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EUROPEAN SOCIAL CHARTER

16th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF ARMENIA

Articles 2, 4, 5, 6, 22 and 28

for the period 01/01/2017 – 31/12/2020

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EUROPEAN SOCIAL CHARTER

(REVISED)

Report of the Republic of Armenia

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

Reporting period: 2017-2020

Article 2. Right to just conditions of work

Information with regard to changes undertaken during the reporting period and to questions submitted by the European Committee of Social Rights (hereinafter referred to as "the Committee")

(a) Please provide updated information on the legal framework to ensure reasonable working hours (weekly, daily, rest periods) and exceptions (including legal basis and justification). Please provide detailed information on enforcement measures and monitoring arrangements, in particular as regards the activities of labour inspectorates (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.).

(b) The Committee would welcome specific information on proactive action taken by the authorities (whether national, regional, local and sectoral, including national human rights institutions and equality bodies, as well as labour inspectorate activity, and on the outcomes of cases pending before the courts) to ensure the respect of reasonable working hours; please provide information on findings (e.g. results of labour inspection activities or determination of complaints by domestic tribunals and courts) and remedial action taken in respect of specific sectors of activity, such as the health sector, the catering industry, the hospitality industry, agriculture, domestic and care work.

According to the Decision of the Prime Minister No 755-L of 11 June 2018, the Health Inspection Body of the Ministry of Health was reorganised into the Health and Labour Inspection Body (hereinafter referred to as "Inspection Body"), and the Statute of the Inspection Body (hereinafter referred to as "Statute") was approved.

Various problems emerged in employment relations due to coronavirus pandemic, and on 29 April 2020 the Law No HO-236-N "On Making Amendments and Supplements to the Labour Code of the Republic of Armenia" was adopted (entered into force on 8 May 2020)

to provide legislative regulations thereto and to ensure to the extent possible the protection of labour rights of employees. Among other amendments and supplements the Labour Code of the Republic of Armenia was supplemented by a new Article 33.1, pursuant to which in case of existence of a written application received in the period of prevention of natural disasters, technological accidents, epidemics, accidents, fires and other cases of emergency or elimination of the consequences thereof the authorised inspection body of the field carries out state supervision over the fulfilment of requirements of the labour legislation, other regulatory legal acts containing labour law norms, requirements of collective and employment contracts by the employers, imposing sanctions in cases provided for by law (Article 33.1 of the Labour Code was in force until 1 July 2021).

According to the Decision of the Government No 1006-A of 18 June 2020 amendments were made to the Decision of the Government No 1071-A of 22 August 2019 "On identifying authorised bodies carrying out state supervision" (entered into force on 20 June 2020) and the Inspection body was identified as the authorised body carrying out supervision over the field of labour law, including the protection of health and safety assurance of the employees.

Amendments and supplements were made to the Statute of the Inspection Body by the Decision of the Prime Minister No 768-L of 3 July 2020 "On making amendments and supplements to the Decision of the Prime Minister of the Republic of Armenia No 755-L of 11 June 2018 ". Point 1 of the Statute established that the Inspection Body was a body subordinate to the Government carrying out supervision and other functions prescribed by law, which — acting on behalf of the Republic of Armenia — imposes sanctions as prescribed by law in the field of labour law, including the protection of health and safety assurance of the employees. Accordingly, the goals, objectives and powers of the Inspection body were amended.

1. According to point 9 of the Statute, the aim of the Inspection Body is to ensure compliance with the requirements of labour legislation of the Republic of Armenia and other regulatory legal acts containing norms of labour law, collective and

employment contracts in the cases and in the manner prescribed by law.

2. According to point 10 of the Statute, one of the objectives of the Inspection body is supervision over the risk management in the field of labour law, including the protection of health and safety assurance of the employees and compliance with the requirements of laws and other regulatory legal acts of the Republic of Armenia, as well as implementation of preventive measures in the fields of safety assurance, protection of health and regulation of employment relations.

3. According to paragraph (m) of sub-point 10 of point 11 of the Statute, the powers of the Inspection Body include conducting supervision over the compliance with the requirements of labour legislation, including supervision over maintaining the durations of working time and rest time.

On 29 April 2020 the Law No HO-237-N "On making a supplement to the Code on Administrative Offences of the Republic of Armenia" was adopted, by which the Code on Administrative Offences of the Republic of Armenia was supplemented by Article 230.1, pursuant to which the Inspection Body was granted a power to investigate the cases on administrative offences provided for by Article 41 of the Code on Administrative Offences of the Republic of Armenia and to impose administrative penalties. Pursuant to Article 41 of the Code on Administrative Offences of the Republic of Armenia, "violation of requirements of the labour legislation and of other regulatory legal acts containing regulations of labour right (except for cases provided for in Articles 41.1, 41.2, 41.6, 96.1, part nineteen of Article 158, Articles 169. 5, 169.8 of this Code) entails issuing of a warning with respect to the person having committed the violation.

Violation of the requirements of the labour legislation and other regulatory legal acts containing norms of labour law, committed within one year following the application of an administrative penalty, entails imposition of a fine on the employer in the amount of the

fifty-fold of the minimum salary prescribed".

The measures of administrative liability prescribed by this Article shall also apply in case of failure to maintain the durations of working time and rest time.

According to amendments made, the Inspection Body could carry out supervision over maintenance of durations of working time and rest time only in case of existence of written application received.

After being identified as the authorised body carrying out supervision over the field of labour law, 95 complaints on violations of labour legislation were received, 15 of which concerned working more than the established working time and failure to provide a rest time.

Also, administrative proceedings were instituted on the basis of 15 complaints received in the Inspection Body on failure to maintain the working time and the rest time. For the purpose of eliminating the violations recorded in the course of instituted administrative proceedings, and consequently restoring the violated labour rights of employees, executive orders were issued, and the persons having committed the violations were subjected to administrative liability under Article 41 of the Code on Administrative Offences of the Republic of Armenia.

(c) Please provide information on law and practice as regards on-call time and service (including as regards zero-hours contracts), and how inactive on-call periods are treated in terms of work and rest time as well as remuneration.

Regulations on the on-duty period are specified in Article 149 of the Labour Code. In particular, it is specified that to ensure workplace discipline within the organisation or the performance of urgent works in special cases, the employer may engage the employee on duty in the organisation or at home at the end of the working day or on non-working holidays, commemoration days and rest days not more than once a month, whereas upon consent of the employee — not more than once a week.

Where the duty is performed after the end of the working day, the time of the duty together with the working day (shift) in the organisation may not exceed the duration of the working day (shift) prescribed by part 2 of Article 139 of Labour Code (8 hours), whereas the duration of the duty in the organisation or at home on non-working days — holidays, commemoration days and rest days — may not exceed eight hours a day. The time of duty in the organisation shall be equalised to the working time, whereas at home it shall be not less than half of the working time.

Where the duration of the duty in the organisation or at home exceeds the working time prescribed by parts 1 and 2 of Article 139, Articles 140, 141 and part 1 of Article 143 of the Labour Code, the employee shall, during the next month, be given rest time with the same duration, or the rest time may, upon the will of the employee, be added to the annual leave or may be paid as overtime work.

Employees under the age of eighteen shall not be allowed to be engaged in duty work at home or in an organisation. Pregnant women and the employees taking care of a child under the age of three may be engaged on duty at home or in the organisation only upon their consent.

(d) Please provide information on the impact of the COVID-19 crisis on the right to just conditions of work and on general measures taken to mitigate adverse impact. As regards more specifically working time during the pandemic, please provide information on enjoying the right to reasonable working time in the following sectors: health care and social work (nurses, doctors and other health workers, workers in residential care facilities and social workers, as well as support workers, such as laundry and cleaning staff); law enforcement, defence and other essential public services; education; transport (including long-haul, public transport and delivery services).

To mitigate the impact of the COVID-19 crisis on the right to just conditions of work and its adverse impact, Order of the Minister of Health N 17-N of 4 August 2020 "On approving

the sanitary rules N SK 3.1.2-001-20 applied to prevent the spread of coronavirus disease (Covid-19) in the Republic of Armenia" was elaborated and approved, which specified the following provisions:

1. Organising trainings for the staff of the organisation on application of individual protective measures, hand hygiene, coughing and sneezing etiquette, on organising measures to prevent the spread of coronavirus disease (COVID-19), as well as on instruction not to attend the workplace and to seek prompt medical assistance where there are symptoms of coronavirus disease (COVID-19).

2. Maintaining registers on the temperature readings of the staff, disinfection process, as well as on PCR testing to diagnose coronavirus disease (COVID-19), status of vaccination of the staff against the coronavirus disease (COVID-19) and medical counter-indications.

3. Proper, 3 times a day, natural ventilation of the workplace with duration of 8-10 minutes.

4. Application of individual protective measures, wearing a mask is mandatory pursuant to the Order of the Minister of Health No 23-N of 11 September 2020, changing the mask every 3-4 hours and, where necessary, collecting used masks and other items of individual protection in hermetically closed sacks and removal thereof along with other household waste.

5. Maintaining a social distance of 1.5 metres between the employees during the break and provision of meals.

6. Providing at least 70 per cent alcohol-based antiseptics (disinfectants) to disinfect the hands.

7. Organising the work in a remote mode or on an “on duty” principle for a period of fourteen days for an employee who is a contact to confirmed case of coronavirus disease, making changes in labour conditions in the workplace, in case of its impossibility, to exclude or minimise the contact with other employees.

In the course of activities around the pandemic overtime on duty work was carried out by nurses, doctors and other health workers, for which they were respectively paid additional remuneration. They have received additional remuneration also for carrying out work in special conditions to mitigate the adverse impact of the crisis in the area of remuneration. The medical staff was provided with relevant uniforms, preventive measures were carried out, also mass vaccinations were conducted.

Education Sector

After declaring state of emergency in the Republic of Armenia due to epidemiological situation, according to Decision No 63 of 3 May 2020 of the Commandant, as well as the instructions prescribed by the Order No 24-N of 19 August 2020 of the Minister of Health in the sector of general education, the Ministry of Education, Science, Culture and Sport elaborated the "Guide on organising work in the general education institutions under the conditions of COVID-19", which was delivered to education institutions by the directive letter of the Minister of Education, Science, Culture and Sport. The Guide explicitly defines the provisions aimed at ensuring the labour and social rights of employees. In particular, sub-point 1 of point 17 specifies that teachers of educational institution in the age group of 65 and older (irrespective of their state of health) may choose to show up at work wearing individual protective measures provided by the state, carry out the work in a remote mode, where there are necessary conditions for this, or not to show up at work. In case of failure to show up at work no academic hours shall be assigned to those teachers. The salary thereof is calculated in accordance with assignment of hours in the previous academic year, however it should not exceed the salary of one position, payment in case of failure to show up at work, will be made according to the principle of forced idleness. The employees of pre-school, as well as primary and secondary vocational educational institutions included in the risk groups, who failed to perform their functions due to health or technical issues shall continue receiving remuneration.

In all institutions operating under the Ministry of Education, Science, Culture and Sport,

including cultural and sports institutions (theatres, museums, libraries, sports schools), where carrying out work in a remote mode has been impossible or inexpedient, the employees have received remuneration during the given time period.

Police

For the purpose of proper organisation of works for prevention of spread of COVID-19 pandemic the works, where possible, were organised remotely by the Order of the Head of the Police concurrently ensuring uninterrupted implementation of the functions. The list of officers, whose work was possible to carry out from home, was drawn up.

All subdivisions of the Police were provided with masks and disinfectants, services rendered to civilians were, where appropriate, organised electronically, on which awareness-raising activities were carried out among the public at large. The minimum possible contact of police staff with civilians was ensured. At the same time, around 90 percent of Police officers was vaccinated against COVID-19 pandemic.

(e) The Committee would welcome additional general information on measures put in place in response to the COVID-19 pandemic intended to facilitate enjoying the right to reasonable working time (e.g. flexible working hours, remote work, other measures for working parents when schools and nurseries are closed, etc.). Please include information on the legal instruments used to establish them and the duration of such measures.

Due to the cases of spread of a novel coronavirus disease (COVID-19) in the Republic of Armenia, and taking into account the fact that this infection has been declared a pandemic by the World Health Organisation since 13 March 2020, a state of emergency was declared in the Republic of Armenia since 16 March 2020 by Decision of the Government of the Republic of Armenia No 298-N of 16 March 2020 "On declaring a state of emergency in the Republic of Armenia".

The guideline "On observance of sanitary-epidemiological rules in organisations, possible dangers and organisation of work in case of violation thereof" was approved by Instruction of the Commandant No Ts/17-2020 of 20 March 2020, thereby rules were established to prevent the spread of a novel coronavirus disease (COVID-19), to ensure conditions for workers, which are secure and safe for health.

"Rules aimed at preventing the spread of novel Coronavirus disease (COVID-19) in organizations" were established by Annex No 3 to Decision of the Commandant No 27 of 31 March 2020 "On restrictions applicable in the whole territory of the Republic of Armenia due to the legal regime of the state of emergency"; moreover, according to the same decision, it was allowed to engage in the types of economic activity not prohibited on the condition of observing the "Rules aimed at preventing the spread of novel Coronavirus disease (COVID-19) in organizations" (the decision was in force from 1 April 2020 to 3 May 2020).

Decision of the Commandant No 27 of 31 March 2020 was repealed by Decision of the Commandant N 63 of 3 May 2020 "On temporary restrictions applied in the whole territory of the Republic of Armenia", and safety rules were established for almost all types of economic activity, stemming from the specifics of the economic activity.

The rules established by the referred decisions and Order of the Minister of Health provide for a requirement to perform work in a "remote" mode in certain cases for all employees and in other cases for the employees in the age of 65 and older, belonging to the high-risk group of severe development of coronavirus disease.

Moreover, by the Law HO-236-N of 29 April 2020 "On Making Amendments and Supplements to the Labour Code of the Republic of Armenia" the following supplements were made in the Labour Code:

- Article 106.1 gives the definition of work performed in a remote mode, conditions and procedure for performing thereof.
- According to Article 187.1, in cases when the employee appears to work for an

incomplete working day to organise the care of a child under the age of twelve during the time period of unplanned transfer or unplanned provision of vacations envisaged for educational (including pre-school) institutions, the employee will receive his or her salary in full, where his or her absence during the working day does not exceed two hours. In the cases mentioned in the same part, where the absence during the working day exceeds two hours, as well as where the employee has not appeared to work for the whole working day, he or she shall be paid at least in accordance with the time actually worked or the actual work done.

