for Which Reduced Working Hours are Established. The rules for the introduction of this standard are mandatory in nature and distinguish between two groups of workers – the ones who are entitled to a 6-hour working day and, respectively, a 7-hour day. Work, occupations and professions entitled to reduced working hours are exhaustively listed in Art. 2 and Art. 3 of the Regulation to Determine the Types of Work for Which Reduced Working Hours are Established. This does not mean automatic entitlement as there are other requirements that must be met in order for the employer to have the obligation to establish reduced working hours. They are related to the minimum period of employment under certain conditions (not less than half of the normal hours of work established by the Labour Code), the assessment of occupational risks, direct or indirect involvement with the specific type of work (for example, only workers who are directly employed in: the units of anatomy and forensic pathology, etc.; production, packaging, formulation and use of plant protection products and biocides, disinfectors, etc.; manufacture and testing of serums and vaccines, ionizing radiation environment; in underground facilities where there is a danger of silicosis: mines, mining sites, geological sites and sites of tunneling and mining construction, underground hydroelectric power stations and pump-storage hydroelectric power stations; manufacture of cast iron and steel, ferro-alloys, non-ferrous metals and alloys, etc.). Moreover, employees with complete loss of vision regardless of the type of work are also entitled to a 7-hour work day. Workers entitled to reduced working time according to the regulation should be specified by a written order of the employer after prior consultations with representatives of the employees and the workers, with the occupational health service and the committee/group on labour conditions. Risk assessments are to be taken into account by all means.

Additional paid annual leave allows for longer annual leaves to workers who work under conditions adversely affecting their health. Conditions for the acquisition of additional paid annual leave include work under specific conditions and risks to life and health, which cannot be eliminated, restricted or reduced, to not less than half the normal working hours under the Labour Code. The regulation to determine the types of work for which an additional paid annual leave is established sets out exhaustively the types of work with risks to life and health. The requirement is for workers to work under these conditions less than half of the normal working hours under the Labour Code, with the exception of workers and employees who perform work in an environment of ionizing radiation. Also entitled to additional paid leave are workers with complete loss of vision or complete hearing loss regardless of the type of work. The amount of the additional paid annual leave may not be less than 5 working days within one calendar year. Workers who are given this right shall be specified by written order of the employer after prior consultation with representatives of workers, with the occupational health service and the committee/group on labour conditions and in accordance with the risk assessment. Larger amounts of additional paid annual leave can be negotiated in a collective agreement, and between the parties to the employment relationship.

In its previous conclusion (Conclusions 2007), the Committee asked for information on any other relevant measures taken to reduce exposure to risks. The report mentions a strategy for safety and health at work adopted for the period from 2008 to 2012, whose aim was to outline the commitments and tasks of the government, employer and employee organisations and non-governmental organisations in improving welfare in the workplace. One of its main goals was to reduce work accidents and occupational disease. The Committee asks for information in the next report on the progress made as a result of this strategy.

Information on the progress made as a result of the implementation of the Strategy for Safety and Health at Work 2008-2012

In the period of 2007-2012 there has been real progress in improving working conditions in Bulgaria. Activities to ensure safety and health at work differ in scope, level of performance and quality in different businesses, but there is considerable progress in reducing the overall level of accidents and the level of accidents causing death or disability.

Implementation of legislation on safety and health at work, on the Strategy for Safety and Health at Work 2008-2012, as well as the measures set out in the annual national programs on safety and health at work largely contributed to the results achieved in the period. From the information system of the National Insurance Institute and the inspection activities of the 'General Labour Inspectorate' Executive Agency, namely:

- increasing of the relative share of enterprises from 61% in 2008 to 85% in 2012, which have met the basic requirements of the Law on Health and Safe Work Conditions, or an increase of 24%;
- 96,7% of the inspected enterprises have prepared a risk assessment of the health and safety of the workers;
- 97,7% of the inspected enterprises have an official performing the functions of an authority on health and safety at work;
- 97,4% of the inspected enterprises have provided services to workers from an OHS;
- 64,6% of the enterprises have established committees or groups on labour conditions;
- the number of outstanding mandatory requirements of labour inspectors is reduced – from 746 in 2008 to 282 in 2012;
- the number of accidents at the workplace, leading to absence for more than 3 working days is reduced – from 3124 in 2007 to 2280 in 2012, i.e. by approximately 27%;
- the number of accidents at the workplace is reduced – from 3337 in 2007 to 2392 in 2012;
- the number of calendar days lost due to work-related accidents at the workplace is reduced – from 208 996 in 2007 to 160 972 in 2012;
- the number of fatal accidents is reduced – from 149 in 2007 to 94 in 2011 and 82 in 2012;
- the incidence of fatal accidents at the workplace is reduced – from 5.9 in 2007 to 3.2 in 2012;
- conditions leading to a high number of work-related accidents are eliminated and limited through undertaken checks and inspection measures;
- awareness of social partners and the public on causes of work accidents and measures taken to reduce them is increased.

Article 2§5

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, in particular: circumstances under which the postponement of the weekly rest period is provided.

Compared to the last report, there are no legislative amendments.

Statistical information on violations of the 'General Labour Inspectorate' Executive Agency in relation to working hours, breaks and leaves is granted under Art. 2, Par. 3 and in Appendix 5.

Direct questions of the ECSR:

Paragraph 5 - Weekly rest period

In its previous conclusion (Conclusions 2007), the Committee asked whether weekly rest periods may be deferred to the following week, or subsequent weeks, and what is the longest period a worker may work before being granted a weekly rest period. Under Article 154§2 of the Labour Code, the rest period for a working week of six days (48 hours of work) may not be less than 24 hours. However, the report does not reply to the questions put previously.

In the absence of information allowing the Committee to assess whether the right to weekly rest period is guaranteed, it concludes that the situation is not in conformity.

In relation to the negative conclusion of ECSR that no complete answer was given to their request, we provide the following additional information and clarification on the possibility of transferring a weekly rest to a following period:

The weekly rest period and its duration are regulated by Art. 153 of the Labour Code.

Article 153

(1) In conditions of a five-day working week, the factory or office worker shall be entitled to a weekly rest of two successive days, one of which shall in principle be Sunday. In such cases, the factory or office worker shall be provided with a weekly rest period of at least 48 consecutive hours.

(2) (Amended, SG No. 25/2001, SG No. 52/2004) Upon calculation of working time on a weekly or longer basis, the uninterrupted weekly rest period shall be not less than 36 hours.

(3) (New, SG No. 52/2004) In case of changes of shifts upon calculation of working time on a weekly or longer basis, the uninterrupted weekly rest period may be less than the rest period under Paragraph (2), but not less than 24 hours, provided this is required by the actual and technical work organisation at the enterprise.

(4) (New, SG No. 52/2004) In cases of overtime work performed during the two days of the weekly rest period, when calculating working time on a daily basis, factory or office workers shall be entitled, in addition to an increased pay for such work, also to an uninterrupted weekly rest period of not less than 24 hours during the succeeding working week.According to the provision of Art. 154, Par. 2 of the Labour Code cited in the report, the Council of Ministers can rearrange weekends during the year.

For this purpose, the Council of Ministers shall issue a resolution for each specific case, which is published in the State Gazette in order not to interrupt the work week with a holiday, which would adversely affect the working process, and to provide more efficient use of weekends and combine them with public holidays in the country.

The rearranging of the days of rest always observes the Labour Code requirement for the length of the working week not to exceed 48 hours, and the weekly rest – not to be less than 24 hours, i.e. the longest period of time during which the employee can work before being provided a weekly rest period is 6 days – 48 hours /6 work days of 8 hours/.

Upon the rearrangement of the days of rest, Saturday is declared a work day, and Sunday is a guaranteed traditional day of rest. Moreover, in principle, Saturday is declared a work day in the week following the week of the day that was declared a public holiday and days declared as holidays by the Decision of the Council of Ministers, and which has a duration of less than 40 hours.

Rearrangement of the days of rest takes place within the same calendar month, so as not to change the number of working days in it and to provide within this month the use of the same number of rest days for workers and employees as would have been without the rearrangement by a Decision of the Council of Ministers.

Article 2§6

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Compared to the last report, the following legislative changes have occurred in the Labour Code regarding the terms and contents of the labour contract or employment relationship:

"Article 62. (5) (New, SG No. 120/2002, amended, SG No. 105/2005, effective 29.12.2005, renumbered from Paragraph (4), SG No. 100/2010, effective 1.01.2011) The particulars contained in the said notification and the procedure for the dispatch thereof shall be determined by an ordinance of the Minister of Labour and Social Policy, co-ordinated with the Executive Director of the National Revenue Agency and the President of the National Statistical Institute.

Article 66. (4) (New, SG No. 58/2010, effective 30.07.2010) The designation of the position shall be specified in accordance with the National Classification of Professions and Positions, endorsed by the Minister of Labour and Social Policy following co-ordination with the Chairperson of the National Statistics Institute

Article 68. (6) (New, SG No. 7/2012) A fixed-term employment contract for the period of a long-term mission may be concluded for employment in a position designated for long-term commissioning to a mission of the Republic of Bulgaria abroad under the Diplomatic Service Act ."

Article 2§7

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, in particular: the hours to which the term 'night work' applies.

The Law Amending and Supplementing the Labour Code, publ. SG 103 of 2009 settled the special protection of female workers and employees in an advanced stage of IVF treatment:

Article 140. (4) Night work shall be prohibited for:
2. (supplemented, SG No. 100/1992, amended, SG No. 52/2004, supplemented, SG No. 103/2009, effective 29.12.2009) pregnant female factory and office workers, as well as female factory and office workers in an advanced stage of in vitro treatment;

Direct questions of the ECSR:

Paragraph 7 - Night work

In reply to the Committee's question on the consultation of employees' representatives with regard to night work, it is stated in the report that under Article 181 of the Labour Code, employers must consult representatives of trade unions and employers' organisations before introducing rules on internal working procedures. The Committee asks if these representatives are consulted on the use of night work.

According to Art. 181, Par. 1 of the Labour Code, the employer shall be obligated to issue Internal Work Rules, which shall define the rights and obligations of the factory and office workers and of the employer under the employment relationship and shall regulate the work organisation at the enterprise according to the specific nature of the activities thereof. The Internal Work Rules must regulate working hours, breaks and paid leaves of workers and employees of the enterprise, **including on night work.**

The Internal Work Rules can not contradict the regulatory acts and collective labour agreements (CLA) binding the employer. The need for compliance with CLA is due to the fact that the employer alone has already been bound to a certain behavior by having signed the agreement (additional information about the CLA provided under Article 6, Par. 2, and Art. 22).

The employer is **obligated** to issue Internal Work Rules without any additional conditions. The provision is imperative, which means that its application is mandatory for the addressees regardless of the number of people employed by the specific employer, the industry or type of activity in which the work is done, the form of ownership of the entity or other similar conditions.

According to Art. 181, Par. 2 of the Labour Code, the employer shall issue the Internal Work Rules after holding advance consultations with the trade union organizations' representatives at the enterprise and with the factory and office workers' representatives under Article 7 (2). Therefore, prior consultation is the responsibility of the employer. The employer should also perform this obligation when the Internal Work Rules have been amended.

This provision is also mandatory in nature. Its purpose is to regulate the procedure for the issuance of the Internal Work Rules. This procedure is characterized by the need, regulated as an **obligation of the employer**, of prior consultations with representatives of trade unions and workers' representatives under Art. 7, Par. 2. The issuance of the Internal Work Rules is **subject to** the prior consultations provided for in the text as an expression of social partnership of entities interested in the regulation of labour relations. These consultations are private manifestation of the generally provided for in Art. 37 of the Labour Code right of trade unions to participate in the preparation of all internal regulations of the enterprise. Participants in the preliminary consultations on the issuance of the Internal Work Rules are **all representatives of trade unions in the enterprise – both representative and those who are not recognized as representative.** Secondly, the consultation also involves **representatives of workers and employees under Art. 7, Par. 2.** Thus the representation of workers and employees is significantly enhanced compared to union representation under Art. 37 of the Labour Code – first, by allowing the participation of representatives of non-representative trade unions, and second – by the inclusion in the consultations of workers' representatives, regardless of their union affiliation.

Scope of the provisions as interpreted by the ECSR

Paragraph 1: Establishment of reasonable limits on daily and weekly working hours through legislation, regulations, collective agreements or any other binding means; weekly working hours should be progressively reduced to the extent permitted by productivity increases; flexibility measures regarding working time must operate within a precise legal framework and a reasonable reference period for averaging working hours must be provided.

Paragraph 2: The right to public holidays with pay should be guaranteed; work on public holidays should only be allowed in special cases; work performed on a public holiday should be paid at least at double the usual rate.
Paragraph 3: The right to a minimum of four weeks of annual holiday with pay should be guaranteed; annual leave may not be replaced by financial compensation; days lost to illness or injury during annual leave should be allowed to be taken at another time.
Paragraph 4: Application of preventive measures to eliminate the risks in inherently dangerous or unhealthy occupations; where it has not yet been possible to eliminate or sufficiently reduce these risks some form of compensation should be ensured to those workers exposed to such risks, namely reduced working hours or additional paid holidays.
Paragraph 5: The right to a weekly rest period coinciding, as far as possible, with the day traditionally recognised as a day of rest should be guaranteed; weekly rest periods may not be replaced by compensation and cannot be given up.
Paragraph 6: The right of workers to written information upon commencement of their employment should be guaranteed. This information should cover essential aspects of employment relationship.
Paragraph 7: Compensatory measures should be guaranteed for workers performing night work.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties
undertake:
1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.
The exercise of this right shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.
Appendix to Article 4§4
This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.
Appendix to Article 4§5
It is understood that a Contracting Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exception being those persons not so covered.

Information to be submitted:

Article 4§2

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics (estimates, if necessary) or any other relevant information, in particular: methods used to calculate the increased rates of

remuneration; impact of flexible working time arrangements on remuneration for overtime hours; special cases when exceptions to the rules on remuneration for overtime work are made.

Direct questions of the ECSR:

Paragraph 2 - Increased remuneration for overtime work

According to Article 143 of the Labour Code, work done by an employee beyond his agreed working hours shall be considered overtime work. The Committee has previously noted that pursuant to Article 262 of the Labour Code, workers are entitled to an increased pay rate of 50% for overtime work performed on regular working days, which is in conformity with the Revised Charter (Conclusions 2003).

However, according to Article 263 of the Labour Code, a certain category of workers, those under an "open-ended working hours" scheme may be required to perform work duties after the end of regular working hours without being paid for this work (whether at a standard or enhanced rate). The extra hours performed are compensated by additional paid annual leave, which shall be at least of 5 working days. Accordingly, it considers that the additional paid leave foreseen by the Labour Code to compensate work done after normal working hours by employees under "open-ended" schemes may not be sufficient to compensate such work in an adequate manner. For example, if an employee has worked a total of 100 hours of overtime in a year, 5 days of additional leave (which are equivalent to 40 hours), would be well below the enhanced compensatory leave required by Article 4§2 of the Revised Charter. The Committee moreover notes from another source[1] that there are many cases of employees working overtime without any compensation in Bulgaria – mainly in private companies and in industries such as construction, tailoring, retail trade, restaurants and tourism. It therefore asks the next report to provide information on the activities of the Labour Inspectorate in respect of any breaches related to the failure to pay overtime wages.

In relation to the findings and conclusions of the Committee we provide the following information:

According to Art. 139a, Par. 1 of the Labour Code, owing to the special nature of work, the employer, after consultation with the trade union organisations' representatives and with the employees and workers' representatives under Article 7 (2), may establish open-ended working hours for certain positions.

Employees and workers at open-ended working hours shall be obligated, where necessary, to perform the labour duties thereof even after expiry of the normal working time.
In this case, the measure of labour is determined not only by the limits of astronomical time, but also with the need to execute the work function after its expiry.

The method of calculating the measure of labour is specific precisely because of the nature of the work, and it is based on two criteria: by establishing normal working hours and through the circle and nature of the obligations that the worker or employee must perform. These obligations, due to the nature of the work, sometimes require it to be done after normal working hours as well.

Work after normal working hours is not systematic, but rather accidental, and therefore there could be no question of compensation for those 100 hours within a calendar year.

Therefore, this is not about actual overtime within the meaning of Art. 143 et seq. of the Labour Code.

Apart from breaks under Art. 151, these workers and employees are entitled to a rest of at least 15 minutes after the expiration of the regular working hours.

The provisions of Art. 156 , Par. 1, item 2 of the Labour Code define the additional paid annual leave not in the amount of 5 working days, but in an amount of not less than 5 working days, and larger amounts may be negotiated in the individual or collective labour agreement, thus enabling the determination of the specific amount of leave to take into

account not only the nature of the work, but also its duration. Where these workers and employees render service during weekends and holidays, the common ground of this work is overtime. During weekends and holidays those employees are generally not obliged to render service regardless of their established regime of irregular working hours. Therefore, their service on weekends and holidays is overtime and is paid at an increased rate, a situation covered by Art. 263, Par. 2 of the Labour Code.

In connection with the above, we believe that Bulgarian legislation provides sufficient compensation to overtime on weekdays through additional paid leave to workers and employees who work under irregular working hours.

Moreover, if the employer violates the above requirements of employment law, he will be subject to the sanction of the labour inspectorates.

Article 4§3

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please supply detailed statistics or any other relevant information on pay differentials between men and women not working for the same employer by sector of the economy, and according to level of qualification or any other relevant factor.

Labour Code

The provision of Art. 8, Par. 3 of the Labour Code regulates that in the course of exercise of labour rights and duties no direct or indirect discrimination shall be allowed on grounds of ethnicity, origin, gender, sexual orientation, race, skin colour, age, political and religious convictions, affiliation to trade union and other public organisations and movements, family and property status, existence of mental or physical disabilities, as well as differences in the contract term and the duration of working time.

Article 243. (Repealed, SG No. 100/1992, new, SG No. 25/2001)
(1) Women and men shall be entitled to equal pay for equal work or work of equal value.
(2) Paragraph (1) shall apply to all payments under the employment relationship.

The text of Art. 243 of the Labour Code creates a guarantee of equal pay for equal work regardless of gender. There is an explicit legal requirement for the principle of equal pay for equal work between men and women to apply to all payments under employment.

The Council of Ministers determines:

1. The minimum wage for the country;

2. The types and minimum amounts of additional wages and benefits in employment, as far as they are not defined in this code /Art. 244 of the Labour Code/.

The Council of Ministers determines annually by a Decree the minimum wage for the country, which is the lowest wage for time worked or work done. In its determination the following are taken under consideration: the needs of workers and their families; the cost of life; the general level of wages in the country; the social assistance system; economic factors, incl. requirements of economic development, levels of labour productivity and employment.

It should be emphasized that the minimum wage in the country is comprehensive in scope – it applies to all whether they are employed in state, municipal or private enterprises.

Protection Against Discrimination Act

Article 7. (1) It shall not constitute discrimination:
7. (amended, SG No. 103/2009, effective 29.12.2009) the special protection of **pregnant women, women in an advanced stage of in vitro treatment and mothers,** established by

law, unless they have waived enjoyment of this protection and has notified the employer in writing of this waiver;
13. (renumbered from Item 12, SG No. 69/2008) **the measures in the field of education and training to ensure balanced participation of women and men,** as far and for as long as such measures are necessary;
Article 12. (3) The employer shall not have the right to refuse to employ a candidate on the grounds of pregnancy, maternity or bringing up a child.
Article 13. (3) (New, SG No. 108/2008) When a mother on maternity or parental leave, or a person on a leave under Article 163(8) of the Labour Code or parental leave, returns to work owing to the expiration of the leave or termination of its use, such person is entitled to assume the same job position as the one prior to the leave, or another equal position, and to make use of any improvement of the work conditions to which this person would be entitled if not on leave.
Article 14. (1) The employer shall ensure **equal remuneration** for equal or equivalent work.
(2) (Supplemented, SG No. 108/2008) Paragraph (1) shall apply to all remunerations, whether paid directly or indirectly, in cash or in kind, notwithstanding the validity term of the employment contract or the length of business hours.
(3) (Amended, SG No. 38/2012, effective 1.07.2012) The assessment criteria for determining labour remunerations and the assessment of work performance shall be equal for all factory and office workers and shall be determined by the collective agreements, or by internal wage rules, or by statutory terms and procedure of assessing state administration employees notwithstanding the grounds under Article 4 (1).

Pursuant to Article 14, Par. 1 and par. 2 of the Protection against Discrimination Act, the employer must provide equal pay for equal work or work of equal value. This rule applies to all types of remuneration, regardless of whether paid directly or indirectly, in cash or in kind, regardless of the term of the employment contract and the length of working time. This equal treatment principle is not limited to protection against discrimination on the basis of gender.

