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EUROPEAN SOCIAL CHARTER

4[tht] National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF CROATIA

(Articles 2, 5 and 6 of the Charter
and
Articles 2 and 3 of the Additional Protocol
for the period 01/01/2005 – 31/12/2008)

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The 4th Report by the Republic of Croatia
for the period between January 2005 and December 2008 on the measures taken to give effect to the accepted provisions of the European Social Charter (Articles 2, 5 and 6) and the Additional Protocol to the European Social Charter (Articles 2 and 3)

December 2009.

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REPORT OF THE REPUBLIC OF CROATIA

For the period from January 2005 to December 2008 made by the Republic of Croatia in accordance with Article 21 of the European Social Charter, on the measures taken to give effect to the accepted provisions of the European Social Charter (Articles 2, 5 and 6), the instrument of ratification or approval of which was deposited on 26 February 2003

In accordance with Article 23 of the Charter, copies of this report have been communicated to:

- ***Union of Autonomous Trade Unions of Croatia***
- ***Independent Trade Unions of Croatia***
- ***Croatian Trade Unions Association***
- ***Association of Croatian Unions***
- ***Association of Workers' Trade Unions of Croatia***
- ***Croatian Employers' Association.***

Article 2 – The right to just conditions of work

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

1. *to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;*
2. *to provide for public holidays with pay;*
3. *to provide for a minimum of two weeks annual holiday with pay;*
4. *to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;*
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.*

Legislation

Constitution of the Republic of Croatia

Under Article 140 of the Constitution of the Republic of Croatia, international agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, are part of the internal legal order of the Republic of Croatia and are above law in terms of legal effects. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of international law.

- ILO Convention No. 106 concerning Weekly Rest in Commerce and Offices, 1957 (OG – International Agreements, nos. 6/95, 3/02)
- ILO Convention No. 132 concerning Annual Holidays with Pay (Revised), 1970 (OG – International Agreements, nos. 6/95, 3/02)
- ILO Convention No. 14 concerning the Application of the Weekly Rest in Industrial Undertakings, 1921 (OG – International Agreements, nos. 6/95, 1/02)
- Labour Act (OG 137/04 – revised text)
- Act on Public Holidays, Memorial Days and Non-Working Days in the Republic of Croatia (OG 136/02 – revised version)
- Occupational Safety and Health Act (OG 59/96, 94/96, 114/03, 100/04, 86/08 and 116/08)
- Ordinance on jobs with special conditions of work (OG 5/84)
- Ordinance on maximum permitted levels of harmful substances in the atmosphere of working premises and biological limit values (OG 92/93)
- Collective agreements

ARTICLE 2, PARAGRAPH 1

Reasonable daily and weekly working hours

Question by the Committee of Social Rights

Full-time working hours

Article 30 (38) of the Labour Act provides that full-time working hours must not be longer than 40 hours a week. Full-time working hours regulated by special laws, collective agreements, agreements between works councils and employers or employment contracts may only be determined in a shorter duration (not exceeding 40 hours a week), and if they do not contain provisions on shorter working hours, working hours are considered to be 40 hours a week.

Rescheduling of working hours

<u>Question by the Committee of Social Rights</u>

The concept of "rescheduling of working hours" is a specific concept of the Labour Act. It provides an exception from LA's provisions stating that full-time working hours must not be longer than 40 hours a week, and is similar to some elements of the concept of "annualised hours" or "compressed working week". The concept of rescheduling of working hours allows industries in which the workload is unevenly distributed throughout the year (for example, in agriculture: winter time – sowing and at harvest time) to organise their activities in such a way that full-time workers (normally obliged to work 40 hours a week) need not work the same number of hours every week in the year. Rather, their working hours may be rescheduled so that during certain periods of time they work longer hours and during others shorter hours, but their average working hours in the course of a calendar year or other period specified by the collective agreement may not be longer than the prescribed full-time working hours.

Along these lines, the provisions of Article 43 of the LA prescribe that where the nature of work so requires, full-time or part-time working hours may be rescheduled so that in the course of one calendar year there may be a period of time with working hours that are longer and another period of time with working hours that are shorter than full-time or part-time working hours. If working hours are rescheduled, the average working hours in the course of a calendar year or other period specified by a collective agreement may not exceed full-time working hours.

Rescheduled working hours are not considered to be overtime work. The maximum duration of rescheduled working hours is 52 hours a week, except for work of seasonal character provided for by a collective agreement, but even in that case it may not exceed 60 hours a week. When working hours are rescheduled, special protection is provided for the following categories of workers:

a) workers working part-time at two or more undertakings – in such a case the worker's consent for rescheduling is required;
b) minors who are forbidden to work rescheduled full-time working hours;
c) pregnant women, mothers with children under three years of age, single parents with children under six years of age – these persons may only work rescheduled hours if they provide a written statement indicating their voluntary consent to such work.

This protection is provided through the activities of labour inspection services. Namely, a labour inspector will prohibit work in rescheduled hours of minors and persons who were required to give a statement on voluntary consent to rescheduled hours, but failed to do so. If

no rescheduling is provided for by a collective agreement or agreement between the works council and the employer, the labour inspection service, acting upon the request of the employer, is authorised to grant approval for rescheduled working hours, for a period not longer than one calendar year.

However, in the new Labour Act, which entered into force on 1 January 2010, the rescheduled working hours are regulated as follows:

Rescheduling of working hours

Article 47

> *(1) Where the nature of work so requires, full-time or part-time working hours may be rescheduled so that in the course of one calendar year there may be a period of time with working hours that are longer and another period of time with working hours that are shorter than full-time or part-time working hours, provided that average working hours in the course of rescheduling may not exceed full-time or part-time working hours.*
>
> *(2) Where rescheduling of working hours is not provided for in a collective agreement or an agreement concluded between the works council and the employer, the employer shall establish a plan of rescheduled working hours with an indication of jobs and number of employees included in such rescheduled working hours and submit such plan with rescheduled working hours to the labour inspector.*
>
> *(3) Rescheduled working hours are not considered to be overtime work.*
>
> *(4) If working hours are rescheduled, they cannot, including overtime work, exceed forty-eight hours a week during the period when they last longer than full-time or part-time working hours.*
>
> *(5) As an exception to paragraph 4 of this Article, rescheduled working hours may, during the period when they last longer than full-time or part-time working hours, exceed forty-eight hours a week and may last up to a maximum of fifty-six hours a week on condition that this is provided for by a collective agreement and that a written statement about voluntary consent to such work is submitted to the employer by the employee.*
>
> *(6) An employee who refuses to work for more than forty-eight hours a week in the course of rescheduled working hours shall not suffer any adverse consequences as a result of such refusal.*
>
> *(7) At the request of the labour inspector, the employer is obliged to enclose, with the plan referred to in paragraph 2 of this Article, the list of employees who have given a written statement referred to in paragraph 5 of this Article.*
>
> *(8) Rescheduled working hours may, in the period when they last longer than full-time or part-time working hours, last up to a maximum of four months, unless otherwise provided in a collective agreement, in which case they cannot exceed six months.*

(9) The duration of fixed-term employment contract for work carried out in rescheduled working hours shall be such that the employee's average working hours are equal to the stipulatted full-time or part-time working hours..

(10) It shall be prohibited for minors to work longer than eight hours a day in the course of rescheduled working hours.

(11) A pregnant woman, a parent of a child under three years of age, a single parent of a child under six years of age or a part-time employee may only work rescheduled hours referred to in paragraph 4 of this Article they submit to the employer a written statement indicating their voluntary consent to such work.

(12) The labour inspector shall prohibit or limit rescheduled working hours if they are contrary to the provisions of this Act or if it can be concluded on the basis of the report and opinion of an authorised physician, obtained in accordance with Article 45, paragraph 4 of this Act, that they have harmful effects on the employee's health, his or her working ability or safety.

During inspectional supervisions carried out in **2005** labour inspectors responsible for labour relations found 376 workers who were working rescheduled hours illegally, contrary to the provisions of Article 43 of the LA. In **2006** there were 249 such workers, in **2007** 110, and in **2008** 344.

Supervision activities relating to the rules on working hours

Also, during inspectional supervisions carried out in **2005** labour inspectors responsible for labour relations established that 130 employers had committed violations against 254 workers by concluding employment contracts with them in which full-time working hours were stipulated in the duration longer than allowed by law (Article 38, LA). In **2006** a total of 113 employers committed the same violations against 214 workers, in **2007** 125 employers committed violations against 212 workers, and in **2008** 107 employers against 180 workers.

In all these cases, in which illegalities were found, inspectors filed requests, with the competent misdemeanour courts, to institute misdemeanour proceedings against employers and responsible persons in these employers, or motions to indict them.

During supervisions carried out in 2005, labour inspectors responsible for labour relations established, amongst other things:

- that 5,684 workers had worked overtime illegally, contrary to the provisions of Article 41 of the LA;
- that 376 workers had worked rescheduled time illegally, contrary to the provisions of Article 43 of the LA;
- that employers had committed 222 violations by denying workers the right to use a daily break (Article 45 of the LA);
- that employers had committed a total of 448 violations by denying workers the right to use a weekly rest (Article 46 of the LA).

Due to all violations committed, inspectors filed requests with the competent misdemeanour courts to institute misdemeanour proceedings against employers.

We would like to emphasise that provisions of Article 247, paragraphs 1 and 2 of the LA specify that employers' conduct contrary to Articles 45 and 46 of the LA constitutes a major violation for which an employer-legal person may be imposed a fine in an amount ranging from HRK 31,000.00 to 60,000.00, whereas an employer-physical person and the responsible person in an employer-legal person may be fined in an amount ranging from HRK 4.000,00 to 6.000,00.

We would also like to note that provisions of Article 248, paragraphs 1 and 2 of the LA specify that employers' conduct contrary to Articles 38, 41, 43, 45 and 46 of the LA constitutes the gravest violation for which an employer-legal person may be imposed a fine in an amount ranging from HRK 61,000.00 to 100,000.00, whereas an employer-physical person and the responsible person in an employer-legal person may be fined in an amount ranging from HRK 7,000.00 to 10,000.00.

During supervisions carried out in **2006**, labour inspectors responsible for labour relations established, amongst other things:

- that 5,907 workers had worked overtime illegally, contrary to the provisions of Article 41 of the LA;
- that employers had committed 312 violations by denying workers the right to use a daily break (Article 45 of the LA);
- that employers had committed a total of 507 violations by denying workers the right to use a weekly rest (Article 46 of the LA).

Due to all these violations, inspectors filed requests with the competent misdemeanour courts to institute misdemeanour proceedings against employers.

During supervisions carried out in **2007**, labour inspectors responsible for labour relations established, amongst other things:

- that 5,287 workers had worked overtime illegally, contrary to the provisions of Article 41 of the LA;
- that 272 employers had committed violations against 673 workers by denying them the right to use a daily break (Article 45 of the LA);
- that 438 employers had committed violations against 1,312 workers by denying them the right to use a weekly rest (Article 46 of the LA).

Due to all these violations, inspectors filed requests with the competent misdemeanour courts to institute misdemeanour proceedings against employers.

During supervisions carried out in **2008**, labour inspectors responsible for labour relations established, amongst other things:

- that 4,001 workers had worked overtime illegally, contrary to the provisions of Article 41 of the LA;
- that 227 employers had committed violations against 523 workers by denying them the right to use a daily break (Article 45 of the LA);

- that 400 employers had committed violations against 1,103 workers by denying them the right to use a weekly rest (Article 46 of the LA).

Due to all these violations, inspectors filed requests with the competent misdemeanour courts to institute misdemeanour proceedings against employers.
On-call work

So far, the Labour Act has not specifically regulated "on-call work".

In the new Labour Act, it is regulated as follows:

Definition of working hours

Article 42

> *(1) Working hours are periods of time during which the employee is obliged to carry out tasks or during which he or she is ready (available) to carry out tasks at the workplace or another place defined by the employer following the employer's instructions.*
>
> *(2) The period of time during which an employee is prepared to respond to the call of the employer to perform tasks, where such need arises, shall not be considered as working time if the worker is not at his or her workplace or another place defined by the employer.*
>
> *(3) The period of preparedness and the amounts of remuneration for such preparedness are determined in an employment contract or collective agreement.*
>
> *(4) The time an employee spends performing tasks after the call on the part of the employer shall be considered as working time, regardless of whether the tasks are performed at the place defined by the employer or at the place chosen by the worker.*

ARTICLE 2, PARAGRAPH 2

Paid public holidays

<u>Question by the Committee of Social Rights</u>

Pursuant to the provisions of Article 84 (92) of the Labour Act, a worker has the right to an increase in salary, amongst other things, for work on public holidays and Sundays. The amount of this increase is not specified by the LA, but may be regulated by collective agreements, employment rules, employment contracts and, under certain conditions, by agreements between works councils and employers (if the parties to the collective agreement have authorised them to enter into agreements with such contents).

Furthermore, Article 5 of the Act on Public Holidays, Memorial Days and Non-working Days in the Republic of Croatia (Official Gazette, no. 136/02 – revised text, 112/05 and 59/06) provides for the right to an increase in salary, but only for workers who are normally not

obliged to work on these days, not for those who are obliged to work on public holidays. This means that nor does this regulation specify the amount of the increase or the payment arrangements for work carried out by workers obliged to work on any of these days.

Thus, if any of the acts mentioned, which are the source of these rights, include a provision such as, "A worker who works on a public holiday or non-working day, as established by law, on a day normally scheduled as a working day, **is entitled to an increase in salary of 50%**", the worker is entitled to 150 monetary units (100 for regular work and 50 based on the increase).

If the provision is formulated along the lines of, "A worker who works on a public holiday or non-working day, as established by law, on a day normally scheduled as a working day, **is entitled to salary compensation and an increment calculated at 50% of his regular salary**", then the worker is entitled to 250 monetary units (100 for the salary entitlement also applicable to workers who are not obliged to work on that day, 100 for regular salary, and 50 based on the increase).