- It has been defined in Article 220 that "failure by the employee to appear to work or appearing to work for an incomplete working day for the purpose of organising the care of a child under the age of twelve during the time period of unplanned transfer or unplanned provision of vacations envisaged for educational (including pre-school) institutions shall not be deemed as violation of workplace discipline".

To protect health and ensure the safety of the employees during the state of emergency declared in the Republic of Armenia due to the novel coronavirus disease, as well as to organise the work and ensure the safety, to ensure implementation of mandatory requirements prescribed by the Instruction of the Commandant No Ts/17-2020 of 20 March 2020, as well as the decisions of the Commandant No 27 of 31 March 2020 and No 63 of 3 June 2020, including to ensure performance of work in a remote mode, the inspection body has carried out 23 144 (twenty three thousand one hundred forty four) monitorings during the period between 16 March 2020 to 11 September 2020, as a result of which the activities of 2866 (two thousand eight hundred sixty six) economic entities have been suspended.

A supplement has been made to Article 421 of the Code of the Republic of Armenia on Administrative Offences of 6 December 1985 by the Law No Ho-405-N of 4 September 2020 "On making supplements to the Code of the Republic of Armenia on Administrative Offences" and the Code has been supplemented by Article 182.4. As a result of supplements made, the Inspection body has been vested with the right to pay inspection visits, investigate the cases on administrative offences recorded as a result of those visits and to

impose administrative penalties.

To ensure compliance with the requirements of the Order of the Minister of Health of the Republic of Armenia No 17-N of 4 August 2020 "On approving the sanitary rules SK N 3.1.2-001-20 applied to prevent the spread of coronavirus disease in the Republic of Armenia" during the quarantine period established from 11 September 2020 by Decision of the Government No 1514-N of 11 September 2020 "On establishing quarantine due to the coronavirus disease (COVID-19)" between 11 September 2020 to 30 December 10330 (ten thousand three hundred thirty) inspection visits were paid. During the inspection visits 1411 (one thousand four hundred eleven) violations were recorded and administrative sanctions were imposed on 524 (five hundred twenty four) economic entities.

(f) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

The Ministry of Labour and Social Affairs has put into circulation a draft law providing for amendments to the Labour Code, according to which the duration of work for special category of workers (a guard for instance) working 24-hours a day has been revised to ensure compliance of the provision of the Code with the requirement of point 1 of Article 2 of the Revised European Social Charter. For this category of workers the draft law stipulates a 12-hours a day duration of daily working time instead of previous 24-hours.

(b) However, if the previous conclusion concerning provisions in Article 2, paragraphs 2 through to 7, was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion or conformity was deferred pending receipt of information, please reply to the questions raised.

2.2. Ensuring paid non-working days

As for this issue raised by the Committee, it should be mentioned that the concepts "basic salary" and "additional salary", including the types thereof, are defined by part 3 of Article 178 of the Labour Code. In particular, part 3 of Article 178 of Labour Code defines that "bonus shall be the additional remuneration calculated against the basic salary in the cases and in the amounts prescribed by this Code, by law, other regulatory legal acts, collective agreement or employment contract or the legal act of the employer which shall be paid for performing heavy, harmful or especially heavy, especially harmful work and/or overtime work and/or night work and/or works performed on rest days and non-working days (holidays and commemoration days) prescribed by law".

According to part 2 of Article 156 of the Labour Code "Engagement of employees in work on non-working holidays and commemoration days shall be prohibited, except for the

works the termination of which is impossible due to technical reasons of production or which are necessary for the provision of services to the population, as well as for performing urgent repair, and loading or unloading operations".

It should be noted, that the regulation of part 3 of Article 185 of the Labour Code shall apply to the employees of the fields listed in the same part only in the cases, when the work is performed during any one of at least five consecutive non-working days (public holidays, commemoration days, days off). That is to say, this regulation actually applies when there are at least five consecutive non-working days (public holidays, commemoration days, days off) and work is carried out by the employees of mentioned fields during any one of those days (in that case bonus size against the work performed during the non-working day (public holiday, commemoration day, day off) shall be determined upon consent of the parties or by collective agreement). In all other cases, the work performed during rest day and non-working, i.e. holidays and commemoration days shall be remunerated in accordance with parts 1 and 2 of Article 185 of the Labour Code, as was presented in the previous reports.

At the same time, however, taking into account the fact that Article 1 of the Law of the Republic of Armenia "On public holidays and commemoration days of the Republic of Armenia" was set out in a new wording by the Law "On public holidays and commemoration days of the Republic of Armenia" No Ho-362-N adopted on 17 November 2021 (the Law entered into force on 1 December 2021), it should be noted that in fact the case prescribed by part 3 of Article 185 of the Labour Code rarely occurs. In particular, according to the amendment to Article 1 of the Law of the Republic of Armenia No HO-362-N of 17 November 2021 "On public holidays and commemoration days of the Republic of Armenia", New Year and Christmas (which are non-working days) shall be celebrated from 31 December through 2 January (New Year) and on 6 January (Christmas and Epyphany). Whilst according to the edition in force before 1 December 2021, New Year and Christmas holidays (which are non-working days) were celebrated from 31 December through 2 January (New Year), on 3, 4 and 5 January (pre-Christmas holidays) and 6 January (Christmas and Epyphany).

That is to say, under the edition in force before 1 December 2021 it was possible to perform works from 31 December to 6 January, i. e. during at least five consecutive non-working days (public holidays, commemoration days, rest days), whilst under the current law of the Republic of Armenia "On public holidays and commemoration days of the Republic of Armenia" there are three consecutive non-working days — from 31 December to 2 January. In this case part 3 of Article 185 of the Labour Code shall apply only to the years, when two rest days (e.g. a weekend) follow or precede the period from 31 December to 2 January.

Amendments have been made to Articles 184 and 185 of the Labour Code by the Law " No HO-460-N of 9 October 2020 "On making amendments and supplements to the Labour Code of the Republic of Armenia (the law has entered into force on 11 October 2020). More specifically, Article 184 has been supplemented by part 2. The latter defines that during the martial law the provision stipulated in part 1 of the Article with regard to the obligation for payment of bonus (according to which "for each hour of overtime work, in addition to the hourly rate, an additional payment shall be made, not less than 50 percent of the hourly rate, and for each hour of night work, not less than 30 percent of the hourly rate, except for the case provided for by part 2 of this Article") does not extend to the cases of engagement in work of employees of organisations and institutions of state, territorial and local self-government bodies, state and community organisations and institutions, as well as organisations and institutions having been transferred under the management of authorised public administration body of any field due to the martial law (irrespective of the form of ownership).

Article 185 of the Labour Code has been supplemented by a new part 1.1 by the Law No HO-460-N of 9 October 2020 "On making amendments and supplements to the Labour Code of the Republic of Armenia". The latter prescribes that during the martial law the provision stipulated in part 1 of the Article (according to which "the work performed on rest days and non-working days of holidays and commemoration days established by law, unless it is envisaged in the work schedule, upon the consent of the parties shall be remunerated in at least double the amount of the hourly (daily) pay rate or task pay rate, or the employee shall be granted another paid rest day within a month, or that day shall be

added to the annual leave, except for the case provided for by part 1.1 of this Article") shall not extend to the cases of engagement in work of employees of organisations and institutions of state, territorial and local self-government bodies, state and community organisations and institutions, as well as organisations and institutions having been transferred under the management of authorised public administration body of any field due to the martial law (irrespective of the form of ownership).

2.4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;

Parts 1-2 of Article 250 of the Labour Code prescribe as follows:

1. Employment shall be temporarily terminated in the manner prescribed by regulatory legal acts, if:

   (1) the employee has not been introduced to the rules for safe performance of labour;

   (2) the means of labour is in a non-operable condition or there is an accident;

   (3) the work is performed with violations of the technical regulation;

   (4) employees are not provided with collective and/or individual safety measures;

   (5) the workplace is dangerous or harmful to life and health.

2. In case of emergence of danger within the organisation or the subdivisions of the organisation the employer shall be obliged to:

   (1) notify as soon as possible all employees and those who may be in danger about the danger, as well as about the measures to be taken for safety assurance and healthcare of employees and the actions to be taken by the employees;

(2) take measures to terminate the works and instruct the employees to abandon the working area and move to a safer place;

(3) organise the provision of first aid to the afflicted and the evacuation of the employees;

(4) notify the relevant internal and external services and authorities about the danger and the afflicted employees as soon as possible;

(5) prior to the arrival of the specialised services, engage the service of the organisation in charge of safety assurance and healthcare of employees, as well as the employees having received corresponding training to eliminate the danger.

Meanwhile, according to part 3 of Article 250 of the Labour Code, “in cases provided for by part 1 of this Article, where the employer does not take measures to protect employees from the potential danger, the service of the organisation in charge of safety assurance and healthcare of employees, as well as the representatives of the employees shall have the right to demand termination of work”. Where the employer refuses to fulfil the demand of the service of the organisation charge of safety assurance and healthcare of employees and the representatives of the employees, the latter shall notify the inspection body thereof. Head of the inspection body may take a decision to oblige the employer to terminate work after assessing the safety assurance and state of health of the employees. Where the employer refuses to fulfil the demands of the head of the inspection body exercising supervision authorised by the Government for ensuring labour safety, the latter shall have the right to address the Police for execution of the demand for termination of work and the evacuation of employees from the dangerous workplaces.

Parts 8 and 9 of Article 250 of the Labour Code prescribe that "when work is temporarily terminated in cases provided for by part 1 of this Article, the average salary of the employee shall be retained, accepting the average hourly rate as a basis for calculation". Where natural conditions impede the safe performance of works, they must be terminated. In case of emergence of a danger, the employer shall, in the manner prescribed by this Code have the

right to transfer employees to another job not provided for by the employment contract in order to prevent accidents in production.

According to Article 253 of the Labour Code, "The employer shall be obliged to inform the employees about the issues relating to the analysis and planning of the safety assurance and healthcare of employees, organising such activities and supervision over them; as well as make consultations with them. The employer shall be obliged to involve the representatives of employees in the discussion of the issues regarding the safety assurance and health of employees. The employer may set up a Commission for safety assurance and health of employees within the organisation, the rules of procedure whereof shall be prescribed by the Government".

Parts 1 and 2 of Article 256 of the Labour Code prescribes that in cases of emergence of accidents or acute diseases at the workplace the employer shall be obliged to provide employees with first aid. The employer shall organise the transfer of an employee having become ill or having received an injury at the workplace to the health organisation at his or her expense.

Pursuant to the Statute of the Health and Labour Inspection Body of the Republic of Armenia approved in 2018, the Inspection Body shall be vested with the competence to exercise supervision over the application of norms of health care and safety assurance of employees, in cases and in the manner prescribed by law, including supervision over ensuring guarantees prescribed by the labour legislation for persons under the age of 18, as well as for pregnant and breast-feeding women and employees taking care of a child. The powers of the Inspection Body include exercise of supervision over fulfilment of the requirements of the labour legislation, including temporary termination of activities, in the cases and manner prescribed by the Labour Code and other regulatory legal acts, until the violations are remedied.

The questionnaire of the checklist on exercise of supervision over the sphere of health care and safety assurance of employees during the mining and quarrying process, approved by decision of the Government No 718-N of 30 April 2020 "On approval of the checklists for

risk-based inspections carried out by the Health and Labour Inspection Body of the Republic of Armenia" includes the requirements prescribed by Article 253 of the Labour Code of the Republic of Armenia, i.e.:

(1) The employer shall be obliged to inform the employees about the issues related to the analysis and planning of the safety assurance and health care of employees, organising such activities and supervision over them, as well as make consultations with them;

(2) The employer shall be obliged to involve the employees' representatives in the discussion of the issues regarding the safety assurance and health of employees.

2.6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;

It is envisaged to make a supplement in Article 84 of the Labour Code (Contents of the individual legal act on accepting for employment and the employment contract) by the Draft Law of the Republic of Armenia "On making amendments and supplements to the Labour Code of the Republic of Armenia" developed and put into circulation by the Ministry of Labour and Social Affairs, and to define that the individual legal act on accepting for employment, the employment contract shall also contain information on the time limits for notification on rescission of the employment contract.

Article 4. Right to Fair Remuneration

Information with regard to changes undertaken during the reporting period and to questions submitted by the European Committee of Social Rights (hereinafter referred to as "the Committee")

(a) Please provide up to date information on the rules applied to on-call service, zero-hour contracts, including on whether inactive periods of on-call duty are considered as time worked or as a period of rest and how these periods are remunerated.

Labour Code does not provide for an «On-call service» as a type of contract. The information on various countries examined with respect to this issue reveals that this type of contracts is used in case of works, which require calling a specialist on an ad hoc basis. The specialists often referred to within the scope of such contractual regulations include doctors, veterinarians, engineers or the employees of emergency services.

The regulations of the Labour Law shall extend to the doctors employed on the basis of employment contracts, and the regulations of the Civil Code shall extend to the doctors employed on the basis of civil law contracts. The specifics of work and rest regimes for employees of the health care sector employed on the basis of employment contracts shall be defined by the Decision of the Government No 201-N of 1 February 2007, the various lists of Annex No 1 whereof prescribe various normal durations of the weekly working time for employees of the health care sector depending on the position held thereby or their profession.

Considering another example with respect to employment of engineers working in the public sector, it should be noted that, the employees e. g. holding a position of an engineer in the Urban Development Committee, are considered to be civil servants, therefore employment relations with them are solely regulated by legislation related to public service.

Engineers working in the private sector may carry out their activities based on the principles adopted under the business policy of the given organisation both on the basis of legal relations on provision of services under civil law contracts and within the scope of general legal regulations prescribed by employment contracts and labour law.

It should be noted that, in general, within the scope of employment relations the employees shall be obliged to keep to the defined work (shift) schedules (part 3 of the Article 142 of the Labour Code).