Article 15. (2) (New, SG No. 108/2008) Upon returning to work after maternity and/or parental leave, where a technological operational change has been introduced with regard to any person referred to in Article 13(3), training shall be provided for the said person, with a view to obtaining the relevant professional qualification, as appropriate with regard to the changes.
Article 27. (Amended, SG No. 23/2011, effective 22.03.2011) The provisions of this Section shall furthermore apply to discrimination on the grounds of gender while in military service in the armed forces, except in carrying out any activities and occupying any positions where gender is a determining factor.
Article 35. (1) Persons providing training and education, as well as the compilers of textbooks and learning materials, shall be obliged to give information and to apply methods of training and education in a way focused on overcoming stereotypes about the role of women and men in all spheres of social and family life.
§ 1 of the ADDITIONAL PROVISIONS, p.16. (New, SG No. 103/2009) "Women in an advanced stage of in vitro treatment" shall be women, who are in a stage of treatment through the methods of assisted reproduction, including the period from egg retrieval to the embryo transfer but no more than 20 days.

Statistical Data:

According to data from the National Statistical Institute, the employment rate for women between 20 and 64 years of age in the second quarter of 2011 is 60.6%. The difference in the employment rate of the two genders is 5.7 percentage points, where this value for men is 66.3%. In 2010, the employment rate for women between 20 and 64 years of age was 61.7%, and for men – 69.1%. Compared to the preceding year, the employment rate

for women has decreased with 2.3 percentage points and for men – with 4.7 percentage points. Female employment in Bulgaria is only 0.4 percentage points lower than the average value for the European Union.

According to data from the National Statistical Institute, the unemployment rate for women between 15 and 64 years of age in the second quarter of 2011 is 10% - 2.4 percentage points lower than the value of the same indicator for men. In 2010 this value is 9.5% for women and 11% for men. The increase in unemployment among women compared to the preceding year is 2.8 percentage points and for men – 3.9 percentage points. According to Eurostat, in July 2011 the female unemployment rate in Bulgaria is 10.5% - only 0.8 percentage points higher than the average value for the EU.

According to the National Institute of Statistics, as to December 2013 the average indicators for the difference in pay by gender in unadjusted form[1] are as follows: 14,5 % for 2009, 14,1 % for 2010 and 13,5 % for 2011.

WAGE DIFFERENCES BY GENDER

(percentages)

Economic activities	2007	2008	2009	2010	2011
Total	**10,6**	**11,4**	**12,5**	**12,3**	**12,2**
Mining industry	26,9	23,7	18,8	15,9	15,5
Processing industry	24,2	25,0	24,2	24,1	24,9
Production and distribution of electricity, heat and gas	9,2	15,9	17,0	15,7	19,6
Water supply; Sewerage, waste management and recovery	14,5	12,2	8,2	8,2	2,8
Construction	-15,6	-10,3	-4,3	-4,6	-8,3
Commerce; repair of motor vehicles and motorcycles	10,7	14,4	14,5	11,8	9,5
Transportation, storage and postal offices	14,0	15,3	12,6	16,3	15,5
Hotels and restaurants	8,0	11,2	9,7	9,6	12,2
Creation and distribution of information and creative products; telecommunications	14,0	13,7	19,7	13,8	8,3
Financial and insurance activities	24,7	23,6	23,8	24,5	21,4
Real estate transactions	2,2	7,1	3,4	-0,2	-4,2
Professional activities and scientific research	-9,2	11,8	11,7	8,4	6,8
Administrative and support activities	-15,3	-13,0	-4,2	-7,5	-14,8
State management	4,9	10,8	13,0	12,5	10,3
Education	13,4	11,9	14,5	13,2	11,1
Human health care and social work	26,0	30,2	30,5	27,2	26,1
Culture, sports and entertainment	23,1	20,9	16,5	18,3	22,1
Other activities	-3,5	-3,7	0,8	-0,8	2,6

[1]The difference in pay by gender in unadjusted form is the difference between the average gross monthly salary (in BGN) of male employees and female employees as a percentage of the average monthly wage of employed men. The totality consists of all employees by service or employment and covers all enterprises regardless of their size or economic activity.

Direct questions of the ECSR:

Paragraph 3 - Non-discrimination between and women men with respect to remuneration

The Committee invites Bulgaria to include all information on equal pay.

The valid Bulgarian legislation provides for equal pay for equal work or work of equal value. Legal guarantees have been introduced to prevent gender differences in remuneration for jobs (office or position) which require the same type of work in terms of complexity and responsibilities, and the same level of education, professional qualifications and performance. The payment systems, rules on formation of salaries and wages, including additional payment and incentives (bonuses) applied in the country and among different organisations do not differentiate payment on the basis of gender. Similar is the situation with collective agreements and individual contracts.

The Labour Code prohibits all types of discrimination, privileges and restrictions on the basis of nationality, origin, gender and race. The principle of equal pay for women and men was introduced into the Labour Code in 2001 (Article 243 provides that men and women shall be entitled to equal pay for equal work or work of equal value, and that the latter shall apply to all payments under the employment relationship), and an amendment was introduced in 2003, which reintroduces the definition of indirect discrimination.

Income from wages is subject to collective labour agreement between employers and trade unions at various levels – corporate, branch and (in general – there is a possibility) – national. The minimum wage at national level must be consulted with the social partners within the National Council for Tripartite Cooperation – with representative organizations of employees and employers together.

With the Regulation on the Structure and Organization of Work Salary (publ. SG 9 of 26.01.2007, last suppl. 49 of 29.06.2012), the Council of Ministers determines the structure and organization of wages, types and minimum additional remuneration as well as terms and conditions for determination and calculation of salaries of workers and employees. This regulation applies to workers and employees under labour contract in all enterprises, regardless of the form of ownership and funding sources.

According to Art. 4 of the Regulation on the Structure and Organization of Work Salary, the basic salary is a remuneration for specific work tasks, duties and responsibilities inherent in the workplace or office, in accordance with accepted standards of quantity and quality of work and duration of work.

The basic salary is determined on the evaluation and grading of jobs and positions, and is agreed upon in the labour contract between the parties to the employment relationship.

When assessing the workplace, the complexity of the work, the responsibility of the work, the burden of the work and the working environment parameters are also taken under consideration.

Sizes and/or mechanisms for the formation of the basic salary are negotiated in a collective labour agreement and/or by the parties to the individual employment relationship and are included in the internal rules for the salary of the enterprise.

Initial basic salaries for professions and positions may be negotiated in a collective labour agreement.

The mechanisms specified in the Regulation on the Structure and Organization of Work Salary for determining basic salary and additional remunerations are neutral with regard to gender.

Within budgetary organisations and activities, the maximum level and/or range of basic salaries per position are determined on the basis of a legal act – Article 5 of the Ordinance on the structure and organization of salaries. The imperative provisions of labour legislation guarantee equal pay for women and men on the basis of an objective assessment of performance.

The participation of women in the labour market is determined by several factors including: the structure of economy and economic cycles, educational levels and professional qualifications, existing and legally guaranteed work opportunities, household income, etc. Major factors are existing traditions, the stereotypes on the role of women and men in the family and child rearing, the participation in social and economic and political life.

In times of economic crisis in the period of 2008 – 2010, there is a slight increase in the gross hourly wage for women and men in Bulgaria. According to the latest Eurostat data, this rate changes from 12.3 % (2008) to 13.9 % (2009) to 14.1 % (2010), where the average value for the European Union is 18%.

Inequality in average salaries does not necessarily mean a pay gap between men and women with the same profession and the same professional experience. In order to correctly analyse the specifics of the pay gap between men and women, the main factors determining remuneration must be reviewed in detail – profession, education, professional experience, working hours, economic activity, size of the undertaking.

Practice of the Commission on Protection against Discrimination with regards to the right to work:

1. Proceedings on the grounds of Article 50, item 1 of the Protection Against Discrimination Act on the basis of a signal from thirteen civilians working under employment relationships in additional establishment plan posts within Unit 32830, village of Asen, municipality of Pavel banya. The **complaints refer to discrimination against the right to work.**

The civilians complain of unequal treatment, in violation of Article 14, par. 1 of the PADA. The latter claim that employees holding positions under the basic establishment plan in the Bulgarian army carry out the same functions as the appellants but are not subject to the restrictions in payment applicable to those employed at additional establishment plan posts. The civilians refer to Article 1, par. 4 of Decree No 66 of 28 March 1996 of the Council of Ministers on the Staffing of certain activities in budgetary organisations, final revision promulgated in State Gazette, issue 100, December 13th 2005, as giving grounds for such differentiation in the regulation of pay.

The decree regulates the employment of individuals under employment contracts for the needs of budgetary organizations outside the approved number of staff. The number of such additionally employed individuals may not exceed the approved annual number of staff for the respective organisation with more than 10%, and an additional establishment plan is prepared for the additionally employed individuals.

When comparing the relevant legislation with the provisions of the reviewed Decree No 66 dated 28 March 1996 of the Council of Ministers, a SECOND special permanent panel of the Commission established the following:

The provisions of Article 1, par. 4 of Decree No 66 dated 28 March 1996 is in contradiction to Article 7, letter "a", item "i" of the International Covenant on Economic, Social and Cultural Rights. This pact is ratified by means of Decree No 1199 of the Presidium of the National Assembly dated 23 July 1970, issued by the Ministry of Foreign Affairs (prom. in State Gazette, issue 43 of 1976) and, in compliance with the provisions of Article 5, par. 4 of the Constitution of the Republic of Bulgaria, has been incorporated into the internal legislation of the country, having priority over internal norms. The above provision of the pact provides that the States Parties recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, remuneration which provides all workers as a minimum with fair pay and **equal remuneration for work of equal value**.

The provisions of Article 1, par. 4 of Decree No 66 dated 28 March 1996 are also in violation of paragraph 2, item “b” of Article 141 (Art. 141) of the TREATY establishing the EUROPEAN COMMUNITY, which provides that each Member State shall ensure the principle of equal pay so that “**pay for work at time rates shall be the same for the same**

job".

The above provisions of Article 1, par. 4 of Decree No 66 dated 28 March 1996 are also in violation of Article 6, par. 2 of the Constitution of the Republic of Bulgaria, according to which: All citizens **shall be equal before the law; There shall be no privileges or restriction of rights** on the grounds of race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status or property status.

In this specific case, the provisions of Article 1, par. 4 of Letter No 66 dated 28 March 1996 of the Council of Ministers discriminate against individuals employed under an Additional establishment plan due to the fact that their salary is restricted to 180 BGN as opposed to the higher maximum amount of remuneration set for other civilians in the Ministry of Defence (as determined by Decree No 122 of 14 August 2006 of the Council of Ministers).

The Commission for protection against discrimination recommends that the Council of Ministers reviews and removes the discriminatory provisions of Decree No 66 of 28 March 1996 – ON STAFFING OF CERTAIN ACTIVITIES IN BUDGETARY ORGANISATIONS, and the legal acts issued on the basis of this Decree by the responsible Ministries with view of the requirements set out in Article 14 and Article 15 of PADA.

The decision was not appealed and has entered into force

2. Proceedings pursuant to Section I of Chapter Four of the Protection Against Discrimination Act, initiated on the basis of a complaint lodged by K.K. from Ruse, quoting discrimination against her "right to work".

The appellant indicates in her complaint that she works as a nurse at a nursery home in Ruse headed by Nurse P. In July 2007, at a meeting, employees were informed that some of them were paid higher salaries in January 2007. Mrs. D. K., head of department in the municipal administration of Ruse suggested that the employees sign declarations for voluntary refund of those amounts. After the appellant announced that she does not agree to such suggestion, a second, individual meeting was organized with the appellant and the head accountant of Ruse Municipality, Mrs. G. At the said meeting, the representatives of the administration stated that if the appellant refuses to sign the declaration, she will not receive the 10% increase in salary provided for the public sector as of mid-2007.

In August 2007, the basic salary of the remaining 120 nurses was increased, but the salary of the appellant remained unchanged.

Mrs. K. K. believes that a violation of Article 14, par. 1 of the PADA is in place, as her employer has failed to provide equal pay for work of equal value and requests that, within the competence of the Commission for Protection against Discrimination granted pursuant to Article 47, par. 2, her rights be reinstated and termination of such violation on behalf of her direct superior – Nurse P be ruled.

The decision of the Commission establishes discrimination on behalf of the employer who has failed to provide equal pay for work of equal value.

The decision was appealed, confirmed in part by a three-member panel of the Supreme Administrative Court and has entered into force.

Article 4§4

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

<u>Direct questions of the ECSR:</u>

Paragraph 4 - Reasonable notice of termination of employment

It points out that during the previous supervision cycle (Conclusions 2007) it found that the situation was not in conformity because 30 days was not a reasonable

notice period for an employee with five or more years' service. The Committee notes that amendments have been made to Article 326, paragraph 2, of the Labour Code to increase notice periods to three months for the dismissal of employees on permanent contracts by means of collective agreements. The 30-day leave period remains in force under the Labour Code but it is now possible to extend it to three months through an agreement between employers and employees. In order to rule on the situation, the Committee would like to know if all employees are covered by a collective agreement at national level or if the provisions of the Labour Code are applied alongside those of collective agreements.

The Committee notes that there has been no change in the notice periods of fifteen days for the termination of contracts for work in addition to the employee's principal occupation with the same employer or with different employers. These periods are said to take account of the specific nature of these "additional contracts", which is embodied in their title. It is submitted in the report that in these specific cases, it is neither reasonable nor acceptable to take account of the employee's length of service. The Committee points out that two weeks is not a reasonable notice period for employees with over six months' service.

Pursuant to Art. 50 of the Labour Code (LC)**,** the collective agreement shall regulate issues of the industrial and social-security relations of factory and office workers, which are not regulated by mandatory provisions of the law, and it may not contain clauses which are less favourable to the factory and office workers than the provisions of the law or of a collective agreement which is binding on the employer.

The levels of collective bargaining are regulated by Art. 51 of the LC, which provides for collective agreements, shall be concluded by enterprise, branch, industry and municipality, and only one collective agreement may be concluded at the level of enterprise, branch and industry.

Pursuant to Art. 51 of the LC, within an enterprise, the collective agreement shall be concluded between the employer and a trade union organisation.

Pursuant to Art. 51c of the LC, in the municipalities collective agreements for activities financed from the municipal budget shall be concluded between the representative organisations of the factory and office workers and of the employers.

The Bulgarian legislation does not provide for the conclusion of a collective agreement on a national level but the provision of Art. 51b, para. 4 of the LC regulates the right of the Minister of Labour and Social Policy, upon the joint request of the all representative organisations of the employees and workers and of the employers in the industry or the branch, to extend the application of the agreement or of individual clauses thereof to all enterprises of that industry or branch.

Article 326, Par. 2 of the Labour Code considers a collective labour agreement concluded at an enterprise level, whose provisions can be of benefit to the members of the trade union organization/s and/or the ones acceded to it under Art. 57, Par. 2 of the Labour Code.

In relation to additional labour agreements under Art. 110, 111 and 114 of the Labour Code, it should be taken under consideration that as the additional work contracts are labour contracts, the common grounds and procedures for termination of employment contracts shall apply to them.

The legislature has provided additional opportunity for termination with a 15 days prior notice, as the nature of the work assigned with an additional labour contract does not require the continued employment of the employee. The assigned work has a temporary nature in terms of the required daily working time to complete it, and in terms of the relevant calendar duration. The majority of labour contracts for the performance of additional work are concluded as fixed-term contracts for part-time working hours and are therefore terminated due to expiration of the term.

In view of the above, we believe that the additional opportunity provided by the legislation for the termination of contracts for additional work with a 15-day notice is in the interest of both parties, as the extension of the notice period for termination would have too much of a binding effect to the parties. This legislative decision takes into account precisely the basic specifics of these contracts as "additional".

For these reasons it is not necessary in such cases to take into account the length of service of the worker or employee.

Article 4§5

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Direct questions of the ECSR:

Paragraph 5 - Limits to deduction from wages

It refers to the previous conclusion (Conclusions 2007) and its request for additional information on whether the system limiting wage deductions ensured that workers would earn at least a minimum subsistence income under all circumstances (Article 446 of the Code of Civil Procedure).

The Committee notes the opinion expressed in the report that the deductions applied will, in all circumstances, ensure that employees benefit from "at least minimum maintenance" of subsistence. Thus, following an example presented in the report in relation to the income of BGN 240 (€152), the employee will receive, after authorized deductions, BGN 180 (92 €) and BGN 192 (98 €) respectively for those without and those with dependent children. The indicated sums are higher than the guaranteed minimum income of BGN 65 (€33) established by Decree No. 6 of the Council of Ministers of 15 January 2009.

Nevertheless, the Committee recalls that it has found the guaranteed minimum income to be manifestly inadequate under Article 13 of the Revised Charter (Conclusions 2009, Bulgaria) and while acknowledging that the amounts after deduction quoted in the example above are higher it therefore asks that the next report contain more detailed evidence that such amounts do indeed guarantee the very means of subsistence for a worker and his/her dependants.

The legal definition of "unseizable income" is contained in Art. 446, Par. 1 of the Code of Civil Procedure specified in the previous report, and also in Art. 213, Par. 1 of the Tax Insurance Procedure Code. **Both provisions are mandatory, which means that their implementation is absolutely essential for all parties to the proceedings, as well as for third parties.**

Coercively Enforceable Property

Article 213. (1) Coercive enforcement shall be levied on the entire property of the debtor with the exception of:

1. any items of property for everyday use by the debtor and the family thereof, the essential food, heating fuel, draft animals and tools for the practice of a skilled craft or occupation according to a list approved by the Council of Ministers;
2. the sole residence of the debtor, and if the living floorspace exceeds 30 square metres for the debtor and for each of the family members thereof individually, the excess shall be sold if the residence is actually divisible under these conditions;
3. the assets on bank accounts up to an amount of BGN 250 for each family member;
4. agricultural land: up to one-fourth of the land tracts owned, but not less than 0.3 hectares, farmed directly by the debtor or by a family member thereof, as well as the implements required for the farming of the said land tracts;

5. the labour remuneration, the benefit under an employment relationship, the pension or the study grant: up to an amount of BGN 250 monthly (175 euro).

Art. 213, Par. 2 of the Tax Insurance Procedure Code explicitly enumerates other debtor's receipts which do not allow enforcement:

(2) Coercive enforcement shall be inadmissible in respect of:
1. any social-insurance benefits, including unemployment benefits;
2. any social assistance allowances provided by the State budget or the municipal budget;
3. (supplemented, SG No. 41/2009, effective 1.07.2009) any amounts donated by natural and legal persons and received by permanently disabled persons with working capacity reduced by more than 50 per cent or with a certain type and degree of disability of more than 50 per cent and other categories of socially disadvantaged persons;
4. any claims for maintenance set by the court.

Debtor's Option
Article 214. (1) The debtor may, after declaring the entire property thereof, propose that enforcement be levied against another corporeal movable or immovable or that enforcement be performed only according to some of the methods demanded by the public enforcement agent.

The same option for the debtor is also regulated by the provision of Art. 443 of the Code of Civil procedure, namely, the execution debtor may propose that the enforcement be levied against another corporeal thing or receivable or be performed solely by some of the methods of enforcement demanded by the execution creditor. If the enforcement agent determines that the method of enforcement proposed by the execution debtor is in a position to satisfy the execution creditor, the enforcement agent shall levy the enforcement against the corporeal thing or receivable named by the execution debtor.

Enforcement Agent's Liability for Damages
Article 441. (Amended, SG No. 50/2008, effective 1.03.2008, SG No. 100/2010, effective 21.12.2010) The private enforcement agent shall be liable, under the terms established by Article 45 of the Obligations and Contracts Act ("Every person must redress the damage he has guiltily caused to another person."), for any damages inflicted as a result of legally non-conforming coercive enforcement. The liability for any such damages inflicted by the public enforcement agent shall be under Article 49 of the Obligations and Contracts Act ("A person who has commissioned another to perform certain work shall be liable for the damage caused by the latter in, or in connection with, the performance of such work.").

The defence against coercive enforcement pursuant to Tax and Social Insurance Procedure Code, available to the debtor, is regulated by Chapter Twenty-Seven.

The steps of the public enforcement agent shall be contestable by the debtor or by the third liable person before the director of the competent territorial directorate through the public enforcement agent who performed the said steps. Any such contestation shall be lodged within seven days after performance of the step if the person was present or was notified of the said performance, and in the rest of the cases, after the day of communication. In respect of third parties, the time limit shall begin to run as from learning of the step concerned. This is the so called administrative control on the actions of the public enforcement agent by the superior authority

Consideration of Contestation
Article 267. (1) The decision-making authority shall consider the contestation on the basis of the information in the file and the evidence presented by the parties.
(2) Within fourteen days after the receipt of a valid contestation, the decision-making authority shall pronounce by a decision whereby the said authority may:

1. terminate the proceeding, if the debtor pays the amount due, including the costs incurred, before pronouncement on the contestation;
2. suspend the enforcement, if there are grounds for suspension of the coercive enforcement under this Code, of which the execution creditor shall be notified as well;
3. revoke the step contested;
4. revoke or refuse to revoke the enforcement step, contested by the third party possessing independent rights to the item of the property where against the coercive enforcement is levied; where the contestation is not granted, the third party may bring an action within thirty days after receipt of the transcript of the decision;
5. dismiss the contestation;
6. leave the contestation without consideration, where the contestant has no standing to contest the steps of the coercive enforcement authority or where the contestant withdraws the contestation.
(3) In the cases referred to in Item 3 of Paragraph (2) the enforcement case shall be returned to the authority who performed the step appealed, and the enforcement proceeding shall commence from the revoked action.