Pursuant to the Labour Act, workers who work on a public holiday or non-working day, as established by law, on a day which is not a working day according to their regular schedule, are entitled to an increase in salary for working on a public holiday (100 for regular work and 50% based on working on a public holiday). However, since in that case their weekly working hours would exceed a total of 40 (or other weekly hours agreed in their employment contract), the hours worked on a non-working day will appear as excess to full-time work, which will then be remunerated as overtime, and this will not be considered as rescheduling of working hours.

Normally, the increase in salary for working on public holidays is considerably greater than for working on Sundays, so that, according to collective agreements, payment for working on Sundays is most often increased by 35%, whereas for public holidays, it may be as high as 150%.

So, for example, in the interpretations published by the Commission for Interpreting the Collective Agreement for Civil Servants and Civil Service Employees of 2006, we find the following explanation regarding salaries subject to increments, "Since the salaries of civil servants and civil service employees, according to Article 35, paragraph 1 of the Collective Agreement, comprise basic salary and increments to the basic salary, the increment of 150% for work on public holidays and non-working days, as established by law, and for Easter, relates to salaries defined in this way (basic salary plus increments to basic salary).

Regarding the Committee's question concerning the contents of regulations regulating public holidays in the trade sector, it should be stated that working hours in the trade sector were regulated, until 19 June 2009, by the provisions of Articles 57 to 62 of the Trade Act (OG 87/08 and 116/08). Article 58, paragraph 2 of this Act prescribes that shops shall not trade on Sundays and public holidays, unless otherwise determined by the Act.

On 19 June 2009, the Constitutional Court of the Republic of Croatia repealed this provision of the Act, by which working hours were prescribed from Monday to Saturday, on Sundays and public holidays. Since this date, when these provisions ceased to be valid, both wholesale and retail traders have been permitted to set the working hours of trade premises autonomously.

We would also like to cite *Article 58 of the Trade Act*, according to which:

(1) Shops may open at 6.00 at the earliest, and close at 21.00 at the latest, from Monday to Saturday.
(2) Shops may not open on Sundays and public holidays, unless otherwise prescribed by the Act.
(3) Between 1 June and 1 October and during December, shops may open on Sundays.
(4) Shops referred to in paragraph 3 of this Article may open at 7.00 at the earliest, and close at 14.00 at the latest.
(5) On Easter Saturday, on Christmas Eve (24 December) and on New Year's Eve (31 December) shops may close at 15.00 at the latest, if these dates fall on working days.
(6) If Christmas Eve (24 December) or New Year's Eve (31 December) falls on a Sunday, shops may close at 14.00 at the latest.
(7) On 1 November (All Saints' Day), stands and stalls not included in the retail market, which sell flowers and candles, and kiosks selling flowers and candles, may open at 6.00 at the earliest and close at 21.00 at the latest.
(8) On Easter Monday and Boxing Day (26 December), shops referred to in Article 60, paragraph 1, subparagraphs 1, 2 and 3 of this Act may open at 7.00 at the earliest and close at 14.00 at the latest.

Article 59

By way of exception to the provisions of Article 58, paragraphs 1 and 2 of this Act, the following may work 24 hours a day:

- petrol stations and retail outlets within indoor areas of petrol stations
- shops at border crossings and within indoor areas of motorway rest (service) areas, within indoor areas of railway stations, airports, ports and docks, and tourist sailing harbours.

Article 60

(1) By way of exception to Article 58, paragraphs 2 and 3 of this Act, the following may work on Sundays throughout the year:
- stands and stalls outside retail markets, which sell flowers and candles,
- kiosks selling printed media, flowers and candles,
- shops specialising in the sale of bread and bakery products, printed media, flowers and candles,
- petrol stations and retail outlets within indoor areas of petrol stations,
- shops at border crossings and within indoor areas of motorway rest (service) areas, within indoor areas of railway stations, airports, ports and docks, and tourist sailing harbours,
- shops specialising in the sale of souvenirs.
(2) Shops referred to in paragraph 1, subparagraphs 1, 2 and 3 of this Article may open at 7.00 at the earliest, and close at 14.00 at the latest, and shops referred to in paragraph 1, subparagraph 6 of this Article may open at 6.00 at the earliest, and close at 21.00 at the latest.
(3) Shops and petrol stations referred to in paragraph 1, subparagraphs 4 and 5 of this Article may open 24 hours a day.
(4) The following may also open on Sundays throughout the year:

- sales outlets within hospitals, sanatoria, spas, hotels and hotel complexes, campsites, museum or gallery buildings, national parks and zoos, in accordance with their working hours,
- retail outlets selling products aimed at promotion and entertainment, during the holding of events in concert halls and cinemas, congress halls, sports halls and playing fields,
- shops on board ships – two hours prior to and for the duration of sailing.

ARTICLE 2, PARAGRAPH 3

Annual holiday with pay

In relation to the Committee's question regarding the duration of the minimum three-week annual leave, we would like to reiterate that if work is organised in fewer than six working days a week, when determining the duration of annual leave, it shall be considered that working hours are distributed over six working days, unless otherwise specified by a collective agreement, employment rules or employment contract.

Data on the number of interrupted annual holidays with pay have not been systematically collected.

However, as regards the right to a paid annual leave, we would like to point out that labour inspectors responsible for labour relations carried out inspectional supervisions and found wrongful conduct on the part of employers, contrary to the provisions contained in LA's Article 47 (minimum duration of an annual leave), Article 49 (nullity of waiver of the right to annual leave), and Article 54 (taking portions of annual leave). Their findings were as follows:

- during supervisions carried out in **2005** and **2006** labour inspectors responsible for labour relations did not find any employers who had committed illegal acts in breach of the provisions contained in Article 47 of the LA, stating that a worker who carries out work in which he or she cannot be protected from harmful effects despite the application of occupational safety and health measures is entitled to annual leave of a minimum of thirty working days, for each calendar year;
- during supervisions carried out in **2007** labour inspectors established that 31 employers had committed violations against 116 workers by denying them annual leave in the minimum duration;
- during supervisions carried out in **2008** labour inspectors established that 30 employers had committed violations against 61 workers by denying them annual leave in the minimum duration.

Due to all these violations, inspectors filed requests with the competent misdemeanour courts to institute misdemeanour proceedings against employers, or motions to indict them.

The provisions of Article 49 of the LA prescribe that any agreement by a worker to waive his or her right to annual leave or accept payment of compensation in lieu of annual leave is null and void. In **2005** labour inspectors responsible for labour relations found one employer in violation of these provisions in respect of 1 worker; during supervisions carried out in **2006**, 6 employers were found to have violated these provisions in respect of 14 workers; during supervisions carried out in **2007**, 9 employers were found to have violated these provisions in

respect of 24 workers; and during supervisions carried out in **2008**, 2 employers were found to have committed the same violation in respect of two workers.

Due to all these violations, inspectors filed requests with the competent misdemeanour courts to institute misdemeanour proceedings against employers, or motions to indict them.

The provisions of Article 54 of the LA state that a worker has the right to take annual leave in two portions, and, if the worker takes annual leave in portions, he or she must use the first portion, lasting at least twelve days without interruption, in the calendar year for which the right to annual leave is acquired. The other portion of the annual leave must be taken by 30 June of the following year at the latest. While carrying out inspectional supervisions, labour relations inspectors established, amongst other things, as follows:

- during supervisions carried out in **2005** labour relations inspectors established that 658 workers had not been allowed to take their annual leaves in portions;
- during supervisions carried out in **2006** 301 workers had not been allowed to take their annual leaves in portions;
- during supervisions carried out in **2007** 1.339 workers had not been allowed to take their annual leaves in portions;
- during supervisions carried out in **2008** 424 workers had not been allowed to take their annual leaves in portions.

Due to all these violations, inspectors filed requests with the competent misdemeanour courts to institute misdemeanour proceedings against employers, or motions to indict them.

The provisions of Article 247, paragraphs 1 and 2 of the LA specify that employers' conduct contrary to Article 54 of the LA constitutes a major violation for which an employer-legal person may be imposed a fine in an amount ranging from HRK 31,000.00 to 60,000.00, whereas an employer-physical person and the responsible person in an employer-legal person may be fined in an amount ranging from HRK 4,000.00 to 6,000.00.

We would also like to note that the provisions of Article 248, paragraphs 1 and 2 of the LA specify that employers' conduct contrary to Articles 47 and 49 of the LA constitutes the gravest violation for which an employer-legal person may be imposed a fine in an amount ranging from HRK 61,000.00 to 100,000.00, whereas an employer-physical person and the responsible person in an employer-legal person may be fined in an amount ranging from HRK 7,000.00 to 10,000.00.

ARTICLE 2, PARAGRAPH 4

Reduced working hours or additional holidays for workers in dangerous or unhealthy occupations

The Ordinance on jobs with special conditions of work (OG 5/84) prescribes jobs with special conditions of work, as well as special requirements that must be met by workers performing these jobs.

Jobs with special conditions of work may only be performed by persons who, as well as general requirements for employment, also meet some special requirements, such as age, gender, professional abilities, health status and psychological abilities. The provisions of

special regulations provide that, for performing jobs defined as jobs with special conditions of work, workers must meet the requirements laid down in special regulations. The worker's ability to perform a job with special conditions of work, in terms of his or her health status and psychological capacity is established before assignment to this job and re-examined within the time limits specified by a general legal act in accordance with the provisions of the Ordinance.

Pursuant to the provisions of the Occupational Safety and Health Act, employers are obliged to provide workers in dangerous or unhealthy jobs with adequate personal protective equipment and protective clothing, prescribe special procedures to be applied when handling dangerous substances, post warning signs on dangers and harmful substances, prescribe in what way certain work or work processes are to be carried out, in particular with respect to hours of work, monotonous work and work at a predetermined work-rate.

The provisions of the Ordinance on maximum permitted levels of harmful substances in the atmosphere of working premises and biological limit values specifies maximum permitted levels (MPL) of certain harmful substances in the air of working premises and areas, which, according to the currently available information, do not cause health damage to employees and do not require the application of special occupational safety and health rules or the use of personal protective equipment. Under the provisions of Article 48 of the Act, the employer must ensure that the concentration of dangerous substances in working premises and areas is at its reasonable minimum and constantly below the maximum permitted level of concentration. If the concentration of dangerous substances is above the maximum permitted level, the employer must immediately halt work, order the workers to leave the premises, establish the causes which have led to emission above the MPL, and, on the basis of the findings obtained, apply other appropriate occupational safety and health rules, and only when measurements indicate that the concentration is below the maximum permitted level of concentration can the employer allow the workers to resume work.

Article 8 of the aforesaid Ordinance defines short-term permissible exposure limits (SPEL) for certain dangerous substances, which are higher than MPL values. Workers can be exposed to these substances without adverse health risk for not more than 15 minutes, but this should not be repeated more than four times during the working time. At least 60 minutes must pass between two periods of exposure to these substances, which does not mean that the worker is not allowed to carry out some other tasks in the meantime.

From 1 January 2011 the limit values prescribed by the provisions of the Ordinance on limit values of exposure to dangerous substances at the workplace and on biological limit values (OG 13/2009) will be applied.

We would like to emphasise that during inspectional supervisions carried out in **2005** and **2006** labour inspectors responsible for labour relations did not find any employers who had committed illegal acts in breach of the provisions contained in Article 40, paragraph 4 of the LA stating that working hours are shortened in proportion to the harmful effect of working conditions on the worker's health and working ability in jobs in which, despite the application of occupational safety and health measures, it is impossible to protect the worker from harmful effects, that workers in such jobs must not work overtime and that they must not be employed by another employer. During inspectional supervisions carried out in **2007** labour inspectors responsible for labour relations established that 10 employers had committed violations of the above cited provisions against 8 workers. During inspectional supervisions

carried out in **2008** labour inspectors responsible for labour relations established that 3 employers had committed violations of the above cited provisions against 13 workers.

Due to all these violations, inspectors filed requests with the competent misdemeanour courts to institute misdemeanour proceedings against employers, or motions to indict them.

We would also like to point out that during supervisions carried out in **2005** and **2006** labour inspectors responsible for labour relations did not find any illegal acts committed by employers in breach of the provisions contained in Article 47 of the LA, stating that a worker who carries out work in which he or she cannot be protected from harmful effects despite the application of occupational safety and health measures is entitled to annual leave of a minimum of thirty working days, for each calendar year.

ARTICLE 2, PARAGRAPH 5 – Paid weekly rest

Pursuant to the provisions of Article 46 of the LA, a worker has the right to a weekly rest period on Sunday, lasting at least 24 consecutive hours, and if his or her work on Sunday is indispensable, then he or she must be provided with one day of rest for each working week, in the period determined by a collective agreement, agreement between the works council and the employer, or employment contract.

During supervisions carried out in 2005 labour inspectors responsible for labour relations established that 2,609 workers had been denied the right to use a weekly rest by their employers. Employers committed a total of 448 violations, due to which inspectors filed requests with the competent misdemeanour courts to institute misdemeanour proceedings against them.

During supervisions carried out in 2006 labour inspectors responsible for labour relations established that 1,583 workers had been denied the right to use a weekly rest by their employers. Employers committed a total of 507 violations, due to which inspectors filed requests with the competent misdemeanour courts to institute misdemeanour proceedings against them.

During supervisions carried out in 2007 labour inspectors responsible for labour relations established that 438 employers had not allowed 1,312 workers to use a weekly rest, due to which inspectors filed requests with the competent misdemeanour courts to institute misdemeanour proceedings against them.

During supervisions carried out in 2008 labour inspectors responsible for labour relations established that 400 employers had not allowed 1,103 workers to use a weekly rest, due to which inspectors filed requests with the competent misdemeanour courts to institute misdemeanour proceedings against them.

Article 5 – 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 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.