Pursuant to part 1, point 4 of part 2 of Article 138 of the Labour Code the working time for

the employees within the scope of employment relations shall include e. g. the actual hours worked, shift at workplace or at home, the period of secondment, the period necessary for arranging or preparing a workplace, work tools and safety measures, the period of idleness, other periods prescribed by the same part, by law, collective agreement or internal legal acts. Breaks for rest or eating, daily (inter-shift), weekly uninterrupted rest, non-working holidays and commemoration days prescribed by this Code, leave shall not be included in the working time, but shall be counted in the work experience. The mentioned periods may be included in the working time where the employee performs work on those days in the cases and the manner provided for by this Code.

Pursuant to the Article 165 of the Labour Code "Working year, for which annual leave is granted, shall include, e. g. the following: the actual period worked, the period in which, according to the legislation, the employee retains the workplace (position) and salary completely or partially, the period of the employee's temporary incapacity for work, the period of paid annual leave and other periods."

Pursuant to part 1 of Article 178, parts 1-2 of Article 180 of the Labour Code "The salary is the remuneration for works performed by an employee under law, other legal acts or an employment contract. The minimum conditions, amount of remuneration for work, occupational and official, tariff and qualification requirements, labour standards, as well as tariffication of jobs and employees shall be defined by the legislation of the Republic of Armenia or by the collective agreement. The hourly, work-based and monthly rates, other forms, amount and conditions of remuneration for work, the labour standards shall be defined by the collective agreement or the employment contract".

That is, with respect to the raised issue it's essential to know the form of remuneration for work of the employee: whether the work is remunerated by hourly, work-based or monthly rates. At the same time, it should in all cases be taken into account that the underlying principle for remuneration for work is paying the employee for the work performed.

As to performance of works under civil law contracts, the regulations of labour law (including granting of annual leave) shall not extend on such relations. Civil law relations are bilateral contractual relations (contractor, service provider), which are regulated in the

manner and under the conditions prescribed by the contract (the specifics are prescribed by regulations of the Civil Code).

(b) Please explain the impact of the COVID-19 crisis on the right to a fair remuneration as regards overtime work and provide information on measures taken to protect and fulfil this right. Please include specific information on enjoying the right to a fair remuneration/compensation for overtime work for medical staff during the pandemic and explain how the matter of overtime work and working hours was addressed in respect of teleworking (regulation, monitoring, remuneration, increased compensation).

To solve the issues having arisen in the employment legal relationship and also to ensure to the extent possible the protection of labour rights of employees in a situation that occurred in the aftermath of COVID-19 epidemic, amendments and supplements were made to the Labour Code on 29 April 2020 (by HO-236-N).

In particular, the following was set out:

- in case of existence of a written application received in the period of prevention of natural disasters, technological accidents, epidemics, accidents, fires and other cases of emergency or elimination of the consequences thereof the authorised inspection body of the field carries out state supervision over the fulfilment of requirements of the labour legislation, other regulatory legal acts containing labour law norms, requirements of collective and employment contracts by the employers, imposing sanctions in cases provided for by law (Article 33.1 of the Labour Code);
- the work performed in a remote mode shall be the work performed outside the workplace in the period of prevention of natural disasters, technological accidents, epidemics, accidents, fires and other cases of emergency or urgent elimination of the consequences thereof, in the case when due to these situations it becomes impossible to ensure performance of those works in the workplace (part 1 of Article 106.1 of the Labour Code);

- performance of work in a remote mode shall not be considered a change of workplace or other essential working condition (part 2 of Article 106.1 of the Labour Code);
- the employee shall retain his or her salary completely in case of work in a remote mode (part 3 of Article 187.1 of the Labour Code);
- the obligation of the employer to grant annual leave upon the request of an employee when the employee has unused days of annual leave, where it becomes impossible to continue works provided for by the employment contract, including in a remote mode (part 3 of Article 106.1 of the Labour Code);
- where in the time of epidemics the employee failed to appear to work or appeared to work for an incomplete working day, he or she shall be paid at least in accordance with the time actually worked or the actual work done (part 1 of Article 187.1 of the Labour Code);
- in the case when the employee has appeared to work for an incomplete working day in order to organise the care of a child under the age of twelve during the time period of unplanned transfer or unplanned provision of vacations envisaged for educational (including pre-school) institutions, the employee will retain his or her salary in full, where his or her absence during the working day does not exceed two hours. In the cases mentioned in this part, where the absence during the working day exceeds two hours, as well as where the employee does not appear to work for the whole working day, he or she shall be paid at least in accordance with the time actually worked or the actual work done (part 2 of Article 187.1 of the Labour Code);
- where during the period of idleness, due to no fault of his or her own, the employee is not offered another job that matches his or her profession and qualification and that he or she could have performed without causing harm to his or her health, the employee shall be paid two-thirds of his or her average hourly salary prior to idleness for every hour of idleness, but no less than the minimum hourly rate established by the legislation (part 1 of Article 186 of the Labour Code);

- prohibition on rescission of employment contract upon the initiative of the employer and imposing of disciplinary penalties in case of failure to appear to work or appearing to work for an incomplete working day due to epidemic (point 5 of part 1 of Article 114, part 2 of Article 220 of the Labour Code).

As for the overtime works:

pursuant to part 2 of Article 144 of the Labour Code the employer may engage the employee in overtime work only in exceptional cases provided for by Article 145 of this Code.

It should be noted that pursuant to part 1 of Article 145 of the Labour Code one of the exceptional cases of permitting overtime work shall also be e.g. the work necessary for prevention of epidemics and other cases of emergency or for elimination of the consequences thereof.

It shall also be stated that pursuant to part 1 of Article 146 of the Labour Code the overtime work, upon request of the employer, shall not exceed 4 hours during two successive days, and 180 hours — during a year, except for the cases mentioned in point 1 of part 1 of Article 145 of the Code, where the overtime work shall not exceed 8 hours during two successive days, and in which case maximum durations of daily and weekly working time prescribed by part 3 of Article 139 of the Code shall be retained. The maximum duration of working time, including overtime work, may not exceed 12 hours a day (including the break for rest and meal), and 48 hours - during the week.

It should be mentioned that in 2020 due to COVID-19 epidemic complaints were received by the authorised inspection body (i. e. Health and Labour Inspection Body) for failure to provide salary or its partial provision, failure to grant an annual leave or delay in granting it. Violations of the law more frequently committed by economic entities, according to the prevalence thereof, concerned failure by the employer to pay monetary compensation (final settlement, dismissal benefit) to the employees in case of their dismissal from work, violation of the procedure for rescission of the contract upon the initiative of the employer

provided for by the Labour Code, improper exercising by the economic entities of their powers. For the purpose of eliminating the violations executive orders on assignment of tasks were issued to economic entities, penalties were imposed.

Awareness-raising and consultation works on the procedure for organising activities in a remote mode by reason of state of emergency were carried out.

(c) The Committee would welcome information on any other measures put in place intended to have effects after the pandemic which affect overtime regulation and its remuneration/compensation. Provide information on their intended duration and the time frame for them to be lifted.

In addition to the information provided in point (a) with respect to overtime works performed, it should be noted that in accordance with part 1 of Article 184 of the Labour Code "For each hour of overtime work, in addition to the hourly rate, an additional payment shall be made, not less than 50 percent of the hourly rate." *This provision extends to the remuneration of overtime works performed in a remote mode as provided for under point (a).*

(d) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

As a result of the amendments made to Article 184 of the Labour Code of the Republic of Armenia by Law of the Republic of Armenia HO-117-N "On making amendments and supplements to the Labour Code of the Republic of Armenia" adopted on 24 June 2010, for each hour of overtime work, in addition to the hourly rate, an additional payment shall be made, not less than 50 percent of the hourly rate; the provision "Upon the agreement of parties, each overtime hour shall be remunerated at the rate not less than the hourly rate fixed for the employee" has been repealed. As a matter of fact, the provision which allowed

the employer not to make an additional payment to the employee for overtime work upon consent of the party was deleted, and a minimum threshold on additional payment was set, below which the employer had no right to remunerate the employee for each hour of overtime work even upon consent of the parties.

On the other hand, the approach "remuneration for each hour may not be less than the hourly pay of the employee" mentioned by the Committee is already ensured by the regulation in effect of part 1 of Article 184[1] of the Labour Code, as the employee shall be paid his or her hourly rate, as well as the additional payment, not less than 50 percent of the hourly rate, except for the case provided for by part 2 of the same Article.

The specified amendments were made for the purpose of bringing the relevant provisions of the Labour Code of the Republic of Armenia (setting the level of payment for additional working time necessarily higher than normal remuneration) into compliance with Article 4.2 of the Charter.

Referring to the observation on the regulations prescribed by part 1 of Article 185 of the Labour Code it is worth mentioning that:

For the work performed on rest days and non-working days (holidays and commemoration days) prescribed by law, unless it is envisaged in the work schedule and is performed as an overtime work, the employee shall both:

(1) be paid for each hour of overtime work, in addition to the hourly rate, a bonus no less than 50 percent of the hourly rate (part 1 of Article 184 of the Labour Code);

[1] During the reporting period Article 184 of the Labour Code of the Republic of Armenia has undergone amendments (Law HO-460-N of 9 October 2020 of the Republic of Armenia which entered into force on 11 October 2020). As a result, Article 184 of the Labour Code of the Republic of Armenia prescribes as follows:
1. For each hour of overtime work, in addition to the hourly rate, an additional payment is paid no less than 50 percent of the hourly rate, and for each hour of night work, no less than 30 percent of the hourly rate, except for the case provided for by part 2 of this Article".
2. During the period of martial law the provision stipulated by part 1 of this Article with respect to the obligation to pay bonus shall not extend to the cases of engagement in work of employees of organisations and institutions of state, territorial and local self-government bodies, state and community organisations and institutions, as well as organisations and institutions having been transferred under the management of authorised public administration body of any field due to the martial law (irrespective of the form of ownership).".

(2) upon consent of the parties shall be remunerated in at least double the amount of the hourly (daily) pay rate or task rate, or the employee shall be granted another paid rest day within a month, or that day shall be added to the annual leave, except for the case provided for by part 1.1[2] of the same Article (part 1 of Article 185 of the Labour Code).

That is to say, the bonuses envisaged for overtime work and the bonuses envisaged for works performed on rest days, non-working days (holidays and commemoration days) prescribed by law are different irreplaceable guarantees defined by the Labour Code of the Republic of Armenia.

Therefore, if the work performed on rest days and non-working public holidays and commemoration days defined by law also constitutes an overtime work for the employee, the employer shall pay the employee both the bonuses prescribed for overtime work and for work performed on rest days and non-working public holidays and commemoration days defined by law.

In addition to the above-mentioned, where, upon the consent of parties, the bonus for the work performed on non-working public holidays and commemoration days defined by law takes the form of a rest time, the employee shall be granted both the additional rest time as compensation for work performed on rest days and non-working days of holidays and commemoration days, and the bonus envisaged for overtime work prescribed by part 1 of Article 184 of the Labour Code.

[2] Article 185 of the Labour Code has been supplemented by part 1.1 (Law HO-460-N of 9 October 2020 of the Republic of Armenia, which has entered into force on 11 October 2020), which reads as folows:
"During the period of martial law the provision stipulated by part 1 of this Article with respect to the obligation to pay bonus shall not extend to the cases of engagement in work of employees of organisations and institutions of state, territorial and local self government bodies, state and community organisations and institutions, as well as organisations and institutions having passed under the management of authorised public administration body of any field due to the martial law (irrespective of the form of ownership).".

The employer may establish other additional guarantees in the cases and as prescribed by the collective agreement or employment contract[3].

That is, the above-mentioned provision enshrined in the Labour Code already guarantees compliance with the requirements of Article 4.2 of the Charter.

With respect to the above-stated, it is necessary to refer to the specifics prescribed by part 3 of Article 185 of the Labour Code, according to which the requirements set by parts 1 and 2 of this Article shall not apply to employees working in the sectors of health care, curatorship (guardianship), children's upbringing, energy, gas and heat supply, communication and other fields of work of special nature if the work is performed during any one of at least five consecutive non-working days (holidays, commemoration days, rest days). Moreover, in the case prescribed by this part, the amount of the bonus for work performed during a non-working day shall be determined upon consent of the parties or by the collective agreement.

It should be noted, that the regulation of part 3 of Article 185 of the Labour Code shall apply to the employees of the fields listed in the same part only in the cases, when the work is performed during any one of at least five consecutive non-working days (public holidays, commemoration days, rest days). That is to say, this regulation actually applies when there are at least five consecutive non-working days (public holidays, commemoration days, days off) and work is carried out by the employees of mentioned fields during any one of those days (in that case bonus size against the work performed during the non-working day (public holiday, commemoration day, day off) shall be determined upon consent of the parties or by collective agreement). In all other cases, the work performed during rest day and non-working, i. e. holidays and commemoration days shall be remunerated in accordance with parts 1 and 2 of Article 185 of the Labour Code.

However, it should be stated that Article 1 of the Law of the Republic of Armenia

[3] Grounds: part 1 of Article 6, part 1 of Article 45, sub-point 3 of part 2 and sub-points 1 and 8 of part 3 of Article 49, part 1 of Article 57, part 3 of Article 84 and parts 1 and 3 of Article 178 of the Labour Code of the Republic of Armenia.

"On public holidays and commemoration days of the Republic of Armenia" was set out in a new wording by the Law No HO-362-N adopted on 17 November 2021 (the Law entered into force on 1 December 2021) "On public holidays and commemoration days of the Republic of Armenia". As a result, the case defined by part 3 of Article 185 of the Labour Code may rarely occur. In particular, according to the amendment to Article 1 of the Law of the Republic of Armenia HO-362-N of 17 November 2021 "On public holidays and commemoration days of the Republic of Armenia" New Year and Christmas (which are non-working days) shall be celebrated from 31 December through 2 January (New Year) and on 6 January (Christmas and Epyphany). Whilst according to the edition in force before 1 December 2021, New Year and Christmas holidays (which are non-working days) were celebrated from 31 December through 2 January (New Year), on 3, 4 and 5 January (pre-Christmas holidays) and 6 January (Christmas and Epyphany). That is, under the edition in force before 1 December 2021 it was possible to perform works from 31 December to 6 January, i. e. during at least five consecutive non-working days (public holidays, commemoration days, rest days), whilst under the current law of the Republic of Armenia "On public holidays and commemoration days of the Republic of Armenia" there are three consecutive non-working days — from 31 December to 2 January. In this case part 3 of Article 185 of the Labour Code shall apply only to the years, when two rest days (e. g. a weekend) follow or precede the period from 31 December to 2 January.