Judicial Appeal
Article 268. (1) (Amended, SG No. 30/2006, effective 1.03.2006, SG No. 12/2009, effective 1.01.2010 - amended, SG No. 32/2009) In the cases referred to in Items 2, 4, 5 and 6 of Article 267 (2) herein, the debtor or the execution creditor may appeal the decision before the administrative court exercising jurisdiction over the location of the competent territorial directorate within seven days after the communication. The case file shall be transmitted to the administrative court within three days after the receipt of the appeal.
(2) (Amended, SG No. 30/2006, effective 1.03.2007) The judgment of the administrative court shall be final and unappealable.

Scope of the provisions as interpreted by the ECSR
Paragraph 1: Wages must guarantee a decent standard of living to all workers. The net minimum wage must amount to at least 60% of the net national average wage.
Paragraph 2: The right to an increased remuneration rate for overtime work should be guaranteed to workers; where leave is granted to compensate for overtime, it should be longer than the overtime worked.
Paragraph 3: The right to equal pay without discrimination on grounds of sex should be expressly provided for in legislation. Appropriate and effective remedies should be provided in the national legislation in the event of alleged wage discrimination on grounds of sex.
Paragraph 4: The right of all workers to a reasonable period of notice for termination of employment should be guaranteed.
Paragraph 5: The right of all workers to their wage being subject to deductions only in circumstances which are well-defined in a legal instrument (law, regulation, collective agreement or arbitration award) should be guaranteed.

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 police shall be determined by national laws or regulations. The principle governing the application to the members of the 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 or regulations.

Information to be submitted:

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Direct questions of the ECSR:

Forming trade unions and employer associations

The Committee examined the conditions governing the forming of trade unions and employer associations in its previous conclusions (Conclusions 2004 & 2006). In its last conclusion it noted that trade unions and employer associations were covered by the Non-Profit-Making Organisations Act (No. 81) of 6 October 2000 insofar as conditions governing their registration was concerned. The report indicated however that this was the case until a special law on trade union activities was adopted, which at the time was still pending. The report being silent on any new developments, the Committee asks to be informed about any changes in the legislation regarding this matter.

At present there is no adopted special law on trade unions.

Freedom to join or not to join a trade union

The Committee already noted that Article 4(1) and 5(1) of the Labour Code as well as Section 21(1) of the Associations Act provide for the right of employees and employers to join or leave trade unions or association of their own free will. However, it takes note from another source that there are repeated allegations of anti-union discrimination and harassment. Given the seriousness of such allegations the Committee asks for the next report to comment on them.

Prohibition of discrimination due to "union membership" and the principle of freedom of association are incorporated into the national legislation. In **Art. 8, Par. 3 of the Labour Code**, the legislator has regulated that in the implementation of labour rights and obligations there shall be no direct or indirect discrimination based on nationality, origin, gender, sexual orientation, race, color, age, political or religious beliefs, membership in trade unions and other public organizations and movements, family and financial situation, mental or physical disabilities, as well as differences in the duration of the contract and working hours. Art. 4, Par. 1 of the **Protection Against Discrimination Act** imperatively regulates the prohibition of discrimination on the basis of a large number of indications exceeding the requirements of the EU anti-discrimination directives. The prohibition acts toward all entities and the protection extends to all persons on the territory of the Republic of Bulgaria.

The legislator supplements the norms of the Labour Code for equal treatment, and by the provisions of **Chapter II, Section I, Protection in Exercising the Right to Work of the Protection Against Discrimination Act** ensures the protection of workers and employees against discrimination at all stages of the existence of the individual employment relationship – origination, implementation and termination.

According to Art. 18 of the Protection Against Discrimination Act, the employer in cooperation with the trade unions must take effective measures to prevent all forms of discrimination in the workplace. Within the framework of European and national initiatives to prevent and combat discrimination, the Commission for Protection against Discrimination involves as partners various non-governmental organizations, associations and trade unions. At different stages of the Commission's interaction with the social partners there are signed agreements for cooperation with employers and nationally represented trade unions.

Files brought before the Commission for Protection against Discrimination with regard to complaints for violations due to TRADE UNION MEMBERSHIP

1. The Commission applies the general procedural rules provided for the **specialized anti-discrimination proceedings** before the administrative body, namely the provisions of **Chapter IV, Section I, Proceedings before the Commission for Protection Against Discrimination of the Protection Against Discrimination Act**. According to **Art. 47, items 1-4 of the Protection Against Discrimination Act**, the Commission for Protection Against Discrimination: 1. establishes violations of the Law on Protection against Discrimination or other laws governing equal treatment, the offender and the person concerned; 2. provides prevention and cessation of the violation and restoration of the original position; 3. imposes provided sanctions and implements measures of administrative duress; 4. gives binding instructions to ensure compliance with this and other laws governing equal treatment.

In the proceedings for protection against discrimination, the Chairman of the Commission for Protection Against Discrimination has established five PERMANENT SPECIALIZED PANELS to certain discriminatory indications as well as Ad Hoc panels /for a specific case/ and 5-member panels /for multiple discrimination/. The Second Specialized Permanent Panel has specialized in the following indications: gender, human genome, the right to employment and union membership. It should be noted that other specialized panels of the Commission also contribute to the protection of labour rights.

The SECOND SPECIALIZED PERMANENT PANEL is specialized in the following indications: gender, human genome, the right to employment and union membership. It should be noted that the remaining specialized panels of the Commission also contribute to the protection of labour rights.

In **2012** the SECOND SPECIALIZED PERMANENT PANEL has decreed 24 resolutions on generated files, including 4 resolutions on complaints of discrimination due to "trade union affiliation".

Trade union membership has been combined with another law protected indication in 5 files of the ones from **2012** for multiple discrimination, reviewed by a FIVE-MEMBER EXTENDED PANEL ON MULTIPLE DISCRIMINATION.

2. Number of files according to years and to complaints for violations due to TRADE UNION AFFILIATION

2006 – 8 files
2007 – 0 files
2008 – 4 files
2009 – 10 files
2010 – 1 files
2011 – 6 files
2012 – 7 files

Establishment of violations of the requirements for equal treatment on the grounds of "trade union membership" is at one of the first places of importance for the Commission for Protection Against Discrimination.

In its previous conclusions (Conclusions 2004 and 2006) the Committee considered that the situation is not in conformity with Article 5 as the Labour Code (Article 225), which provides for damages up to a maximum of 6 months wages in the event of discriminatory dismissal because of trade union activities, does not provide for adequate compensation, which would be proportionate to the damage suffered by the victim. The explanation provided on the reduction in the length of court proceedings does not appear sufficient for it to take another view. The Committee already found that where such discrimination takes place, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim.

The text of Article 225, Par. 1 of the Labour Code provides for cases of unlawful dismissal where the is entitled to compensation from the employer amounting to the worker's gross labour remuneration for the period of unemployment caused by reason of the said dismissal, but not more than six months.

Essential tools for civil protection against discrimination regulated by the Protection against Discrimination Act are the claims under Article 71 of the Protection against Discrimination Act, within the jurisdiction of the ordinary courts.

The provision includes three types of claims, which in the opinion of the plaintiff may be brought individually or simultaneously. The bringing of the claim under Article 71, para 1, item 1 of the Protection against Discrimination Act is to be established the relevant discriminatory actions by an enforceable judgment. The claim under Article 71, para 1, item 2 aims to eliminate the direct consequences of discrimination and to establish by force of law an obligation to those who carried out the discrimination to cease violation, to restore the situation before the violation and to refrain from further discriminatory actions.

The claim under item 3 of Article 71, Par. 1 provides a possibility to injured person to seek and receive a compensation for damages caused by the violation. **Compensations are subject to both material and non-material damages - affected honor, dignity, pain and sufferings. In case of compensation for damages incurred from discrimination is applying the general rule of Article 52 of the Obligations and Contracts Act that the compensation shall be determined on an equitable basis.** The mandatory judicial practice accepts that the concept of "equity" is not abstract, and in determination of fair compensation should be considered and discussed all specific circumstances that are relevant to determining the amount of compensation in order to be fair.

According to Article 71, Par. 1, any person who was subject to unequal treatment - discrimination may actively bring a legitimate action.

The claims under Article 225, Par.1 of the Labour Code and under Article 71, Par. 1, Sections 1-3 of the Protection against Discrimination Act complement may be brought simultaneously, but also may apply separately and independently of each other. This means that even if a compensation is awardable for the period during which the worker has been unemployed, there is no prohibition for claims under Article 71, Par. 1, item 1-3 of the Protection against Discrimination Act. The reason for this is that the grounds for awarding compensations are different. The compensation under Article 225, Par. 1 is awarded to the worker because he/she was unemployed for a certain period of time **due to any kind** of unlawful dismissal, while the compensation under Article 71, Par.1 of the Protection against Discrimination Act is awarded for acts of discrimination, **not only in the workplace but in all cases of discrimination actions.** The amount of the compensation has **no upper limit** (Art. 71, Par. 1).

In view of the lack of information regarding compensation for discrimination based on trade union membership activities in areas other than dismissal, the Committee reiterates its request for information on what form of compensation exists and, if financial, what level is set.

Chapter IV, Section II, Judicial Proceedings of the Protection Against Discrimination Act provides for compensation for damages. **Art. 71 of the Protection Against Discrimination Act** stipulates that **with the exception of the cases under Section I (specialized anti-discrimination proceedings)**, any person whose rights under this or other laws governing equal treatment have been violated, may file a claim before the district court and ask for: 1. establishment of the offense; 2. sentencing the defendant to cease the violation and restore the situation prior to it, as well as to refrain from further violations; 3. compensation for damages. The procedure for damages under this section is relieved for applicants for whom the Commission for Protection Against Discrimination has established with a resolution discrimination by a protected indication. In these cases, the party claiming damages in the court proceedings shall only prove the amount of compensation without

establishing discrimination. **Art. 71, Par. 2 of the Protection Against Discrimination Act** stipulates that trade unions and their branches as well as non-profit entities with a public benefit activity can file a claim on behalf of persons whose rights have been infringed, upon their request. These organizations may intervene as an interested party in a pending litigation. **In awarding compensation for damages incurred from discrimination there applies the general rule of Art. 52 of the Law on Obligations and Contracts that the compensation shall be determined on an equitable basis.** The amount of damages under Art. 71, Par. 1 **has no upper limit.**

Sanctions in Proceedings for Protection against Discrimination

The Commission for Protection against Discrimination of the Republic of Bulgaria is an independent specialized state body for prevention of discrimination, protection against discrimination and provision of equal opportunities. The Law on Protection against Discrimination has provided a special procedure before the Commission for Protection against Discrimination.

In compliance with Art. 17 of Directive 2000/78 (EC), Art. 15 of Directive 2000/43 (EC) and Art. 25 of Directive 2006/54 (EC), the penalties for established unequal or less favorable treatment are regulated by the national law of the Republic of Bulgaria, in Chapter Five, Section II of the Law on Protection against Discrimination (the basic regulatory act in the field of anti-discrimination law).

The Commission for Protection against Discrimination reviews cases where three years from the perpetration of the offense that has led to discrimination have not expired, i.e. the proceedings for protection against discrimination before the Commission do not consider the cases with an expired three-year limitation period (Art. 52, Par. 3 of the Law on Protection against Discrimination). Art. 65, Par. 3 of the Law on Protection against Discrimination regulates the power of the Commission for Protection Against Discrimination exercised by the panel reviewing the file, to announce a resolution determining the type and amount of the penalty. In compliance with the requirements of Art. 52, Par. 3 of the Law on Protection against Discrimination specified here above, persons who have committed discrimination not earlier than the three-year limitation period can also be sanctioned.

1. **Types of penalties according to the Protection Against Discrimination Act:**

1.1. Fine – imposed on natural persons and

1.2. **Penalty payment – stipulated for juridical persons**

2. Persons and cases where fins and property sanctions are imposed:

2.1. For the **established perpetrator of discrimination** in Art. 78, Par. 1 of the Law on Protection against Discrimination, there is a **fine in the amount of BGN 250 to 2000**.

2.2. The same penalty is provided for a person who does not fulfill the obligation arising from the Law on Protection against Discrimination in Art. 80, Par. 1 of the Law on Protection against Discrimination, i.e. not only the performance of discrimination is sanctioned, but also the non-execution of an obligation stipulated in the Law on Protection against Discrimination, e.g. non-placement of the text of the Law on Protection against Discrimination at a place accessible to all in educational institutions and by the employer in the enterprise.

2.3. Provided the offense leading to a difference in treatment is performed in the activities of a legal person, a fine shall be imposed amounting from BGN 250 to 2500.

2.4. Non-performance of an obligation stipulated in the Law on Protection against Discrimination shall lead to a sanction for the head of the respective legal person – employer, ranging from BGN 200 to 2000;

2.5. For other participants in the proceedings, the following sanctions are stipulated:

2.5.1. For persons who have refused to provide information requested by the Commission or have refused to grant access to premises, Art. 78, Par. 2 of the Law on Protection against Discrimination stipulates a fine of BGN 500 to 2,000.

2.5.2. Default of appearance of a regularly summoned witness, without good cause, before the Commission to give testimony stipulates a fine of BGN 40 to 100;

3. For a repeated identical offense in Art. 81 of the Law on Protection against Discrimination, the penalty is a fine or, respectively, a penalty payment, double the amount originally imposed.

4. Failure to meet the Commission's resolution shall result in a fine of BGN 2,000 to 10,000 consistent with the national law of the Republic of Bulgaria (Art. 82 of the Law on Protection against Discrimination), provided there is not a more severe punishment for this offense, and if after three months as of delivery of the resolution, the infringement continues, the punishment shall be a fine of BGN 5,000 to 20,000.

Fines provided for in the special Law on Protection against Discrimination have a fixed minimum and maximum, i.e. the panel examining the case reviews each file and estimates the amount of the fine or the penalty payment of the offender, guided by principles of Art. 27 of the Law on Administrative Violations and Sanctions establishing the way for determining administrative penalties. According to the provision of Art. 27, Par. 2 of the Law on Administrative Violations and Sanctions, sentencing should take into account the gravity of the infringement, its motives and other extenuating and aggravating circumstances as well as the property status of the offender. Thus, the amount of the penalty is individualized for each case.

All provided sanctions, like measures transposing Art. 17 of Directive 2000/78 (EC), Art. 15 of Directive 2000/43 (EC) and Art. 25 of Directive 2006/54 (EC), **are single and not progressive**. They are imposed with the resolution establishing discrimination or by a special act for the specific case described in Section 2.5, items 3 and 4 of this document.
Sanctions are due after **the entry into force of the resolution** that imposes them.

The Committee asks for examples of how the Discrimination Protection Act 2003 referred to in the previous report is applied in cases of discrimination based on trade union membership or involvement in trade union activities.

Examples of application of the Protection Against Discrimination Act: in cases of discrimination due to trade union membership or participation in union activities:

Where the employer **DOES NOT ALLOW THE ESTABLISHMENT OF A TRADE UNION ORGANIZATION**, THERE IS AN EXTREME FORMS OF DISCRIMINATION IN THE SPHERE OF EMPLOYMENT, as the rights to freedom of association for the protection of labour rights of workers are violated. The established violations reaching dismissal of organization founders or trade union leaders as such indicate precisely discrimination due to "union membership" because the different and less favorable treatment was motivated by the affiliation of the worker to an organization for the protection of labour rights. In this case, social dialogue is directly impeded and the procedures provided for in the Labour Code for collective labour negotiation are hampered.

An example of direct discrimination due to the protected indication "union membership" is the **DECISION NO. 217/2011 OF CASE NO. 143/2009** of the **SECOND SPECIALIZED PANEL**, filed by a trade union federation against the company manager, which expects a permit for merger after purchase of the shares of the shareholders of a corporation licensed as a national operator for the provision of a public service. The public operator and sole capital owner of the merging company appoints as a manager in the merger period one of its top executives who is representing the merging company before the employer.

The chairman of the trade union federation claims discrimination due to "trade union membership" by the dismissal of three employees, which are leaders of the only trade union section established in the merging company-employer.

Secondly, there are actions against a multitude of other company employees in terms of "employer coercion" to leave on their own initiative the merging company or enter into new, more unfavorable contracts with the host company.

The person who has filed the complaint explains that he has subsequently sent a notice to the corporation representative, sole owner of the merging company and its successor, stating that the company has a union section, naming three employees who represent the leadership of the trade union section, and requesting a meeting with the employer. On the next day, a Human Resources representative of the corporation has served dismissal warrants to the three employees.

During the proceedings, the manager of the merging company stated before the Commission for Protection against Discrimination on the dismissal of the three employees, that the employer is entitled to terminate the employment of employees of the other company on the basis of Art. 328, Par. 2 of the Labour Code. According to the manager, this right of the employer does not require motivation of the warrant for termination of employment of employees on managerial positions, and therefore considers the termination to be legal and in accordance with the Labour Code.

As far as the positions of the three dismissed employees fall in the "company management" category within the meaning of § 1. Item 3 of the Additional Regulations of the Labour Code, the manager of the merging company believes that in respect of these employees no acts of discrimination have been committed and dismisses the charges of harassment of numerous workers and employees through termination and modification of their employment contracts.

After detailed examination of the evidence gathered, the Second Specialized Panel has indicated that undoubtedly upon termination of individual employment contracts under Art. 328, Par. 2 of the Labour Code, the employer exercises his sovereign right in his sole discretion, acting where appropriate, but the legality of the actions in terms of labour legislation is not subject to the proceedings. In connection with the complaint it should be established, however, whether the termination of the employment contracts of these persons is related with a development of employment relationship stipulated by law or whether their belonging to the trade union organization has caused the use of the legal opportunity to achieve the realized outcome.

After discussing the defensive arguments of the defendants, the panel has found that they could be seen as grounded, had they not reflected one-sidedly the objective factual circumstances. The panel has established that in the process period the manager of the merging company is not only representing the employer, but is also chief commercial director of the host corporation.

The manager of the merging company is directly subordinate to the executive director of the corporation-sole owner who has received the information from the trade union federation. These facts state that it is beyond doubt that the employer company and the host corporation were "related" within the meaning of § 1, item 9 of the Additional Regulations of the Labour Code, as the host corporation, in its capacity of sole owner and through the appointed administrator has participated in the management of the company to be merged.

Having established that the employer company and the host company are "related", the arbitration panel has accepted that the information submitted to the host company about union affiliation of the three fired employees was known to the manager of the merging company, and convincing evidence to the contrary, besides a formal objection, has not been filed by the constituted defendant parties.

As established by witness evidence, the employer has exercised such an approach only to the three leaders who are also members of the leadership of the trade union section, although the manager did not personally know the dismissed persons. He has decided to release only those management positions occupied by the leaders of the trade union, and has

done it the next day after the information about them was provided to the host company, which is "related" to the employer company. The alleged undisputed legal fact of failure to notify the employer and formal legal independence of the companies have not shown convincingly in these circumstances that the right to equal treatment has not been violated.

In this case, the specialized panel has adopted that with the issuance of orders for termination of employment and by termination of employment only of the managerial staff who has formed the leadership of the trade union section of the employing company, the manager of the merger company has committed a less favorable treatment of concerned persons in connection with the "union membership" attribute specified in Art. 8, Par. 3 of the Labour Code, which is prohibited and constitutes direct discrimination and violation of Art. 4, Par. 2 of the Law on Protection against Discrimination.

The panel has adopted that the established infringement of the employer managing the company should be fined with a maximum amount as the violation has affected the rights of more than one person and a fine of this size will have a re-educative role and deterrence to prevent other offenses. As far as it has been found that there has been an offense by the employer, the head of the universal successor of the juridical entity employer – the host company, was fined a maximum amount because the infringement committed has affected the rights of more than one person.

An analogous case was established with **DECISION No. 176/2013 OF THE SECOND SPECIALIZED PANEL OF A CLAIM OF A CHAIRMAN OF A NATIONAL FEDERATION TO A NATIONALLY REPRESENTATIVE SYNDICATE** against the juridical person employer for discrimination due to "trade union organization affiliation".