I. Legislation of the Republic of Croatia

- Constitution of the Republic of Croatia
- ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise (OG – International Agreements, no. 2/94 – Item 16 of the Decision to publish the conventions of the International Labour Organisation to which the Republic of Croatia is a party on the basis of notification of succession, OG 3/00)
- ILO Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (OG – International Agreements, no. 2/94 – Item 19 of the Decision to publish the conventions of the International Labour Organisation to which the Republic of Croatia is a party on the basis of notification on succession, OG 3/00)
- ILO Convention No. 135 concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking (OG – International Agreements, no. 2/94 – Item 27 of the Decision to publish the conventions of the International Labour Organisation to which the Republic of Croatia is a party on the basis of notification of succession, OG 5/00)
- ILO Convention No. 11 concerning the Rights of Association and Combination of Agricultural Workers (OG – International Agreements, no. 6/95)
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- Labour Act (OG 38/95, 54/95, 65/95, 17/01, 82/01, 114/03, 142/03, 30/04, 137/04 – revised text)
- Act on the Method of Determining the Representation of Trade Union Associations of a Higher Level in Tripartite Bodies at the National Level (OG 19/99)
- Internal Affairs Act (OG 29/91, 73/91, 19/92, 33/92, 76/94, 161/98 and 53/00) **(obsolete)**
- Civil Servants Act (OG 92/05, 107/07 and 27/08)
- Ordinance on the method of keeping the Register of Associations (OG 84/05)
- Decision determining the representation of trade union associations of a higher level in tripartite bodies at the national level (OG 55/09)
- Agreement on the Economic and Social Council and Other Forms of Social Partnership in the Republic of Croatia (OG 88/01, 188/03, 44/04)

Formation of trade unions and employers' associations

In the reporting period (from 1 January 2005 to 31 December 2008) no changes were made to the legal framework on forming trade unions and employers' associations, which means that the situation is the same as described in our previous report.

By the end of October 2009 the following associations had been registered in the Register of Associations kept at the ministry responsible for labour affairs, which registers associations and higher-level associations operating on the territory of two or more counties:

- 25 higher-level trade union associations,

- 3 higher-level employers' associations
- 277 trade unions
- 47 employers' associations.

Of these, the following associations are currently deemed to be representative:

1. Union of Autonomous Trade Unions of Croatia
2. Independent Trade Unions of Croatia
3. Association of Croatian Unions
4. Croatian Trade Union Association
5. Workers' Trade Union Association of Croatia

Employers: Croatian Employers' Associations

Right to join or not to join a trade union

<u>Question by the European Committee of Social Rights</u>

In the reporting period (from 1 January 2005 to 31 December 2008) no changes were made to the legal framework on the right to join or not to join a trade union, which means that the situation is the same as described in our previous report.

In response to the Committee's question about whether in practice there have been examples of trade union closed shops, we would like to state that no examples of trade union closed shops have been noticed so far, which is in line with the provisions of Article 2 of the Labour Act, prohibiting any direct or indirect discrimination of persons seeking employment or employed persons (workers), amongst other things, on the grounds of membership or non-membership of a trade union, and with the provisions of Article 188 of the same Act prohibiting unequal treatment due to membership of a trade union or participation in trade union activities, and prescribing that the employer must not take into consideration membership of a trade union and participation in trade union activities when deciding whether or not to offer an employment contract.

(Labour Act, Article 2)

Direct and indirect discrimination of a person seeking employment or employed person (worker, civil service employee, civil servant or other worker – hereinafter: the worker) on the grounds of race, colour, gender, sexual orientation, marital status, family responsibilities, age, language, religion, political or other belief, national or social background, financial status, birth, social status, membership or non-membership of a political party or trade union, and physical or psychological difficulties is prohibited.

Discrimination in this sense is in particular prohibited in relation to:
1. employment requirements, including the criteria and requirements for the selection of candidates for the performance of a particular job, in any branch of activity and at all levels of the professional hierarchy,
2. promotion,
3. access to all types and levels of occupational training, additional training or retraining,

4. employment and working conditions and all the rights arising from employment and related to employment, including equal pay,
5. termination of employment contracts,
6. membership of, and participation in, workers' or employers' associations or in any other professional organisation, including benefits arising from this membership.

The provisions of collective agreements, employment rules and employment contracts introducing discrimination on any of the grounds referred to above shall be null and void.

Labour Act, Article 188

(1) A worker must not be placed in a less favourable position than other workers on the ground of his or her membership of a trade union. It is, in particular, prohibited to:
- conclude an employment contract with a worker, under the condition that he or she does not join a trade union or that he or she leaves a trade union,
- terminate an employment contract or place a worker in a less favourable position than other workers in some other way because of his or her membership of a trade union or participation in trade union activities after working hours, or during working hours subject to the consent of the employer.
(2) The employer must not take into consideration membership of a trade union and participation in trade union activities when rendering a decision as to whether or not to conclude an employment contract on the assignment of a worker to a particular job or to a particular place of work, on specialist training, promotion, pay, social benefits and termination of an employment contract.
(3) An employer, a chief executive or another body, and an employer's representative, must not use coercion in favour of or against any trade union.

Representativeness

In the reporting period (from 1 January 2005 to 31 December 2008) no changes were made to the legal framework on represenativeness, which means that the situation is the same as described in our previous report.

In 2008 trade union confederations launched an initiative to draft a new law which would solve the issue of representativeness of trade unions at all levels: for enterprises or institutions at the regional, branch or industry levels, and for confederations at the national level. At this moment, the legislative procedure is still ongoing.

Question by the European Committee of Social Rights

In response to the Committee's question as to who decides on whether employers' associations are representative and whether there is any judicial supervision, we are answering as follows:

The issue of the representativeness of the employers' associations has not been solved by law, but by a decision rendered by the national Economic and Social Council (hereinafter: "the ESC") in July 2007, establishing that of 3 registered employers' associations of a higher level, only the Croatian Employers' Association (CEA) met all of the set criteria.

The quantitative and qualitative criteria were defined in co-operation with the representatives of employers and with the assistance of the International Labour Organisation in 2003.

Before the issue of the representativeness of the employers' associations was solved by the decision of the national Economic and Social Council of July 2007, a working group had been formed, which, based on the data obtained from the employers' associations, had prepared a report on this and a proposal for decision to be adopted by the Economic and Social Council.

The question of the representativeness of employers and their associations was not raised until 2004, because until then there had been only one higher-level association of employers – the Croatian Employers' Association.

At the initiative of new higher-level associations of employers, i.e. the Confederation of Croatian Industry and Entrepreneurs and the Federation of Independent Employers' Associations, on 26 October 2004 a working meeting was held at the Office for Social Partnership in the Republic of Croatia on the subject of participation of these two employers' associations in the work of the Economic and Social Council and other tripartite bodies, and agreement was reached on the method for determining the representativeness of employers' associations.

The Croatian Employers' Association, the Federation of Independent Employers' Associations and the Confederation of Croatian Industry and Entrepreneurs were provided with a proposal for the representativeness criteria that had been defined in 2003, in co-operation with employers' associations and the International Labour Organisation.

Having considered the criteria proposed, the Croatian Employers' Association and the Federation of Independent Employers' Associations stated that they had no objections, whereas the Confederation of Croatian Industry and Entrepreneurs accepted the criteria proposed subject to some minor objections that did not materially affect the said proposal. The proposal for the criteria for determining the representativeness of employers' associations in the work of the ESC and other tripartite bodies was submitted to the ESC, which, at its 76th session, held on 26 October 2005, discussed and established the criteria for representativeness of employers' associations in the work of tripartite bodies.

It was proposed that the three registered higher-level employers' associations in the Republic of Croatia should provide the ESC, through the Office for Social Partnership, with the information about their meeting the aforesaid criteria within 30 days, and the Economic and Social Council would after that adopt a conclusion on this matter. There was a dissenting opinion of the Croatian Employers' Association, which considered that the registered higher-level employers' associations in the Republic of Croatia should, together with the information about meeting the representativeness criteria, also provide their annual financial reports.

A working group of social partners was set up to discuss this issue, composed of representatives of the Ministry of the Economy, Labour and Entrepreneurship, the UNI-CRO Trade Union of Services, the Croatian Employers' Association and the Office for Social Partnership of the Croatian Government.

On 21 December 2006, a meeting was held on the premises of the Confederation of Croatian Industry and Entrepreneurs on the topic "The Representativeness of Employers' Associations", whose aim was to check the data provided by the Confederation of Croatian

Industry and Entrepreneurs. At this meeting it was concluded that the working group would submit a report on the basis of which the Economic and Social Council would adopt its conclusion. This would solve the issue of representativeness of social partners in relation to their participation in tripartite bodies.

At its 99th session, held on 19 July 2007, the Economic and Social Council adopted the *Report on determining the representativeness of higher-level employers' associations for the purposes of their participation in the work of the ESC and other tripartite bodies*, and stated that one of the employers' associations, i.e. the Croatian Employers' Association had fulfilled the criteria for representativeness of higher-level employers' associations for the purposes of their participation in the work of the ESC and other tripartite bodies.

II. Furthermore, in response to the Committee's question about whether there is a right of appeal against the minister's decision establishing the names of higher-level trade union associations which comply with the representativeness criteria in the national tripartite bodies, we are providing the following answer:

As it was stated in the previous national report, the issue of the representation of higher-level trade unions associations in tripartite bodies on the national level is regulated by the Act on the Method of Determining the Representation of Trade Union Associations in Tripartite Authorities on the National Level, passed in 1999.

This Act stipulates the procedure for determining representation of higher-level trade union associations in bodies at the national level, consisting of representatives of the Government of the Republic of Croatia, trade unions and employers (tripartite bodies at the national level).

Pursuant to the provisions of that Act, if tripartite bodies at the national level are established by an agreement, the number of seats belonging to trade unions in these bodies cannot be lower than the number of associations determined by a formal decision of the competent minister.

When a higher-level association considering that it meets the conditions of the Act and wishing to be represented in tripartite bodies at the national level, submits a request for determining its eligibility, the minister competent for labour affairs is obliged to appoint a commission made up of an equal number of representatives of trade unions, the government and employers, which will assess whether or not the trade union complies with these conditions.

Based on the procedure conducted and the decision rendered by the tripartite Commission, the minister of labour adopts a decision by which it establishes the names of associations that meet the conditions to be represented in national tripartite bodies and the total number of members of all the trade unions affiliated to individual associations. The minister's decision is published in the Official Gazette.

After that, the higher-level trade union associations found to meet the criteria for representation are expected to reach an agreement on their representation in tripartite bodies at the national level.

If the associations listed in the minister's decision fail to reach an agreement, their representation in tripartite bodies at the national level – unless otherwise specified by a

special law – can be determined on the basis of the number of votes that an individual association gets in the process of declaration of trust, in which all employed persons in the Republic of Croatia vote, apart from the military staff, army officers, army officials and authorised officials of the Ministry of the Interior. The process of declaration of trust may be launched on the initiative of any trade union association determined in the minister's decision, and a formal request to launch this process is submitted to the minister responsible for labour affairs.

It is important to emphasise that no procedures for declaration of trust have been launched so far, since the representative higher-level trade union associations have always been able to reach an agreement on the number of members in the Economic and Social Council.

Right of appeal against the minister's decision

Pursuant to the aforesaid Act, each association that has submitted a request for assessing its compliance with the conditions for representation in tripartite bodies at the national level can challenge the minister's decision by bringing an administrative lawsuit before the Administrative Court of the Republic of Croatia.

The Administrative Court must to pass a judgement following the administrative lawsuit within thirty days from the day when the lawsuit was filed.

According to the Act, each association may request new proceedings for determining representation of associations in tripartite bodies at the national level, but not before the expiration of three years from the legal effectiveness of the labour minister's decision establishing the associations which meet the representation criteria.

The most recent proceedings for determining representation of higher-level trade union associations in tripartite bodies on the national level, provided for by to the aforesaid Act, was launched in 2008 and concluded in 2009. After that, on 1 April 2009, the labour minister issued a decision stating that the following higher-level trade union associations meet all the statutory conditions for representation in bodies at the national level consisting of representatives of the Government of the Republic of Croatia, trade unions and employers (tripartite bodies on the national level):
1. Union of Autonomous Trade Unions of Croatia, Zagreb, Trg kralja P. Krešimira IV. 2
2. Independent Trade Unions of Croatia, Zagreb, Trg Francuske Republike 9/V
3. Association of Croatian Unions, Zagreb, Trg maršala Tita 4/II
4. Croatian Trade Union Association, Zagreb, Trg kralja P. Krešimira IV. 2
5. Workers' Trade Union Association of Croatia, Zagreb, Ulica Kralja Držislava 4.

Personal scope

Article 4 of the Civil Servants Act of 2005 prescribes that rights, obligations and responsibilities of civil servants are regulated by law and regulations enacted pursuant thereto.

Furthermore, the issues which are not regulated by the aforesaid Act or special laws, regulations adopted by the Government of the Republic of Croatia (hereinafter: "the Government") or other regulations passed on the basis of Constitution and laws, or collective agreements are subject to general labour regulations.

However, it should be pointed out that there is no regulation restricting trade union association.

As already stated, the Constitution of the Republic of Croatia regulates the right to free association. In particular, Article 59 of the Constitution provides that in order to protect their economic and social interests, all employees and employers have the right to form trade unions and employers' association, respectively, and are free to join and leave them. Based on this provision of the Constitution, Article 167 of the Labour Act prescribes that workers and employers have the right, without any distinction whatsoever and according to their own free choice, to found and join trade unions and employers' associations, respectively, subject to only such requirements which may be prescribed by the articles of association or internal rules of these trade unions or employers' associations. Trade unions and employers' associations may be formed without any prior approval.

In relation to the Committee's question about whether foreign nationals legally residing or regularly working in Croatia have the right to join or be founder members of trade unions and can fill administrative or executive posts in such unions, it is clear from what is mentioned above that there are no barriers preventing foreign nationals legally residing or regularly working in Croatian from joining or founding trade unions in the same way as Croatian nationals, whilst their internal organisation is a matter for regulation by trade unions themselves.