3. (a) Please provide information on the impact of COVID-19 and the pandemic on the right of men and women workers to equal pay for work of equal value, with particular reference and data related to the extent and modalities of application of furlough schemes to women workers.

Pursuant to part 3 of Article 180 of the Labour Code, with respect to organising remuneration of labour, the Labour Code of the Republic of Armenia necessarily stipulates that in case of applying a job qualification system, the same criteria shall apply to both men and women, and this system must be elaborated so that any discrimination based on gender

is excluded.

At the same time, part 2 of Article 178 of the Labour Code clearly stipulates that "men and women shall receive equal pay for equal or equivalent work" *(according to part 3 of Article 178 of the Labour Code "The salary shall include the basic salary and any additional salary paid by the employer to the employee for the work performed by him or her").*

See the information submitted with respect to the question of point (a) concerning the specifics of work in a remote mode, remuneration of work in a remote mode prescribed by the Labour Code due to the epidemic (including specifics of salary payment), as well as supervision carried out by the authorised inspection body during 2020 due to COVID-19 epidemic.

At the same time, with respect to statistical information on remuneration of women and men see Statistical Collection entitled "Women and Men in Armenia, 2021", pages 81-83 (https://armstat.am/file/article/gender_2021.pdf).

(b) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

As has also been mentioned in the previous national reports of the Republic of Armenia, regulations and guarantees on adequate remuneration of women and men for the same or equivalent work and non-discrimination are clearly stipulated by Articles 29 and 30 of the Constitution of the Republic of Armenia in the wording of 6 December 2015, points 3, 5 and 6 of part 1 of Article 3, Article 3.1, part 2 of Article 178, part 3 of Article 180 of the Labour Code, Article 6, parts 1-3 of Article 19 of the law of the Republic of Armenia "On ensuring equal rights and equal opportunities for women and men", as well as by regulations of separate laws for employees of specific fields of activity of the Republic of Armenia.

In addition to the information provided under point (a), it should also be noted that:

a supplement has been made to the Labour Code by the Law HO-173-N of 10 September

2019 "On making a supplement in the Labour Code of the Republic of Armenia" (has entered into force from October 19), wherein discrimination as a concept has been defined and prohibition of discrimination in employment relations has been stipulated. In particular, Article 3.1 added to the Labour Code defines as follows:

"1. Discrimination shall be prohibited by the labour legislation.

2. Any direct or indirect distinction, exclusion or restriction on the grounds of sex, race, skin colour, ethnic or social origin, genetic features, language, religion, world view, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances, the aim or result whereof is displaying less favourable treatment in cases of emergence and/or change and/or termination of collective and/or individual employment relations or prohibiting or denying the recognition and/or exercise, on equal basis with others, of any right prescribed by labour legislation shall be deemed to be discrimination, except for cases when such distinction, exclusion or restriction is objectively justified by the legitimate aim pursued, and the means used for reaching that aim are proportionate and necessary.

3. In job announcements (competitions) and when establishing employment relations, it is prohibited to establish any condition deemed to be a ground for discrimination other than practical qualities and professional training and qualification, except for cases when it derives from job-specific requirements.".

That is, as provided by the information given under the Revised European Social Charter, this Article and Article 20, the legislation of the Republic of Armenia guarantees the right to effective legal remedies for restoration of the violated rights of a person.

In particular, each person shall have the right to apply to court, as prescribed by the Civil Procedure Code, in order to protect his or her rights and legal interests prescribed by the Constitution, laws and other legal acts or provided for by a contract. It should be noted that the former Civil Procedure Code did not set forth the specifics with regard to employment disputes, i.e. the latter were subject to investigation by general rules on investigation and resolving of civil cases. The new Civil Procedure Code, which has entered into force since

29 April 2018, introduces Chapter 24 entitled "Proceedings for separate employment disputes", which defines the scope of cases investigated through the procedure for this proceedings, the time limits for investigation thereof, including performance of certain actions, provides for manifestations of the active role of the court, special rules for distribution of the burden of proof, as well as issues to be discussed when delivering a judgement. Thus, according to part 1 of Article 210 of the new Civil Procedure Code "The court shall, as prescribed by Chapter 24, examine and settle individual labour disputes, examined under special adversary proceedings, related to the change, rescission of employment contract and subjecting an employee to disciplinary liability. In fact, the legislator has chosen cases which have a more serious impact on the rights of the employee and a common logic from the point of view of evidence-based process. *Other disputes pertaining to employment relations shall be subject to examination through judicial procedure under general rules for examination and settling of other civil cases.* In terms of what was laid down above, it is necessary to bear in mind that the legislator considers the nature of the dispute as a condition for instituting proceedings for labour disputes. In other words, in considering the applicability of the proceedings in question the court must not merely rely on the subject matter of the claim, i. e. the claim put forward by the claimant. The next peculiarity of examining labour disputes under special adversary proceedings concerns *the process of proving*. In terms of this, first of all a particular attention should be paid to part 1 of Article 213 of the new Civil Procedure Code, pursuant to which "The burden of proof as to having observed the procedure underlying the disputed individual legal act and established by the law relating to the adoption of the given individual legal act, other regulatory legal act or internal legal act of the employer, shall be borne by the respondent".

It should also be noted that according to effective regulations where a disagreement arises between the employee or the employee who has formerly been in employment relations with the given employer and the employer as a result of discrimination manifested on the basis of gender in regard to salary, as a labour dispute, it shall be subject to examination through judicial procedure in the manner prescribed by the Civil Procedure Code of the

Republic of Armenia (Article 263, part 1 of Article 264 of the Labour Code).

As far as observation on the size of compensation is concerned:

Meanwhile, where a woman (man) finds that her (his) right has been violated and as a result of the discrimination practiced against her (him) she is paid a lower salary than the man (woman) working in the same organisation, she (he) shall be free to apply to court for protection of her (his) violated employment right (part 1 of Article 38 of the Labour Code).

Labour Code does not provide for a requirement on size restriction with respect to the salary due to a person, but unpaid, including by reason of manifested discrimination.

The compensation procedure envisaged for the employee in case of restoring through judicial order the violated rights of the employee in accordance with the regulations prescribed by Article 265 of the Labour Code has already been mentioned in the 2018 national report on Article 4.3 of the Charter (parts 1 and 2 of Article 265 of the Labour Code).

Referring to the regulation of part 2 of Article 265 of the Labour Code it should be mentioned that for economic, technological, organisational reasons or in case of impossibility of reinstatement of future employment relations between the employer and the employee, compensations shall be paid to the employee:

- for the entire period of forced idleness, prior to entry into force of the court judgement;
- for non-reinstatement of the employee to office.

In this case, the legislator provides for a certain restriction only for the compensation paid to the employee for non-reinstatement to work, i. e. the compensation shall be defined in the amount not less than the average salary but not more than the twelve-fold of the average salary (the exact amount shall be determined by court). By this definite restriction mentioned, the legislator seeks to ensure, in a certain sense, also the interests of the employer, taking into account the fact that the Labour Code is a bilateral legal act regulating the relations between the employee and the employer. Payment of that compensation

already implies that the employer shall be subjected to significant financial liability for non-reinstatement of the employee to work.

It should also be noted that the court shall decide the exact size of the compensation for non-reinstatement of the employee to work in the case prescribed by part 2 of Article 265 of the Labour Code.

It is necessary to refer also to the peculiarities prescribed by the Civil Code (Article 1087.2) for compensation of intangible damage, according to which "The size of compensation of intangible damage shall be determined by the court in compliance with the principles of reasonableness, equitableness and proportionality". When determining the size of compensation of intangible damage, the court shall take into account the nature, degree and duration of physical or mental suffering, consequences of the damage caused, existence of fault while causing damage, personal characteristics of the person who suffered intangible damage, as well as other relevant circumstances".

It has already been mentioned in 2018 National Report on Article 4.3 of the Charter that the comparisons of remuneration between organisations, referred to by the Committee, may be conducted at the level of collective employment relations.

At the same time, it should be stated that according to part 4 of Article 5 of the Law HO-157-N of 12 December 2013 "On remuneration for persons holding state positions and state service positions" and point 5 of part 3 of Article 38 of the Law of the Republic of Armenia HO-205-N of 23 March 2018 "On Civil Service", as well as taking into account the requirements of the procedure approved by the decision of the Government No 1420-N of 18 December 2014, an analysis of labour market **according to specialisations and territories shall be carried out in the Republic of Armenia once in three years aimed at changing the calculation coefficients of the basic salary and official pay rates for persons holding state positions.** The regular report drawn up in 2021 shall be published in the official website of the Bureau of Civil Service of the Office of the Prime Minister. As a result of analysis of the information on amounts of salaries of state servants (except for servicemen, servants of the penitentiary and rescue services), the following indicators shall be calculated and (or)

assessed:

(1) specialisations and average salary prevailing in the state service system, according to prevailing professions, including according to services;

(2) the average salary in the state service system;

(3) the average salary according to state services;

(4) the average salary in separate state services according to groups of positions;

(5) the average salary according to gender, including according to groups of positions.

With respect to paying greater attention to the issue of equal remuneration of women and men in the national action plans on employment it should be noted that:

The previous reports already contained information on this: the national, sector-specific strategic documents and priorities and the 17 goals included in "Transforming our World: the 2030 Agenda for Sustainable Development" adopted in the UN Conference on Sustainable Development by the leaders of world countries held in New York in September 2015 (which include the goal "gender equality: achieve gender equality and empower all women and girls") and UN Development Assistance Framework were taken as a basis for development of the "Dignified work" 2019-2023 National Plan of the Republic of Armenia jointly elaborated by ILO and tripartite partners in Armenia and signed on 14 May 2019.

In this sense, taking into account the fact that gender pay gap is a serious issue encountered both in the whole world and in the Republic of Armenia, the "Dignified Work" national plan prioritises the expansion of employment capacities of women and men. The information on the 2019-2023 Strategy and the Action Plan for implementation of the gender policy in the Republic of Armenia approved by Decision of the Government 1334-L of 19 September 2019 has also been introduced in the previous 2020 national report of the

Republic of Armenia on Article 20 of the Charter[4].

The second priority of the Strategy sets out the area "Overcoming gender discrimination in social and economic field, enhancing the economic opportunities of women". In this respect, e.g. actions taken by the Ministry of Labour and Social Affairs envisaged under state programs aimed at developing the skills and building the capacities of young mothers who are non-competitive in the labour market and have no profession are focused on enhancing the competitiveness of women in the labour market, enhancing the role of a woman in generating household income, combining work and child/family care.

The study of statistics disaggregated by sex maintained by the Statistical Committee allows to identify the differences between the statuses of women and men. In particular, the following statistical data are presented below:

In accordance with the data published in the statistical booklet "Women and men in Armenia, 2021" of the Statistical Committee in 2020 as compared to 2017 the gender pay gap of average monthly salaries (earnings) has been reduced by 8.5 percentage points. In 2020 the average earnings of women in the Republic of Armenia comprised 64.9 percent of that of the men or the remuneration gender pay gap amounted to 35.1 percent[5]. It should be noted that the above-mentioned salary indicators concern average monthly and not hourly remuneration, which does not allow to take into account the causes of differences in remuneration of women and men.

With respect to this it should be stated that the international expert involved in the UN Women Country Office in Georgia Project "Economic empowerment of women in South Caucasus" has for the first time calculated the unadjusted and adjusted gender pay gap indicators of hourly remuneration gender pay gap (gaps) according to individual and work-related factors, multivariate regression analysis has been carried out based on microdata of 2018 of Labour Force Survey conducted in households. Based on the analysis a bilingual

[4] The actions introduced in the Strategy are summed up each year and published on the official website of the Ministry of Labour and Social Affairs at: https://www.mlsa.am/?page_id=4405:
[5] See in the booklet at the following link: https://armstat.am/file/article/gender_2021.pdf).

report has been prepared[6] entitled "Analysis of remuneration gender pay gap and gender inequality" in the labour market of Armenia. Pursuant to that report (pages 33, 40 and 51), the unadjusted or adjusted gender pay gap of hourly remuneration of Armenia (which does not take into account personal characteristics, education) amounts to 23.1 percent, and the adjusted remuneration gender pay gap amounts to 28.4 percent. Calculation of gender pay gap of hourly remuneration is important as women in Armenia work fewer hours than men, which is related to time spent in unpaid housework. If this is not being given due weight, the remuneration gender pay gap shall reflect the differences between gender salaries and average worked hours (for more details see the Report).

With the view of improving the statistics of salary (including also the quality and full coverage of statistics), from 2018 the Statistical Committee (ARMSTAT) has switched to application for statistical purposes of the personalised record-keeping database of income tax and social payment of the State Revenue Committee (see the details at: https://armstat.am/file/article/trud_2019_11.pdf).

4. *(a) Please provide information on the right of all workers to a reasonable period of notice for termination of employment (legal framework and practice), including any specific arrangements made in response to the COVID-19 crisis and the pandemic.*

Article 123 of the Labour Code prescribes that in cases provided for by point 5 (if the employee regularly fails to fulfil the duties reserved for him or her by the employment contract or the internal regulatory rules, with no good reason), point 6 (in case the employer has lost confidence in the employee), point 8 (where the employee is found to be under the influence of alcoholic beverages, narcotics or psychotropic substances at the workplace), point 9 (where the employee fails to come to work throughout the entire working day (shift) with no good reason) and point 10 (in case the employee rejects or evades mandatory

[6] The Report is available at the following links:
1. English: https://www.armstat.am/file/article/analysis_of_the_gender_pay_gap_armenia_en.pdf,
2. Armenian: https://www2.unwomen.org/-/media/field%20office%20georgia/attachments/publications/2020/analysis%20armenian.pdf?la=en&vs=532):

medical examination) of part 1 of Article 113 of the Code, the employer shall have the right to rescind the employment contract without notifying the employee thereof.