The complaint alleged that the syndicate organization has stated its collective membership with the National Federation by written application accompanied by the required documents from its Statutes. It was said that even in the founding of the union section they have been informed about violations of labour laws in the respondent company, namely coercion of employees to sign job descriptions years after the conclusion of the employment contract containing official functions and duties beyond the clauses in contracts and the ones actually fulfilled.

The complaint alleged that the chairman of the syndicate organization has informed by letter the manager of the employer company for the establishment of a trade union structure, naming the members of its leadership, but there was no reaction on the part of the employer, including a written response to the notification letter. In accordance with Art. 46 of the Labour Code, the chairman of the trade union section submitted a new letter to the employer, requesting conditions for trade union activities in the organization, including adequate premises, access of union leadership to jobs in the company and others. Subsequently a written request was submitted to organize a meeting between representatives of the employer and the leadership of the union, as well as a request for dialogue on signals for problems of people working in the company.

Also no conditions were provided for the exercise of trade union activities. As stated, this constituted a silent denial on the part of the defendant. It was also stated that the proposal of the union section for joint discussion in a spirit of social cooperation of the workers problems presented to the union was not accepted: on working conditions, compliance with national law, information from the employer for established and operational internal constituent documents of the company concerning labour and social rights and obligations of employees.

About a month later, the federation sent another letter, which requested a meeting and dialogue with representatives of the employer in connection with the signals received from union members for non-compliance of internal company documents with the requirements of the Bulgarian legislation and the "refusal of the employer" to accept the fact that there is a trade union body in the company. The complaint stated that they have alerted the management of the company regarding their reluctance to communicate with the union that constitutes a breach of their obligations under national labour legislation. It also specified that on the same

date, at 17:48 pm, a confidential letter was mailed via the company network, reporting to the staff that the Internal Rules for Salary, the Statutes on Internal Work Order, the Action Program and other internal documents of the company are available, in the network and in the original, and they were on hand in the Human Resources section. It was specified that no response of the notification letter was received again and the invitation of the federation did not result into a meeting.

In this case, the panel has accepted that the employer who is a legal entity has effected a less favorable treatment of a newly constituted union section, a member of the nationally represented union. The offense started on 31.05.2010 with the call for presenting facilities for trade union activities in the company. The unfavorable treatment was expressed in denial of the union section to be recognized as a legitimate trade union structure in the legal employer entity, in withholding premises and necessary equipment for normal trade union activities of the newly established trade union section and its chairman.

The panel has enacted that such actions constitute direct discrimination within the meaning of Art. 4, Par. 2 of the Law on Protection against Discrimination in relation to Art. 8, Par. 3 of the Labour Code, which states that the employer has direct obligations not to engage in direct and indirect discrimination on the grounds of trade union membership, and in conjunction with Art. 46, Art. 50, Art. 52 and Art. 51a of the Labour Code.

The panel has given compulsory instruction to the legal employer entity pursuant to Art. 76 , Par. 1, item 2 in conjunction with Art. 18 of the Law on Protection against Discrimination and in conjunction with Art . 46 of the Labour Code to eliminate the violations committed by the employer of the said rules, expressed in the creation of a situation impossible for the exercise of trade union activities, and in the future to prevent unequal treatment of a newly established trade union section of a National Federation, to comply with the obligation of Art. 46 of the Labour Code to assist the newly established trade union section for carrying out its activities, as well as to its representatives, to comply with the provisions of Art. 18 of the Law on Protection against Discrimination.

The panel has ruled for the legal employer entity to begin immediate implementation of the obligations resulting from Art. 46 of the Labour Code for the employer to negotiate with employee representatives and has set a 30-day deadline for the defendant employer to certify the implementation of the laid down regulations.

2. Another form of discrimination – **DIFFERENT TREATMENT OF DIFFERENT SYNDICATE ORGANIZATIONS OR THEIR MEMBERS**

A widespread manifestation of discrimination in employment may be considered when an employer does not allow to a part of workers and employees access to more favorable conditions of work and pay, including holidays and vacations that have been negotiated in the process of collective labour agreement. By malicious interpretation and implementation by employers of the procedure for the conclusion of collective agreements, a significant part of workers hired with a labour contract remain excluded from the more favorable provisions of the collective agreement. The unequal treatment imposed by the employer is due to membership in a syndicate other than the one in the collective labour agreement or non - membership in a trade union. Discrimination affects the right of workers and employees to freedom of association outside organizations recognized as representative at national level, although the set of principles relating to freedom of association and collective agreement includes the right of workers to establish and join trade unions of their choice and this complete freedom exists only if it is recognized de jure and de facto.

An example of how discrimination on the grounds of "union membership" leads directly to less favorable treatment and damage to employment rights of part of the workers is the **DECISION NO. 164/2010 OF CASE 38/2009 DUE TO A CLAIM OF THE PRESIDENT OF THE TRADE UNION ORGANIZATION AGAINST A HEADMASTER OF A SECONDARY GENERAL EDUCATION SCHOOL**. According to the claim, the discriminatory actions of the headmaster of the school consisted in the fact that he refused to apply the provisions of the signed collective agreement for the public education system and did not allow teachers - union members of a non-representative national

trade union, the increased paid annual leave provided for in the collective labour agreement. To the members of this union organization the employer authorized a leave, which was 8 days shorter, so the claimant believed that the members of this union were treated less favorably than the members of trade unions who have signed collective agreements for the public education system. It was found that only those workers who are not members of any trade union, as well as those who are members of the claimant's organization have not received additional days of paid leave, although members of this organization have requested the defendant to join the branch collective labour agreement.

It was indisputably established, that working teachers and staff members of the school who were members of the claimant's organization, as well as those who were not members of any trade union, had practically the same work as their colleagues - members of other unions. Working conditions were the same, the type of workload was the same, and the differences in treatment in determining the additional amount of paid leave were only based on whether a particular employee was a member of a trade union that is a party to the collective labour agreement concluded at national level.

In this factual context, the panel has established that the employer, by presenting a different paid leave from the one established by the branch collective labour agreement has perpetrated an unequal and less favorable treatment on the grounds of "union membership" of teachers who were not members of nationally represented trade unions, and has violated the requirements of the law to take effective measures in cooperation with unions to prevent all forms of discrimination in the workplace and equal working conditions (Art. 13, Par. 1 and Art. 18 of the Law on Protection against Discrimination).

The panel has stated in this particular case that the offense does not conform to the provisions of community law, because a decision of the European Court of Justice on 11.02.2010 in the Andersen against Denmark case has given an interpretation on the application of Directive 2002/14/EC of the European Parliament and of the Council of 11.03.2002, establishing a general framework for informing and consulting workers and employees in the European Community, according to which, after having a category of persons covered by collective agreement of general application, the fact that a person is not a member of a union that has signed this collective agreement in itself does not exclude that person from the protection afforded by that collective agreement. It follows that, in accordance with Directive 2004/14/EC, the worker or employee who is not a member of a union which has signed a collective agreement, can benefit from the full protection provided for in it, even though he is not a member of a trade union organization.

The headmaster of the school was given a mandatory instruction to refrain from repeating such acts of discrimination, and to suspend the infringement established.

The case reviewed in **DECISION No. 197/2012 OF CASE No. 164/2011** is analogous.

The Second Specialized Permanent Panel has stated in this case that in Chapter II of the Law on Protection against Discrimination the legislator has imperatively regulated the duty of employers for equal treatment of workers and employees and the prohibition of discrimination in the exercise of the right to work. Even by itself, the fact that some teachers and employees receive fewer days of leave because they are not members of nationally represented trade unions or do not belong to any association, is an absolute violation of the regulations of the Law on Protection against Discrimination. There is unequal treatment of employees from the same sector that perform the same functions, work under the same or similar circumstances and have the same obligations, i.e. in fact, pursue the same work, but actually have different extra days of paid leave only depending on whether they are members of certain trade unions which are party to the collective labour agreement. In this case there is a violation of Art. 13, Par. 1 of the Law on Protection against Discrimination, as the right to paid leave is part of the arrangements for the exercise of labour, and Art. 8, Par. 3 of the Labour Code prohibits different treatment on the grounds of "trade union membership".

The specialized panel, having found that the above violation is committed by a representative of the legal person – employer and headmaster, and that this has led to less

favorable treatment of the applicant for an extended period of time, has imposed a fine for violations of the defendant in an amount above the minimum specified in the Law on Protection against Discrimination.

An example of impaired social dialogue is the **DECISION No. 008/2012 OF CASE No. 190/2010**, for discrimination on the grounds of "personal status", "public status", "trade union membership" and "persecution" within the meaning of the Law on Protection against Discrimination, based on the claim of 54 employees of a State Enterprise. According to the complaints, there is an unequal and discriminatory treatment by the state enterprise employer in respect of claimants compared to other company employees, incl. in comparison with those who are members of other trade associations and organizations.

The claimants stated that the unequal treatment was expressed in their exclusion from "effective participation" in the negotiations for the conclusion of collective labour agreement in 2010 through "improper implementation of the process of collective labour agreement for more favorable working conditions", discriminatory clauses in collective agreements, admission of "harassment" and "persecution" within the meaning of the Law on Protection against Discrimination regarding the employees.

They further argued that in violation of the Labour Code, the management of the state enterprise has issued an order which defined new workers' representatives, although such have been selected after the participants in the collective agreements negotiations have not reached an agreement on the presentation of a common project. Consequently, without the participation of the applicants, the project of two syndicate organizations in the state enterprise, containing discriminatory clauses, was accepted.

The panel has reviewed in detail and has analyzed the claimants' complaints and the opinions of the defendants, and has dismissed some, but separate complaints have been taken under consideration. After analysis and comparison of the labour, its qualitative and quantitative measurement, as well as other criteria that should be compared, the extended panel found that the claimants' complaint for breach of the principle of equal pay for equal work (Art. 14, Par. 1 of the Law on Protection against Discrimination) was justified.

The expanded five-member panel has undisputedly established that the offense was committed through the signing of Art. 48 of the collective labour agreement and thus direct discrimination was made due to "personal status" with regard to the applicants in the proceedings. Considering the public danger consisting of violating the right to equal treatment of the fifty four claimants, the panel held that to achieve the aims of the Law on Protection against Discrimination, there should be imposed a penalty payment on the state enterprise employer above the average established in the Law on Protection against Discrimination, namely BGN 2,000 (two thousand).

Although many of the other complaints were dismissed, the other established infringement against the claimants was interesting. With the particular resolution, the panel has also established that the introduction of differences between workers in joining the collective labour agreement with regard to their membership in a different union, contradicted not only to the Law on Protection against Discrimination, but also the protective function of the Labour Code. This is so because the application of more favorable work conditions established by collective agreements which should be available to all workers in the enterprise, depended on certain aggravating conditions for workers who are not members of the trade union – party to the collective labour agreement. Whether it was subjectively desired or not, the panel indicated, it has objectively resulted in pressure on workers to join trade unions, precisely those which conclude collective agreements, which are mostly the representative trade unions, which is undoubtedly to the detriment of employees who, exercising their constitutional right of association, have freely chosen to join smaller unions or not exercise any trade union membership. As far as the solution adopted created favorable conditions for trade union monopoly, and not for union pluralism on which the constitutional right of association is based, the panel held that the effect of Art. 7, Par. 1 of the collective labour agreement of 2010 in the state enterprise resulted in less favorable treatment and direct discrimination within the meaning of the Law on Protection against Discrimination on the

grounds of “union membership” of workers and employees who are not members of the three unions – parties to the collective labour agreement, and constituted a violation of the Labour Code and the Law on Protection against Discrimination.

In view of the established breaches leading to discrimination on the grounds of “personal status” and “union membership”, the panel has issued a mandatory prescription to the state enterprise employer to cancel the effect of the discriminatory provisions of the collective labour agreement and to cancel the related provisions of the internal rules concerning salaries.

It further asks for more information on how Article 414 of the Labour Code regarding sanctions and fines related to violations of labour legislation applies in this context, notably by providing concrete examples of cases dealt with by the Labour Inspectorate;

Fines imposed under Art. 414 of the Labour Code are in their legal nature administrative sanctions. Proceedings to establish and enforce these penalties are regulated by the Administrative Violations and Sanctions Act (AVSA).

Article 15. (1) (Amended, SG No. 59/1992, SG No. 102/1995) A fine shall be a pecuniary penalty constituting the payment of a certain sum.
(2) In respect of minors the imposition of a fine as an administrative sanction shall be commuted to public censure.
Article 27. (1) An administrative sanction shall be meted out in accordance with the provisions of this Act within the bounds of the punishment provided for the respective violation committed.
(2) In meting out the punishment, account shall be taken of the gravity of the violation, the motives or inducements for the commission thereof and other extenuating and aggravating circumstances, as well as the property status of the offender.
(3) Extenuating circumstances shall condition the imposition of a milder sanction, while aggravating circumstances shall cause harsher sanction.
(4) Commutation of punishments provided for each respective violation to lighter ones shall not be allowed except in the events referred to in Article 15, paragraph 2.
(5) Imposition of a sanction lesser than the minimal extent prescribed for fines and temporary deprivations of the right to practice a certain profession or business activity shall not be permitted either.
Article 52. (1) (Supplemented, SG 51/2007) A penalising authority shall be obliged to rule on the administrative-penal case within one (1) month following the receipt thereof. In the cases specified in Article 44 (4) the penalizing authority shall rule on the same day upon receipt of the administrative penalizing file.
(2) Should it be found that a statement of violation has not been presented to the offender, the penalising authority shall forthwith send it back to the official who drew it up.
(3) Following the receipt of a case, a penalising authority shall notify of the statement drawn up the victims, if any, and provided their addresses are known.
(4) Before ruling on a case, a penalising authority shall examine the statement of violation with a view to its lawfulness and validity, and shall appraise all objections lodged and evidences gathered. Where needed, an investigation of controversial circumstances shall also be conducted. Such investigation may be assigned to other officials from the same administration as well.
Article 53. (1) Where established that an offender has committed the act guiltily, the penalising authority shall issue a penal decree whereby the relevant administrative sanction shall be imposed on the offender.

Report on the Activity of the 'General Labour Inspectorate' Executive Agency for 2012:

In 2012, as in 2011, the demand for administrative and penal liability of those who violate the regulations, was one of the forms of impact in allowing violations of labour legislation and means of duress for them to comply with the requirements of the regulations. Such liability was sought by persons who do not execute within their stipulated term their given requirements, allow the periodical repeat of the same offenses, deliberately circumvent legal provisions in employment, use and discharge workforce and create obstacles to the implementation of the legal powers of inspectors.

In 2012, 19 305 Statements of administrative offence have been constituted compared to 20 410 in 2011.

Most SAO were constituted in enterprises of economic activity: Retail trade, except of motor vehicles and motorcycles – 3779, Restaurants – 2375, Construction of Buildings – 1804, Manufacture of food products – 1073 and Manufacture of clothes – 1053.

In 2012 there have been constituted 2 595 SAO to persons for non-performance of given requirements within the stipulated term. 128 SAO have been constituted for obstacles preventing the inspectors from carrying out their inspections.

Data from the inspection activity in 2012 show that labour inspectors have been more demanding toward employers. Constituted SAO are distributed as follows:

- To employers – juridical persons - 78% of the total number of SAO;
- To sole traders – 12%;
- To employers – natural persons – 6%;
- To officials – 3%;
- To employees and workers – 2 %.

For systematic violation of labour legislation 62 alerts have been filed at the Prosecutor's office, and 24 of the alerts have been for violations of Art. 302 and 303 of the Labour Code.

Drawn statements for violations of legal norms are distributed as follows:

- For violations of rules governing the provision of the Health and Safe Work Conditions Act - 3881, 246 of them for non-performance of requirements;
- For violations of rules governing employment – 15,190, 2 344 of them for non-performance of requirements within the stipulated term;
- For violations of the norms of the Law on Encouragement of Employment – 101.

In 2012 there have been served 18 269 penal enactments.

The penal enactments that have come into effect in 2012 are 16 716. The amount of fines from penal enactments that have come into effect is **BGN 18 689 851** compared to **BGN 15 572 329** for 2011.

Specific cases of the 'General Labour Inspectorate' Executive Agency for the sanctions and fines imposed consistent with Art. 414 of the Labour Code:

1. "... – Sl." AD - wrongfully withheld amounts from salary – infringement of Art. 272, Par. 1 of the Labour Code. Penal enactment served on 03.04.2014 – not entered into force – the amount of the sanction – BGN 1500

2. "O... 13" LLC – unpaid wages of two workers at a rate of BGN 250 in violation of Art. 128, item 2 of the Labour Code. Penal provision served on 01.04.2014 – not entered into force – the amount of the sanction – BGN 1500

3. "O... industry" LLC – failure to provide requested documents – a violation of Art. 402, Par. 2 in connection with Art. 402, Par. 1, item 2 of the Labour Code – effective as of 19.03.2014 – penalty payment – BGN 3000, and "FZ – Drazhevo" EOOD – penalty payment – BGN 4000. Penal enactment effective as of 06.08.2013

4. „"Ya. B." EOOD – violated break in-between days – Art.152 of the Labour Code – effective as of 27.03.2014 – penalty payment – BGN 2000.

5. ET "P. – J. T." – the employer did not make available to the control authorities a copy of the Internal Work Order Regulations – infringement of Art. 403a, Par. 1 of the Labour Code – breach has not been remedied. Amount of property sanction BGN 1500. Following an appeal, the amount was reduced to BGN 100. Penal enactment effective as of 13.01.2014.

6. "S.- 07" EOOD – night work by a minor – violation of Art. 140, Par. 2 in connection with Art. 140, Par. 4, item 1 of the Labour Code – Penalty payment – BGN 2500. Penal enactment effective as of 03.10.2013.

7. „R." LLC – unpaid wages in the amount of 60% of gross salary, but not less than the minimum wage for the country – violation of Art. 245, Par. 1 of the Labour Code – property sanction – BGN 2000. Penal enactment upheld by the District Court – effective as of 08.01.2014.

8. "T. Trans" EOOD – failure to issue an order for the termination of employment – violation of Art. 128, Par. 3, in conjunction with Art. 335, Par. 2, Item 3 of the Labour Code – property sanction – BGN 1500. Penal enactment effective as of 28.12.2012.

9. "E. M." EAD – the employer has allowed overtime above the imperatively defined one – violation of Art. 146, Par. 2, Item 2 of the Labour Code – Penalty sanction – BGN 1500. Penal enactment effective as of 01.11.2012.

10. "B. t." LLC – the employer has not confirmed registered individual work schedules for the period for which a calculation of working time was established – violation of Art. 9 of the Regulation on Working Time, Breaks and Holidays – property sanction – BGN 1500. Penal enactment upheld by the District Court and the Administrative Court – effective as of 03.06.2013.

Supplement: **Given mandatory requirements**

The trade union section of Podkrepa Labour Confederacy at "Ya. B." EOOD has requested from the employer of "Ya. B." EOOD, Yambol, to assist by providing premises and a notice board on the premises. The requirements were appealed in court.

- **examples of cases where Article 172 of the Penal Code, which provides for prison sentences of up to three years in cases where a person wilfully prevents someone from occupying a post or compels someone to leave his job, has been applied.**

Criminal Code (CC)

Article 172. (Amended and supplemented, SG No. 28/1982, amended, SG No. 1/1991, SG No. 10/1993) (1) (Amended, SG No. 10/1993, amended and supplemented, SG No. 92/2002) A person who intentionally impedes another to take a job, or compels him to leave a job because of his nationality, race, religion, social origin, membership in a trade union or another type of organization, political party, organisation, movement or coalition with political objective, or because of his or of his next-of-kin political convictions, shall be punished by imprisonment for up to three years or by a fine of up to BGN 5,000.

(2) An official who fails to carry out an order or a court decision that has entered into force for re-instating at work of a wrongly dismissed worker or employee, shall be punished imprisonment for up to three years.

Special Provision

Article 175. (Amended, SG No. 28/1982, supplemented, SG No. 62/1997, amended, SG No. 92/2002) (1) For crimes under Article 170, paragraphs (1) and (4), Article 171, paragraph (1), **Article 172, paragraph (2)**, and Article 173, penal proceedings shall be instituted or the basis of complaint by the aggrieved party.

(2) (Amended, SG No. 19/2008) Public prosecution criminal proceedings with regard to acts qualifying under **Articles 172, paragraph 1**, and 174 shall be brought up upon **complaint of**

the victim filed with the relevant Prosecution Office and may not be terminated upon his/her request.

According to Art. 175, Par. 1 and 2, prosecutions are initiated after the submission of a complaint to the Prosecution Office, which means that the prosecution **does not refer ex officio.** At present there is no data for the filed complaints of a committed crime under Art. 172, Par. 1 of the CC.

Court decisions for crimes under Art. 172, Par. 2 of the Criminal Code are provided in Appendix 2 to the report.

Criminal Procedure Code

Conditions for the institution of pre-trial proceedings

Article 207. (1) Pre-trial proceedings shall be instituted where there is a statutory occasion and sufficient information about the perpetration of a crime.