Article 6 – Right to collective bargaining

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.*

Legislation of the Republic of Croatia

- Constitution of the Republic of Croatia
- ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise (OG – International Agreements, no. 2/94 – Item 16 of the Decision to publish the conventions of the International Labour Organisation to which the Republic of Croatia is a party on the basis of notification of succession, OG 3/00)
- ILO Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (OG – International Agreements, no. 2/94 – Item 19 of

the Decision to publish the conventions of the International Labour Organisation to which the Republic of Croatia is a party on the basis of notification on succession, OG 3/00)
- ILO Convention No. 135 concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking (OG – International Agreements, no. 2/94 – Item 27 of the Decision to publish the conventions of the International Labour Organisation to which the Republic of Croatia is a party on the basis of notification of succession, OG 5/00)
- ILO Convention No. 11 concerning the Rights of Association and Combination of Agricultural Workers (OG – International Agreements, no. 6/95)
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- Labour Act (OG 38/95, 54/95, 65/95, 17/01, 82/01, 114/03, 142/03, 30/04, 137/04 – revised text)
- Police Act (OG 129/00)
- Act on the Method of Determining the Representation of Trade Union Associations of a Higher Level in Tripartite Bodies at the National Level (OG 19/99)
- Conciliation Act (OG 163/03)
- Ordinance on the method of keeping the Register of Associations (OG 84/05)
- Decision determining the representation of trade union associations of a higher level in tripartite bodies at the national level (OG 55/09)
- Agreement on the Economic and Social Council and Other Forms of Social Partnership in the Republic of Croatia (OG 88/01, 188/03, 44/04)
- Ordinance on the methods for the selection of conciliators and the conduct of the conciliation procedure (OG 170/03)
- Decision establishing the List of Conciliators and Members of Conciliation Boards (OG 92/03)
- Decision on the criteria for the payment of fees to conciliators and members of conciliation boards and reimbursement of the costs incurred by them in conciliation procedures conducted in collective labour disputes (OG 112/03).

ARTICLE 6, PARAGRAPH 1

Paragraph 1, Joint consultation

Joint consultation at national level

Question by the European Committee of Social Rights

By the Agreement on the Economic and Social Council and Other Forms of Social Partnership in the Republic of Croatia, the social partners have regulated the establishment and operation of the Economic and Social Council, the most important national-level forum for tripartite social dialogue in the Republic of Croatia. They have also undertaken to promote the development of other tripartite bodies and of bipartite relations between social partners on the national level, and to define basic tenets for the establishment and operation of tripartite social partnership bodies on other levels (Article 1 of the Agreement).

The Economic and Social Council was established as a national tripartite body for purposes of defining and carrying out co-ordinated activities aimed at the protection and promotion of economic and social rights and interests of both employees and employers, in pursuance of co-ordinated economic, social and development policies, fostering the conclusion and application of collective agreements and harmonising these agreements with the measures of

economic, social and development policies. The signatories of the Agreement have agreed that all draft laws, regulations, programmes and other documents falling within the Council's competence will be reviewed by the Council before being submitted to the Croatian Parliament. The Council's opinions on these documents are sent to the Government of the Republic of Croatia, Croatian Parliament and its relevant bodies. Consultations between the social partners may also be held before making a draft of any of these documents. Pursuant to the Standing Orders of the Croatian Parliament, representatives of higher-level trade union and employers' associations referred to in the aforesaid Agreement may participate in the activities of parliamentary working bodies.

The Council comprises representatives of the Government of the Republic of Croatia, higher-level employers' associations and higher-level trade union associations found to be meeting the requirements from Article 2 of the Act on the Method of Determining the Representation of Trade Union Associations of a Higher Level in Tripartite Bodies at the National Level (hereinafter: "the social partners"). The Council has 15 members, 5 representatives of each of the social partners, and each member has at least one deputy.

With a view to fulfilling the aforesaid goals, the Council:
- monitors, studies and evaluates the effects of the economic policy and the measures undertaken in pursuance thereof, on the social stability and development,
- monitors, studies and evaluates the effects of the social policy and the measures undertaken in pursuance thereof, on the economic stability and development,
- studies and evaluates the effects of the fluctuation of prices and salaries on the economic stability and development,
- gives reasoned opinions to the labour minister regarding any problems relating to the conclusion and application of collective agreements and provides its assessment of effects of any extensions of collective agreements,
- makes proposals to the Government, employers and trade unions, or to their associations and higher-level associations, aimed at achieving co-ordinated price and wage policies,
- monitors the situation in the fields of employment, pension and health insurance,
- establishes a list of conciliators or members of conciliation boards,
- establishes a list of arbitrators or arbitration boards,
- adopts the ordinance governing the methods for the election of conciliators and procedure for conducting conciliation,
- gives opinions on draft laws in the areas of labour and social security and public services,
- gives opinions on the proposal for the State Budget,
- promotes the concept of tripartite co-operation among the Government, trade union and employers' associations for the purpose of resolving economic and social issues and problems,
- encourages alternative dispute resolution of collective labour disputes,
- gives opinions and proposals to the labour minister regarding other issues regulated by the Labour Act,
- monitors the implementation of the laws in the areas of labour and social security,
- monitors the protection of rights in the areas of labour and social security and proposes measures for their improvement,
- adopts its Standing Orders.

The Council may also:
- establish a permanent labour disputes tribunal,
- decide on forms of training for its members, members of its commissions and other tripartite bodies,

- discuss and issue conclusions about all other issues falling within its competence,
- carry out other activities laid down in the Agreement.

Pursuant to Article 219, paragraph 7 of the Labour Act and Article 8 of the Agreement on the Economic and Social Council and other Forms of Social Partnership in the Republic of Croatia, at its 94th regular session held on 3 April 2007 the Economic and Social Council adopted the Standing Orders of the Economic and Social Council, which, in Article 1, provide as follows:
- fulfilment of the rights and duties of the president and members of the Economic and Social Council (hereinafter: "the Council"),
- the Council's working bodies,
- the remit, methods of work and decision-making procedures of the Council's working bodies,
- methods of work and decision-making procedures of the Council,
- order at sessions held by the Council and its working bodies,
- the taking of minutes,
- publicity of work of the Council and its working bodies,
- performance of expert, administrative, technical and other tasks for the Council and its working bodies.

It is important to emphasise that representatives of the social partners and the Government are equally represented on the Council.

The Economic and Social Council commissions are tripartite expert bodies through which social partners conduct preliminary discussions on particular issues from the scope of work of the national ESC. Eight ESC commissions have been founded: the Commission for Wage Policy, Taxation System and the State Budget, the Commission for Social Policy, the Commission for Collective Bargaining, the Commission for Economic Development and Privatisation, the Commission for Employment, Education and Alignment with the Labour Market, the Commission for Legislation, Implementation of Regulations and Protection of Rights, the Commission for International Relations and Preparations for Croatia's Accession to the EU, and the Commission for Alternative Dispute Resolution.

ESC's commissions

COMMISSION FOR WAGE POLICY, TAXATION SYSTEM AND THE STATE BUDGET

The Commission for Wage Policy, Taxation System and the State Budget monitors the wage policy, studies and evaluates the effects of the fluctuation of prices and wages on the economic stability and development, reviews the conduct of co-ordinated price and wage policies, discusses and provides opinions on proposals and decisions by the Government of the Republic of Croatia regarding these issues, and also the issues regarding the taxation system and tax policy, the State Budget and other financial documents. In addition, the

Commission for Wage Policy, Taxation System and the State Budget considers and gives opinions on proposals for the State Budget, amendments to the State Budget, and decisions on the execution of the State Budget.

COMMISSION FOR SOCIAL POLICY

The Commission for Social Policy monitors, discusses and gives opinions and proposals regarding legislative initiatives proposed by the Government of the Republic of Croatia and other proposers of laws governing issues in the areas of social policy and social security in the Republic of Croatia and, in particular, those relating to the pension and health systems.

COMMISSION FOR EMPLOYMENT, EDUCATION AND ALIGNMENT WITH THE LABOUR MARKET

The Commission for Employment, Education and Alignment with the Labour Market monitors, discusses and gives opinions and proposals regarding legislative initiatives proposed by the Government of the Republic of Croatia and other proposers of laws governing the areas of employment policy, education and labour market situation and trends, and the issues relating to co-ordination between education and labour market policies in the Republic of Croatia.

COMMISSION FOR COLLECTIVE BARGAINING

The Commission for Collective Bargaining monitors and gives opinions about topical issues relating to conclusion and application of collective agreements, and monitors and analyses the contents and coverage of collective agreements.

COMMISSION FOR LEGISLATION, IMPLEMENTATION OF REGULATIONS AND PROTECTION OF RIGHTS

The Commission for Legislation, Implementation of Regulations and Protection of Rights examines general issues relating to the improvement of Croatian legislation, monitors how regulations are applied, and gives proposals and opinions to improve this area. This Commission provides opinions on all draft laws of interest to the social partners, which are proposed by the Government of the Republic of Croatia, and on laws adopted by the Croatian Parliament.

COMMISSION FOR ECONOMIC DEVELOPMENT AND PRIVATISATION

The Commission for Economic Development and Privatisation monitors economic development processes in the Republic of Croatia and privatisation, examines proposals and gives opinions on decisions proposed by the Government of the Republic of Croatia in this area and, in particular, on draft laws and other acts proposed by the Government of the Republic of Croatia, and on laws passed by the Croatian Parliament. It proposes appropriate measures for the Council to improve the processes of economic development and privatisation.

COMMISSION FOR ALTERNATIVE DISPUTE RESOLUTION

The Commission for Alternative Dispute Resolution monitors the process of applying alternative dispute resolution methods, proposes candidates for the list of conciliators, proposes training programmes for candidates for the list of conciliators of the Economic and Social Council, and proposes measures to improve methods of alternative resolution of collective and individual labour disputes.

COMMISSION FOR INTERNATIONAL RELATIONS AND PREPARATIONS FOR CROATIA'S ACCESSION TO THE EU

The Commission for International Relations and Preparations for Croatia's Accession to the EU keeps informed about Croatia's relations with international institutions, gives proposals and opinions on draft decisions by the Government of the Republic of Croatia relating to Croatia's preparations for accession to the EU, and keeps abreast of the alignment of Croatian legislation with that of the EU.

As already stated, representatives of the social partners are actively involved in the work of the management boards of certain funds and other institutions and bodies through which they can promote and represent the interests of their members, and co-ordinate standpoints with representatives of the Government, such as: the Croatian Pension Insurance Institute (CPII), the Croatian Employment Service (CES), the Croatian Institute for Health Insurance (CIHI), the Croatian Institute for Health Insurance of Health Protection at Work, the Advisory Council of the Fund for the Protection of Workers' Claims, the Management Board of the Fund for Occupational Rehabilitation and Employment of Persons with Disabilities, the Croatian Privatisation Fund, the Programme Council of the Croatian Radio and Television, the Commission for Adult Education, and the Croatian Government's Council for Population Policies.

With the aim of achieving more active involvement of the social partners in the process of Croatia's preparation for EU accession, their representatives have been appointed to negotiating working groups for individual chapters, and also to the National Committee for Monitoring Negotiations with the European Union, as the highest level body in this process in the Republic of Croatia, which operates within the Croatian Parliament.

Representatives of the social partners are also involved in the work of the National Council for Monitoring the Implementation of the National Anti-Corruption Programme, the parliamentary working body responsible for supervising and monitoring the implementation of this national programme.

In addition, representatives of social partners (employers and trade unions) have been appointed as full-time members (with no voting rights) of five working bodies of the Croatian Parliament and, in particular: the Committee for Labour, Health and Social Policy, the Committee for Finances and State Budget, the Committee for Legislation, the Committee for the Economy, and the Committee for Development and Reconstruction, through which they can present the views of their organisations and engage in dialogue with elected Members of Parliament.

With a view to improving the occupational safety and health measures, the National Council for Safety at Work has been founded as a separate Government advisory body, in whose work

representatives of the Government of the Republic of Croatia and of the social partners, as well as recognised experts from this field, take part.

In order to increase Croatia's competitiveness in the broadest sense, the National Competitiveness Council has also been established. Representatives of the social partners participate in its activities along with representatives of scientific institutions.

The Government has established regular co-operation with representatives of trade unions and employers. This co-operation is implemented through quarterly working meetings of the Prime Minister and his or her associates with presidents of trade union confederations and the president of the Croatian Employers' Association. The goal of these meetings is to exchange information on global, economic and social issues of interest to participants, and to launch initiatives regarding examination of certain topics within the framework of social partnership bodies. The Office for Social Partnership is in charge or preparing and organising the said meetings.

In addition, pursuant to the Conclusion of the Government of the Republic of Croatia of 7 April 2004, with the aim of promoting co-operation and exchange of information between the Government, i.e. its ministries, and trade unions, ministers hold monthly meetings with representatives of trade unions operating within their areas of competence. Also, each minister has designated a person in their ministry, at the level of State Secretary or Assistant Minister, who is responsible for maintaining ongoing communication with trade unions operating within the area of the Ministry's competence.

On 8 December 2005 the Government of the Republic of Croatia issued an identical Conclusion relating to co-operation between the Government, i.e. its ministries, and representatives of the Croatian Employers' Association and its branch organisations.

Joint consultation at regional level

Question by the European Committee of Social Rights

County Economic and Social Councils

As already reported, pursuant to the Agreement on the Economic and Social Council and other Forms of Social Partnership in the Republic of Croatia, with the aim of establishing and developing tripartite dialogue on other levels of state government, the possibility was opened up for establishing economic and social councils in units of local or regional self-government. Such a council may be jointly founded by the government of the unit concerned, trade union federations whose representativeness has been established at the national level and employers' associations.