Lack of performance of employment duties or improper performance of such duties due to the fault of the employee shall be deemed as violation of workplace discipline (ground: Article 220 of the Labour Code). Certain disciplinary sanctions may, as prescribed by Chapter 21 of the Labour Code of the Republic of Armenia, be applied against an employee for violating workplace discipline, particularly warning, strict warning and rescission of employment contract by the grounds in points 5, 6, 8-10 of part 1 of Article 113 of the Code. Moreover, Article 224 of the Labour Code of the Republic of Armenia stipulates that the gravity of violation and consequences thereof, the guilt of the employee, the circumstances behind the violation and the work that the employee has previously performed shall be taken into consideration in case of application of a disciplinary penalty. Consequently, the circumstances defined by Article 224 of the Code shall be accepted as a basis in case of rescission of employment contract on grounds indicated in points 5, 6, 8-10 of part 1 of Article 113 of the Code.

In relation to regulations in paragraph 4 of Article 4 of the Charter of the European Committee of Social Rights, the Analytical Summary of Case Law of the Charter indicates that where implementation of certain procedures is required for rendering a decision on early termination of employment relations due to reasons other than the grounds of disciplinary nature, the period of notification shall start only after the decision has already been rendered. That is to say, it is safe to conclude that the cases of early termination of employment relations due to the grounds of disciplinary nature, based on the above-mentioned observation of the Committee, shall be separated from the cases of early termination of employment relations due to other reasons.

Evidence of this is also the above-mentioned observation indicated in the previous opinions of the Committee that the only grounds for immediate dismissal from the job that complies with paragraph 4 of Article 4 of the Charter are repetition of the cases of failure to fulfil duties or disciplinary violations. In this sense, the cases of rescission of employment contract on grounds indicated in points 5, 6, 8-10 of part 1 of Article 113 of the Labour Code

shall constitute early termination of employment relations due to the grounds of disciplinary nature. Consequently, the Labour Code has not prescribed time limits for notification in cases of rescission of employment contract on grounds indicated in points 5, 6, 8-10 of part 1 of Article 113 of the Labour Code of the Republic of Armenia.

On the ground indicated in point 5 of part 1 of Article 109 of the Labour Code (part 1 of Article 124 of the Code), the employment contract shall be rescinded, where the employee is conscripted to compulsory fixed-term military service. At the same time, in accordance with part 3 of Article 5 of the Law of the Republic of Armenia "On military service and the status of a serviceman" adopted on 15 November 2017 "compulsory military service is the main form of fulfilment of the constitutional obligation to participate in the protection of the Republic of Armenia by citizens of the Republic of Armenia. Service organised in the armed forces and in other forces through military call-up shall be deemed to be compulsory military service".

Pursuant to part 1 of Article 20 of the law of the Republic of Armenia "On military service and the status of a serviceman", the relevant military commissariat —with the view of ensuring the presence of a citizen in the call-up for compulsory military service, and the diplomatic representation or consular office in the case when the citizen resides in a foreign state and is registered in the diplomatic representation or consular office of the Republic of Armenia in that state — the diplomatic representation or consular office shall notify the citizen electronically or in a hard copy on his obligation to appear to military commissariat indicating in the notice the time limit for appearing to the military commissariat. According to part 2 of this Article, after announcement of call-up for compulsory military service citizens having obligation to proceed to compulsory military service and subject to call-up are obliged to appear to the military commissariat of the place of record-registration, and, where it is impossible, to the nearest military commissariat within the period specified in the notice. Part 1 of Article 124 of the Labour Code defines that "in case of being conscripted to compulsory fixed-term military service no later than three days prior to the date mentioned in the relevant written notice, the employer shall rescind the employment contract".

It should be noted that in case of being conscripted to compulsory fixed-term military service the relevant written notice shall serve as a ground for rescission of the employment contract. That is, in this case the citizen is already notified about fulfilling his constitutional obligation. Therefore, in case of conscription to compulsory fixed-term military service, the notification within a reasonable time limit provided for by the Labour Code (e. g. Article 115) loses its vital importance. It should be stated that part 1 of Article 124 of the Labour Code also defines that "Within a month after the discharge from compulsory military service the employee may address the employer for the conclusion of a new employment contract. In case the employee addresses the employer within the mentioned time limits, the employer shall be obliged to conclude a new employment contract within three days, the essential conditions of which shall not be less favourable for the employee than the conditions of the employment contract which was in effect prior to recruitment to compulsory fixed-term military service.

With regard to changes taken place during the reporting period it is necessary to refer to the amendments made to the Labour Code by the Law HO-270-N of 27 May 2021 (shall enter into force from 1 January 2022), according to which part 1 of Article 113 of the Labour Code has been supplemented by a new point 12 *(i.e. the employer shall have the right to rescind the employment contract concluded for an indefinite period of time, as well as the employment contract concluded for a fixed time limit before the end of the validity period thereof, in case the residence status of a foreigner is repealed or invalidated)*, and a supplement has been made to part 1 of Article 115 of the Labour Code according to which the employer is obliged to notify the employee in writing 3 days in advance in case the residence status of a foreigner is repealed or invalidated.

It should also be noted that the violations of the legislation more frequently committed by economic entities amid the coronavirus (Covid-19) epidemic according to prevalence thereof also include the violation of time limits for rescission of the contract in case of dismissal from the job, improper exercise of powers by economic entities.

Aimed at strengthening the system of protection of employee rights in the Republic of

Armenia, the Inspection Body promptly responded to the problems having arisen or prima facie offences being committed in the field of employment («EmployeeProtect.am» employment rights protection platform is functioning from 1 October 2021).

The platform allows the Inspection Body to carry out substantiated reforms on the basis of information submitted by the employees on problems existing in the field of protection of the employment right, inform the employees about the latest news in the field of protection of labour rights.

(b) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

See the information submitted for point "a" on notices prescribed by the Labour Code and substantiation with regard to those notices.

Meanwhile, with respect to *"providing information on notifying in the cases of termination of employment contracts and early termination of fixed-term employment contracts and dismissal from work during the probation period and (or) on dismissal benefit instead"*, it should be noted that the grounds prescribed by Article 113 of the Labour Code are envisaged for cases of rescission of both the employment contract concluded for indefinite term and the employment contract concluded for fixed-term contract; some of these grounds serve as a basis for notification terms prescribed by Article 115 of the Code and others for the dismissal benefits prescribed by Article 129.

The exact information on regulations prescribed by Articles 113, 115 and 129 of the Labour Code is presented within the scope of the question set out in point "a", as well as previously, in the previous national report of the Republic of Armenia.

At the same time, the following should be stated in relation to the question of the Committee "whether or not a notification benefit is paid in addition to the dismissal benefit provided for by the Labour Code":

The time limits prescribed by Article 115 of the Labour Code (during that period the

employee continues to work and receive salary) and the guarantees on payment of dismissal benefits prescribed by Article 129 of the Code are separate guarantees, which are not interchangeable[7].

At the same time, it is necessary e. g. to refer to the regulation prescribed by part 2 of Article 115 of the Labour Code according to which in case of failure to observe the time limits for notification provided for by part 1 of Article 115 of the Labour Code, as well as parts 1 of Article 93 *(Where the employer finds that the employee — based on the current results of the probation period set for evaluating the suitability of the employee for the envisaged job (position) — does not meet the prescribed requirements, he or she may dismiss the employee from work before the expiry of the time limit of the probation period by notifying him or her thereon in writing three days in advance)* and 2 of Article 111 of this Code (The employer may rescind the employment contract concluded for a fixed time limit due to the expiry of the contract by notifying the employee thereon in writing at least ten days in advance), the employer shall be obliged to pay a fine to the employee for every overdue day of notification which is calculated based on the average daily salary rate.

Pursuant to part 4 of Article 115 of the Labour Code, "During the periods defined by part 1 of this Article the employer shall provide the employee with time off to look for a new job". The duration of the time provided may not be less than ten percent of the working time included in the notification period. The time-off to look for a new job shall be provided in accordance with the schedule proposed by the employee. The average salary of the employee shall be retained during the mentioned period and shall be calculated based on the average hourly salary rate.

With regard to questions on time limits for notification applied in the public sector, we

[7] In particular, for example, both exact time limits for notifying the employee and guarantees for granting of dismissal fee are envisaged for cases of rescission of employment contract on the grounds provided for by points 1, 2, 3, 7, 11 of part 1 of Article 113 of the Code. That is to say, with regard to the observation made by the Committee on unreasonableness of the time limit and (or) size in the cases of rescission of the employment contract or dismissal from the job, as well as with regard to the fact that in certain cases the time limit for notification on dismissal from the job or the dismissal benefit granted instead is unreasonable, again it should be noted that the latter (the term for notification and the dismissal benefit) are not interchangeable.

would like to inform the following:

The relations related to organising civil service in the Republic of Armenia, evaluation of performance of civil servants, training, legal status of the civil servant, dismissal from the position, termination of service, as well as other relations related to the civil service as a separate type of state service shall be regulated by the Law of the Republic of Armenia HO-205-N of 23 March 2018 "On Civil Service" (Law) having entered into force from 1 July 2018, except for Articles 33-36, 38, 42 and 49 of the Law.

Grounds for dismissing a civil servant from position and terminating service shall be prescribed by Article 37 of the Law "On civil service"[8].

[8] Pursuant to part 1 of Article 37 of the Law "On civil service", the grounds for dismissing a civil servant from position shall be the following:
(1) a personal application;
(2) reduction of staff lists and/or elimination of civil service position in the case prescribed by Article 23 of this Law (reorganisation and (or) structural change of a relevant body);
(3) not being appointed to civil service position in the cases prescribed by part 6 of Article 23 of this Law (not being appointed to a position equal to the position held prior to reorganization and/or structural change or a lower position in case of reorganisation and/or structural change);
(4) declaring invalid the decision on dismissing from civil service position or the decision on terminating the service and restoring the person in his or her position of civil service;
(5) termination of activities of the relevant body;
(6) not consenting to appointment to a civil service position in the case prescribed by part 9 of Article 23 of the Law;
(7) being elected or appointed to a public position.
Pursuant to part 2 of Article 37 of the Law, the powers of a civil servant shall be terminated:
(1) in case of his or her death;
(2) in case of applying again, within one year, the disciplinary penalty provided for by sub-point "a" of point 2 of part 2 of Article 21 of this Law;
(3) in case of applying, within one year, the disciplinary penalties provided for by sub-points "a" and "b" of point 2 of part 2 of Article 21 of this Law;
(4) in case of applying the disciplinary penalty provided for by sub-points "c" of point 2 of part 2 of Article 21 of this Law;
(5) in case of not appearing at work for more than four consecutive months in the course of one year as a result of temporary incapacity for work or for more than 80 days in the course of the last twelve months — not counting maternity leave;
(6) in case of failure to pass the probation period established by this Law;
(7) in case of violation of the procedure for appointment to a civil service position as prescribed by this Law — upon petition of the Bureau of Civil Service;
(8) in cases of failure to follow the incompatibility requirements set by the Law of the Republic of Armenia "On public service", on the ground of the relevant conclusion;
(9) in case of terminating citizenship of the Republic of Armenia;
(10) in case of the judgement of conviction against him or her that has entered into force, except for the cases when a penalty has been imposed. In case the penalty or the unpaid part of the penalty is replaced with

It should be stated that "in case of dismissing from the civil service position under the grounds provided for by points 2-4 of part 1 of Article 37, warning civil servants about that shall not be mandatory".

Meanwhile, pursuant to part 3 of Article 24 of the Law "Civil servants dismissed from the civil service position on the grounds provided for by points 2-6 of part 1 of Article 37 of this Law, except for civil servants holding a position under a fixed-term employment contract, shall, upon their application, register in the personnel reserve of the civil service". According to part 5 of the Article "the period of being registered in the personnel reserve shall be included in work record in the civil service. The civil servant shall, in the manner prescribed by law, receive remuneration for three months from the relevant body where he or she has held a civil service position".

Meanwhile, part 3 of Article 27 of the law "On remuneration for persons holding state positions and state service positions" prescribes that "dismissal allowance provided for by the Labour Code, shall not be paid to a state servant in the cases of being dismissed from office where remuneration is provided for him or her, as prescribed by law, for the period of being involved in the reserve of the personnel". Therefore, in the cases of dismissing from the position or terminating powers where the law does not provide any guarantees for registration in the personnel reserve, and the Labour Code provides for dismissal allowance in similar cases, the servant must be paid the mentioned allowance.

In case of emergence of the grounds provided for by part 2 of Article 37 (except for the ground "termination of powers based on a personal application"), the official with the

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community service in case of violation by a person of performance of the duties established by the timetable for payment of the penalty, service shall be terminated;
(11) in case of attaining the maximum age for holding a civil service position as prescribed by this Law;
(12) in case of being declared by court order as having no or limited legal capacity or as missing;
(13) in case of being deprived by court order of the right to hold a civil service position;
(14) in case of contracting any one of the diseases approved by the Government;
(15) in case of being removed from the personnel reserve, except for the cases when the civil servant holds a public position or a public service position;
(16) in case of not receiving for two consecutive years, by his or her fault, the credits approved for an individual training programme;
(17) based on a personal application.

competence to appoint to a position shall, within two working days, adopt a relevant legal act on terminating the powers of a civil servant. That is to say, the civil servant shall not be notified in the cases of terminating the powers of a civil servant on the grounds provided for by part 2 of Article 37 of the law.

It should be noted that the grounds provided for by points 2-4 of part 2 of article 37 of the law refer to terminating the powers of a civil servant as a result of application of disciplinary penalty. However, part 3 of Article 21 of the law defines that "disciplinary penalty shall be applied after conducting an official investigation". That is, prior to imposing disciplinary penalties on a civil servant, an official investigation shall be conducted[9] for a duration of at least 30 working days.