(2) In the hypotheses set out in the Special Part of the Criminal Code, publicly actionable proceedings shall be instituted upon the victim's private complaint addressed to the prosecution office and these shall not be susceptible of termination on grounds of Article 24, Paragraph 1, item 9.

(3) The complaint shall be required to contain information about the author and to be signed by him/her.

(4) No state fees shall be due at the moment the complaint is filed.

Statutory occasions

Article 208. The following shall be considered statutory occasions for the commencement of investigation:

1. a notice sent to the pre-trial authorities of the perpetration of a criminal offence;
2. information about a perpetrated criminal offence, distributed by the mass media;
3. appearance of the perpetrator in person before the pre-trial authorities with a confession about a perpetrated crime;
4. direct discovery by pre-trial authorities of signs of a perpetrated crime.

Notice of a perpetrated crime

Article 209. (1) The notice of a perpetrated crime must contain data about the person who is the author thereof. Anonymous notices shall not be statutory occasions for the commencement of investigation.

(2) Notices may be oral or written. Written notices may be legal occasions for the commencement of investigation only where signed. Oral notices shall be put down in a record to be signed by the individual making the statement and the body taking it.

Institution of pre-trial proceedings

Article 212. (1) Pre-trial proceedings shall be instituted by a decree of the prosecutor.

(2) (Amended, SG No. 32/2010, effective 28.05.2010) Pre-trial proceedings shall be considered instituted upon drafting the record for the first investigative action, where an on-site observation is conducted, including physical examination, search, seizure, and witness interrogation, provided their immediate performance is the only possible way to collect and preserve evidence, as well as where a search is conducted as per the conditions and procedures laid down in Article 164.

(3) The investigative body that has performed such action under Paragraph 2 shall immediately notify the prosecutor, and in any event shall do so no later than 24 hours thereof.

Refusal of the prosecutor to institute pre-trial proceedings

Article 213. (1) The prosecutor may refuse to institute pre-trial proceedings, of which the victim or his/her heirs, the prejudiced legal person and the person who has given a notice, shall be notified.

(2) Of his/her own motion or following appeal of the persons under para 1 a prosecutor with a higher-standing prosecution office may repeal the decree under Paragraph 1 and order the institution of pre-trial proceedings and the commencement of investigation.

Trade union activities

In its last conclusion the Committee noted that while Article 46 of the Labour Code requires employers to provide, free of charge, trade unions with the necessary premises to perform their functions satisfactorily, there were allegations from the Confederation of Independent Trade Unions of Bulgaria (CITUB) that in practice unions were not always able to hold meetings on a company's premises and frequently union representatives were either denied access or had limited access to companies where no trade unions were present. In reply to the Committee's question on these allegations, the report simply indicates that the government has had no information about any instances of non-compliance with Article 46 of the Labour Code. Given the importance of this issue, the Committee asks confirmation that there have been no findings of violation by the labour inspectorate or domestic courts on this matter.

The information is submitted in Appendix 3.

Personal scope

In its two previous conclusions the Committee noted that whilst it is possible for foreign workers to form a trade union or participate in the formation of a trade union as a founding member they are however required to be granted authorisation beforehand (Order No. 1 of 15 August 2002). The Committee recalls that employees who are nationals of other Parties to the Charter must enjoy the right to organise in the same way as nationals (see Conclusions 2006). The report indicates that there has been no changes in the situation. Therefore, as previously, the Committee considers that the situation is not in conformity with Article 5 in this respect.

The Protection against Discrimination Act is effective toward foreigners performing non-economic activities within the meaning of Regulation 1 of 15.08.2002, and the Commission has the power to determine whether there has been discrimination or not. So far, **no case has been filed** at the Commission against Discrimination for unequal or less favorable treatment of nationals of member states, which are parties to the European Social Charter **on the grounds of "nationality" in connection with Art. 5 of the ESCh (rev).**

Scope of the provision as interpreted by the ECSR

Trade unions and employers' associations must be free to organise without prior authorisation, and initial formalities such as declaration and registration must be simple and easy to apply. These organisations must be independent where anything to do with their organisation or functioning is concerned. They must be free to form federations and join similar international organisations.

Workers must be free not only to join but also not to join a trade union. Domestic law must guarantee the right of workers to join a trade union and include effective punishments and remedies where this right is not respected. The same rules apply to employers' freedom to organise.

Trade unions and employers' organisations must have broad autonomy where anything to do with their internal structure or functioning is concerned. They are entitled to perform their activities effectively and devise a work programme. Any excessive interference by a State constitutes a violation of Article 5.

Domestic law may restrict participation in various consultation and collective bargaining procedures only to representative trade unions.

Article 5 applies to the public and private sectors. States party are entitled to restrict or withdraw the right of the armed forces to organise. Restrictions may be placed on the right of the police to organise, but they may not be deprived of all their trade union prerogatives.

Article 6 – The right of workers to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake
1. to promote joint consultation between workers and employers;
2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;
and recognise
4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.
Appendix to Article 6§4
It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

Information to be submitted:

Article 6§1

1) Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Direct questions of the ECSR:

Paragraph 1 - Joint consultation

The Committee recalls that in 2006 it deferred its conclusion noting that the two largest trade union confederations, the Confederation of Independent Trade Unions (CITUB) and the Confederation of Labour Podkrepa (CL Podkrepa), discontinued participation in the National Council for Tripartite Cooperation (NCTC) in the year 2005. The aformentioned unions complained that tripartitie cooperation within the NCTC was increasingly inefficient and that the Government was taking unilateral decisions without prior consultation of the social partners. The Committee therefore asked for the Government's comments on this development as well as for detailed information on the activities of the NCTC. The Committee notes from another source[3] that at the end of 2008, the same trade unions decided to cease their participation in the NCTC for good. It further notes from the same source that at the beginning of 2009, they complained before the Supreme Administrative Court about the 'non-observance of the procedure for coordination in the NCTC'.

In September 2009 the activity of the National Council for Tripartite Cooperation was resumed. Together with the social partners was established a tripartite working group to the National Council for Tripartite Cooperation to discuss new measures to overcome the consequences of the crisis. The Confederacy of Independent Syndicates in Bulgaria and

“Podkrepa” were invited to return to the negotiating table. Resource ministries resumed the dialogue with organizations of employees and employers at sectoral level.

At the first meeting of the National Council for Tripartite Cooperation three main areas for priority action were outlined: preservation of jobs, preservation of financial stability of the social security system in Bulgaria and efficient use of public finances. A joint development of an anti-crisis package was agreed upon.

On April 1, 2010 the Council of Ministers adopted a Decision approving Measures to support employment, households, businesses and fiscal position, which contained 60 anti-crisis measures.

Appendix 1 lists the measures for the strengthening of social partnership and civil dialogue at all levels of decision-making, **incl. by the National Council for Tripartite Cooperation and its standing committees, sectoral, branch and regional cooperation councils and others.**

While asking the Government to comment and provide information in this regard, the Committee notes from the report that outside the reference period (in July 2009) the Government adopted measures to enhance social dialogue at all levels. Such measures include the establishment of a focus group within the NCTC to monitor the socio-economic situation and suggest anti-crisis measures. The report informs that as a result of this mechanism, the NCTC adopted a series of measures based on suggestions from the organisations of workers and employers' representatives. Other measures include the instiutionalisation of regional councils for tripartite co-operation.

The Committee recalls that in its previous conclusion (Conclusions 2006), it had also requested whether bipartite consultative bodies are established in Bulgaria and whether measures aimed at promoting bipartite social dialogue at national, regional and enterprise level are in place. Since the report remains silent in this regard, the Committee reiterates its request.

Tripartite cooperation is common and joint involvement of the top three interested parties – state, trade unions and employers in resolving labour and social issues.

Social partners at a national level in the tripartite collaboration are the nationally represented organizations of workers and employers.

Social partners in the broadest sense as participants in the social dialogue can be other organizations and structures of civil society, in addition to the above.

The levels at which social dialogue, cooperation and consultation are carried out are the following:

- National - through the National Council for Tripartite Cooperation;
- Municipal - through the municipal councils for tripartite cooperation;
- Sectoral - by sectoral councils for tripartite cooperation, established with the relevant ministries and departments;
- Branch - through the branch councils for tripartite cooperation to the relevant sectoral councils;
- Through the involvement of the social partners and other civil society structures in various organs of the state administration.

Social dialogue takes place through the work of other government and public institutions, which include representatives of the social partners, including the National Insurance Institute, the National Health Insurance Fund, the National Institute for Conciliation and Arbitration, the Guaranteed Receivables of Workers and Employees fund, the Working Conditions fund, the National Agency for Vocational Education and Training, the National Council for Encouragement of Employment, the National Council on Working Conditions and others.

The established Economic and Social Council of the Republic of Bulgaria is intended to serve as a permanent institutional form of social dialogue and consultations on economic and social policy between the government and civil society structures to ensure the

participation of a wide range of civil society representatives in social and economic life affirming the rule of lawful and democratic welfare state.

The adoption of various regulations in the field of labour and directly related relations, insurance relations and living standards is carried out in cooperation and consultation with the representative organizations of workers and employers in the National Council for Tripartite Cooperation and the standing committees to it.

As an expression of the **development of bipartite dialogue** in 2010 for the first time there were concluded 2 national agreements between representative employers' and trade union organizations - to settle the regulation of home-based work and telework through which were created the conditions for the implementation of the European Framework Agreement on Remote work and of Convention No. 177 of ILO on Home-based Work. Based on these, amendments and supplementations to the Labour Code on home-based work and telework were adopted.

Collective labour agreements in enterprises, branches, sectors, and municipalities negotiate more favorable working conditions than those expressly provided by law - e.g. in terms of employment, health and safety at work, monthly salary, social policy, social cooperation and others. This is an opportunity to regulate the employment relationship with the direct participation of stakeholders - employers and employees.

A priority objective in the activation of social dialogue is using the right of the Minister of Labour and Social Policy to extend the action of the branch collective labour agreements. The dissemination is an opportunity to expand the activity of a concluded sectoral (branch) collective agreement in other enterprises, other than those covered under its conclusion. Thus the validity of the collective agreement extends to companies in the sector or industry to which, if not extended, the contract will not apply because they have no unions. After the issuance of the order, the more favorable provisions of the contract benefit all employees, regardless of whether they have trade union membership or not.

As of 2010, the Minister of Labour and Social Policy has disseminated with his ordinance the activity of 7 branch/sectoral collective agreements for a period of two years from the date of their conclusion as follows:

- ORDER No. RD-01-161 of 16.02.2010 for extending the effects of the branch collective agreement in the “Collection, purification and distribution of water” sector
- ORDER No. RD -01-371 of 11.05.2010 for extending the effects of the branch collective agreement for people in the brewing industry
- ORDER No. RD -01-607 of 23.08.2010 for extending the effects of the branch collective agreement in the “Pulp & Paper” sector
- ORDER No. RD -01-427 of 30.05.2011 for extending the effects of the branch collective agreement for the branch “Exploration, Mining and Mineral Processing” in all enterprises in the sector
- ORDER No. RD -01-838 of 16.11.2011 for extending the effects of the branch collective agreement for people in the brewing industry
- ORDER No. RD -01-608 of 16.07.2012 for extending the effects of the branch collective agreement in the “Pulp & Paper” sector
- ORDER No. RD -01-751 of 18.09.2012 for extending the effects of the branch collective agreement in the “Collection, purification and distribution of water” sector

Tripartite cooperation in the development and implementation of the policy for provision of safe and healthy work conditions

The permanent body for implementing the coordination, consultations and cooperation in the development and implementation of the policy for provision of safe and healthy work conditions at a national level is the National Council on Working Conditions. It includes nationally representative organizations of workers and employers as well as representatives of ministries, established by the Council of Ministers and representatives of the National Insurance Institute. The tripartite cooperation is expressed in the leadership of the National Council on Working Conditions with Chairman being the Minister of Labour and Social

Policy, and the deputy chairmen shall be determined annually on a rotating basis by representatives of organizations of employees and employers.

In all districts are created regional councils for tripartite cooperation on safety and health at work. There are committees on working conditions in the enterprises through which dialogue between the employer and employees is carried out the.

Branch councils on working conditions consist of representatives of the national branch or sectoral associations, unions and syndicates of workers, of sectoral or branch structures of employers and an equal number of representatives of the relevant ministry or department. The main functions and tasks of the sectoral and branch councils on working conditions are related to:

- Analyzing the state of working conditions in the respective sector and proposal of measures for improvement
- Organization of the development and discussion of draft rules and regulations for safe and healthy working conditions specific to the respective sector;
- Research and promotion of best practices, organization of competitions, seminars, and other events;
- Organizing and conducting training on rules, norms and methods ensuring safe and healthy working conditions, of the employer, of officials and representatives of workers and employees.

Regional (county and municipal) councils on working conditions consist of representatives of the existing regional associations or organizations of workers and employers and an equal number of representatives of the regional administration and local government bodies.

Bipartite social dialogue at enterprise level in the area of provision of safe and healthy work conditions is realized through the Committees and the Work Conditions groups.

Matters for joint consultation

In its previous conclusion (Conclusions 2006), the Committee noted from the report that there had been a restriction in the scope of topics subject to consultation within the NCTC. Since the report does not provide information in this regard, the Committee recalls that under Article 6§1 consultation must cover all matters of mutual interest, and particularly: productivity, efficiency, industrial health, safety and welfare, and other occupational issues (working conditions, vocational training, etc.), economic problems and social matters (social insurance, social welfare, etc.) (Conclusions I, Statement of Interpretation on Article 6§1 and Conclusions V, Ireland). It thus requests that the next report indicate whether all the matters of mutual interest mentioned above are covered by joint consultation.

The implementation of coordination, consultations and cooperation within the framework of the tripartite and bipartite social dialogue includes all issues of mutual interest, namely: productivity, efficiency, occupational health, health and safety, working conditions, training and more, as well as economic and social issues (social security, social assistance, etc.)

In the field of labour relations consultation covers all issues related to the application of labour rights, interests and obligations of employees on the one hand and employers on the other. These are the questions on wages, working hours, holidays, leaves, health and safety, social and community services and others.

In the field of social relations, consultations relate to the categorization of labour upon retirement, the circle of the insured, the insured social risks, the grounds and the amount of benefits for temporary incapacity, conditions for obtaining retirement pension and their amounts, security relations, etc.

Living standard issues cover the determination of the minimum wage, periodic updating of salaries, pensions, social security benefits and social benefits, depending on the inflation index, social and living wage.

Public sector

In its previous conclusion (Conclusions 2006), the Committee reiterated its question whether joint consultative bodies exist in the public service. Since the report still contains no information in this regard, it cannot be established whether joint consulative bodies exist in the public service.

A draft Law on amending and supplementing the Civil Servants Act was prepared at the end of 2012, which proposed to regulate collective agreements in the public administration and was submitted for consideration to the Council for Administrative Reform whose members are the Deputy Ministers from the competent authorities. In the early 2013 the government resigned, which required the formation of a caretaker government and the holding of early elections. In view of the updated composition of the Council for Administrative Reform at the end of 2013, the bill was again put to the Council. A decision has to be taken on this issue.

Article 6§2

1) Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, in particular on collective agreements concluded in the private and public sector at national and regional or sectoral level, as appropriate.

Direct questions of the ECSR:

Paragraph 2 - Negotiation procedures

Legislative framework

The Committee refers to it previous conclusions (Conclusions 2004 and 2006) for a description of the rules governing collective bargaining in the private and in the public sector.

Regarding the regulations settling collective agreements in the private sector:

The legal framework of collective labour agreement is contained in the Labour Code - Art. 50 - Art. 60. Additionally, Bulgaria has ratified Convention No. 98 of the International Labour Organization to implement the principles of the right to organize and to collective agreements.

Parties to the collective labour agreement depending on the level of its conclusion are individual employers and trade unions at company level, or representative organizations of employers and representative organizations representing employees at branch, sectoral or municipal level.

There are three levels of agreement - enterprise; sector/branch; and municipality.

At enterprise level only one collective agreement may be concluded. The collective agreement is concluded between the employer and a union on the basis of a project of the organization. It should be borne in mind that:

1. Trade unions in Bulgaria are formed and operate primarily in enterprises. Rarely there are unions formed on a territorial basis, i.e. outside the enterprise;

2. Enterprises are rarely left with only one trade union. In most cases, there are two - one to the Confederation of Independent Trade Unions in Bulgaria and the other to the "Podkrepa" Labour Confederation;

If an enterprise has more than one trade union, they present a joint project. Given that an overall project cannot be reached, then into force comes the General Meeting of workers/employees, and where there are many – the Board of commissioners. The General Meeting elects one of the projects of the trade unions and on the basis of this project collective agreements are negotiated and concluded.

Originally the duration of the collective agreement is one year, and the law allows the parties to agree on a longer term but not longer than two years.

Negotiations are initiated by the organizations of workers/employees. The law binds this moment with obligations for both parties. Obligation arises for the employer to enter into negotiations and to provide certain information to the other party. And for the other party there arises the liability to provide information on the numerical strength of the organization.

The contract shall be entered in the units of the General Labour Inspectorate. It may be amended and supplemented in the period of its validity. The employer shall make available to employees the text of the collective labour agreement.

CLA at sectoral and branch level shall be concluded between the respective representative organizations of workers and employers on the basis of agreement between their national organizations through which are defined common positions on the scope and procedural framework of sectoral and industry contracts. At this level only one CLA is concluded.

Collective agreements are concluded by municipalities for activities financed from the municipal budget. Unlike other levels, municipalities may enter in more than one CLA.

The subject of collective agreements, and hence of the CLA covers issues of labour and social security relations of employees which are not covered by mandatory provisions of law. Like the established international practice on negotiation, in Bulgaria the CLA includes questions about:

- Salary;
- Working hours;
- Leaves and holidays;
- Health and safety conditions at work;
- Conditions for employment, dismissals, compensations;
- Training and retraining;
- Trade union rights;
- Labour disputes;
- Pension and health insurance;
- Social and cultural services, etc.

At the insistence of employers, collective agreements include new issues, mainly concerning:

- Mutual obligations of the parties to increase labour productivity;
- Ensuring quality of production;
- Reducing the length of the working week;
- Implementation of shift work, etc.

On the other hand, on the insistence of the unions, new issues are also included, relating to the assuaging of the social impact of technological innovations, namely:

- Ensuring job security;
- Extension of the period of notice for dismissal for technological reasons;
- Additional compensation for unemployment;
- Retraining of dismissed workers at the expense of the employer;
- Supplementary pensions and insurance;

- Realization of the right to information and general information exchange between workers/ employees, their organizations and employers and others.

With regard to rules governing collective agreements in the public sector:

At the end of 2012 there was drafted a Law on Amending and Supplementing the Law on Civil Servants, which proposed the regulation of collective agreements in the public administration. At the end of 2013, the bill was submitted for re-examination to the Council of Administrative Reform. A decision has to be taken on this issue.

The Committee asked for clarification as to how damages are calculated in the event that one month following a proposal for negotiation submitted by a trade union an employer or employers' organisation who are required to negotiate fail to do so (Article 52 of the Labour Code). The report states that the damage is assessed in the course of a civil trial therefore more precise information may not be provided. The Committee reiterates its requests for clarification and expects the next report to contain more precise information on this matter.

Until the conclusion of the negotiations and the signing of the collective labour agreement, the parties in the labor relationship are the employer and the relevant trade union. To the trade union, the employer owes a behavior that is his imperative obligation under the law. The employer, if he is the party at fault in the relationship associated with the beginning of negotiations on collective agreements, must bear the damages from his fault behavior, and this possibility is expressly provided for in Art. 52, Par. 2 of the Labour Code. The non-defaulting party is actively legitimized to lead the case in the pre-agreement relationship, and this is the respective trade union. The employer's liability is within the damage arising from a later conclusion of collective agreements and are calculated on the basis of what is stipulated therein (Decision No. 383 of 23.10.2003 of the Supreme Cassation Court (SCC), case No. 3252/2001).

The report states that the Labour Code was amended to encourage autonomous bilateral dialogue. Article 51b of the Labour Code as amended in 2008 makes it easier according to the report to conclude agreements at the level of industries and branches. The amendments also facilitate, according to the report, the possibility of extending the validity of such agreements.

In its previous conclusion (Conclusions 2006), the Committee asked for data on the proportion of employees covered by collective agreements. The report remains silent in this regard. However, the Committee notes from another source[4] that in 2007–2008, some 10 sectoral collective agreements were in force and that 58 branch-level agreements, 2,000 company-level collective agreements and annexes to existing agreements were registered. According to this source, the coverage rate of collective agreements in Bulgaria is estimated to be at 30% of total employees. This rate is inferior to that noted by the Committee in its previous conclusion (35-38 %). The Committee asks the next report to include details with regard to developments in this regard. Should it be confirmed that the coverage rate of workers by collective agreements has continued to decrease, the situation would not meet the requirements of the Charter.