To be more precise, pursuant to Article 7 of the Agreement on the Economic and Social Council, the social partners agree that economic and social councils may also be established in units of local and regional self-government (hereinafter: "local or regional councils"), with the aim of establishing and developing tripartite dialogue in these units.

A local or regional council is established on the basis of an agreement between the unit of local or regional self-government concerned, bodies or persons, with territorial competence, authorised to represent or act on behalf of a higher-level trade union association which, at the

time of establishment of such a council, is found to be meeting the requirements laid down in the Act on the Method of Determining the Representation of Trade Union Associations of a Higher Level in Tripartite Bodies at the National Level, and the relevant body of a higher-level employers' association.

The number of representatives of each of the social partners depends on the number of trade union associations, which have trade unions or other forms of their internal organisation in the area in which the local or regional council is being established. This number may not be less than one nor more than the total number of representative trade union federations on the national level.

A local or regional council carries out the following duties:

- promotes tripartite co-operation in units of local or regional self-government,
- monitors and evaluates the effects of the measures undertaken in pursuance of the local or regional policies on the economic and social stability, development and standard of living in the unit of local or regional self-government,
- evaluates the effects of the fluctuation of prices and salaries on the economic development and stability in the territory of the unit of local or regional self-government,
- makes proposals aimed at achieving co-ordinated price and wage polices in the territory of the unit of local or regional self-government,
- monitors the situation in the area of employment and proposes measures to promote employment and to make education match the needs of the labour market,
- examines and proposes measures to improve the quality of life of citizens in units of local or regional self-government,
- promotes the conclusion of collective agreements in the territory of the unit of local or regional self-government,
- gives opinions on the proposal for the budget of the local or regional self-government unit,
- organises and carries out activities relating to amicable resolution of individual labour disputes,
- establishes and develops co-operation with representatives of the executive authorities of all units of local self-government in the territory of the respective regional self-government, and, in this connection, examines certain issues falling within its competence,
- co-operates with trade union and employers' association at the local and national levels,
- co-operates with the national Economic and Social Council,
- co-ordinates certain activities with the Office for Social Partnership in the Republic of Croatia.

So far, economic and social councils have been established at the county level, so at this moment we have 20 County Economic and Social Councils plus the Economic and Social Council of the City of Zagreb, which has the status of a county.

In view of the efforts to devolve certain government functions to local- and regional-level subjects, and the need to boost the regional development project, in line with EU guidelines and Croatia's commitments, it is necessary to continue supporting and developing this form of co-operation between the social partners.

A local or regional council is established by an agreement between the executive body (government) of the unit of local or regional self-government, bodies or persons, with territorial competence, authorised to represent or act on behalf of a higher-level trade union

association which, at the time of establishment of such a council, is found to be meeting the requirements laid down in the Act on the Method of Determining the Representation of Trade Union Associations of a Higher Level in Tripartite Bodies at the National Level (Official Gazette, 19/99), and the relevant body of a higher-level employers' association.

A local or regional council is composed of equal number of representatives of each of the local or regional social partners. Each representative has one deputy.

The work of local and regional councils is regulated by their Standing Orders.

A local or regional council:
- monitors, studies and evaluates the effects of local or regional communal, taxation, social and economic policies, implemented in pursuance of Articles 19-22 of the Local and Regional Self-government Act, on the economic and social stability, development and standard of living in the unit of local or regional self-government,
- keeps a list of conciliators and a list of arbitrators or arbitration boards, established by the Council at the national level for its territory,
- gives opinions on the proposal for the budget of the local or regional self-government unit,
- examines other issues regulated by the Agreement from the local perspective, and, in this connection, provides its initiatives and opinions to the national-level Council or to the representative body of the unit of local or regional self-government, depending on the nature of the matter,
- once a year submits a report on its work to the national-level Council,
- adopts its Standing Orders.

Individual local economic and social councils carry out their activities with varying intensity and the same is true for participation of representatives of the social partners in their work. However, a considerable progress has been observed in terms of organisation and substance of work of local councils since their establishment.

By occasionally attending sessions of county economic and social councils, representatives of the Office for Social Partnership directed their activities towards attaining the purposes and goals of these councils to the maximum possible degree.

Paragraph 2, Negotiation procedures

<u>Question by the European Committee of Social Rights</u>

Since the Republic of Croatia is a party to the ILO Convention No. 98 concerning the right to organise and to bargain collectively, which is a constituent part of the internal legal order of the Republic of Croatia, it is bound by its provision stating that "[M]easures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation 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".

Therefore, the purpose of a collective agreement is for the parties to this agreement (trade unions and employers) to bargain on a voluntary basis and conclude an agreement in order to regulate their mutual relations autonomously.

There is only a small number of employers and workers in the Republic of Croatia who are not covered, directly or indirectly, by provisions of collective agreements. Preparations for collective bargaining, the collective bargaining process, and the conclusion and application of collective agreements are all complex and demanding tasks, which are carried out by both employers and their associations and workers and their associations. The State also bears its share of responsibility in this connection: in situations when laws and regulations on collective agreements are being enacted, when a collective agreement is to be extended, and when the State appears as the employer.

Croatian legislation lays down no requirements regarding representativeness for concluding collective agreements, which means that even a collective agreement signed by only one trade union is valid, notwithstanding the fact that it may have fewer members than another trade union which participated in negotiations, but refused to conclude a collective agreement (for example, it may happen that some trade unions conclude a collective agreement, while others, which participated in the bargaining process, refuse to do so because they are not satisfied with its contents).

Accordingly, if only one trade union wishes to engage in collective bargaining with the employer, the representativeness criteria do not apply.

The Labour Act contains no provisions governing representativeness of employers' associations or procedures for establishing a bargaining committee if several employers' associations are involved. In other words, if there is a possibility of conducting negotiations and concluding a collective agreement with several employers in one county, these employers need not necessarily have established an association at county level. Such agreements may be concluded both by members of the Croatian Employers' Association and by those who are not its members.

Persons representing contractual parties to a collective agreement must obtain a mandate for collective bargaining and conclusion of collective agreements. If a party is a legal person, this mandate must be issued in conformity with its statute. Before the beginning of the bargaining process, it is customary to agree upon a bargaining protocol, which specifies the place of bargaining, the frequency and duration of meetings, and similar matters.

Trade unions decide autonomously on who is excluded and is it after all possible to exclude anyone from negotiations for concluding a collective agreement, and if they fail to reach an agreement, the decision falls on the Economic and Social Council, or the minister responsible for labour affairs if the Economic and Social Council has not been established.

Once concluded, a collective agreement covers all workers of the employer concerned, irrespective of whether or not they are trade union members.

Extended application of a collective agreement

<u>Question by the European Committee of Social Rights</u>

In response to the Committee's question relating to extension of a collective agreement, the following answer is given.

Pursuant to the provisions of Article 211 of the Labour Act, the minister responsible for labour affairs may, for the purposes of public interest, extend the application of a collective agreement to persons who are otherwise not bound by its provisions (those who did not take part in its conclusion, or who did not subsequently accede to it).

Before rendering a decision to extend the application of a collective agreement, the minister must consult trade unions, employers' associations or representatives of the employers to which the collective agreement is to be extended. A decision to extend the application of a collective agreement may be revoked in the procedure prescribed for its rendering.

This means that the procedure for extending the application of a collective agreement is launched on the initiative of at least one party to the collective agreement. Such a proposal may be made by a party to this agreement, i.e. the employer/employers' association or the trade union/trade union association which entered into the agreement or acceded to it.

The minister may not render a decision to extend the application of a collective agreement on the basis of a proposal to extend its application which is made by persons who are not parties to this agreement, i.e. other employers or their associations or other trade unions or their associations.

After seeking and obtaining opinions from the trade union, employers' association or representative of the employer to which the collective agreement is to be extended, the minister will decide whether or not its application will be extended, provided that there is a public interest for this.

The Labour Act does not specify the types of collective agreements whose application may be extended, nor does it not contain any provisions on the types of collective agreements by their areas of application. However, the practice shows that the collective agreements most frequently extended are those binding a large number of employers and covering a large number of workers. They include agreements applied to one economic branch or activity (what are called "branch" or "national" collective agreements), or those covering several economic branches or activities.

If there is a public interest in doing so, the minister may issue a decision to extend the application of a collective agreement on the proposal of a party to the collective agreement and upon obtaining opinions from the employer and the trade union to which the agreement is to be extended.

A proposal to extend the application of a collective agreement must be submitted by at least one of its parties. Such a proposal may be solely made by a party to this agreement, i.e. the employer/employers' association or the trade union/trade union association that concluded the agreement or acceded to it.

Persons who are not parties to this agreement, i.e. other employers or their associations or other trade unions or their associations, are not allowed to do so, which means that the minister may not render a decision to extend the application of a collective agreement on the basis of their proposal.

Nor may a proposal to extend the application of a collective agreement be made by the constituent members of the employers' association that entered into it, but only by the employers' association itself. This is so because these members are actually not parties to this collective agreement, but are only bound by it pursuant to the provisions of Article 199 of the Labour Act.

The extension of a collective agreement must be justified by a public interest.

Before rendering a decision to extend the application of a collective agreement, the minister must consult trade unions, employers' associations or representatives of the employers to which the collective agreement is to be extended. In the event that there is an employers' association and trade unions, the minister will ask them.

A decision to extend the application of a collective agreement must be published in the Official Gazette.

Pursuant to the provisions of Article 211, paragraph 4, a decision to extend the application of a collective agreement may be revoked in the procedure prescribed for its rendering. This means that a party to the collective agreement may propose to the minister responsible for labour affairs to revoke the decision extending its application. The minister is obliged to render a decision on whether or not he or she will grant the proposal, by following the same procedure prescribed for its rendering.

A decision to extend the application of a collective agreement only extends the application of the collective agreement to which the decision relates, which means that its subsequent amendments are not included. Therefore, if the parties to the collective agreement decide to amend this agreement, these amendments will only be applicable to the parties to the agreement and not to the persons to whom the basic agreement was extended. For the latter persons, the collective agreement will only be applicable in the form in which its application was extended by the minister's decision.

This means that the minister must render a special decision to extend the application of the amendments to the extended collective agreement.

When it comes to extension of application of collective agreements, the Labour Act does not prescribe any requirements stating that a collective agreement must cover a representative number of workers and employers.

On 8 September 2009, there were seven decisions extending the application of collective agreements in force in Croatia. The Collective Agreement on the Level of the Minimum Wage was extended to cover all employers and workers in the Republic of Croatia, and the application of six branch-level collective agreements were extended by the minister's decision to cover all employers and workers in the respective industries (trade, catering, travel agencies, wood and paper industry, security industry).

As regards information about collective agreements, the Labour Act specifies that every collective agreement and every change (amendment, supplement, cancellation or accession) to a collective agreement must be notified to the ministry responsible for labour or to a county office responsible for labour affairs, depending on the area of its application.

A collective agreement or a change to a collective agreement applicable within the entire Republic of Croatia, or within two or more counties shall be notified to the ministry responsible for labour. All other collective agreements and changes to collective agreements shall be notified to county offices responsible for labour affairs.

According to records on collective agreements applicable in two or more counties or the entire Republic of Croatia, kept by the Ministry of the Economy, Labour and Entrepreneurship:

In 2006, a total of 50 collective agreements (CAs) were registered, 2 of which were branch-level CAs.
In terms of NCEA, in 2006 there were 16 branch-level collective agreements in force, 7 of which related to the economy, and 9 to the public sector.

In 2007, a total of 45 CAs were registered, 1 of which was a branch-level CA.

In 2008, a total of 92 CAs were registered, 7 of which were branch-level CAs.

In terms of NCEA, in 2008 there were 15 branch-level collective agreements in force, 8 of which related to the economy, and 7 to the public sector.

The current situation shows that employers are more interested in concluding collective agreements on the enterprise level than on the branch level.

Paragraph 3, Conciliation and arbitration

Conciliation is the most popular alternative method of resolving disputes between parties, either after or before proceedings have been launched before the court or other bodies. In Article 2 of the Conciliation Act, which entered into force on 1 December 2003, (Official Gazette, no. 117/03), the legislator defined "conciliation" (also called "intercession" or "mediation") as every procedure, no matter what it is called, in which parties try to settle their dispute by agreement, using the services of one or more conciliators who help the parties to reach a settlement, but have no authority to force them to accept the solution.

It follows from this that decisions rendered by conciliators may be binding upon the parties only with their joint consent.

Compared to judicial proceedings, conciliation is a much faster and cheaper method of resolving disputes between parties, because a conciliator only assists the parties in reaching a mutually agreeable resolution, taking into account their own interests and regardless of the regulations normally applied by the judge during judicial proceedings. In the arbitration procedure, in which parties have a say in selecting the arbitrator, the arbitrator/arbitrators render a decision, whereas in the conciliation procedure the parties reach a settlement through the mediation of a conciliator. This is similar to court settlement, but there are some substantial differences because the judge is obliged to conform to regulations and court formalities, whilst conciliation enables parties to feel more relaxed, unburdened by legal restrictions.

REPORT ON CONCILIATION PROCEDURES IN COLLECTIVE LABOUR DISPUTES IN THE PERIOD 2005-2009

Articles 202, 203, 204 and 205 of the Labour Act (Official Gazette, nos. 38/95, 54/95, 65/95, 102/98, 17/01, 82/01, 114/03, 123/03, 142/03 and 30/04) prescribe mandatory conciliation procedure in collective labour disputes.

Pursuant to the provisions of the aforesaid articles, in 2003 the Ordinance on the methods for the selection of conciliators and the conduct of the conciliation procedure (Official Gazette, no. 170/03) was issued. Under this Ordinance, conciliation in collective labour disputes was regulated within the framework of the Economic and Social Council, with organisational and personnel support provided by the Office for Social Partnership.

The Office for Social Partnership carried out a comparative analysis of conciliation procedures conducted in the period 2005-2009.