Pursuant to part 1 of Article 22 of this Law, "in cases provided for by this Law the official having competence to appoint to a position shall assign an official examination, indicating the grounds for conducting the official examination, questions subject to clarification and the method of conducting the examination". And part 2 of this Article prescribes that "Official examination assigned for examining the questions concerning the rules of conduct of the civil servant, incompatibility requirements, other restrictions applied to a public servant, conflict of interests, prohibition on accepting gifts shall be conducted by the Ethics Commission of Civil Servants".

"The Committee finds that some of the grounds for disciplinary violation that may lead to immediate dismissal from work, such as failure to appear to work for a day without good reason, are trivial violations and may not lead to immediate dismissal from work.".

With respect to the referred observation it should be noted:

Among other amendments the draft law of the Republic of Armenia "On making amendments and supplements to the Labour Code of the Republic of Armenia" developed

[9] The official investigation is considered to be the examination of official duties of the civil servant and/or his or her integrity and/or issues related to his or her activities and/or employment relations in the manner prescribed by law and the decision of the Government of the Republic of Armenia No 814-N of 19 July 2018.

and put into circulation by the Ministry of Labour and Social Affairs includes a regulation, pursuant to which it is envisaged to replace the regulation "where the employee fails to come to work throughout the entire working day (shift) with no good reason" prescribed by point 9 of part 1 of Article 113 of the Labour Code with the following regulation "where the employee fails to come to work for three consecutive working days (shifts) per year with no good reason". Comments of the European Committee of Social rights on point 4 of Article 4 of the Revised European Social Charter have been taken as grounds for the above-mentioned wording.

5. *No information requested, except where there was a conclusion of non-conformity or a deferral in the previous conclusion for your country. For conclusions of non-conformity, please explain whether and how the problem has been remedied and for deferrals, please reply to the questions raised.*

Article 214 of the Labour Code of the Republic of Armenia states that, upon the payment of salary, the overall size of deductions and charges shall be calculated as prescribed by law, which cannot exceed fifty per cent of the monthly salary of the employee. It should be noted that this restriction is of an imperative nature and no exception thereto has been established.

Meanwhile, Article 214 of the Labour Code also prescribes that the salary paid to the employee after the deductions and charges prescribed by Article 213 of this Code may not be less than the amount of the minimum salary prescribed by law, except for the cases provided for by points 1 (the advance payment of the salary paid to the employee), 2 (the excess payments made as a result of mechanical errors of calculation) and 3 (the part of the advance payment provided to an employee for a business trip or a shift to another workplace or for performance of specific tasks, which was not spent and not returned appropriately) of part 2 of Article 213 of the Code.

The employee shall be obliged to compensate the employer for the damage caused fully, but not more than the amount of his or her average salary for three months, except for the cases

provided for by Article 239 of the Labour Code (ground: Article 238 of the Code).

The cases of material liability of an employee are prescribed by Article 237 of the Labour Code. In particular, it is prescribed that the employee shall be obliged to compensate for the material damage caused to the employer, which has emerged as a result of destruction or loss of property of the employer; as a result of allowing surcharge of materials; in cases of compensation of the employer for damage caused to other persons during performance of employment duties on the part of the employee; due to expenses made as a result of destruction of property belonging to the employer; as a result of improper maintenance of material assets; as a result of intentionally not taking measures to prevent the issuing of low-quality products; as a result of confiscating material or monetary assets.

Article 239 of the Labour Code provides for the following cases of full compensation for damage on the part of employees:

(1) the damage has been caused intentionally;

(2) the damage has been caused as a result of a criminal activity of the employee;

(3) an agreement on full material liability was signed with the employee;

(4) the damage has been caused as a result of the loss of tools, devices, special clothes and individual or collective safety measures provided to him or her for work, as well as the loss of materials, semi-finished products or products;

(5) the damage has been caused in a way or with a property, in the case of which full liability for property is defined by law;

(6) the damage has been caused under the influence of alcoholic drinks, narcotics or psychotropic substances.

However, as indicated above, Article 214 of the Code establishes a ban on payment of less salary than the nominal amount of the minimum salary to the employee as a result of deductions and charges. The specified restriction shall also apply to the limit of the amount of compensation for damage caused to an employer by the employee as provided for by

point 4 of part 2 of Article 213 of the Code. Consequently, the restrictions on the amounts of deductions from the salary, as prescribed by Article 214 of the Code, shall apply to determine the total amount of deductions and charges when calculating and paying the salary in the manner prescribed by part 1 of Article 192 of the Code.

Due to the above-mentioned, compensation for damage caused to the employer by the employee shall be made under such a procedure (i.e. the amount to be compensated may be distributed in parts) during which the restrictions prescribed by Article 214 of the Code are maintained.

With respect to observation on Article 190 of the Labour Code it should be stated as follows:

The hourly, work-based and monthly rates, other forms, amount and conditions of remuneration for work, the labour standards shall be defined by collective agreements or employment contracts (ground: part 2 of Article 180 of the Labour Code). According to part 1 of Article 17 of the Labour Code, the employee performs — on the basis of an employment contract — certain work for the benefit of the employer based on certain profession, qualification or in a certain position.

Pursuant to Article 216 of the Labour Code of the Republic of Armenia, the employee shall be obliged to perform in good faith the obligations assumed by the employment contract; follow the internal disciplinary rules; observe workplace discipline of the organisation; meet the specified labour standards; follow the requirements for labour safety and security; treat the properties of the employer and other employees in good faith, as well as notify the employer immediately about a danger causing a threat to the life and health of persons and the protection of the employer's property.

Meanwhile, according to Article 231 of the Labour Code, material liability arises when the party (employer or employee) to the employment contract causes damage to the other party by failure to fulfil or improper fulfilment of his or her obligations.

Taking as a basis the fact that, i.e. where the remuneration paid to the employee is work-based, the final output of production (the work performed) and the damage caused to the

employer by failure by the employee to perform the work shall be the basis for evaluating the employee's work: part 3 of Article 190 of the Labour Code establishes that the work shall not be remunerated in case of a defective product due to the fault of the employee.

Pursuant to Article 13 of the Labour Code, employment relations are relations based on mutual agreement of employees and employers, under which employees shall personally perform official functions (work with certain profession, qualification or in a certain position) with certain remuneration adhering to internal disciplinary rules, and employers shall ensure working conditions provided for by the labour legislation, other regulatory legal acts containing norms of labour law, collective agreements and employment contracts. Meanwhile, according to point 3 of Article 2 of the Labour Code, "one of the objectives of the labour legislation is to protect the rights and interests of employees and employers".

Due to the above-mentioned, and based on the legal equality of the parties to employment relations, parts 1 and 2 of Article 190 of the Labour Code define that the work of an employee in case of defective product not due to the fault of the employee shall be remunerated in the amount of remuneration prescribed for a non-defective product. The work of an employee for defective product due to the fault of the employer or for hidden flaw of the material being reprocessed, as well as for the defective product noticed after acceptance of the product shall be remunerated in the amount of remuneration prescribed for a non-defective product.

Regulations in Article 191 of the Labour Code may also be viewed in the context of the above-mentioned substantiations to regulations in Article 190 of the Labour Code depending on the benefit received or damaged caused to the employer due to compliance or non-compliance with labour standards by the employee. That is, where non-compliance with labour standards is not caused by employee, remuneration for work shall be paid for the actual work performed. In this case the monthly salary may not be less than two-thirds of his or her monthly salary, which may not be less than the established minimum monthly salary. Where labour standards are not met by the employee, remuneration for work shall be proportionate to the actual work performed.

It should also be stated that the draft law of the Republic of Armenia "On making amendments and supplements to the Labour Code of the Republic of Armenia" developed and put into circulation by the Ministry of Labour and Social Affairs envisages removing from the 2nd sentence of Article 214 of the Code the exceptions prescribed for "the cases provided for by points 1, 2 and 3 of part 2 of Article 213 of the Code". As a result, with the adoption of the draft law it will be envisaged that in all cases the salary paid to the employee after the deductions and charges prescribed by Article 213 may not be less than the amount of the minimum salary prescribed by law.

Article 5. Right to organise

Information with regard to changes undertaken during the reporting period and to questions submitted by the European Committee of Social Rights (hereinafter referred to as "the Committee")

(a) Please provide data on trade union membership prevalence across the country and across sectors of activity, as well as information on public or private sector activities in which workers are excluded from forming organisations for the protection of their economic and social interests or from joining such organisations. Also provide information on recent legal developments in these respects and measures taken to promote unionisation and membership (with specific reference to areas of activity with low level of unionisation, such as knowledge workers, agricultural and seasonal workers, domestic workers, catering industry and workers employed through service outsourcing, including cross border service contracts).

According to the information obtained from the Confederation of Trade Unions of Armenia, as of 1 January 2021 the latter unites 18 republican branch unions of trade union organisations with 188 259 trade union members.

The Constitution of the Republic of Armenia with the amendments of 6 December 2015

(has entered into force on 22 December 2015) was set out in a new wording, part 1 of Article 45 of which prescribes that “everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of labour interests. No one shall be compelled to join any private association. Part 3 of Article 45 of the Constitution of the Republic of Armenia prescribes that “the freedom of association may be restricted only by law with the aim of protecting state security, the public order, health and morals, or the fundamental rights and freedoms of others”.

According to Article 6 of the Law of the Republic of Armenia "On trade unions", employees who have concluded an employment contract with the employer concerned and who perform work within and outside the territory of the Republic of Armenia, including foreign citizens and stateless persons, may become members to a trade union organisation. Employees who have concluded employment contracts with various employers in a relevant branch (related branches) of economy (production, service, occupation) may also become members to trade union organisations. An employee may be a participant (member) of more than one organisation, provided this does not contradict their statutes.

At the same time, it is prescribed by Article 6 of the Law of the Republic of Armenia "On trade unions" that officers of the armed forces, the police, national security bodies and prosecutor's office, as well as judges and members of the Constitutional Court of the Republic of Armenia may not be participants (members) of a trade union organisation.

(b) Also provide information on measures taken or considered to proactively promote or ensure social dialogue, with participation of trade unions and workers organisations, in order to take stock of the COVID-19 crisis and pandemic and their fallout, and with a view to preserving or, as the case may be, restoring the rights protected under the Charter after the crisis is over.

(c) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

In response to the statement of the Committee that the civilians working in the Police may not form or join trade unions of their choice, we consider it pertinent to state as follows:

Pursuant to Article 6 of the Law of the Republic of Armenia "On trade unions", police officers may not be participants of trade union organization. Meanwhile, the Law of the Republic of Armenia "On Police Service" defines and separates two concepts: civil servant within the Police and police officer. Part 1 of Article 2 of the same law defines that taking into account the peculiarities of certain services and positions, residents of the Republic of Armenia may take up civil service in the Police, and Article 3 defines the concept of police officer, stipulating that any resident of the Republic of Armenia, who serves in Police, has taken the oath of office, holds a position in a positions group prescribed by Article 4 of the Law and has been conferred a police or military title shall be a police officer. Article 4 entitled "Groups of positions in police and the namelist of police positions" does not include any provision on civil servants in police, to whom a separate Chapter 11^1 is dedicated in the law of the Republic of Armenia "On Police Service".

Thus, we may conclude that civil servants in police are not considered as police officers, therefore, the ban on joining trade unions prescribed by Article 6 of the law of the Republic of Armenia "On trade unions" does not apply to the latter.

Article 45 of the Constitution of the Republic of Armenia, wherein the right to form and join trade unions is enshrined, prescribes in part 3 that the right may be restricted only by law, for the purpose of state security, protecting public order, health and morals or the basic rights and freedoms of others.

The law of the Republic of Armenia "On trade unions", as well as any other legislative act of the Republic of Armenia does not incorporate any provision prohibiting civil servants, including civil servants in police, to form and join trade unions.

We may conclude from the aforementioned that civilians working in the Police of the Republic of Armenia may form and join trade unions of their choice.

The following should be mentioned with respect to the issue on forming or joining trade

unions by civilians working in the National Security Service:

Pursuant to Article 6 of the law of the Republic of Armenia "On trade unions", national security officers may not be participant to a trade union organization.

Article 19 of the law of the Republic of Armenia "On national security bodies" prescribes that military servants constitute the main personnel of national security bodies. In exceptional cases servants and workers (civilian staff) may be appointed to job on contractual bases. Legal relations related to military servants of the National Security Service shall be regulated by the Law of the Republic of Armenia "On Service in the National Security Bodies", pursuant to part 1 of Article 1 whereof service in the national security bodies shall be a military service.

As to the civilian staff of the national security bodies it should be noted that part 1 of Article 2 of the Law of the Republic of Armenia "On civil service" defines that the scope of the Law shall, inter alia, extend to the persons holding positions provided for by the namelist of civil service positions within the state bodies subordinate to the Prime Minister.

Part 2 of Article 5 of the Law of the Republic of Armenia "On state administration system" stipulates that bodies subordinate to the Prime Minister shall be the National Security Service, the Police and the State Supervision Service.

Therefore, we may conclude that legal relations related to civil servants in the National Security Service shall mainly be regulated by the Law of the Republic of Armenia "On Civil Service" and the latter, as well as other employees of the civilian staff of the National Security Service shall not be considered as national security officers, to whom the ban provided for by Article 6 of the Law of the Republic of Armenia "On trade unions" applies. Meanwhile, legislation of the Republic of Armenia does not contain a norm prohibiting civil servants, other employees of civilian staff of the national security to join trade unions.

Therefore, civilians working in the National Security Service of the Republic of Armenia may form and join trade unions of their choice.

According to Article 6 of the Law of the Republic of Armenia "On trade unions", servants of Prosecutor's bodies of the Republic of Armenia may not be participant to the trade union.

At the same time, the Law of the Republic of Armenia "On Prosecutor's Office" envisages a number of provisions aimed at ensuring the promotion of economic and social interests of servants of Prosecutor's bodies. In particular, the Law establishes the independence of a prosecutor and inadmissibility of intervention in his or her activities, subordination in the Prosecutor's Office and the peculiarities of mutual relations of superior and inferior prosecutors, as well as certain guarantees for securing and protecting the rights of an inferior prosecutor, i.e. the right of the inferior prosecutor to submit a written objection to the superior of the superior prosecutor where the inferior prosecutor finds that the assignment or instruction is illegal or unjustified. In addition, the procedures and grounds for appointing a prosecutor to a position, competency evaluation, training, imposing a disciplinary penalty and dismissal from the position are enshrined in the law and Chapter 11 is dedicated to material, legal, social and other guarantees for activities of prosecutors.

