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REVISED EUROPEAN SOCIAL CHARTER

9th National Report on the implementation of
the European Social Charter (revised)

submitted by

THE GOVERNMENT OF ROMANIA

(Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29
for the period 01/01/2005 – 31/12/2008)

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Report registered by the Secretariat on 30 November 2009

CYCLE 2010

Article 2 – Right to just conditions of work

Legal framework

- Law no. 53/2003 on the Labour Code
- Order 870/2004 on approving the Regulation on working time, the organization and on-call service in public units in the health sector
- Law no. 19/2000 on the public system of pensions and other social insurance rights
- Law no. 319/2006 on health and safety at work
- Government Decision no. 1425/2006 approving the rules for the application of Law no. 319/2006 on health and safety at work
- Order no. 64/2003 of Minister of Labour and Social Solidarity, with amendments approved by Order no. 76/2003
- Government Decision no. 355/2007 on the supervision of workers' health
- 2007-2010 Single Collective Labour Agreement at national level

Paragraph 1 – Reasonable daily and weekly working hours

In its previous conclusion the Committee wished to be informed about the rules, statutory or otherwise regulating on-call work. In particular it wished to know whether time spent at the workplace inreadiness for work is regarded as working time. In this connection the Committee notes that the report does not provide a reply. The Committee notes that If the necessary information is not provided in the next report, there will be nothing to show that the situation in Romania is in compliance with Article 2§1 of the Revised Charter.

According to **Art. 111 par.(1)** of **Law no. 53/2003** on the Labour Code, the maximum legal working time may not exceed 48 hours per week, including overtime.

Par.(2) of the same article provides that when work is carried out in shifts, the working time may be extended beyond 8 hours per day and 48 hours per week, provided that the average working hours, calculated over a period of maximum 3 weeks, should not exceed 8 hours per day or 48 hours per week.

According to the legal provisions in force the working time is defined as:

- Labour Code (Law no. 53/2003) in its Article 108 – "The working time is any period during which the employee performs the work, is available to the employer and fulfils his/her tasks, according to the provisions of the individual employment contract, the applicable collective labour agreement and/or the legislation in force." (www.codulmuncii.ro/en)

- Order of the Minister of Labour and Social Solidarity no. 870/2004, Article 1 – "The working time is the time the employee uses to fulfil his/her work tasks."

The Single Collective Labour Agreement at national level for 2007-2010 lays down, in its Article 18, that "normal working time duration does not include time used for clothing – unclothing at the beginning and end of the work schedule". www.legislatiamuncii.ro/Contractul-colectiv-de-munca.html

Work "on-call" may be interpreted as the overtime performed by the employees, upon the employer's request, over the normal working time.

According to **Article 117 (2)** of the Labour Code, "the overtime work may not be performed without the agreement of the employee, except for acts of force majeure or urgent works intended to prevent or to eliminate the consequences of an accident".

The provisions of **Article 119 (1) and (2), Article 120 (1 and 2) and Article 121** of the Labour Code establish that "overtime shall be compensated by paid hours off in the next 30 days after its performance. Under these circumstances, the employee shall enjoy the wage corresponding to the hours performed above the normal work schedule.

If the compensation by paid hours off is not possible in the terms set in **Article 119 (1)** in the following month, the overtime shall be paid to the employee by adding an extra pay according to its duration. The extra pay for overtime, as provided under the conditions provided for in paragraph (1), shall be established by negotiation, within the collective labour agreement or, as the case may be, within the individual employment contract, and shall not be lower than 75% of the basic pay.

Example: the rule is that, whenever a worker performs 2 hours over the normal work schedule, the 2 overtime hours should be at first compensated with 2 hours off, payable during the next 30 days after its performance. When it is not possible to compensate for the 2 hours worked overtime during the next 30 days, the worker shall receive an extra pay which, according to the provisions of the Single Collective Labour Agreement at national level for 2007-2010, and particularly to Article 41 (3) (c), is 100% of the basic pay.

Article 121 of the Labour Code establishes that "young people under the age of eighteen years may not perform overtime work."

Paragraph 2 – Public holidays with pay

The Committee also noted previously that the provisions of the relevant legislation on public holidays do not apply to workplaces requiring continuous activity. The Committee asks how workers engaged in such activity are granted time off in lieu or receive increased remuneration.
The Committee asks for further confirmation that most employees required to work on a public holiday receive an increase of more than 100 %.

According to art. 134 par.(1) of Law no. 53/2003 on the Labour Code, with amendments and completions, the holidays that are not working days are as follows:

- 1st and 2nd January;
- First and second day of Easter;
- 1st May;
- 1st and 2nd days of Pentecost;
- St. Mary's Day (15th August);
- 1st December;
- 1st and 2nd days of Christmas;
- 2 days for each of the 3 annual religious holidays, declared as such by legal religions other than Christian, for persons belonging to them.