In the period from 2005 to the end of 2008, a total of 289 requests to institute conciliation procedure were filed. The greatest number of requests was filed in 2005 (95 or 32.87%), after which the number of procedures dropped – in 2008 a total of 53 procedures were launched (18.34%).

Year	**2005**	**2006**	**2007**	**2008**	**Total**
No. of conciliation procedures	95	65	76	53	289

Table 1 – Number of conciliation procedures, 2005-2009

In the reporting period, the majority of conciliation procedures were conducted in July (11.42%), October (11.07%) and November (12.46%).

Month	**2005**	**2006**	**2007**	**2008**	**Total**	**%**
January	5	5	6	6	22	7.61
February	8	9	4	4	25	8.65
March	8	5	0	4	17	5.88
April	17	1	3	4	25	8.65
May	7	4	5	6	22	7.61
June	8	3	12	4	27	9.34
July	10	9	7	7	33	11.42
August	5	4	6	1	16	5.54
September	4	3	11	0	18	6.23
October	5	8	8	11	32	11.07
November	11	9	11	5	36	12.46
December	7	5	3	1	16	5.54

Table 2 – Overview of conciliation procedures, by month

Success of conciliation

In the reporting period, a total of 162 (56.06%) conciliation procedures were completed successfully, and 115 (39.79%) unsuccessfully. In 12 cases the grounds for conducting conciliation ceased to exist. It is evident that the results achieved were about equal throughout the reporting period. A little more than 50% of cases were resolved successfully to which we should also add 4.15% of procedures for which grounds ceased to exist, because in these cases solution was apparently found without the mediation of a third party. The table below shows that since 2005 (with the exception of 2006), the number of resolved conciliation cases has been on a slight downward trend.

	2005	%	2006	%	2007	%	2008	%	Total	%
Resolved	59	62.11	35	53.85	43	56.58	25	47.17	162	56.06
Unresolved	28	29.47	30	46.15	30	39.47	27	50.94	115	39.79
Grounds no longer exist	8	8.42			3	3.95	1	1.89	12	4.15

Table 3 – Success of conciliation procedures

Types of disputes

Pursuant to the Labour Act, the conciliation procedure is conducted in the event of disputes related to concluding, amending or renewing a collective agreement or other similar disputes which could result in a strike or other form of industrial action – **interest-based disputes**, and non-payment of salary or salary compensation within 30 days of the maturity date – **legal disputes**.

Type of dispute	2005	%	2006	%	2007	%	2008	%	Total	%
Legal	69	72.63	34	52.31	46	60.53	31	58.49	180	62.28
Interest-based	26	27.37	31	47.69	26	34.21	21	39.62	104	35.99
Legal and interest-based					4	5.26	1	1.89	5	1.73

Table 4 – Types of disputes

Table 4 shows that conciliation procedures are in the majority of cases instituted in order to settle labour disputes of a legal nature – 62.28%, whereas interest-based disputes accounted for 35.99% of all disputes, and combined legal and interest-based disputes for 1.73%.

Furthermore, in the reporting period the greatest success was achieved in resolving legal disputes – 34.95% of all conciliation procedures that were initiated. The percentages of successful and unsuccessful procedures initiated to resolve interest-based labour disputes were about equal – 19.38% and 16.27%, respectively.

2005-2009	Resolved	%	Unresolved	%	Grounds no longer exist	%	Total
Legal	101	34.9	68	23.5	11	3.81	180

Interest-based	56	19.3	47	16.2	1	0.35	104
Legal and interest-based	5	1.73					5

Table 5 – Success of conciliation, by type of disputes

Initiation of conciliation procedures

In the reporting period, the greatest number of conciliation procedures was initiated by the Trade Union of Construction Workers of Croatia (47 procedures or 16.26%), followed by the Trade Union of Metal Workers of Croatia (46 or 15.92%), PPDIV Trade Union (33 or 11.42%) and the New Trade Union (32 or 11.07%). When it comes to public and civil servants, a total of 10 procedures (3.46%) were initiated in public services, 8 in the area of culture and 3 (1.04%) in the civil service. It should also be pointed out that almost all conciliation procedures in the reporting period were initiated by trade unions, whereas only one procedure was initiated by employers.

Trade union	2005	2006	2007	2008	Total
PPDIV Trade Union	21	5	3	4	33
Trade Union of Metal Workers of Croatia	15	9	16	6	46
Trade Union of Construction Workers of Croatia	26	9	7	5	47
New Trade Union	7	4	11	10	32
Croatian Trade Union of Employees in Culture	4	2	0	2	8
Independent Trade Union DTR	1	0	4	0	5
Croatian Trade Union of Salaried Doctors	1	0	0	0	1
Slavonia and Baranja Trade Union	1	2	0	0	3
Trade Union of Transport and Communication Workers	1	0	0	0	1
SSSH Osijek Cinemas	2	1	0	0	3
HT Negotiating Committee	1	2	0	0	3
Rijeka Port Trade Unions	2	1	1	2	6
Independent Trade Union of Employees in High Schools	1	1	0	0	2
Trade Union of Textile, Footwear, Leather and Rubber Industries of Croatia	2	4	1	4	11
Customs Trade Union	1	0	0	0	1
Humanitarian Mine Clearance Trade Union	1	0	0	0	1
Independent Trade Union of Catering and Tourism Industries of Croatia	1	0	0	0	1
Istria and Kvarner Trade Union	2	0	4	3	9
RSRH	1	5	4	3	13
Croatian Railways Trade Unions	1	0	2	1	4
Independent Trade Union of the Students' Centre and Independent Trade Union of Science and Higher Education	1	0	0	0	1
Civil Servants Trade Union (SDLSN, SPH, SMUP)	1	1	0	0	2

Brestovac Trade Union	0	0	0	1	1
Trade Union of Wood and Paper Industries	0	0	1	1	2
Trade Union of Workers in Commerce of Croatia	0	0	0	2	2
Independent Trade Union of Workers in Energy, Chemical and Non-Metal Processing Industries	0	1	0	1	2
Independent Trade Union of Aviation Employees	0	0	0	1	1
Cabin Crew Trade Union	0	0	0	2	2
Trade Union of Printing and Publishing Industries	0	2	0	1	3
Trade Union of Educational Services of Croatia	0	1	0	1	2
Journalists' Trade Union	0	0	0	1	1
Independent Trade Union of Aircraft Mechanics of Croatia	0	0	1	0	1
County Trade Union of Employees of Klas	0	1	1	0	2
Trade Union of Croatian Railway Workers	0	0	7	0	7
HUS	0	0	1	0	1
Regional Industry Trade Union	0	0	3	0	3
Cabin Crew Trade Union	0	0	1	0	1
Trade Union of ZET Drivers and Transport Workers	0	0	1	0	1
Trade Union of Croatian Teachers and Federation of School Trade Unions	0	1	1	0	2
Independent Trade Union Dalmatinka nova	0	2	1	0	3
Group of trade unions of workers in Zagreb Holding, Zagreb City Gas Company and Zagreb Water Supply Company	0	0	2	0	2
Trade Union of INA Workers	0	1	0	0	1
Croatian Trade Union of Telecommunications	0	1	0	0	1
Independent Trade Union of Ploče Port Workers	0	1	0	0	1
Trade Union of Bizovac Spa Employees	0	1	0	0	1
Trade Union of Banking and Finance Employees	0	1	0	0	1
Independent Trade Union of Construction Workers of Croatia	0	1	0	0	1
Trade Unions of Public Services	0	1	0	0	1
Trade Union of Employees of Croatian Schools	1	0	0	0	1
Preporod – Trade Union of Employees of Croatian Schools	0	1	0	0	1
Independent Trade Union of ETA Požega	0	1	0	0	1
Trade Union of Tourism and Services	0	1	0	0	1

Table 6 – Overview by trade union

The largest number of conciliation procedures was initiated in the areas of construction, metal processing, food, textile, footwear, leather and rubber industries.

Counties

In the reporting period, the largest number of conciliation procedures was initiated in the City of Zagreb (85 or 29.41%), followed by the Zagreb County (50 or 17.30%), then by the Krapina-Zagorje County (23 or 7.96%) and the Osijek-Baranja County (18 or 6.23%). The counties with the smallest number of initiated procedures are the Šibenik-Knin County (1), the Vukovar-Srijem County (2), and Dubrovnik-Neretva and Lika-Senj counties (1).

County	2005	2006	2007	2008	Total
Bjelovar-Bilogora	1	1	2	2	6
Međimurje	2	2	0	1	5
Dubrovnik-Neretva	2	1	0	0	3
Lika-Senj	1	0	2	0	3
Karlovac	2	2	4	1	9
Koprivnica-Križevci	0	1	3	0	4
Krapina-Zagorje	7	4	8	4	23
Osijek-Baranja	8	7	1	2	18
Istria	3	0	0	3	6
Požega-Slavonia	8	3	1	0	12
Primorje-Gorski Kotar	3	2	2	8	15
Sisak-Moslavina	5	2	6	1	14
Brod-Posavina	3	1	1	1	6
Split-Dalmatia	3	4	0	2	9
Šibenik-Knin	0	0	1	0	1
Varaždin	4	0	3	3	10
Vukovar-Srijem	0	2	0	0	2
Virovitica-Podravina	2	0	2	0	4
Zadar	1	1	1	1	4
Zagreb	11	4	30	5	50
City of Zagreb	29	28	9	19	85
	95	65	76	53	**289**

Table 7 – Overview by county

Conciliators

Pursuant to the provisions of the Labour Act, the Economic and Social Council issued the Decision establishing the List of Conciliators and Members of Conciliation Boards (Official Gazette, no. 92/03), and the minister responsible for labour affairs issued the Decision on the criteria for the payment of fees to conciliators and members of conciliation boards and reimbursement of the costs incurred by them in conciliation procedures conducted in collective labour disputes (Official Gazette, no. 112/03).

In the reporting period, Viktor Gotovac was most frequently appointed as conciliator (in 93 cases or 32.18%). Danica Lisičar and Aida Marjan were each appointed in 38 cases (13.15%) and Stipe Šola in 25 cases (8.65%).

Conciliator	2005	2006	2007	2008	Total
Viktor Gotovac	37	20	24	12	93
Nives Mazur	4	1	0	0	5
Ljubo Kordić	5	8	5	2	20
Stipe Šola	7	0	12	6	25
Zvonko Vojnić	3	1	7	1	12
Danica Lisičar	8	11	13	6	38
Aida Marjan	9	9	8	12	38
Ivan Matešić	4	5	4	2	15
Damir Parmać	7	4	1	0	12
Mirjana Palada Kmetović	5	4	2	8	19
Darko Čavrak	2	2	0	0	4
Ivo Jelić	0	0	0	0	0
Ante Marinović	0	0	0	1	1
Mihovil Šprem	0	0	0	0	0
Stipe Poljak	0	0	0	0	0
Mirko Parun	0	0	0	0	0
Martina Knežević	0	0	0	0	0
Nada Samardžić-Tomas	2	0	0	0	2
Idaet Didi Begović	1	0	0	0	1
Fabijan Barišić	1	0	0	0	1
Suzana Racan Štern	0	0	0	2	2
Marko Teofilović	0	0	0	1	1

Table 8 – Overview by conciliator

Table 9 shows that around 55% of procedures in which the conciliator was Viktor Gotovac were conducted successfully, Aida Marjan had around 35% successful procedures, Danica Lisičar around 35%, Stipe Šola 72%, and Ljubo Kordić 85%.

Conciliator	Resolved	Unresolved	Grounds no longer exist	Total
Viktor Gotovac	52 (55.92%)	39 (41.94%)	3 (3.23%)	93
Aida Marjan	13 (34.22%)	24 (63.16%)	1 (2.63%)	38
Danica Lisičar	13 (34.22%)	21 (55.26%)	4 (10.53%)	38
Stipe Šola	18 (72%)	7 (28%)	0	25
Ljubo Kordić	17 (85%)	3 (15%)	0	20
Mirjana Palada	11 (57.89%)	8 (42.11%)	0	19
Ivan Matešić	11 (73.33%)	4 (26.67%)	0	15
Ivo Vojnić	10 (83.33%)	2 (16.67%)	0	12
Damir Parmać	8 (66.67%)	3 (25%)	1(8.33%)	12
Nives Mazur	4(80%)	1(20%)	0	5

Darko Čavrak	2 (50%)	1(25%)	1(25%9	4
Suzana Racan Stern	2 (100%)	0	0	2

Table 9 – Overview by success of conciliation

It is also noticed that parties in conciliation procedures usually seek the same conciliators who have already mediated between them.

YEAR 2009

In the period January-August 2009, a total of **54 requests** to institute a conciliation procedure were filed. Of this number, **11 (20.37%) procedures** were completed **successfully**, **35 (64.81%)** were completed **unsuccessfully**, **6** (11.11%) requests were **withdrawn**, and **2** (3.7%) procedures are still **pending.**

Month	Number of conciliation procedures
January	4
February	6
March	5
April	14
May	7
June	7
July	8
August	**3**
Total	**54**

Table 10 – Number of conciliation procedures in the period January-September 2009

Outcome	Number
Resolved	11
Unresolved	35
Pending	2
Request withdrawn	6

Table 11 – Overview by success

As regards **types** of disputes in this period, there were **40** (74.07%) **legal** disputes, **12** (22.22%) **interest-based** disputes, and **2** (3.7%) **combined legal and interest-based** disputes.