Thus, it may be concluded, that despite the ban to participate in the trade unions, the legislation of the Republic of Armenia envisages relevant regulations and guarantees to ensure to the extent possible the social protection of servants of prosecutor's bodies.

As to other inconsistencies with Article 5 of the Charter recorded by the Committee (which were submitted on extremely high minimum requirements for membership established for forming trade unions and employer associations, as well as with regard to the fact that self-employed employees, those with liberal professions and employees of informal sector may not form or join trade unions of their choice), we would like to inform that the five-year plan of the Government (Section 4.6) approved by the Decision of the Government No 1363-A of 18 August 2021 provides for revising the legislative regulations of employer and trade union activities for the purpose of developing and deepening social partnership at all levels. In accordance with provisions envisaged by the five-year plan, the action plan of the Government program 2021-2026 (approved by the Decision of the Government N 1902-L of 18 November 2021) includes actions for making amendments and supplements to the

laws of the Republic of Armenia “On trade unions” and “On employer unions”, within the framework whereof it is envisaged to bring the legislation of the Republic of Armenia regulating the activities of trade unions and employer unions in line with the requirements of international obligations undertaken by the Republic of Armenia (conventions of the ILO and the Revised European Social Charter).

A time limit — the second decade of December of 2022 — is prescribed for submitting the indicated draft amendments to the Staff of the Prime Minister.

Article 6. Right to Collective Bargaining

Information with regard to changes undertaken during the reporting period and to questions submitted by the European Committee of Social Rights (hereinafter referred to as "the Committee")

1. *No information requested. If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

On 5 October 2020 the new national collective agreement was concluded between the Government, Confederation of Trade Unions of Armenia and Republican Association of Employers of Armenia at the national level of social partnership. Within the framework of the new national collective agreement the Republican Tripartite Commission was established (Government, Confederation of Trade Union of Armenia and Republican Association of Employers of Armenia), consisting of 5 members from each part.

According to point 1 of Article 41 of the Labour Code, the national level of social partnership establishes the basics for the regulation of employment relations in the Republic of Armenia. The parties of such partnership are the Government of the Republic of Armenia, the Republican Union of Trade Unions, the Republican Association of Employers. Therefore, issues related to civil servants and public servants may be discussed within the scope of cooperation carried out in accordance with the national collective agreement, taking into account the fact that at the national level of social partnership the Government acts as a party of social partnership.

Pursuant to national collective agreement, the cooperation between the parties refers to the following issues: 1. ensuring the safety and maintaining the health of employees; 2. jobs, salary and standard of living of employees; 3. labour market and employment; 4. social and economic sector.

Before the conclusion of the new national collective agreement (5 October 2020) between

the Government, the Confederation of Trade Unions of Armenia and the Republican Association of Employers of Armenia, the national collective agreement concluded on 1 August 2015 was in force.

Since July 2018, the Bureau of Civil Service of the Office of the Prime Minister operates, the Statute whereof has been approved by Decision of the Prime Minister N 973-L of 17 July 2018.

It should be noted that no functions of an advisory body within the meaning of part 1 of Article 6 of the Charter are reserved for the Bureau of Civil Service both by the law "On Civil Service" and the Statute approved by Decision of the Prime Minister N 973-L of 17 July 2018.

Currently the draft public administration reform strategy until 2030 is being considered, which also proposes institutional modernization of responsible public administration body, envisaging for the latter, among other functions, the function of cooperation with development partners. Moreover, the 2021-2026 Action Plan of the Government of the Republic of Armenia approved by Decision of the Government No 1902-L of 18 November 2021 provides for adopting of the Public Administration Reform Strategy until 2030 during the second decade of December 2021.

2. *Please provide information on specific measures taken during the pandemic to ensure the respect of the right to bargain collectively. Please make specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.*

Certain amendments and supplements have been made to the Labour Code due to spread of coronavirus disease (COVID-19). In particular, on 29 April 2020 the Law HO-236-N "On

making amendments and supplements to the Labour Code of the Republic of Armenia" was adopted (has entered into force on 8 May 2020).

Not only the concept of work carried out in a remote mode has been defined by the amendments made to the Labour Code, but it is also stipulated that in case of possibility of organizing work in a remote mode the employees shall not be considered as being in idleness and their salary shall be fully retained. The amendment made has enabled to work in a remote mode amid coronavirus pandemic.

In particular, the Labour Code has been supplemented by a new Article 106.1, part 1 of which prescribes that the work carried out in a remote mode shall be the work carried out outside the workplace during the period of preventing natural disasters, technological accidents, epidemics, accidents, fires and other cases of emergency or urgently eliminating the consequences thereof, where, due to those cases, carrying out works in the workplace becomes impossible.

Among other amendments and supplements, the Labour Code was supplemented by a new Article 33.1 by the Law HO-236-N of 29 April 2020, according to which "where the authorized inspection body of the field receives a written application during the period of preventing the natural disasters, technological accidents, epidemics, fires and other cases of emergency or eliminating the consequences thereof, he or she shall carry out state control over the fulfilment of the labour legislation, other regulatory legal acts containing labour law norms, the requirements of the collective and employment contracts by the employers, applying sanctions in cases provided by law (Article 33.1 of the Labour Code of the Republic of Armenia was in force until 1 July 2021).

The amendment was made with a view to ensure, to the extent possible, the protection of employment rights of employees during the time periods indicated above.

Article 33.1 of the Labour Code was in force until 1 July 2021, after which the Law HO-265-N of 4 December 2019 "On making amendments to the Labour Code of the

Republic of Armenia" entered into force, whereby Article 33 of the Labour Code was set out in a new wording, defining that from 1 July 2021 the state control over the fulfilment of the labour legislation, other regulatory legal acts containing labour law norms, the requirements of the collective and employment contracts by the employers shall be carried out by the authorised inspection body of the field, applying sanctions in cases provided by law.

By the Law HO-236-N of 29 April 2020 supplements have also been made:

- to part 1 of Article 114 of the Labour Code, prescribing that "rescission of employment contract upon the initiative of the employer during the period of preventing the natural disasters, technological accidents, epidemics, fires and other cases of emergency or eliminating the consequences thereof shall be prohibited where due to those occurrences the employee has failed to appear to work";
- in part 2 of Article 220 of the Labour Code, prescribing that "failure to appear to work or appearing to work for an incomplete working day during the period of preventing the natural disasters, technological accidents, epidemics, fires and other cases of emergency or eliminating the consequences thereof due to those cases shall not be deemed as violation of workplace discipline".

Healthcare

Pursuant to the Order No 1223-L of 8 April 2020 of the Minister of Health, in the preliminary stage of COVID-19 pandemic, the medical organisations providing medical assistance and service within the scope of state order (except for medical organisations reprofiled to provide medical assistance and service to patients with a confirmed diagnosis of a novel coronavirus (COVID-19) disease and patients whose diagnosis require verification) were commissioned to provide medical assistance and service in the following cases:

(1) in case of urgent and emergency diagnosis and conditions, particularly in the life-threatening conditions, cases requiring actions of resuscitation, immediate surgical

intervention;

(2) in cases of exacerbations and (or) complications of life-threatening chronic diseases, including acute inflammation of upper respiratory tract in cases of tuberculoses, respiratory failure and other life-threatening cases, except for diagnosed cases of novel coronavirus (COVID-19) disease;

(3) in cases of diseases dangerous for the environment approved by the Government of the Republic of Armenia;

(4) in the cases of medical assistance to patients with mental illnesses and narcological patients;

(5) in the cases of medical assistance, service and expert examination of persons of pre-conscription and conscription age;

(6) in the cases of provision of obstetric aid services;

(7) in the cases of provision of hemodialysis services;

(8) in case of treatment of malignant tumors (cancer);

(9) not to provide medical assistance, where the diagnosis, health condition of the patient allows organising medical service routinely.

Meanwhile, by adoption of the Order of the Minister of Health N 1549-L of 15 May 2020, medical organisations were proposed to resume the provision of planned inpatient medical assistance and service, bringing the intrahospital sanitary and epidemiological state in line with the provisions of the Order of the Minister of Health N 1350-A of 27 April 2020, ensuring the application by the medical staff, patients, visitors of individual protective measures, continuous implementation of anti-epidemic measures to mitigate the risks of transmission of COVID-19 virus.

Police

From the outset of the spread of COVID-19 pandemic the Police has jointly with the Ministry of Health become one of the important links in the fight against the spread of pandemic, ensuring along with other state administration bodies implementation of a number of measures aimed at preventing the spread of pandemic within the scope of the legal regime of state of emergency.

Investigative Committee

Taking into account the cases of spread of the novel coronavirus disease (COVID-19) in the Republic of Armenia, based on the provisions of the Decision of the Government of the Republic of Armenia No 298-N of 16 March 2020 "On declaring a state of emergency in the Republic of Armenia", by the Order of the Chairman of Investigative Committee an operative headquarter has been created in the Committee on 17 March 2020 for organizing preventive, anti-epidemic measures and rapid response in the subdivisions of the Investigative Committee.

Information has been submitted to the operative headquarter on a daily basis in the manner prescribed by the same Order on attendance of the officers of the Investigative Committee, implementation of preventive, anti-epidemic measures, deterioration of health condition of persons holding autonomous positions, persons holding discretionary positions, civil servants, technical maintenance employees (workers), on cases of detection of coronavirus disease among them, finding out the primary source of the virus and the scope of contacts of the worker.

The Operative Headquarter of the Investigative Committee maintains daily contacts with the Commandant's Office jointly managing the forces and means ensuring the legal regime of the state of emergency in the Republic of Armenia.

Persons aged 60 and more and/or persons having pancreatic diabetes, cardiovascular, respiratory diseases shall, where possible, carry out their functions in a remote mode, at

home.

Taking into account the peculiarities of the activities of the Investigative Committee, more specifically the necessity to observe the time limits of preliminary investigation prescribed by law, a reduced working time was established for employees of the Committee from March 2020, in particular the working time started on 10:00 and ended on 16:00, later changes were made to the working time, according to which it started on 10:00 and ended on 18:00.

Information on situation in the transport sector during the COVID-19 pandemic is presented in the response to sub-question (a) of Article 22.

As regards to the Opinions of the Committee of 2018, Article 16 of the Law "On trade unions" prescribes as follows:

"Trade Union, on behalf of its governing body or representative shall have the right to conclude (re-conclude) collective agreement with the employer union of the employer.

The employer shall be obliged to ensure the conduct of collective bargaining with the trade union uniting his or her employees within a period of not later than seven days.

The collective agreement shall be concluded as prescribed by the legislation of the Republic of Armenia.

In the collective employment relations with the employer the trade union organisation may act as the employees' representative where more than half of the employees having concluded an employment contract with the employer, are participants (members) of the trade union organisation. The provisions of the collective agreement concluded with an employer by the trade union organisation having the power of such representation, shall also apply to all those employees having concluded an employment contract with the employer, who are not members of the trade union organisation.

Where not more than half of the employees having concluded employment contracts with the employer, are members of the trade union organisation in the organisation, the trade union organisation shall represent and protect only its members' interests in the collective

employment relations.

Where there is no trade union organisation in the employer's organisation, the functions of protection of the employees' interests may be delegated to the relevant territorial or branch trade union in the manner prescribed by the legislation.

If employees having concluded employment contracts with various employers in the relevant sector (related sectors) of economy (production, service, occupation) are members of a trade union organisation, the trade union organisation may introduce and protect its employees' interests in the collective employment relations before the given employer if more than half of the employees having concluded an employment contract with the given employer, are members of a trade union organisation. Otherwise, the trade union organisation may represent and protect only the interests of its members before the given employer.

The Republican Union of Trade Unions may bargain and conclude an agreement with the Government of the Republic of Armenia, and the republican branch trade union organisations may bargain and conclude an agreement with other public administration bodies.".

It is prescribed by Article 23 of the Labour Code of the Republic of Armenia that the representatives of employees — trade unions, representatives (entity) elected by the staff meeting (assembly) shall have the right to represent the rights and interests of employees and to protect those rights and interests in employment relations.

Where there is (are) no trade union(s) in the organisation or none of the existing trade unions unites more than half of the number of employees of the organisation, representatives (an entity) may be elected by the staff meeting (assembly).

The existence of representatives (an entity) elected by the staff meeting (assembly) in the organisation shall not impede the performance of functions of trade unions.

Where there are no representatives of employees in the organisation, the functions of the

representation of employees and protection of interests thereof may be delegated to the relevant branch or territorial trade union by the staff meeting (assembly). In that case, the staff meeting (assembly) shall elect a representative(s) to participate in the collective bargaining conducted with the given employer in the delegation of the branch or territorial trade union.

Pursuant to Article 56 of the Labour Code:

1. The parties to a collective agreement of the organisation are the group of employees of the organisation in the person of the representative of employees acting in the organisation and the employer, in the person of the head of the organisation or his/her authorised person.

2. Where there is more than one representative of employees in the organisation the collective agreement of the organisation shall be concluded between the unified representative body of employees and the employer.

3. The unified representative body of employees shall be established by the representatives of employees, through corresponding negotiations. If a unified representative body of employees is not established due to the lack of consent of the representatives of employees, a decision on the establishment of a unified representative body shall be made by the staff meeting (assembly).

4. In case the functions related to the protection of representations and interests of employees are transferred to the corresponding territorial or branch trade union because of the absence of representatives of employees within the organisation, the employer and the corresponding territorial or branch trade union shall be considered to be the parties to the collective agreement.

By collating paragraph 5 of Article 16 of the Law of the Republic of Armenia "On trade unions" and parts 2 and 3 of Article 56 of the Labour Code of the Republic of Armenia it becomes clear that even if more than 50 percent of employees having concluded an employment contract with the employer do not participate in the trade union organization,

the trade union organization shall be entitled to represent and protect the interests of its members in the collective employment relations according to regulations of paragraph 5 of Article 16 of the Law of the Republic of Armenia “On trade unions” and parts 2 and 3 of Article 56 of the Code.