Statistical information about the signed collective agreements and annexes for the period - 2009 - May 2012. In the database of the National Institute for Conciliation and Arbitration from January 2009 to May 2012 are shown CLA and annexes, according to the negotiating levels in the country, as given in Table 1.

Table 1

CLA received at the National Institute for Conciliation and Arbitration and annexes thereto according to negotiating levels 2009 - May 2012

Negotiating levels	2009	2010	2011	May 2012	Total
Sector/branch	12	12	10	1	35
Municipality	57	68	103	26	254
Enterprise/ organization	907	1 354	1 590	483	4 334
Total	976	1 434	1 703	510	4 623

Concluded CLA at sectoral/branch level registered in the database of NICA for the period 2009 - May 2012 relate to a total of 8 branches and 20 sectors. The total number of sectoral collective agreements and branch collective agreements in 2009 and 2010 decreases in 2011, respectively from 12 to 8 sectoral/branch level. Eight of all collective agreements at sectoral/branch level (29 %) were re-signed in the specified period. Sectoral/branch agreements have been concluded in 12 sectors according to the Classification of Economic Activities (2008). Most collective agreements have been concluded in Section C of CEA 2008 – 14 branch CLA. Two collective agreements exist in the construction sector.

Figure 1 presents data on the annual number of collective agreements and annexes, and the economic sectors are further grouped and 19 economic sectors form 10 major sectors. The data shows that in the period of 2009-2011 for all consolidated sectors the highest number of signed collective agreements and annexes is in 2011. The most significant increase in 2010 is in the public sector, which has the greatest number of CLA. From 705 CLA in 2009 their number increased to 1020 in 2010 (50% compared to the previous year) and 1166 in 2011 (14% compared to the previous year). Other important sectors for collective agreements in the country are the industry, the public sector, the agricultural sector, trade, and business services. Sectors with the lowest number of CLA are finance, communications and construction.

Figure 1

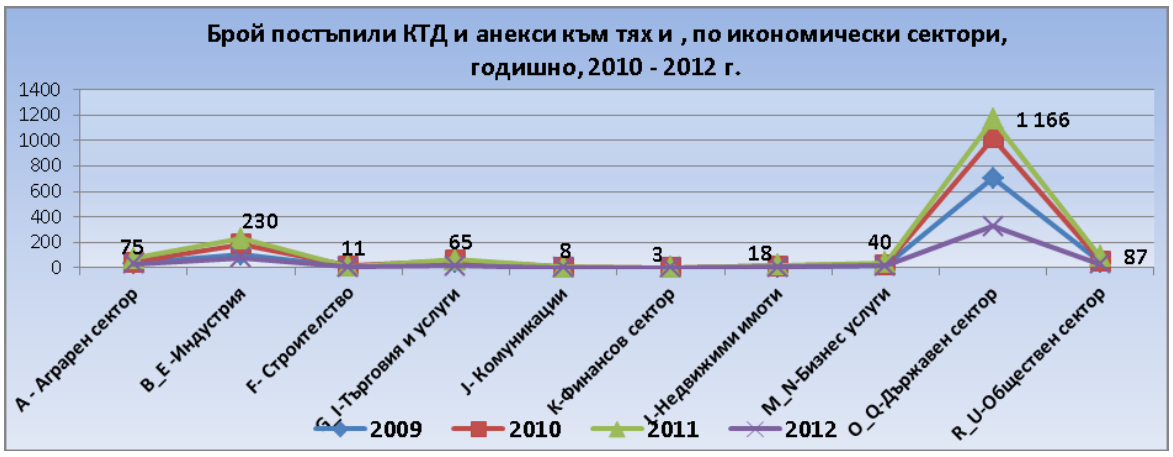

Figure 1 – number of CLA and annexes thereto by economic sectors, per year, 2010-2012

A - Agrarian sector, B_E – Industry, F – Construction, F_I – Commerce and Services, J – Communications, K – Financial Sector, L – Real Estate, M_N – Business services, O_Q – State sector, R_U – Public sector

Figure 2 presents data on all entries of CLA annexes thereto in NICA by territorial areas. The areas with the highest number of signed contracts are Sofia city, Plovdiv, Stara Zagora. Dobrich, Veliko Tarnovo, Gabrovo, Varna, Varna, Rousse, Shumen, Haskovo and Sofia district are around the average number. The smallest share belongs to Pernik, Pleven, Yambol, Razgrad and Blagoevgrad. Data for signed CLA plus annexes express largely the economic activity in the country with the exception of the areas of Burgas, Varna and Pleven, which in 2009 and 2010 have a very small number of CLA.

Figure 2

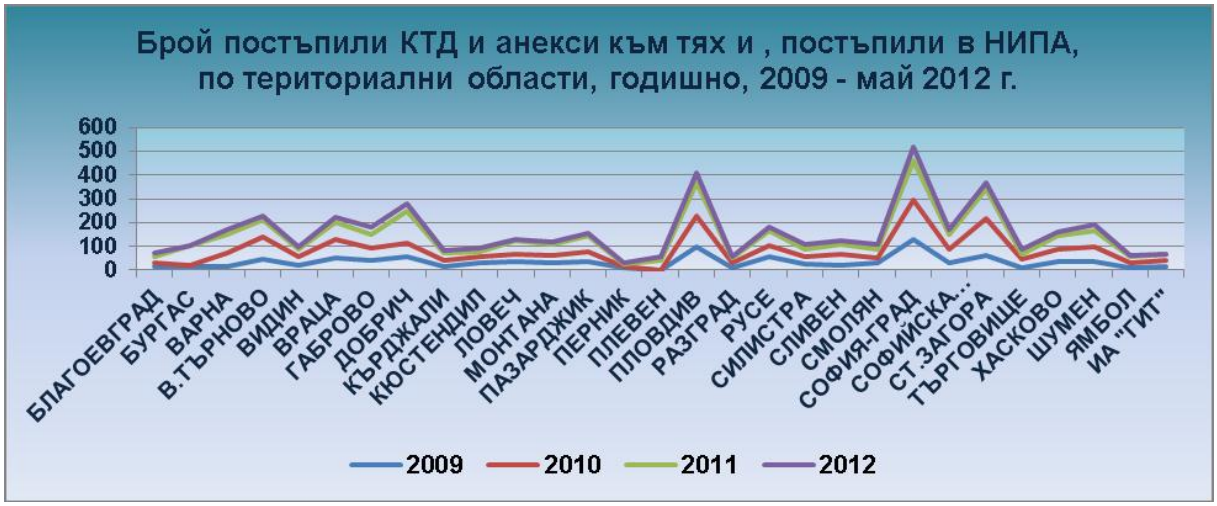

Figure 2 – number of CLA and annexes in NICA by territorial districts per year, 2009 – May 2012

BLAGOEVGRAD, BURGAS, VARNA, VELIKO TARNOVO, VIDIN, VRATZA, GABROVO, DOBRICH, KURDJALI, KUSTENDIL, LOVECH, MONTANA, PAZARDZHIK, PERNIK, PLEVEN, PLOVDIV, RAZGRAD, ROUSSE, SILISTRA, SLIVEN, SMOLYAN, SOFIA CITY, SOFIA DISTRICT, STARA ZAGORA, TURGOVISHTE, HASKOVO, SHUMEN, YAMBOL, 'GENERAL LABOUR INSPECTORATE' EXECUTIVE AGENCY

Article 6§3

1) Please describe the general legal framework as regards conciliation and arbitration procedures in the private as well as the public sector, including where relevant decisions by courts and other judicial bodies, if possible. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, in particular on the nature and duration of Parliament, Government or court interventions in collective bargaining and conflict resolution by means of, *inter alia*, compulsory arbitration.

During the reference period there is no change in the legislation:

- Law on the Settlement of Collective Labour Disputes - Art. 4-8;

- Rules for the organization and operation of the National Institute for Conciliation and Arbitration - Art. 9-14;

- Rules for mediation and arbitration for the settlement of collective labor disputes by the National Institute for Conciliation and Arbitration (adopted by the Supervisory Board of NICA on 20.02.2003 d) - Chapter II.

Arbitration as means of resolving collective labor disputes can be two types - voluntary arbitration carried out with the support of trade unions and employers' organizations or NICA under Art. 4-8 of Law on the Settlement of Collective Labour Disputes, and binding arbitration to be conducted only by virtue of Article. 14 of the Law on the Settlement of Collective Labour Disputes.

1. The Law on the Settlement of Collective Labor Disputes establishes procedures for the settlement of collective labor disputes between employees and employers on labor and social relations and living standards, incl. strikes that can be effective, warning and symbolic.

Consistent with Art. 3 of the Law on the Settlement of Collective Labour Disputes, collective labor disputes are settled by direct negotiations between employers and employees or between their representatives by freely determined procedures, and workers assert in writing their claims and the names of their representatives in the negotiations.

2. Arbitration carried out with the assistance of NICA is voluntary, which means that unlike, for example, immediate negotiations under Art. 3 of the Law of Settlement of Collective Labour Disputes, it is not a mandatory procedure in resolving a collective labor dispute. Voluntary arbitration applies when no agreement has been reached on the collective dispute in the legal term or the term agreed by the parties through direct negotiations with or without the involvement of a mediator between the parties.

Employees may participate in the collective dispute in person or decide to be represented, for example, by the trade union in the company, by one or more employees - informal leaders or external experts. The other side of the collective labor dispute is the employer who may be involved in the dispute in person or through one or more representatives authorized by him who may be, for example, senior officers of the Company, external experts, experts of the representative employers' organizations.

Voluntary arbitration with the assistance of NICA is performed in the cumulative availability of the following conditions:

- A collective labor dispute;
- Unsuccessful direct negotiations with or without intermediary or failure of any party to negotiate;
- A written agreement between the parties to refer a dispute for settlement by voluntary arbitration under Art. 5 of the Law on Settlement of Collective Labour Disputes, and
- A written request of the parties or their representatives to initiate arbitration proceedings.

Procedural rules for the consideration and resolution of collective labour disputes are the same regardless of whether the arbitral body is sole or collective.

The arbitration decision, the reasons and dissenting opinions shall be reported immediately to the parties. Arbitration proceedings are at one level of authority, so that the decision is final and not subject to appeal.

In addition to the arbitration decision, the arbitral proceedings may end with an arbitration agreement for an amicable settlement of collective labor dispute. The arbitration agreement may be concluded with the active participation in the voluntary settlement of the dispute to the arbitrator or arbitration panel. Conclusion of the arbitration agreement replaces the collective agreement between the parties in resolving a non-legal labor dispute, since thereunder arise new rights and obligations of the parties. The signed arbitration agreement is binding on the parties and subject to immediate enforcement under § 1, Par. 1 of the Supplementary and final provisions of the Law on Settlement of Collective Labor Disputes.

Decisions of NICA are presented in Appendix 4 to the report.

Direct questions of the ECSR:

Paragraph 3 - Conciliation and arbitration

The Committee previously held the situation in Bulgaria not to be in conformity with Article 6§3 of the Revised Charter since the Civil Service Act No. 67 of 27 July 1999 makes no provision for conciliation, mediation or arbitration procedures to settle conflicts of interest between the Government and public servants.

Such procedures are provided in the draft of the Law amending and supplementing the Civil Servants Act. At the end of 2012 there was drafted a Law amending and supplementing the Civil Servants Act, which proposes to regulate the collective bargaining in the public administration. At the end of 2013, the bill was again submitted for consideration by the Council for Administrative Reform. A decision has to be taken on this issue.

Article 6§4

1) Please describe the general legal framework as regards collective action in the private as well as the public sector, including where relevant decisions by courts and other judicial bodies, if possible. Please also indicate any restrictions on the right to strike. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, in particular: statistics on strikes and lockouts as well as information on the nature and duration of Parliament, Government or court interventions prohibiting or terminating strikes and what is the basis and reasons for such restrictions.

Direct questions of the ECSR:

Paragraph 4 - Collective action

Restrictions on the right to strike

The Committee previously found that the situation was not in conformity with Article 6 4on the ground that there is a general ban on the right to strike of all personnel employed by the Ministry of Defence or any establishment responsible to such Ministry .

In response to the request of the Committee, we provide the following statement, drawn up by the Ministry of Defence:

The right of association and the right to strike are fundamental rights of employees recognized by the express provisions of Art. 49 and Art. 50 of the Constitution of Bulgaria. They are a means to protect their collective economic and social interests as well as a constitutional guarantee that Bulgaria is developing as a democratic and social state.

Furthermore, sovereignty, security, independence and territorial integrity of the country are higher values of a democratic society, as much as fundamental rights and freedoms of citizens. Their constitutional settlement and security are listed in "Fundamental Principles" of the CRB. The sovereignty of the country, its territorial integrity and independence are guaranteed by the armed forces (Article 9 of the CRB).

In case of competition between the fundamental rights of citizens and the interests of national security, priority is given to security in the name of which the restriction of certain rights and freedoms of citizens is permissible. This ability to limit their rights in the interest of national security is enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by a law passed by the National Assembly on July 31, 1992.

The convention governs the competition between human rights, on the one hand, and the interests of national security, on the other, by putting public interest over personal rights.

The convention stipulates that in the interests of national security, a law may provide restrictions on the right to inviolability of private and family life, home and correspondence (Art. 8, Par. 2), the right to freedom to manifest one's religion or convictions (Art. 9, Par. 2), the right of expression of opinion (Art. 10, Par. 2), the right to freedom of peaceful assembly and freedom of association (Art. 11, item 2).

According to the specification within the scope of the European Social Charter (p) on the application of Art. 6, Par. 4 with regard to protected persons, each party may regulate by law the exercise of the right to strike. The Charter does not expressly regulate its kind - symbolic or effective. Therefore, any country that has ratified the ESC (p), may allow in its legislation limitations in the exercise of the right to strike, the protection of the rights and freedoms of others or the public interest, national security, public health or morals.

According to Art. 50 of the CRB, the right to strike in defense of collective economic and social interests of the citizens of the Republic of Bulgaria is carried out under the conditions and procedures specified by law. This is the Law for the settlement of collective labor disputes. Art. 16, item 6 explicitly stipulates the prohibition of strikes (whether effective or symbolic) in the Ministry of Defense, Ministry of Interior, judicial, prosecutorial and investigative bodies.

The armed Forces of the Republic of Bulgaria consist of formations, which include personnel, weapons and other military equipment, property and management funds prepared to implement their constitutional functions in ensuring national security.

Chapter nine of the Law on Defence and Armed Forces of the Republic of Bulgaria regulates the status of civil servants in the Ministry of Defence, the Bulgarian army and structures directly subordinate to the Minister of Defence. The law in this part follows the logic of the provisions relating to the activities of the armed forces, and therefore the rules that apply to civil servants do not go beyond the limits imposed by other provisions of the legislation. The prohibition under Art. 258, sentence 2 of the Law on Defence and Armed Forces of the Republic of Bulgaria virtually guarantees the continuity of the activities of the defense system.

The constitutional purpose of the Armed Forces to ensure the sovereignty, security and independence of the country essentially precludes the suspension of their activities. The opposite would put the state itself and the constitutional form of government in danger.

The guarantee to ensure the continuity of the functions and tasks of the armed forces is governed by the provisions of Art. 285 sentence 2 of the Law on Defence and Armed Forces, namely that civil servants in the Ministry of Defence, the Bulgarian Army and the structures subordinated to the Minister of Defense may establish and join trade unions, but have no right to an effective strike. However, there is no prohibition or restriction on symbolic strike under Art. 10 of the of the Law on Defence and Armed Forces, respectively of art. 47, Par. 1 and 2 of the Civil Servants Act.

Given the above, national security is a higher value, the protection of which may be a reason to limit some of the fundamental rights of citizens of the State in accordance with the principle of proportionality of restrictions.

The prohibition on collective rights of strikes of civil servants in the Ministry of Defence, the structures directly subordinate to the Minister of Defence and the Bulgarian Army regulated in Art. 285 of the Law on Defence and Armed Forces is required by the nature of the activities in the field of defense, which is why the state has legally legislated additional remuneration to compensate civil employees.

To protect the rights of employees in the Ministry of Defence, the structures directly subordinate to the Minister of Defence and the Bulgarian Army conclude a collective agreement, which provides additional protection of labor and social security rights and an opportunity to improve their life status. The collective agreement provides for a number of additional benefits for civilian employees outside those specified in the Labor Code (Appendix 6).

Given those circumstances, the prohibition of strikes of civil servants in the Ministry of Defence, the structures directly subordinate to the Minister of Defence and the Bulgarian Army is permissible in view of the provisions of the ESCh (rev).

In Complaint No. 32/2005 - European Trade Union Confederation (ETUC), Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" (CL "Podkrepa") v. Bulgaria the Committee found a violation on the grounds that:

- **that the restriction to the right to strike in the railway sector pursuant to Section 51 of the Railway Transport Act goes beyond those permitted by Article G and therefore constitutes a violation of Article 6§4 of the Revised Charter;**

- **that allowing civil servants to only engage in symbolic action which the law qualifies as strike and prohibiting them from collectively withdrawing their labour (Section 47 of the Civil Service Act) constitutes a violation of Article 6§4 of the Revised Charter.**

Follow up to Complaint No. 32/2005 - European Trade Union Confederation (ETUC), Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" (CL "Podkrepa") v. Bulgaria:

By Order of the Prime Minister in 2010 an interagency expert working group was created to prepare proposals for legislative amendments to the Law on Civil Servants and Art. 51 of the Law on Railway transportation. During the work of the work group, the representatives of the Ministry of Transport and Communications argued that the proposals in the part of railway transportation should not be placed for discussion at the moment. The provided opinion indicated that efforts should be focused and directed at the financial stabilization of Bulgarian railways, which, if successfully carried out, will have as its ultimate effect the improvement of the rights of employees in this sector of transport. Therefore a bill was drafted amending only the Civil Servants Act, which was submitted for consideration to the Council for Administrative Reform at the end of 2013. Implementing decision No. 27 of 12.20.2013 of the Council on providing analysis of legislation and policies in some European countries to the right of strikes and collective bargaining, the necessary information was provided.

With regard to the prohibition of strikes of civil servants in the Ministry of Defence and other services to the Ministry, the Ministry of Defense gave a statement (on page 56-57 of the report), which indicates that there is no excessiveness in the issuance of the ban on effective strikes for these employees and they do not support the negative conclusion of the ECSR (p.52-54 of the report).

Given the above, the Ministry of Labour and Social Policy reported on the non-conformity situations that were submitted for consideration in the National Coordination Mechanism on Human Rights considering its powers to propose to the relevant state bodies and institutions to initiate amendments in domestic legislation on human rights pursuant to Decision No. 796 of the Council of Ministers on 19.12.2013. Decision is awaited on this issue.

Procedural requirements

The Committee recalls that pursuant to Section 11.3 of the Settlement of Collective Labour Disputes Act (SCLDA), the employees or their representatives are required to notify the employer or his representatives in writing of the duration of a strike and of the body directing it at least seven days before the beginning of the strike. The Committee asked how the requirement for employees or their representatives to indicate the proposed duration of a strike is applied in practice and in particular how

precise the information must be and what are the consequences of extending a strike beyond the time indicated.

According to the report should a strike exceed the duration originally notified it may be considered as unlawful. The Committee asks whether it is possible to notify that a strike will be of unlimited duration.

The report states that Section 11 of the SCLDA may be amended. The Committee asks to be kept informed of any amendments.

The requirement of Art. 11, Par. 3 of the Law on the Settlement of Collective Labour Disputes on the obligation of workers or their representatives to notify in writing the employer or his representative at least 7 days before the beginning of the strike, to specify its duration and the body that will oversee the strike, is an explicit legal requirement for the legality of the strike. Therefore, it cannot be stated that the strike will be of unlimited duration.

During the previous report no amendments were adopted on the Law on the Settlement of Collective Labour Disputes.

Scope of the provisions as interpreted by the ECSR

Paragraph 1: Promotion of joint consultation between employees and employers or the organisations that represent them on all matters of mutual interest on national, regional or sectoral and enterprise level in the private and public sector (including the civil service).

Paragraph 2: Promotion of the right of employee's and employer's organisations to free and voluntary collective bargaining and conclusion of collective agreements; right of public officials to participate in the determination of their working conditions.

Paragraph 3: Promotion of voluntary and independent conciliation, mediation and/or arbitration procedures in order to facilitate the resolution of collective conflicts concerning the conclusion of a collective agreement or the modification, through collective bargaining, of conditions of work contained in an existing collective agreement as well as for resolving conflicts which may arise between the public administration and its employees.

Paragraph 4: Guarantee whether in law or case-law of the right to call and participate in a strike in connection with a conflict of interests between employers and employees including public officials.

Procedural requirements in connection with the exercise of the right to strike (e.g. peace obligation, prior approval by workers, cooling-off periods, etc.) shall not excessively limit the right to strike.