Type of dispute	Number
Legal	40
Interest-based	12
Legal and interest-based	2

Table 12 – Types of disputes in 2009

The majority of conciliation procedures in the aforesaid period were instituted by the **Trade Union of Construction Workers of Croatia (19 or 35.19%)**, followed by the **Trade Union of Metal Workers of Croatia (9 or 16.67%)** and the **New Trade Union (6 or 11.11%).**

Number of requests filed, by trade union

Trade Union	Number of requests filed
New Trade Union	6
Trade Union of Metal Workers of Croatia	9
Independent Occupational Trade Union of Aircraft Mechanics of Croatia	1
Trade Union of Construction Workers of Croatia	19
Independent Trade Union of Workers in Energy, Chemical and Non-Metal Processing Industries	1
Trade Union of Tourism and Services of Croatia	4
Croatian Trade Union of Employees in Culture	1
Trade Union of Istria and Kvarner	3
Trade Union of Public Services	1
Preporod – Trade Union of Employees of Croatian Schools	1
PPDIV Trade Union	1
Independent Trade Union of Workers in Utility and Related Services	1
Republic Trade Union of Workers of Croatia	1
Croatian Association of Trade Unions	2
Trade Union of Workers of DINA	1
Trade Union of Printing and Publishing Industries	2

Table 13 – Overview by trade union, 2009

In the reporting period, the largest number of conciliation procedures in collective labour disputes was conducted in the **City of Zagreb (22 or 40.74%)** and the **Split-Dalmatia County (8 or 14.81%)**.

County	Number of procedures
Sisak-Moslavina	1
Varaždin	3
City of Zagreb	22
Zagreb	1
Primorje-Gorski	4
Zadar	1
Osijek-Baranja	3
Bjelovar-Bilogora	2
Split-Dalmatia	8
Karlovac	3

Međimurje	1
Istria	5

Table 14 – Overview by county, 2009

As to the involvement of individual conciliators, **Viktor Gotovac, M.Sc.** was appointed in 18 (or 33.33% of cases), which was the largest number of appointments. A total of 11.11% of these cases were resolved successfully. **Mirjana Palada-Kmetović** was appointed **in 8 cases (14.81%)**, 12.5% of which were successfully resolved, and **Aida Marjan** was appointed **7 times (12.96%)** and was successful in 14.29% of the cases assigned to her.

Conciliator	Number of decisions on appointment
Aida Marjan	7
Ivica Šola	3
Mr.sc. Danica Lisičar	4
Mr.sc. Viktor Gotovac	18
Suzana Racan Stern	4
Mirjana Palada Kmetović	8
Ljubo Kordić	2
Ivan Matešić	8

Table 15 – Overview by conciliator, 2009

Conciliator	Resolved	Unresolved	Grounds no longer exist	Pending
Aida Marjan	1(14.29)	6 (85.71%)		
Ivica Šola	2 (66.67%)		1(33.33%)	
Mr. sc. Danica Lisičar	2 (50%)	1(25%)		1(25%)
Mr. sc. Viktor	2 (11.11%)	14 (77.78%)	2 (11.11%)	
Suzana Racan Stern		3 (75%)		1(25%)
Mirjana Palada	1(12.5%)	5 (62.5%)	2 (25%)	
Ljubo Kordić	2 (100%)			
Ivan Matešić	3 (37.5%)	4 (50%)	1(12.5%)	

Table 16 – Successful performance of conciliators, 2009

The above information shows that in the period 2005-2008 a fall in the number of conciliation procedures in collective labour disputes was observed, as was a fall in successfully completed procedures. When it comes to the types of disputes, conciliation procedures are mostly initiated with the aim of resolving labour disputes of a legal nature. It should also be noted that these procedures have recorded the highest success rate.

Furthermore, it is visible that, throughout this period, trade unions (Trade Union of Construction Workers of Croatia, Trade Union of Metal Workers of Croatia, PPDIV Trade Union and New Trade Union) instituted the greatest number of procedures. The names of these trade unions reveal the areas in which conciliation procedures were conducted most frequently.

The largest number of conciliation procedures was conducted in the City of Zagreb and the Zagreb County, which reflects the fact that these are the areas with the most vibrant economies. The low number of procedures conducted in the Vukovar-Srijem, Lika-Senj and Šibenik-Knin counties are indicators of depressed economic activities there.

Throughout the aforesaid period there was no much variation in the choice of conciliators, since parties in conciliation procedures usually prefer the same conciliators. This need not be a bad thing because such conciliators are already fully acquainted with the situation. However, since the parties were the same during the reporting period, this means that other conciliators were denied the opportunity to participate in conciliation procedures.

The 2009 data should be used with caution. Namely, a slight increase in initiated conciliation procedures is visible, but at the same time the number of unresolved disputes was growing, which may be a result of the global economic crisis.

In the period from 1 January 2005 to 31 December 2008, labour inspectors did not find any violations of Article 214 of the Labour Act (disputes in which conciliation is obligatory).

Paragraph 4 – Collective action

Permitted objectives of collective action

The strike is the basic action for workers and their organisations to defend their social and economic interests.

Who is entitled to take collective action?

The Labour Act does not define the right to strike as an individual right, i.e. a right that can be exercised by an individual worker. Rather, it is the exclusive right of a trade union. Therefore, individual workers can only enjoy legal protection regarding the right to participate in a strike if such a strike was officially called by a trade union.

The Labour Act prescribes certain requirements for organising a strike:

The trade union or higher-level trade union association organising a strike must announce the strike to the employer or the employers' association whose member is the employer against which the strike is directed. The letter announcing the strike must state:
- the reasons for the strike,
- the place of the strike,
- the date and time of the commencement of the strike.

A strike may not commence before conducting a conciliation procedure in situations when such a procedure is prescribed by the Labour Act. Disputes in which conciliation is mandatory are defined as those related to concluding, amending or renewing a collective agreement, and non-payment of salary (Article 203 of the Labour Act).

The Labour Act expressly provides for the right to a solidarity strike, laying down special requirements for carrying out such a strike, i.e. it must be announced to the employer at which it is organised (not to the employer against which it is directed), conciliation is not mandatory

(regardless of the reasons for the original strike), and it may not start before the expiration of two days from the date of commencement of the strike in whose support it is organised.

The maximum time limit within which registration of a trade union – for the purposes of calling a strike – must take place is thirty days, but the average period for registration in practice is five days.

The issues relating to strike committees are regulated by the provisions of various documents adopted by trade unions, such as statutes, rules or instructions on organising strikes.

Restrictions on the right to take collective action

The right to strike is a constitutional right, which can only be restricted by law in the manner and to the extent it is possible to restrict other constitutional rights. Therefore, the limits of such restriction are to be found in the Constitution and, in particular, in its Article 16 stating that freedoms and rights may only be restricted by law in order to protect freedoms and rights of others, public order, public morality and health.

Trade unions and their higher-level associations are entitled to call and undertake a strike in order to protect and promote the economic and social interests of their members or on the ground of non-payment of salary or salary compensation within 30 days of their maturity date.

Each strike must be announced to the employer or the employers' association against which it is directed. A strike may not begin before the conclusion of the conciliation procedure, when such procedure is provided for by this Act, or prior to the completion of other alternative dispute resolution procedures agreed upon by the parties. The letter announcing the strike must state the reasons for the strike, its place, and the date and time of its commencement.

No later than on the date of announcing the strike, the trade unions or higher-level trade union associations involved must publish a list of work assignments which must not be interrupted during the strike or lockout, adopted in accordance with the Labour Act.

Employers may engage in a lockout only as a response to a strike already in progress. The lockout must not commence prior to expiration of eight days from the date of the commencement of the strike. The number of workers locked out from work must not be higher than one half of the workers on strike. With respect to the workers who are locked out, employers must pay contributions prescribed by special regulations on the base equivalent to the minimum salary. The Labour Act's provisions applicable to strikes are also applicable, as appropriate, to the employer's right to lock the workers out in the course of a collective labour dispute.

Essential services

Upon a proposal by the employer, the trade union and the employer are obliged to prepare and adopt, by an agreement, the rules applicable to ***production maintenance services and essential services*** which must not be interrupted during a strike or a lockout.

The aforesaid rules include, in particular, the provisions concerning services and the number of workers who must work carry out these services during a strike or a lockout, with the aim

of enabling the restoration of regular work immediately after the strike (production maintenance services), or with the aim of performing work which is required for the prevention of risks to life, personal safety or health of the population (essential services). The definition of these services must not be such as to prevent or substantially restrict the right to strike.

If the trade union and the employer do not reach an agreement on the definition of the services to be maintained, within 15 days after the employer's proposal was forwarded to the trade union, the employer or the trade union may, within the next 15 days, request that these services be defined by an arbitration body. This arbitration body consists of one representative of the trade union, one representative of the employer and an independent chairperson who is appointed subject to an agreement between the trade union and the employer. If the trade union and the employer do not reach an agreement as to the appointment of the chairperson of the arbitration board, and the matter of appointment is not otherwise regulated by a collective agreement or an agreement between the parties, the chairperson shall be appointed by the president of the court which, according to the provisions of the Labour Act, has first-instance jurisdiction for cases related to the prohibition of strike or lockout. If one of the parties refuses to participate in an arbitration procedure for defining minimum services, the procedure is to be conducted without the participation of this party, and a decision on the services that must not be interrupted will be rendered by the chairperson of the arbitration board.

The arbitration body must render this decision within 15 days following the institution of the arbitration procedure. If the employer failed to propose that the aforesaid services be defined before the day when the conciliation procedure commenced, the procedure for defining these services may not be instituted until the end of the strike. Organising a strike or participating in a strike organised in compliance with the law, collective agreement and trade union rules does not constitute a violation of an employment contract. A worker must not be placed in a less favourable position than other workers because of his or her involvement in organisation of or participation in a strike organised in compliance with the law, collective agreement and trade union rules. A worker may only be dismissed if he or she organises or participates in a strike non-compliant with the law, collective agreement or trade union rules, or if in the course of a strike he or she commits some other grave violation of an employment contract.

A worker must not, by any means, be coerced to participate in a strike. Except for children allowance, the employer may reduce the salary and salary supplements of a worker who has participated in a strike. The reduction must be proportionate to the time spent on strike.

An employer or an employers' association may move the court having jurisdiction to prohibit the organisation and undertaking of a strike which is contrary to the provisions of the law. The employer may claim compensation for the damage suffered as a result of a strike organised and undertaken contrary to the provisions of the law. A trade union may move the court having jurisdiction to prohibit the organisation and undertaking of a lockout that is contrary to the provisions of the law. The trade union may also claim compensation for the damage suffered by this trade union or the workers as a result of a lockout organised and undertaken contrary to the provisions of the law.

If a strike or a lockout is undertaken in the territory of only one county, the first-instance jurisdiction to prohibit a strike or a lockout lies in the county court having jurisdiction, sitting as a chamber composed of three judges.

If a strike or a lockout is undertaken in the territory of two or more counties, the first-instance jurisdiction to prohibit a strike or a lockout lies in Zagreb County Court, sitting as a chamber composed of three judges.

An appeal against the decision rendered is decided upon by the Supreme Court. A first-instance decision on whether or not to prohibit a strike or a lockout must be rendered within four days following the filing of the request.

Strikes in the armed forces, police, state administration and public services are regulated by a special law.

Consequences of collective action

A worker must not be placed in a less favourable position than other workers because of his or her involvement in organisation of, or participation in, a strike organised in compliance with the law, collective agreement and trade union rules. A worker may only be dismissed if he or she organises or participates in a strike that was not organised in accordance with the above provisions or if in the course of a strike he or she commits some other grave violation of an employment contract. A worker must not, by any means, be coerced to participate in a strike.

The employer is obliged to pay each worker his or her salary, i.e. the salary defined by the worker's employment contract, collective agreement, employment rules, etc. In this connection, it should be stated that the employer is obliged to pay to the worker his or her full salary and is not allowed to reduce the worker's salary unilaterally. However, this is meant to apply to full-time salary and normal work performance.

The issue of working time is not questionable, because if a worker, for example, does not work one day, the employer will not be obliged to pay him or her salary for that day. The situation regarding normal work performance is much more complicated, because normal work performance is something that is presumed. This means that salary can only be reduced on this account exceptionally – in an entirely uncontested case, when normal work performance is not achieved exclusively through the worker's fault.

In other words, for this to happen, several conditions must be met cumulatively. Firstly, the reduced work performance must be exclusively the worker's responsibility, that is to say, it should not be due to any other circumstances i.e. the facts for which the responsibility did not lie with the worker, but with the employer or third parties (organisation, work of co-workers, conduct of clients, delays in the work process, etc.) or *force majeure*. Secondly, the reduction of work performance has to be significant, that is to say, there should be a major deviation from normal performance. Finally, the whole thing should be conclusively proved, i.e. there should be evidence of reduced output, a significantly lower quantity or quality of work, refusal to carry out work assignments, substantially lower work efficiency, etc. In such a case, the employer would need to have documentary evidence of the smaller quantity of products manufactured or shorter time of effective work, i.e. proved periods of idleness, refusal to carry out work, etc.

Report of the Government of the Republic of Croatia
for the period December 2005 to December 2008 in pursuance of
Article 6 of the Protocol to the European Social Charter, on the measures taken to give effect to the accepted provisions of the Protocol to the European Social Charter (Article 2 and 3), the instrument of ratification or approval of which was deposited on 26 February 2003

In accordance with Article 8 of the Protocol and Article 23 of the Charter, copies of this report in the English language have been communicated to:

- ***Union of Autonomous Trade Unions of Croatia***
- ***Independent Trade Unions of Croatia***
- ***Croatian Trade Unions Association***
- ***Association of Croatian Unions***
- ***Association of Workers' Trade Unions of Croatia***
- ***Croatian Employers' Association.***

Article 2 – Right to information and consultation

1. *With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the 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.*
2. *The Parties may exclude from the field of application of paragraph 1 of this article, those undertakings employing less than a certain number of workers to be determined by national legislation or practice.*

[In the Appendix to the Protocol it is stated as follows:

Articles 2 and 3

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 term "national legislation and practice" embraces 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 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 Articles 2 and 3 are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.]

As already mentioned, an employer may issue employment rules applying to all workers employed with this employer (employment rules) and employment rules for individual groups of employees or for individual units of the company or institution (special employment rules).