That is, pursuant to part 2 of Article 56 of the Labour Code, where there is more than one representative of employees in the organisation (in this case, the trade union which has less than 50 percent of participation of employees having concluded employment contracts with the employer, may act as such) the collective agreement of the organisation shall be concluded between the unified representative body of employees and the employer.

Therefore, it should be stated that pursuant to the legislative regulations of the Republic of Armenia in effect, the trade union that unites no more than 50 per cent of employees having concluded employment contracts with the employer shall also be entitled to participate in collective bargaining.

Pursuant to information received from the Confederation of Trade Unions of Armenia, according to the statistical data of republican branch unions being members of Confederation, 422 collective agreements have been concluded as of 1 January 2021, whereof 2 — at the branch level, 55 — at the territorial level and 365 — at the organization level. The collective agreements apply to 117 119 employees of the organisations, of which 111 187 are members of trade unions.

4. (a) Please provide information on specific measures taken during the pandemic to ensure the right to strike (Article 6§4). As regards minimum or essential services, please provide information on any measures introduced in connection with the COVID-19 crisis or during the pandemic to restrict the right of workers and employers to take industrial action.

It is prescribed by part 2 of Article 75 of the Labour Code that in natural disaster areas as well as regions where a martial law or emergency situation (a state of emergency) has been declared in the prescribed manner, the strikes are prohibited before the effects of natural disaster are eliminated, or martial law or emergency situation (state of emergency) is lifted in the prescribed manner.

Upon the Decision of the Government N 298-N of 16 March 2020 "On declaring a state of emergency in the Republic of Armenia", a state of emergency was declared in the whole territory of the Republic of Armenia from 18:30 p.m. of 16 March 2020 until 17:00 p.m. of 11 September 2020.

Upon the Decision of the Government N 1514-N of 11 September 2020 "On establishing quarantine regime due to coronavirus (COVID-19) disease", on 11 September 2020 quarantine was established in the whole territory of the Republic of Armenia, the term whereof was extended until 20 June 2022. The Labour Code does not establish a ban on strike during the quarantine.

As to restriction measures of the right of employees and employers to engage in industrial activity introduced in connection to COVID-19 crisis or during the pandemic, we would like to inform as follows:

Due to the cases of spread of a novel coronavirus disease (COVID-19) in the Republic of Armenia, and taking into account the fact that this infection has been declared a pandemic by the World Health Organisation since 13 March 2020, a state of emergency was declared in the Republic of Armenia from 16 March 2020 by Decision of the Government of the Republic of Armenia No 298-N of 16 March 2020 "On declaring a state of emergency in the Republic of Armenia" (the state of emergency was declared until 17:00 p.m. of 11 September

2020).

At the same time, the guideline "On observance of sanitary-epidemiological rules in organisations, possible dangers and organisation of work in case of violation thereof" was approved by Instruction of the Commandant of the Republic of Armenia No Ts/17-2020 of 20 March 2020; thereby rules were established to prevent the spread of a novel coronavirus disease (COVID-19), to ensure conditions secure for workers, and safe for health.

"Rules aimed at preventing the spread of novel Coronavirus disease (COVID-19) in organizations" were established by Annex No 3 to Decision of the Commandant of the Republic of Armenia No 27 of 31 March 2020 "On restrictions applicable in the whole territory of the Republic of Armenia due to the legal regime of the state of emergency"; moreover, according to the same decision, it was allowed to engage in the types of economic activity not prohibited on the condition of observing the "Rules aimed at preventing the spread of novel Coronavirus disease (COVID-19) in organizations" (the decision was in force from 1 April 2020 to 3 May 2020).

Decision of the Commandant No 27 of 31 March 2020 was repealed by Decision of the Commandant N 63 of 3 May 2020 "On temporary restrictions applied in the whole territory of the Republic of Armenia", and safety rules were established for almost all types of economic activity, stemming from the specifics of the economic activity.

(b) If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

Amendments to the Labour Code have been envisaged also with respect to the above-mentioned inconsistencies recorded by the Committee, by the draft law of the Republic of Armenia “On making amendments and supplements to the Labour Code of the

Republic of Armenia" developed and put into circulation by the Ministry of Labour and Social Affairs (it is envisaged to submit the latter to the Office of the Prime Minister until the 3rd decade of June 2022). More specifically:

- The legal regulations concerning decision-making on declaring strikes have been mitigated, and they provide for an opportunity to declare strike were such a will expression is made by less employees than envisaged by the norms of the Labour Code in force, e. g. previously calling a strike in the employer's organization required two thirds of voices of the total number of employees, whereas under the proposed amendments it requires at least half of the voices thereof. More specifically, it is envisaged to prescribe by the amendment to Article 74 of the Labour Code that the strike shall be called where the decision is approved by secret ballot:

  (1) by majority of votes of employees having participated in voting in the employer's organization when calling a strike in the employer's organization (strike of the personnel), which may not be less that the half of the total number of employees;

  (2) by majority of votes of employees having participated in voting in the subdivision or office of the employer when calling a strike in the employer's detached or structural subdivision or office, which may not be less than the half of the total number of employees. Where calling a strike in a detached or structural subdivision or office of the employer impedes the smooth functioning of other subdivisions of the employer, the decision on calling a strike shall be approved by the majority of employees of that subdivision or office having participated in voting, which may not be less than one third of the total number of employees working for the employer.

Also, by the above-mentioned draft law an amendment was envisaged in part 1 of Article 75 of the Labour Code (which defines the areas where calling a strike is prohibited). It was suggested that the police and electricity supply services should be removed from the list of

areas indicated.

It should be stated within the context of proposed amendment, that according to point 8 of part 1 of Article 39 of the Law of the Republic of Armenia "On Police Service", the police officer shall not have the right to organize strikes or participate therein. It should be noted that the above-mentioned restriction concerns the police officers, and not the civil servants employed in the Police.

Meanwhile, Article 75 of the Labour Code has been supplemented by a new 1.1 part by the draft law of the Republic of Armenia "On making amendments and supplements to the Labour Code of the Republic of Armenia", which defines that for the purpose of protection of public interests and fundamental rights and freedoms of others, the right to strike in the enterprises, services and bodies not mentioned in part 1 of this Article and playing a significant role in the life of population may be fully or partially restricted under the laws of the Republic of Armenia.

Article 22. The right to participate in establishment and improvement of working conditions and working environment

Information with regard to changes undertaken during the reporting period and to questions submitted by the European Committee of Social Rights (hereinafter referred to as "the Committee")

(a) Please provide information on specific measures taken during the pandemic to ensure the respect of the right to take part in the establishment and improvement of the working conditions and working environment. Please make specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

Healthcare

The health care system during the pandemic, being of frontline nature, has continued providing medical assistance and service to patients and their contacts. Awareness on coronavirus disease has been raised among medical workers, regular trainings have been organized, in the course of which the principles on organizing outpatient medical assistance and service of patients with coronavirus disease, patient management, isolation thereof, use of individual protective measures have been presented.

As a result of execution of the Order of the Minister of Health N 2014-A of 25 June 2020, research has been made in organisations carrying out medical assistance and service in the Republic of Armenia using a research tool/a questionnaire, risk assessment has been made, flaws have been identified. As a result, a 27 times reduction in the cases of coronavirus disease among the personnel of organisations carrying out medical assistance and service has been observed.

Law Enforcement bodies

From the outset of spread of COVID-19 pandemic the Police has jointly with the Ministry of Health become one of the important links in the fight against spread of pandemic, ensuring along with other state administration bodies implementation of a number of measures aimed at preventing the spread of pandemic within the scope of the legal regime of state of emergency.

As to the question whether the Police officers have shifted to distance work or not, we would like to note that taking into account the excessive workload and specifics of work, the Police has almost had no such opportunity, except for a number of officers of certain subdivisions. At the same time, the smooth functioning of the Police has been ensured.

Transport

Due to COVID-19, companies engaged in regular passenger transportations faced new challenges.

In particular, companies engaged in interstate passenger transportations had to stop their activities from time to time due to restrictions applied in different states. Drivers employed in the sphere were either sent to forced leave or changed their sphere of activity.

Interregional, intraregional and intracommunity regular passenger transportations have been conducted in full, exercising the measures provided for prevention of the pandemic. There have been no cases of downsizing or forced idleness of employees engaged in regular intrarepublican passenger transportations.

Interstate cargo transportations have generally continued their functioning and no cases of downsizing or forced idleness of employees in this sphere have been recorded.

Financial aid was granted to "ARMCOACHTERMINAL" CJSC, which provides coach station services in the Republic, thus enabling the company to maintain the jobs.

Organisations carrying out activities in the sphere of road transport were granted state aid on general bases within the scope of programs for neutralisation of social and economic impacts of the coronavirus.

(b) If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

Article 33 of the Labour Code of the Republic of Armenia of 9 November 2004 was set out in a new wording by the Law HO-265-N of 4 December 2019 "On making amendments to the Labour Code of the Republic of Armenia", which reads as follows: the authorised inspection body of the field shall carry out state control over the fulfilment of the labour legislation, other regulatory legal acts containing labour law norms, the requirements of the collective and employment contracts by the employers, applying sanctions in cases provided by law. Article 33 of the Code entered into force in a new edition on 1 July 2021.

The powers of the Inspection Body include exercise of supervision over fulfilment of the requirements of the labour legislation, including temporary termination of activities, in the cases and manner prescribed by the Labour Code and other regulatory legal acts, until the violations are remedied.

At the same time, from 1 July 2021 the Inspection Body has been vested with the rights to investigate the cases and impose sanctions for administrative offences in the field of labour law by the Law HO-266-N of 4 December 2019 “On making a supplement and amendments to the Code on Administrative Offences of the Republic of Armenia”.

According to Article 41 of the Code on Administrative Offences of the Republic of Armenia, a violation of the requirements of the labour legislation and of other regulatory legal acts containing norms of labour law (except for cases provided for in Articles 41.1, 41.2, 41.6, 96.1, part 19 of Article 158, Articles 169.5, 169.8 of this Code) entails issuing of a warning with respect to the person having committed the violation.

Violation of the requirements of the labour legislation and other regulatory legal acts containing norms of labour law, committed within one year following the application of an administrative penalty, entails imposition of a fine on the employer in the amount of the fifty-fold of the minimum salary prescribed.

The Inspection Body has a right to impose sanctions on legal and natural person employers.

According to part 3 of Article 250 of the Labour Code, where the employer does not take measures to protect employees from the potential danger, the service of the organisation in charge of ensuring the safety and healthcare of employees, as well as the representatives of the employees shall have the right to demand termination of work. If the employer refuses to fulfil the demand of the service of the organisation in charge of ensuring the safety and healthcare of employees and the representatives of the employees, the latter shall notify the inspection body thereon.

The head of the inspection body may take a decision to make the employer obliged to terminate work after assessing the safety assurance and state of health of the employees. If the employer refuses to fulfil the demands of the head of the inspection body, the latter shall have the right to address the Police for execution of the demand for termination of work and the evacuation of employees from the dangerous workplaces.

Article 28. The right to protection of the representatives of employees in enterprises and in mechanisms provided thereto

Information with regard to changes undertaken during the reporting period and to questions submitted by the European Committee of Social Rights (hereinafter referred to as "the Committee")

(a) With the objective of keeping this reporting targeted, the Committee asks for no specific information in respect of Article 28. Nonetheless, it would welcome information about the situation in practice concerning this right during the pandemic and about measures taken to ensure that the COVID-19 crisis was not used as an excuse to abuse or circumvent the right of workers' representatives to protection, especially protection against dismissal.

The Ministry of Labour and Social Affairs, in cooperation with the Ministry of Justice

developed the draft law of the Republic of Armenia "On making amendments and supplements to the Labour Code of the Republic of Armenia", which was adopted in the second reading and in full in the session of the National Assembly of 12 October 2021, based on which supplements and amendments have been made in Articles 108, 113, 115, 119, 213, 216, 223 of the Labour Code. According to the Law, the employers may rescind the employment contracts concluded with the employees upon their initiative by notifying thereon the employees in writing not later than 3 days in advance, where the employee fails to fulfil his or her official duties for more than 10 consecutive days or more than 20 working days (shifts) during the last three months due to the fact that he or she is not allowed to come to work on the grounds that he or she has failed to submit the documents constituting the prerequisite for appearing to work envisaged by the rules of sanitary and epidemiological safety aimed at preventing the spread of infectious diseases prescribed by the legislation on ensuring the sanitary and epidemiological safety of the population. These provisions shall also apply to employees elected within the representative bodies of employees.

(b) If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

In addition to the above-mentioned draft law, the Ministry of Labour and Social Affairs has put into circulation another draft law, which provides for amendments to the Labour Code, according whereto the following regulations are envisaged by the Article of the Labour Code which provides for guarantees for representatives of employees (Article 119) to bring them into compliance with the provisions of Article 28 of the Revised European Social Charter:

- Representatives of employees may not be dismissed from work within 6 months after the expiry of powers thereof without the preliminary consent of the representative body of employees.
- The employees elected within the representative bodies of employees working within

the organisation, during the year, shall be exempt from the performance of working duties to attend various events organized by the employees' representative bodies or to improve their qualifications as members of the representative bodies of employees. For these periods the employee shall be paid two-thirds of his or her average hourly salary.

- The above-mentioned draft law also provides for deleting paragraph 2 of part 3 of Article 119 of the Labour Code. Below please find the indicated part after adoption of amendments:

  "3. The employer may appeal against the decision on rejecting the dismissal of the employee from work through judicial procedure.".

At the same time, it is proposed to make amendments to part 1 of Article 26 of the Labour Code, defining that the employer shall be obliged to provide the representatives of employers with conditions, facilities and logistics necessary for exercising their powers.

It should also be noted, that from 1 July 2021 Article 33 of the Labour Code has entered into force, according to which "state control and supervision over the observance of the requirements of the labour legislation and other regulatory legal acts containing norms of labour law, as well as of collective and employment agreements shall be exercised by the inspection body imposing sanctions in the cases provided for by law.

With regard to this it should be noted that the above-mentioned Article shall also apply to the representatives of employees.