A strike should not be considered a violation of the contractual obligations of the striking employees entailing a breach of their employment contract. It should be accompanied by a prohibition of dismissal.

Article 21 – The right of workers to be informed and consulted within the undertaking

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

a. to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b. to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

Appendix to Articles 21 and 22

1. For the purpose of the application of these articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.
2. The terms "national legislation and practice" embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs as well as relevant case law.
3. For the purpose of the application of these articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.
4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings" within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.
5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.
6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Information to be submitted:

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, in particular on the percentage of workers out of the total workforce which are not covered by the provisions granting a right to information and consultation either by legislation, collective agreements or other measures.

Direct questions of the ECSR:

Scope

Article 21 of the Revised Charter entitles employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions that could substantially affect their interests, particularly ones that might have a significant impact on the employment situation in their undertaking.

As the Committee has noted previously (Conclusions 2007), the minimum framework which it has adopted for Article 21 of the Revised Charter is Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, the scope of which is restricted, according to the choice made by member states, to undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state. Furthermore, when assessing compliance with Article 21 of the Revised Charter, the Committee considers that all categories of employee (in other words all employees with an employment contract with an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation.

According to the Bulgarian labour legislation, when calculating the number of employees who are entitled to information and consultation, all categories of employees (those who have an employment contract with the company, regardless of their status, length of service or workplace) are considered - Art. 7a, Par. 3 of the Labor Code and § 43 of the Transitional and Final Provisions of the Law amending and supplementing the Labour Code.

Material scope

The report states that the content of information to be provided includes:

- **the last and forthcoming amendments in the activity and the economic situation of the undertaking;**
- **the situation, the structure and the expected development of the employment in the undertaking, and on planned preparatory measures, especially in cases of possible threats to employment;**
- **possible changes in the labour management.**

In spite of the citation of new Bulgarian legislation (in particular, amendments to the Labour Code on information and consultation with workers' representatives), the report does not still clarify whether rules on information and consultation are contained in collective agreements themselves and if so, it wishes to receive information on their content and on what is the proportion of employees covered by such collective agreements. Therefore, the Committee reiterates this question.

The rules on information and consultation with employee representatives are mandatory provisions in the Labor Code and therefore apply in cases where there are no signed collective agreements.

Scope of the provision as interpreted by the ECSR

Right of employees in private or public undertakings and/or their representatives to be informed on all matters relevant to their working environment and to be consulted in good time with respect to proposed decisions that could substantially affect the employees' interests.

Workers must have legal remedies when these rights are not respected. There must also be sanctions for employers which fail to fulfil their obligations under this Article.

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

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

a. to the determination and the improvement of the working conditions, work organisation and working environment;

b. to the protection of health and safety within the undertaking;

c. to the organisation of social and socio-cultural services and facilities within the undertaking;

d. to the supervision of the observance of regulations on these matters.

Appendix to Articles 21 and 22

1. For the purpose of the application of these articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

2. The terms "national legislation and practice" embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs as well as relevant case law.

3. For the purpose of the application of these articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.
4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings" within the meaning of paragraph 3.
Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.
5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.
6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.
Appendix to Article 22
1. This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of the bodies in charge of monitoring their application.
2. The terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc.

Information to be submitted:

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information on employees who are not covered by Article 22, the proportion of the workforce who is excluded and the thresholds below which employers are exempt from these obligations.

Bulgarian legislation covers 100% of the employees in the provisions for right of information on working conditions and working environment.

Working conditions, work organization and working environment
According to Art. 30, Par. 2 of the Law on Health and Safety at Work: "Representatives of employees in committees and groups on work conditions have right to access to the available information on working conditions, analyses of work accidents and occupational diseases, the findings and recommendations of the supervisory bodies", i.e. representatives of employees have an effective right to participate in the determination of working conditions and working environment, outside the scope of collective agreements.

Safety and Health at Work
With the amendment to the Law on Health and Safety at Work of 2007, groups on working conditions are established in enterprises and organizations "with a staff of 5 to 50 employees including ...", i.e. enterprises with less than 5 employees have no obligation to set up such a structure. The operative information system in the General Labor Inspectorate Executive Agency does not allow retrieval of accurate statistics on how many of the examined companies have no obligation to provide groups on working conditions, respectively, how many have an obligation, but have not met it.

In 2010, in the annual work plan of the General Labor Inspectorate Executive Agency measure No. 9 was set: "Promoting social dialogue on the implementation of the concluded collective labor agreements in companies with trade union structures", as part of the measures of Program No. 1 "Impact by monitoring compliance with labor laws and decent working conditions for workers".

Another measure by which the Labour Inspectorate actively supports the work of committees and groups on working conditions is the inclusion of the agency as a partner in project 2008/108471 "Health, Safety and Ecological Work Conditions", implemented by the Confederation of Independent Trade Unions in Bulgaria with the financial support from Norway through the Norwegian cooperation program for economic Growth and Sustainable Development in Bulgaria, which started in 2009. The project assisted in building and strengthening the capacity of the Committees on Working Conditions in organizations and businesses which contributed to improve social dialogue in the workplace. Thanks to the project there was established a network of Work Conditions Committee in six pilot branches - transport, metallurgy, health, power engineering, construction and shipping.

Direct questions of the ECSR:

Working conditions, work organisation and working environment

In reply to the Committee, the report specifies that workers who are not members of a trade union are entitled to participate in the work of the Personnel Assembly (PAS), which participates in the determination and improvement of their working conditions, work organisation and working environment. They may put forward nominees and be selected as representatives. Furthermore, there are no restrictions based on nationality for participating in votes of the PA or being elected as representative.

In reply to the Committee, the report indicates that outside the scope of collective bargaining workers can take part in the determination of the working conditions within the framework of Committees on Working Conditions (CWC) and Groups on Working Conditions (CWG). This is regulated by the Healthy and Safe Working Conditions Act which was adopted since the last report. The Committee notes however that this concerns essentially the protection of health and safety at work and not working conditions, work organisation and the working environment, and therefore reiterates its question.

According to **Art. 7, Par. 2 of the Labour Code**, employees may hold general meetings to elect representatives to represent their common interests on labor and social security relations before their employers or government agencies. Representatives shall be elected by a majority of more than two-thirds of the General Meeting.

The right of participation of workers in the discussion and adoption of all measures that relate to the improvement of working conditions, work organization and working environment, including health and safety at work, is a fundamental right, regulated by the Law on Health and Safety work conditions.

According to Art. 29, item 3 of the Law on Health and Safety at Work, part of the duties of the committees and groups at work is "to discuss the planned changes in technology, work organization and jobs with regard to the consequences of the choice of equipment, working conditions and working environment and offer solutions to protect the health and safety of workers". In other words, employee representatives are entitled to participate in the determination of working conditions, work organization and work environment, outside the scope of collective agreements.

Employee representatives in committees and groups at work are entitled to:

- Access to the available information on working conditions, analysis of work accidents and occupational diseases, the findings and recommendations of the supervisory authorities;

- Require the employer to take the necessary measures and make recommendations for the elimination of hazards or temporarily reduce risks to health and safety;

- To ask the supervisory authorities whether they consider that the measures taken by the employer are not sufficient to ensure the health and safety of workers;

- To participate in the inspections carried out by the supervisory authorities. (Art. 30, Par. 2 of the Law on Health and Safety at Work).

The employer shall provide the employee representatives on health and safety at work, the requisite conditions, time and resources to fulfill their rights and functions, as well as relevant education and training that takes place during working time without affecting the amount of their remuneration.

Employee representatives in committees and groups on working conditions can not be placed at a disadvantage for their actions to ensure healthy and safe working conditions.

Protection of health and safety

The Committee noted in its last conclusion (Conclusions 2007) that less than half of the total number of enterprises had CWCs and CWGs, and asked what measures the authorities intended to take to improve this situation. The Committee observes from the report that in 2006 only 42.5% of all enterprises inspected by labour inspectors had CWCs and CWGs, and in some regions the rate went down to 13.5%. The report also states that there are few examples of well-functioning CWCs and CWGs. The participation of CWCs and CWGs in inspections decreased from 7.8% in 2005 to 6.8% in 2006. The report indicates that in 2007 a practice was established within the Directorate Regional Labour Inspectorate to invite representatives of different trade unions and CWCs/CWGs to participate in inspections. However, according to the report, participation is still passive and unsatisfactory. The Committee asks for more specific and concrete information on practical measures taken by the authorities to improve the situation.

In companies with more than 50 employees, *including the public sector,* there are set up committees on work conditions consisting of not more than 10 people. They include representatives of the employer and an equal number of representatives of the workers on health and safety at work. The mandate of the representatives of the employees shall be 4 years, and early termination may be requested by at least one third of the total number of employees in the enterprise and is adopted by a majority of more than half of those present at the general meeting. Chairman of the committee is the employer or his representative and the deputy chairman is the representative of the workers on safety and health at work. The work of the committee may include representatives of the supervisory authorities of occupational health and external experts.

In businesses, *including in the public sector*, with a staff of 5 to 50 workers, and in various structural units of the companies, businesses and organizations there are built groups on working conditions. The groups consist of the employer or the manager of the relevant structural unit and one representative of the workers on safety and health at work.

Committees and groups on work conditions:

- Discuss quarterly the overall activity on health and safety of workers and propose measures for improvement;

- Discuss the results of the occupational risk assessment and analyses of the health status of workers, reports of specialized occupational medicine services and other issues of maintenance and protection of the health and safety of workers;

- Discuss the planned changes in technology, work organization and jobs with regard to the consequences of the choice of equipment , working conditions and working environment and offer solutions for the health and safety of workers;

- Carry out checks on compliance with the requirements for health and safety at work;

- Monitor the status of work accidents and occupational diseases;

- Participate in the development of programs to inform and educate workers on issues

of health and safety at work.

The work groups and committees work closely with the specialized agencies and departments of the enterprise, which are related to the creation and provision of healthy and safe working conditions.

Organisation of social and socio-cultural services and facilities

The Committee noted in a previous conclusion (Conclusions 2003) that the Labour Code enumerates a series of social and socio-cultural services and facilities that may be set within the undertaking. It asked in its last two conclusions (Conclusions 2003 and 2007) information on how workers' representatives participate in the organisation of these services.

The subject of collective agreements, and hence of the CLA covers issues of labor and social security relations of employees which are not covered by mandatory provisions of law. Regulation of social and cultural services to employees include operative legal norms, which means that they are not binding and therefore these issues may be included in the draft CLA drawn up by the union. If an enterprise has more than one trade union, they present a common project. Given that a common project is not reached, then the General Meeting of the workers/employees comes into effect, and where they are many – the Board of commissioners. The General Meeting elects one of the projects of the trade unions and on the basis of this project negotiates and concludes collective agreements.

Like the established international practice in the agreements, in Bulgaria CLA includes questions about:

- Remuneration;
- Working hours;
- Leaves and holidays;
- Health and safety at work;
- Conditions for employment, dismissals, compensation;
- Training and retraining;
- Trade union rights;
- Labor disputes;
- Pension and health insurance;
- **Social and cultural services, etc..**

The Committee recalls in this context that Article 22 of the Revised Charter does not require that employers offer social and socio-cultural services and facilities but requires that workers may participate in their organisation, where such services and facilities have been established (Conclusions 2007, Italy). As the report fails again to address this issue, the Committee is led to consider that it is not established that the situation is in conformity with Article 22 in this respect.

As mentioned above, social and cultural services are usually included in the scope of collective agreements and are negotiable. When social and cultural services are carried out by the employer, the financing is done by means of:

1. The employer who must, where possible, provide funds and set them apart with that purpose. The amount of funding depends on the economic capacity of the employer.

2. From other sources. This can be a target allocation by the State, municipalities, trade unions and employers' organizations, donations, etc..

The way of use of the insured for social and cultural services shall be determined by **the General Meeting of the employees** (the General Meeting consists of all employees in the enterprise - Art. 6 Par. 1 of the Labour Code). This is its exclusive competence, which cannot be recalled or transferred to other bodies. These funds can be used to provide housing

assistance to needy employees and others. If an enterprise has a CLA, it may lay down on how to spend these funds, but these rules cannot conflict the decision of the General Meeting.

According to Art. 44, Par. 1 and Art. 12, Par. 1 of the Constitution of the Republic of Bulgaria (CRB), citizens may freely associate to satisfy and protect their interests. It is not necessary for the opportunity to associate in one or another sphere of public life to be provided for by law or regulation. Suffice that the association is formed with authorized purposes and means of activity (Definition No. 5973 of 15.12.1998, SAC on adm. c. No. 4652/98).

The constitutional right of citizens to associate consistent with Art. 12 of the CRB, should be understood in the possibility to set up a legal entity to carry out collective actions in the field of general interest, which is one of the most important aspects of the right of association.

Freedom of association of citizens is not absolute. Art. 44, Par. 2 of the Constitution establishes prohibition of organizations whose activities are directed against the sovereignty, territorial integrity and unity of the nation, or the incitement of racial, national, ethnic or religious hatred, violation of the rights and freedoms of citizens, and of organizations establishing clandestine or paramilitary structures or seeking to achieve their objectives through violence (Decision No. 313 of 10.07.2007 of the SCC in c. No. 1078/2006).

Enforcement

The Committee reiterate its question as to whether employees' representatives other than trade union representatives have a right to lodge complaints with competent courts in the event of a violation of their right to participate and what sanctions are imposed by courts.

Pursuant to Art. 45 of the Constitution of the Republic of Bulgaria, **citizens shall have the right to present complaints,** suggestions, and petitions to the state authorities. Provisions of the CRB have direct and immediate action, which means that every citizen can rely on them directly.

Article 2 of the Code of Civil Procedure regulates the obligation of the Courts to examine and adjudicate in each petition submitted thereto for protection and facilitation of personal and property rights. Court proceedings shall commence on a petition by the interested person or on a motion by the prosecutor in the cases specified by a law (Art. 6, para. 1). The court shall afford the parties an equal opportunity to exercise the rights conferred thereon. The court shall apply the law equally in respect of all (Art. 9). The regional court shall take cognizance of all civil cases, with the exception of such as are cognizable in the district court acting as a court of first instance (Art. 103). Every person may bring an action in order to restore a right thereof where the said right has been impaired, or to establish the existence or non-existence of a legal relation or of a right, where the said person has standing to do so. (чл. 124, ал. 1).

Chapter Thirty-Three of the Code of Civil Procedure contains the legal framework of the proceedings on class action (collective claims).

Class Actions

Article 379. (1) A class action may be brought on behalf of persons who are harmed by the same infringement where, according to the nature of the infringement, the circle of the said persons cannot be defined precisely but is identifiable.

(2) Any persons who claim that they are harmed by an infringement under Paragraph (1), or any organizations responsible for the protection of injured persons or for protection against such infringements, may bring, on behalf of all injured persons, an action against the infringer for establishment of the harmful act or omission, an action for the wrongfulness of the said act or omission, and an action for the blame.

(3) Any persons who claim that the collective interest thereof has been harmed or is likely to be harmed by an infringement referred to in Paragraph (1), or any organization responsible for the protection of injured persons, of the harmed collective interest or for protection against such infringements, may bring, on behalf of all injured persons, an action against the infringer for cessation of the infringement, for rectification of the consequences of the infringement of the harmed collective interest, or for compensation for the damages inflicted on the said interest.

Bringing Class Action

Article 380. (1) Class actions shall be examined by the district court acting as a court of first instance according to the procedure established by this Chapter.
(2) The statement of action, apart from the circumstances upon which the action is founded, shall specify the circumstances which identify the circle of injured persons and the form in which publication of the bringing of the action is proposed.
(3) Evidence of the capacity of the plaintiff to protect the harmed interest seriously and in good faith, as well as to incur the charges related to the conduct of the case, including the costs, shall be presented attached to the statement of action.

Verification of Conditions for Bringing Class Action

Article 381. (1) After verification of the admissibility of the action brought and the conformity of the statement of action, the court shall verify ex officio the capacity of the person or persons who have brought the action to protect the harmed interest seriously and in good faith and to incur the charges related to the conduct of the case, including the costs.
(2) The court may hear the person or persons who have brought the action in public session.
(3) The court shall not admit the case to examination if none of the persons who have brought the action satisfies the conditions referred to in Paragraph (1) or if all such persons together do not satisfy the said conditions.
(4) The ruling of the court whereby the case is not admitted to examination shall be appealable by an interlocutory appeal.

Preparation of Case for Examination

Article 382. (1) The court, sitting in public session with the parties being summoned, shall hear the stands of the parties regarding the circumstances which identify the circle of injured persons and the form of publication of the bringing of the action.
(2) The court shall rule on:
1. an adequate form of publication of the bringing of the action: number of announcements, through which media and for what length of time the said announcements must be made;
2. an adequate time limit after the publication within which the injured persons may declare that they will participate in the procedure or will pursue a remedy independently.
(3) The ruling shall be appealable by an interlocutory appeal.

Acceptance of New Participants and Exclusion from Participation

Article 383. (1) The court, sitting in camera, shall:
1. accept for participation in the procedure other injured persons, organizations responsible for the protection of the injured persons, of the harmed collective interest or for protection against such infringements, who or which have declared, within the time limit set, a motion for participation in the procedure;
2. exclude the injured persons who have declared, within the time limit set, that they will pursue a remedy independently in a separate procedure.
(2) The ruling whereby inclusion of new participants or exclusion from participation is refused shall be appealable by an interlocutory appeal.
(3) The court shall issue a duplicate copy of the ruling on exclusion to the persons who have declared, within the time limit set, that they will pursue a remedy independently in a separate procedure.

Accommodation on Voluntary Resolution of Dispute

Article 384. (1) The court shall direct the parties to a settlement and shall explain thereto the advantages of the various procedures for voluntary resolution of the dispute.

(2) The court shall approve the settlement, agreement, conciliation or another accommodation reached on a partial or comprehensive resolution of the dispute if the said accommodation does not conflict with the law and good morals and if the harmed interest can be protected in a sufficient degree through the measures included in the said accommodation.

(3) The accommodation on resolution of the dispute shall take effect after being approved by the court

Measures for Protection of Harmed Interest

Article 385. (1) The court may order the respondent to perform a specific act, to refrain from performing a specific act, or to pay a specific amount.

(2) Acting on a petition by the plaintiff, the court wherebefore the action has been brought may rule on adequate interim measures for protection of the harmed interest. The ruling may be modified or vacated by the same court consequent to a change of circumstances, an error or an omission.

(3) The ruling shall be subject to intermediate appellate review and cassation appellate review regardless of the prerequisites for cassation appealability covered under Article 280 (1) herein. An appellate review of the ruling shall not stay the enforcement thereof, unless the court competent to examine the appeal decrees otherwise.

(4) Upon rendition of the judgment, the court shall not be bound by the measures for protection cited by the plaintiff. Considering the specifics of the case and after taking into account the stand of the respondent, the court may decree other measures which ensure adequate protection of the harmed interest.

Judgment on Class Action

Article 386. (1) The judgment of the court shall have effect in respect of the infringer, the person or persons who have brought the action, as well as in respect of those persons who claim that they are harmed by the established infringement and who have not declared that they wish to pursue a remedy independently in a separate procedure. The excluded persons may avail themselves of the judgment whereby the class action has been granted.

(2) A list of the excluded persons shall be attached to the judgment of the court.

(3) The judgment shall be subject to intermediate appellate review and cassation appellate review regardless of the prerequisites for cassation appealability covered under Article 280 (1) herein.

(4) A judgment on a class action may not be reversed under Article 304 herein.

Disposition of Compensation

Article 387. (1) The court may decree that the compensation be credited to an account of one of the persons who have brought the action, to a special account jointly disposable by the persons who have brought the action, or to a special account jointly disposable by the injured persons.

(2) After rendition of the judgment, the court may obligate the persons who have brought the action to transfer the compensation to a special account jointly disposable by the injured persons, taking adequate measures to secure the execution of this obligation.

Injured Persons' General Meeting and Committee

Article 388. (1) The first-instance court may convene a general meeting of the injured persons by publishing the notice in the form in which the bringing of the action has been published. The general meeting of the injured persons shall be presided over by the judge and may act if at least six injured persons present themselves.

(2) The general meeting of the injured persons shall elect a committee to dispose of the assets on the special account and may resolve on the acts which the said general meeting assigns the said committee to perform.

In case of compensation for damages is applying the general rule of Article 52 of the Obligations and Contracts Act that the compensation shall be determined on an equitable basis. The mandatory judicial practice accepts that the concept of "equity" is not abstract, and in determination of fair compensation should be considered and discussed all specific circumstances that are relevant to determining the amount of compensation in order to be fair.

Scope of the provision as interpreted by the ECSR
Right of employees in private or public undertakings and/or their representatives to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in
Article 22.
Workers must have legal remedies when these rights are not respected. There must also be sanctions for employers which fail to fulfil their obligations under this Article.