The employer is obliged to publish employment rules and special employment rules and ensure that they are easily accessible to employees and that they are displayed in a clearly visible place on the premises where the employees normally spend time during their working hours.

At the same time, Chapter XVIII of the Labour Act regulates the issue of workers' participation in decision-making processes. Amongst other things, this Chapter lays down the employer's obligation to provide information to the works council (composed of workers' representatives).

Workers have the right to elect, in free and direct elections, by secret ballot, one or more of their representatives – the works council, which will represent them before the employer in relation to the protection and promotion of their rights and interests. The procedure for establishing a works council is initiated upon the proposal of a trade union or at least 10 per cent of the workers employed with the employer.

When electing members of the works council, account must be taken of equal representation of all organisational units and groups of employees (by gender, age, qualifications, jobs they perform, etc.).

If the employer's operations are organised through several organisational units, several works councils may be established in order to ensure adequate participation of workers in decision-making. In that case, the General Works Council is to be formed, composed of representatives of works councils elected in organisational units. The composition, powers and other issues important for the operation of the General Works Council are regulated by an agreement between the employer and works councils.

A works council is elected for a term of three years and elections are held in March.

All workers of an employer shall have the right to elect and be elected. Members of management and supervisory bodies and their family members, as well as workers vested

with the authority to represent the employer before third parties or before workers employed with the employer do not have this right. A list of workers who have voting rights is established by the electoral committee.

Pursuant to Article 133 of the Labour Act, a worker who considers that his or her employer has violated any of his or her rights arising from employment may, within fifteen days following the receipt of a decision violating this right, or following the day when he or she became aware of this violation, require the employer to enable him or her to exercise this right.

If the employer does not meet the worker's request within fifteen days, the worker may within another fifteen days seek judicial protection before the competent court in respect of the right that has been violated.

A worker who has failed to submit a request for exercise of a right may not seek judicial protection before the competent court in respect of the right that has been violated.

However, when a law, other regulation, collective agreement or employment rules provide for alternative dispute resolution, the time limit of fifteen days for filing a request with the court starts running on the date when the alternative dispute resolution procedure was completed.

Unless otherwise specified by the Labour Act or another law, the competent court is, within the meaning of the provisions of the LA, the court that has jurisdiction for employment-related disputes (Article 134 of the LA).

At the same time, we would like to recall that, pursuant to the provisions of Articles 151 and 152 of the Labour Act, the employer has a duty to inform the works council – duly, accurately and integrally – at least every three months about the business situation and results, development plans, trends and changes in salaries, the extent and reasons for introduction of overtime work and other issues of particular importance for the economic and social position of workers.

Also, under Article 152, paragraph 1 of the LA, before rendering a decision that is important for the position of workers, the employer must consult with the works council about the proposed decision and must communicate to the works council the information important for rendering a decision and understanding its impact on the position of workers. Pursuant to the provisions of paragraph 2 of the same article, important decisions are deemed to include those on the adoption of employment rules, recruitment plan, transfers to another job and dismissals, working hours schedules, night work, the adoption of redundancy social security plans and other decisions which, under the provisions of the LA or a collective agreement, must be rendered in consultation with the works council.

It should also be pointed out that, pursuant to Article 152, paragraph 11 of the LA, a decision rendered by the employer contrary to the LA's provisions on consultations with the works council is null and void. Deciding on the nullity of such a decision is not within the competence of the State Inspectorate.

During **2005**, labour inspectors responsible for labour relations found violations of Article 152 of the LA committed by employers in 20 cases, and of Article 151 of the LA in 17 cases.

During **2006**, labour inspectors responsible for labour relations found violations of Article 151 of the LA committed by employers in 16 cases, and of Article 152 of the LA in 15 cases.

During **2007**, labour inspectors responsible for labour relations found violations of Article 152 of the LA committed by employers in 10 cases, and of Article 151 of the LA in 12 cases.

During **2008**, labour inspectors responsible for labour relations found violations of Article 151 of the LA committed by employers in 10 cases, and of Article 152 of the LA in 16 cases.

A fine in an amount ranging from HRK 31,000.00 to 60,000.00 shall be imposed on the employer-legal person:

- for preventing workers from electing a works council (Article 140 of the LA),
- for failing to inform the works council on the issues on which it is obliged to inform them (Article 151 of the LA),
- for failing to consult with the works council on the issues on which it is obliged to consult with them (Article 152 of the LA),
- for rendering a decision without obtaining the works council's consent when such a decision may be rendered only subject to prior consent of the works council (Article 153, paragraph 1 of the LA),
- for failing to provide conditions for work to the works council (Article 159 of the LA),
- for failing to allow an appointed workers' representative to sit on the supervisory board or other corresponding body in a company or institution (Article 166 of the LA).

Article 3 – Right to take part in the determination and improvement of the working conditions and working environment

1. *With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:*
   a. *to the determination and 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.*
2. *The Parties may exclude from the field of application of paragraph 1 of this article, those undertakings employing less than a certain number of workers to be determined by national legislation or practice.*

[In the Appendix to the Protocol it is stated as follows:

Articles 2 and 3

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 term "national legislation and practice" embraces 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 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 Articles 2 and 3 are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.]

Working conditions, work organisation and working environment

Pursuant to the provisions of Article 166, paragraph 4 of the LA, when it comes to participation in the decision-making process, the workers' representative on the supervisory board has the same legal position as other appointed members of the supervisory board. We would like to recall that powers of supervisory board members are defined in Articles 263 and 439 of the Companies Act (OG 111/93, 34/99, 121/99, 52/00, 118/03, 107/07 and 146/08, hereinafter: "the CA"). The provisions of these articles specify that the supervisory board supervises the management of the company's business and can examine and inspect business books and documents of the company, its treasury, securities and other things.

Protection of health and safety

In response to the question as to whether the inspector is under a legal obligation to carry out an inspection upon the request of the safety and health representative, we would like to state that the safety and health representative may inform the inspector about his or her observations and observations of workers whom he or she represents, be present during inspectional supervisions and make comments about the facts established by the inspector. In addition, when the worker's representative assesses that the workers' life and health are at risk, he or she may invite the inspector to carry out inspectional supervision if the employer fails or refuses to do so. Pursuant to the provisions of Article 37, paragraph 1 of the State Inspectorate Act, an inspector is obliged to carry out supervision upon the request of a safety and health representative. Pursuant to the provisions of Article 79, paragraph 4 of the Act on amendments to the Labour Act, the inspector has the duty to establish the facts of the case and examine the well-foundedness of the worker's allegations within 48 hours.

Enforcement

On the basis of the provisions of Article 247, paragraphs 1 and 2 of the LA, stating, amongst other things, that a fine in an amount ranging from HRK 31,000.00 to 60,000.00 may be

imposed on an employer-legal person, and a fine in an amount ranging from HRK 4,000.00 to 6,000.00 on an employer-physical person and the responsible person in an employer-legal person for the violations described in factual and legal terms in the following provisions: **Article 131, paragraph 1 of the LA** (the employer's failure to adopt employment rules before having consulted with the works council), **Article 140 of the LA** (if the employer prevents workers from electing a works council), **Article 151 of the LA** (if the employer fails to inform the worker's council on the issues on which it is obliged to inform them), **Article 152 of the LA** (if the employer fails to consult with the worker's council on the issues on which it is obliged to consult with them), **Article 153 of the LA** (if the employer renders a decision without obtaining the works council's consent when such a decision may only be rendered subject to prior consent of the works council), **Article 159 of the LA** (if the employer fails to provide conditions for work to the works council), **Article 166 of the LA** (if the employer fails to allow an appointed workers' representative to sit on the supervisory board or other corresponding body in a company or institution), we are providing the following information:

During **2005** labour inspectors for labour relations established in 42 cases that employers had acted in contravention of Articles 151, 152, 159 and 166 of the LA, due to which requests to institute misdemeanour proceedings were filed with the competent misdemeanour courts against employers and their responsible persons:

- in 20 cases employers were found to have acted in contravention of the provisions of Article 152 of the LA,
- in 17 cases employers were found to have acted in contravention of the provisions of Article 151 of the LA,
- in 4 cases employers were found to have acted in contravention of the provisions of Article 166 of the LA,
- in one case, an employer was found to have acted in contravention of the provisions of Article 159 of the LA.

During inspectional supervisions carried out in 2005 no employers were found to have acted in contravention of the provisions of Article 131, paragraph 1, Article 140 and Article 153, paragraph 1 of the LA.

During **2006** labour inspectors for labour relations established in 40 cases that employers had acted in contravention of Articles 131, paragraph 1, Article 151, Article 152, Article 153, paragraph 1, Article 159 and Article 166 of the LA, due to which requests to institute misdemeanour proceedings were filed with the competent misdemeanour courts against employers and their responsible persons and, in particular:

- in 16 cases employers were found to have acted in contravention of the provisions of Article 151 of the LA,
- in 15 cases employers were found to have acted in contravention of the provisions of Article 152 of the LA,
- in 3 cases employers were found to have acted in contravention of the provisions of Article 153 of the LA,
- in 3 cases employers were found to have acted in contravention of the provisions of Article 166 of the LA,
- in 2 cases employers were found to have acted in contravention of the provisions of Article 131, paragraph 1 of the LA,

- in one case an employer was found to have acted in contravention of the provisions of Article 159 of the LA.

During inspectional supervisions carried out in 2006 no employers were found to have acted in contravention of the provisions of Article 140 of the LA.

During **2007** labour inspectors for labour relations established in 32 cases that employers had acted in contravention of Articles 131, paragraph 1, Article 151, Article 152 and Article 153 of the LA, due to which requests to institute misdemeanour proceedings were filed with the competent misdemeanour courts against employers and their responsible persons and, in particular:

- in 12 cases employers were found to have acted in contravention of the provisions of Article 151 of the LA,
- in 10 cases employers were found to have acted in contravention of the provisions of Article 152 of the LA,
- in 7 cases employers were found to have acted in contravention of the provisions of Article 131, paragraph 1 of the LA,
- in 3 cases employers were found to have acted in contravention of the provisions of Article 153 of the LA.

During inspectional supervisions carried out in 2007 no employers were found to have acted in contravention of the provisions of Articles 140, 159 and 166 of the LA.

During **2008** labour inspectors for labour relations established in 45 cases that employers had acted in contravention of Articles 131, paragraph 1, and Articles 140, 151, 152, 153 and 166 of the LA, due to which requests to institute misdemeanour proceedings were filed with the competent misdemeanour courts against employers and their responsible persons and, in particular:

- in 16 cases employers were found to have acted in contravention of the provisions of Article 152 of the LA,
- in 14 cases employers were found to have acted in contravention of the provisions of Article 131, paragraph 1 of the LA,
- in 10 cases employers were found to have acted in contravention of the provisions of Article 151 of the LA,
- in 2 cases employers were found to have acted in contravention of the provisions of Article 153 of the LA,
- in 2 cases employers were found to have acted in contravention of the provisions of Article 166 of the LA,
- in one case an employer was found to have acted in contravention of the provisions of Article 140 of the LA.

During inspectional supervisions carried out in 2008 no employers were found to have acted in contravention of the provisions of Article 159 of the LA.

We would like to point out that, following requests to institute misdemeanour proceedings for the violations filed in **2005** with the competent courts, we received 8 rulings from these courts (7 from first instance misdemeanour courts and 1 from the High Misdemeanour Court of the

Republic of Croatia, which upheld the first instance ruling), and we also received 1 misdemeanour order.

In 6 of these rulings, the competent courts imposed fines ranging from HRK 2,000.00 to 15,000.00 on employers-legal persons, and from HRK 1,000.00 to 3,000.00 on responsible persons of these employers. In one ruling the court issued a warning/admonition to the employer and the responsible person of this employer for a violation of Article 152 of the LA. In addition, in one case the competent misdemeanour court issued a misdemeanour order for violation of Article 152 of the LA, and imposed a fine of HRK 10,000.00 on the employer, whilst the responsible person of this employer was fined HRK 1,000.00.

Furthermore, following requests to institute misdemeanour proceedings, filed in **2006**, the competent courts issued and sent to us 5 rulings issuing warning/admonition for violations of Articles 151, 152 and 153 of the LA, and 2 rulings imposing fines for violations of Article 151 of the LA on employers, ranging from HRK 4,000.00 to 10,000.00, and on responsible persons in these employers, ranging from HRK 550.00 to 2,000.00.

Following requests to institute misdemeanour proceedings, filed in **2007**, the competent misdemeanour courts issued and sent to us 7 rulings, 6 issued by first instance misdemeanour courts and 1 by the High Misdemeanour Court of the Republic of Croatia (rejecting the appellant's appeal as ill-founded). We have also received 3 misdemeanour orders.

In 6 of these rulings, the competent misdemeanour courts imposed fines ranging from HRK 2,000.00 to 15,000.00 on employers-legal persons, and from HRK 1,000.00 to 2,000.00 on responsible persons in these employers. We would also like to point out, that in three cases the competent courts issued misdemeanour orders for violations of Articles 151 and 152 of the LA, and imposed fines on employers-legal persons ranging from HRK 3,000.00 to 35,000.00, and on responsible persons in these employers ranging from HRK 1,000.00 to 5,000.00.

Following requests to institute misdemeanour proceedings during **2008**, the competent misdemeanour courts issued and sent to us 6 rulings issuing warning/admonition for violations of Articles 151 and 153 of the LA, and 4 rulings imposing fines for violations of Article 131, 151, 152 and 153 of the LA on employers-legal persons, ranging from HRK 5,000.00 to 31,000.00, and on responsible persons in these employers, ranging from HRK 600.00 to 4,000.00.
We would also like to add that in three cases the competent misdemeanour courts issued misdemeanour orders for violations of Article 152 of the LA, and imposed fines on employers-legal persons ranging from HRK 10,340.00 to 11,000.00, and on responsible persons in these employers ranging from HRK 1,340.00 to 1,500.00.