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:
1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.
Appendix to Article 26
It is understood that this article does not require that legislation be enacted by the Parties.
It is understood that paragraph 2 does not cover sexual harassment.

Information to be submitted:

Article 26§1

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please supply any relevant statistics or other information on awareness-raising activities and programmes and on the number of complaints received by ombudsmen or mediators, where such institutions exist.

<u>Direct questions of the ECSR:</u>
Paragraph 1 - Sexual harassment

The Committee examined the situation in detail in its last conclusion and it takes note of the changes in legislation and practice during the reporting period. The definition of sexual harassment has been amended to reflect the Council Directive

2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

In the national anti-discrimination legislation ***"harassment"*** as a form of discrimination is regulated in **Art. 5 of the Protection against Discrimination Act**. ***"Sexual harassment"*** as a specific form of discrimination is mentioned in that provision, and a special definition of the term ***"sexual harassment"*** is given in the provision of **§ 1, item 2 of the Additional Regulations of the Protection against Discrimination Act**. Since the adoption of the Protection against Discrimination Act to date , the provision of Art. 5 has not been amended, there is a change, however, of the Additional Regulations of § 1, item 2 of the Protection against Discrimination Act, introduced by the amendment and supplementation of the Protection against Discrimination Act, published in the State Gazette, issue 58 of 31 July 2012, effective as of 01.08.2012 (which is in the reference period covered in the survey). This is the way the definition of "sexual harassment" was complemented and "establishing a debasing environment for the victim of the act of unequal or less favorable treatment" was added, i.e. the definition of sexual harassment was expanded.

With the amendment of the Law on Protection against Discrimination, published in the State Gazette. issue 58 of 31 July 2012, in force from 01.08.2012 in **Art. 37 of the Protection against Discrimination Act** are added two new paragraphs, namely:

- **Art. 37, Par. 2** "There shall be no discrimination on the grounds of Art. 4, Par. 1 in the public or the real sector directly or indirectly related to the conduct of business, including the establishment, equipment or extension of a business or the launching or extension of any other form of such activity", and
- **Art. 37, Par. 3**, respectively "In activities under par. 2, the rejection or submission of a person to a behavior that constitutes harassment or sexual harassment, cannot serve as grounds for a decision affecting that person".

In terms of **public awareness**, the CPD annually conducts trainings on EU legislation and anti-discrimination policy through thematic workshops where guest speakers include representatives of the EU institutions. Seminars cover a wide range of senior officials from the central government authorities – Ministry of the Interior, Ministry of Labor and Social Policy, Ministry of Education and Science, Ministry of Culture, etc., territorial, municipal administrations, and representatives of media and NGOs. As a platform for consultation and involvement of the authorities responsible for anti-discrimination, CPD holds annual seminars with members of the judiciary - judges and prosecutors, and with territorial municipal administrations.

In view of the query on the number of complaints received by the **Ombudsman of the Republic of Bulgaria**, it should be noted that the Ombudsman of the Republic of Bulgaria is able to initiate specialized anti-discrimination proceedings before the Commission under the Protection against Discrimination Act by a complaint or an alert. Until now, CPD has not initiated such proceedings.

With regard to mediation, the legal framework allows the use of mediation as a means of reconciliation in proceedings before the Commission.

Liability of employers and means of redress

In its previous conclusion the Committee reiterated its request for information about the case-law in the field of sexual harassment, including the activity of the Commission for protection against discrimination (CPAD). The report provides information about the number of cases on sexual harassment brought annually before the CPAD and an excerpt of a decision issued by the CPAD. The Committee requests that next report provides information on the case-law of the national courts as well, if available.

In proceedings before the Commission for Protection against discrimination in cases related to determining the presence or absence of discrimination in the form of **"sexual**

harassment in the workplace", CPD applies the general rules of the specialized anti-discrimination proceedings before the administrative body, namely the provisions of **Chapter IV Section I "Proceedings before the Commission" of the Protection against Discrimination Act**.

The Committee notes from a previous report that those who aid and abet perpetrators of acts of sexual harassment are held civilly liable whether they are employees or not. The Committee recalls that it must be possible also for employers to be held liable towards persons employed or not employed by them who have suffered sexual harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc (Conclusions 2003, Italy). It therefore asks for a detailed description of the liability of employers in the above-mentioned cases.

In accordance with the principle of **enhanced official start of (ex officio)** the administrative process, in proceedings before the Commission are called, as defendants or as interested parties, depending on the characteristics of the proceedings, besides the alleged direct perpetrators, their control managers as well, and in some cases the employer himself (the employer may be a natural or legal person, public authority or local authority). In this connection, when there is support or other act or omission that has assisted the act of discrimination, there is liability as appropriate.

§ 1, item 5 of the Additional Provisions of the Protection against Discrimination Act regulates the legal definition of **"incitement to discrimination"** applicable to the cases of "sexual harassment" as a form of discrimination.

Protection against Discrimination Act

ADDITIONAL PROVISIONS

§ 1. For the purposes of this Act:

.....

5. (Amended, SG No. 58/2012, effective 1.08.2012) "Incitement to discrimination" shall be directly and intentionally encouraging, instructing, putting pressure or procuring a person to commit discrimination.

Burden of proof

The Committee has ruled that effective protection of employees requires a shift in the burden of proof. In particular, courts should be able to find in favour of the victim on the basis of sufficient prima facie evidence and the personal conviction of the judge or judges (Conclusions 2003, Slovenia). The report contains no information in this regard. The Committee understands that there have been no changes in the situation as regards burden of proof and asks that next report informs for changes in this regard, if any.

On 01.16.2014, the Parliament adopted at first reading a draft Law amending and supplementing the Protection against Discrimination Act. CPD is actively involved in initiating the process of submitting a bill for consideration in the National Assembly.

In order to achieve terminological conformity of the text of the provisions of Article 9 of the Protection against Discrimination Act and Directive 2006/54/EC, the CPD believes that Directive 2006/54/EC is a specific concretization of the general principle of equality, which is one of the fundamental principles of EU law and that, under Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, is protected as a fundamental right. This is an important reason for the scope of the Directive not to be defined narrowly. Directive 2006/54/EC aims to establish minimum requirements for implementing the principle of equal treatment and preventing discrimination. Undoubtedly, it explicitly allows Member States to adopt or maintain provisions which are more favorable to the affected persons than the

requirements of EU law. The Directive, however, may not be compatible with national provisions that are less favorable to the persons concerned and therefore do not meet the minimum requirements established by EU law, such as the terminological accordance of the text of the provisions of Article 9 of the Law on protection against Discrimination and Directive 2006/54/EC. In such incompatibility of Bulgarian provisions with Directive 2006/54/EC, it is sufficient to recall the settled practice of the European Court of Human Rights: in the main proceedings the national rules should, as far as possible, be interpreted and applied in accordance with the Directive. This means that national courts must interpret the national law in the light of the wording and the purpose of the directive in order to achieve the specified result. They must use all their powers, taking into account all the national law and applying the latest methods of interpretation in order to ensure the full effectiveness of the Directive and to reach the solution which corresponds to the objective it pursues. So far, the relevant provision of the Law on Protection against Discrimination is applied in national practice as a standard of proof, requiring a high degree of security that goes beyond mere assumptions and doubts and approximates the full proof of discrimination. The question is how high should be the degree of accuracy with which the applicant must establish the existence of discrimination. All compared versions of different languages of the provision on the reversal of the burden of proof require only a "presumption" for the existence of discrimination, not a sure "conclusion" of such. Recital 21 of another anti-discrimination directive - Directive 2000/43 also states that the burden of proof is turned whenever "there is a prima facie case of discrimination". Moreover, in its opinion, the European Commission states that even from the text literally translated into Bulgarian does not stem a requirement for a high degree of security, since in the Bulgarian language the provision requires only facts "from which it *can* be concluded" that there is discrimination. Therefore, any other more restrictive interpretation of the provision on the reversal of the burden of proof would undermine the useful and practical action and would render it meaningless. The logical extension of this finding is the absence of a rule to reverse the burden of proof and it will eventually enforce the normal rules on the burden of proof, the final result will be: the person who is considered a victim of discrimination will have to indicate and to prove all the facts necessary to support his claim and allow a sufficient degree of certainty to establish the existence of discrimination. The rule of reversal of the burden of proof, however, was introduced precisely to avoid such difficulties and to improve the situation of potential victims of discrimination. It aims at strengthening the rights of those who claim to be victims. A national practice, as the one mentioned above, would be diametrically opposed to this goal as a requirement for identification and proof of facts that would allow for a certain finding of discrimination would ultimately correspond to the normal rules on burden-sharing of proof. In such case the provisions of Article 9 of this Protection against Discrimination Act would produce the desired results to improve the procedural position of those who claim to be victims of discrimination. Indeed, with the rule to reverse the burden of proof introduced in all anti-discrimination directives, the legislature has chosen an approach that provides a fair balance between the interests of the victim of discrimination and the interests of the opposing party in the case. In particular, the legislation does not fully lift the burden of proof on the person who claims to be a victim of discrimination, it just adapts it. Therefore, application of the rule to reverse the burden of proof to the forthcoming amendment of the Protection against Discrimination Act aims that individuals who consider themselves wronged by failure to apply to them the principle of equal treatment, to present facts which establish prima facie presence of discrimination. The Commission for Protection against Discrimination considers these changes as a step in the right direction - building a just society.

Damages

In its previous conclusion the Committee asked for information on the adequacy of the damages, particularly in cases of complaints of unlawful dismissal. The report contains the excerpt of a decision of the CPAD where the maximum fine of 2 500 BGN (1,278 €) was imposed to the perpetrator. The Committee asks for more complete

information on the damages applied by the CPAD and national courts in civil actions as well.

The information on the amount of compensation and the way of its determination is submitted on pages 28-29 of the report.

Files generated during the period 2009 – 2012 for harassment at the workplace:
For 2009 – 21
For 2010 – 23
For 2011 – 16
For 2012 – 25
Total – 85 files

Decisions in the period 2009 - 2012 for established harassment at the workplace and imposed fine or property sanction:
For 2009 – 0
For 2010 – 5
For 2011 – 2
For 2012 – 5
Total – 12 decisions
Sexual harassment – 20 files total for the period.

Prevention

In its previous conclusion the Committee reiterated its request for information about the preventive measures taken by the Government.

CPAD has the power to impose on employers fines and penalties - **Chapter V, Section II "Administrative Penalty Provisions" of the Protection against Discrimination Act**.

Under the provisions of **Art. 76, Par. 1 in Chapter V, Section I "Compulsory administrative measures"**, the CPAD on its own initiative or at the request of the trade union organizations, individuals or legal entities, may apply the following **compulsory administrative measures**: 1) gives **binding instructions** in the form of compulsory administrative measures to employers and officials to remove violations of the law to prevent discrimination, and 2) **stops the execution of illegal decisions or orders of employers** that lead or may lead to discrimination. CPAD monitors the implementation of compulsory administrative measures, but also issues recommendations in their final acts.

"Regional Representatives" administration shall be composed of representatives of the CPAD determined by its decision on a territorial basis. Regional representatives provide methodological support and independent advice to individuals and natural persons according to the Law on Protection against Discrimination in open receptions in the municipalities of the districts and large settlements. Regional representatives conduct monthly campaigns jointly with trade unions for different employers to promote the Protection against Discrimination Act among citizens, interested institutions, NGOs and others.

The Commission for Protection against Discrimination applies a special provision related to the obligation for awareness of workers on the provisions of the Protection against Discrimination Act, according to Art. 22: *"The employer puts at a place available to employees the text of this Law and all provisions of internal rules and the provisions of the collective agreement relating to protection against discrimination".* In this regard CPAD monitors ad hoc during the procedure for failure to do so, as well as the other obligations of the employer under the Protection against discrimination Act.

Article 26§2

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please supply any relevant statistics or other information on awareness-raising activities and programmes and on the number of complaints received by ombudsmen or mediators, where such institutions exist.

Direct questions of the ECSR:

Paragraph 2 - Moral harassment

The Committee examined the situation in detail in its last conclusion and it takes note of the changes in legislation and practice during the reporting period. The definition of moral harassment has been amended to reflect the Council Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

Liability of employers and means of redress

The Committee requests that next report provides more complete information on the case-law of CPAD and the national courts, if available.

The information is submitted on Art. 26, Par. 1.

The Committee recalls that it must be possible for employers to be held liable towards persons employed or not employed by them who have suffered moral harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc (Conclusions 2003, Italy). It therefore asks for a detailed description of the liability of employers in the above-mentioned cases.

The information is submitted on Art. 26, Par. 1.

Burden of proof

The Committee has ruled that effective protection of employees requires a shift in the burden of proof. In particular, courts should be able to find in favour of the victim on the basis of sufficient prima facie evidence and the personal conviction of the judge or judges (Conclusions 2003, Slovenia). The report contains no information in this regard. The Committee understands that there have been no changes in the situation as regards burden of proof and asks that next report informs for changes in this regard, if any.

The information is submitted on Art. 26, Par. 1.

Damages

In cases of violation, the damages must allow for a compensation of a sufficient amount to make good for the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer.

In its previous conclusion the Committee asked for information on the adequacy of the damages as a deterrent to the employer. The report contains the excerpt of a decision of the CPAD where a fine of 500 BGN (255.6 €) was imposed to the perpetrator. The Committee asks for more complete information on the damages applied by the CPAD and the national courts as well.

The information is submitted on Art. 26, Par. 1.

Prevention

In its previous conclusion the Committee reiterated its request for information about the preventive measures taken by the Government.

The information is submitted on Art. 26, Par. 1.

Scope of the provisions as interpreted by the ECSR

Paragraph 1: This concerns forms of behaviour deemed to constitute sexual harassment in the work place or in relation to work. Existing measures must ensure effective protection for workers against sexual harassment. It also concerns the liability of employers and/or their employees. There should be effective remedies for victims and reparation for pecuniary and non-pecuniary harm suffered, including appropriate compensation. The burden of proof should be adjusted and steps should be taken to increase awareness of and prevent sexual harassment.

Paragraph 2: This concerns forms of behaviour deemed to constitute psychological harassment in the work place or in relation to work. Existing measures must ensure effective protection for workers against psychological harassment. It also concerns legal protection against psychological harassment and the liability of employers and/or their employees. There should be effective remedies for victims and reparation for pecuniary and non-pecuniary harm suffered, including appropriate compensation. The burden of proof should be adjusted and steps should be taken to increase awareness of and prevent psychological harassment.

Article 28 – Right of worker representatives to protection in the undertaking and facilities to be afforded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

a. they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;

b. they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Appendix to Article 28

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice".

Information to be submitted:

1) Please describe the general legal framework, including decisions by courts and other judicial bodies, if possible. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

<u>Direct questions of the ECSR:</u>

Protection of worker representatives

In its previous conclusions (2004 and 2006) the Committee considered that the situation is not in conformity with Article 5 and article 28 as the Labour Code (Article 225), which provides for damages up to a maximum of 6 months wages in the event of discriminatory dismissal because of trade union activities, does not provide for adequate compensation, which would be proportionate to the damage suffered by the victim. The

Committee does not consider this approach convincing for the purposes of ensuring that victims of discriminatory treatment based on unionship are awarded adequate compensation proportionate to the damage they suffered.

The information on the amount of compensation and the way of its determination is submitted on pages 28-29 of the report.

The Committee asks again for information on protection granted to worker representatives other than trade union representatives, such as health and safety delegates.

Pursuant to Art. 30, Par. 4 of the Law on Health and Safety at Work, workers' representatives in the committees and groups on working conditions cannot be placed at a disadvantage for their actions to ensure healthy and safe working conditions.

Furthermore, Decision No. 776 of 12.12.2013 of the Council of Ministers of the Republic of Bulgaria approved a bill proposing to the National Assembly of the Republic of Bulgaria to adopt changes to the Labour Code, providing protection against dismissal of an employee who is elected to represent workers with regard to health and safety at work in the enterprise.

Facilities for worker representatives

The Committee recalls that it had previously noted that worker representatives were entitled to access to all workplaces, paid time off and were entitled to participate in training.

The Committee refers to its interpretative statement on the facilities to be granted to workers' representatives in the general introduction as well as to its question on travelling expenses. It asks the next report to provide all the necessary information.

The right of workers' representatives on facilities is regulated by the Act on Information and Consultation of Factory and Office Workers in Community-Scale Undertakings, Groups of Undertakings and European Companies:

Article 11. (9) (New, SG No. 26/2011, effective 5.06.2011) The members of the European Works Council or of the select committee shall be provided with training, financed by the employer, where this is required for performance of the representative functions thereof upon participation in international events. The costs of the training may not be at the expense of the labour remuneration of the said members.
(11) (Renumbered from Paragraph (10), SG No. 26/2011, effective 5.06.2011) The operational expenses of the European Works Council shall be borne by the central management referred to in Article 4 (2) herein of by the management referred to in Article 4 (5) or (6) herein. The management concerned shall provide the members of the European Works Council with such financial and material resources as shall be necessary for the performance of their duties. The cost of organizing meetings and arranging for interpretation facilities and the accommodation and travelling expenses of the members of the European Works Council and its select committee shall likewise be met by the management concerned.
Article 18. (12) The operating expenses of the representative body shall be borne by the European Company. The said company shall provide the members of the body with the financial and material resources needed to enable them to perform their duties. Unless otherwise agreed, the said company shall furthermore bear the cost of organizing meetings and providing interpretation facilities, and the accommodation and travelling expenses of the members of the representative body and of the select committee.
Article 26. (12) (12) The operating expenses of the representative body shall be borne by the European Cooperative Society. The said society shall provide the members of the body with the financial and material resources needed to enable them to perform their duties. Unless

otherwise agreed, the said company shall furthermore bear the cost of organizing meetings and providing interpretation facilities, and the accommodation and travelling expenses of the members of the representative body and of the select committee.

Scope of the provision as interpreted by the ECSR
This provision guarantees the right of workers' representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognises a similar right in respect of trade union representatives.
The term "workers' representatives" means persons who are recognised as such under national legislation or practice.
Protection should cover the prohibition of dismissal on the ground of being a workers' representative and the protection against detriment in employment other than dismissal.
The facilities to be provided may include for example paid time off to represent workers, financial contributions to the workers' council, the use of premises and materials for the operation of the workers' council, etc.

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

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.
Appendix to Articles 28 and 29
For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

Information to be submitted:

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Direct questions of the ECSR:

Definition and scope

The Committee notes the comment made by the CITUB regarding the changes in the definition of collective redundancy brought in by the amendments to the Labour Code which are effective as of 28 February 2010. It notes that this change falls out of the reporting period and asks that next report provides information on the changes that the amendments have brought.

The current text of "Collective dismissals" under § 1, item 9 of the Supplementary Provisions of the Labour Code which entered into force on 28 February 2010 is as follows:

§ 1. For the purposes of this Code:
.....

9. (New, SG No. 52/2004, amended, SG No. 48/2006) "Collective dismissals" shall be dismissals effected on the employer's initiative for one or more reasons not related to the individual factory or office worker concerned, where the number of dismissals is:
(a) at least 10 in enterprises normally employing more than 20 and less than 100 factory and office workers during the month preceding the collective dismissals and the dismissals are carried out over a period of 30 days;
(b) at least 10 per cent of the number of factory and office workers in enterprises normally employing at least 100 but less than 300 factory and office workers during the month preceding the collective dismissals and the dismissals are carried out over a period of 30 days;
(c) at least 30 in enterprises normally employing 300 factory and office workers or more during the month preceding the collective dismissals and the dismissals are carried out over a period of 30 days;
(d) (repealed, SG No. 15/2010).
If the employer has dismissed at least five factory and office workers within the periods under Literate (a) to (c), each succeeding termination of an employment relationship which is effected on the employer's initiative for other reasons not related to the individual factory or office worker shall be assimilated to the total number of dismissals for the purpose of calculating the number of dismissals under Literate (a) to (c).

Scope of the provision as interpreted by the ECSR
Workers' representatives have the right to be informed and consulted in good time by employers planning to make collective redundancies. The collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity.
Consultation procedures must take place in good time, before the redundancies. The purpose of the consultation procedure, which must cover at least the "ways and means" of avoiding collective redundancies or limiting their occurrence and support measures.
Consultation rights must be accompanied by guarantees that they can be exercised in practice

Please indicate the national organisations to which copies of the report have been communicated in accordance to Article 23 of the Charter.

A copy of this report was forwarded to all nationally represented organisations of workers and of employers:

1. Confederation of Independent Trade Unions in Bulgaria (CITUB);
2. Labour Confederation "Podkrepa";
3. Bulgarian Chamber of Commerce and Industry;
4. Bulgarian Industrial Association;
5. Confederation of Employers and Industrialists in Bulgaria;
6. Bulgarian Industrial Capital Association.