According to **Art. 135** on the Labour Code, by Government Decisions there will determined appropriate working schedules for the health and food supply units, in order to ensure the necessary healthcare and respectively the supply with food necessities for the population, whose application is required.

According to **Art. 136** of Law no. 53/2003 on the Labour Code, the provisions set in Art. 134 do not apply in workplaces where the activity cannot be interrupted because of the production process, or to the specific activity.

According to **Art. 137 par.(1) and (2)** of the same act, employees working in establishments referred to in Art. 135, as well as the jobs provided in Art. 136 are provided with appropriate compensation by time off in the next 30 days. If, on duly justified grounds, no days off are granted, the employees shall benefit, for the activity performed during the public holidays, from an extra pay added to the basic pay, which may not be lower than 100% of the basic pay corresponding to the activity performed within the normal work schedule.

Example: the rule is that, when a worker has performed a normal work schedule (8 hours) on the 1st of January, this day is first of all compensated by 8 hours off payable during the next 30 days after having been performed. When it is not possible to compensate for the 8 hours worked on the public holiday in the next 30 days, the worker shall receive an extra pay which, according to the provisions of the Single National Collective Labour Agreement for 2007-2010, and mainly its Article 41 (3) (c), is of 100% from the basic pay.

Paragraph 4 – Elimination of risks for workers in dangerous or unhealthy

Occupations

The Committee asked that the list of occupations activities in which working time has been reduced to less than eight hours daily be included in the next report. Furthermore, having noted that additional paid holidays (at least three days per year) for workers engaged in work under special conditions are provided by collective agreement, the Committee wished to receive a more detailed overview of the agreement provisions concerned.

The Single Collective Labour Agreement at national level for 2007-2010 provides for the reduction of the normal working time and for the categories of personnel that benefit from that schedule.

Following the inspection visits conducted by the labour inspectors at the local level, the activities where employees benefited from a reduced length of working time of less than 8 hours, as stipulated in the Collective Labour Agreements concluded at the groups of enterprises level and/or enterprises level are as follows:

- social work and health - doctors, physicians, Laboratory assistants, nurses and high-school graduate health care personnel, blood transfusion personnel, radiology personnel;
- metallurgy industry – founder, coke worker, locksmith, chamotte mason, crane operator, rolling bridge mechanic, forger, charge preparing worker, purifying worker, metallurgist;
- road transport – car driver;
- extraction and processing of coal – miner, miner helper, locksmith, pyrotechnist, well signaller, equipment mechanic, compressor worker;
- industry of machines and equipments - rolling bridge mechanic;
- other transport-related activities – flight controller;
- production and distribution of electric and thermo-power, gas and hot water – electrician;
- manufacture of chemicals and chemical products – chemist operator, Laboratory assistant, maintenance mechanic;
- manufacture of cellulose, paper and paperboard – boiling worker, cellulose washing worker, vessels equipment operator, maintenance personnel;

- post and telecommunications – junction operator, telephone exchange operator;
- manufacture of glass products – glass blower, glass mixture preparator, smelter, chamotte worker, calotte cutting worker, furnace supplying worker;
- extraction and manufacture of non-ferrous metal and rare ores – underground miner, miner helper, signaller, electrician, carpenter, electro-mechanic, pyrotechnist, welder, haulage man, topographer;
- extraction and manufacture of radioactive ores – miner;
- industry of metallic constructions and of metal products – sanding worker, non-destructive control operator, scouring worker, polisher, die-maker tool man, Laboratory assistant;
- publishing and printing – typographer, bookbinder;
- extraction of salt – miner, pyrotechnist, underground conveyor mechanic, excavating tractor driver, driver, vulcaniser, driller, pump operator, underground electrician, extracting machine mechanic;
- manufacture of textile products – weaver, dyer;
- industry of machines and electrical equipments – plastics press worker, galvanization worker, sanding worker;
- extraction of hydrocarbons – driller;
- manufacture of furniture – carpenter, spraying dyer, wood lacquering worker.

The number of employees who benefited from a reduced length of the normal working time of 8 hours and the proportion of employees compared to the total workforce for the period 2005-2008 is shown in Table 1.

Table 1

Year	Average no of employees per economy	No of employees who benefited from a reduction of the normal length of 8 hours of working time	Proportion of employees compared to total workforce (%)
2005	5,905,410	55,201	0.93
2006	5,898,222	49,450	0.83
2007	5,767,440	38,888	0.67
2008	5,728,134	38,890	0.67

According to **Art. 142** of Law 53/2003 on the Labour Code, the employees working in difficult, dangerous or harmful conditions, the blind and other disabled young people aged up to 18 years old receive an **additional holiday for at least 3 days**.

As regards **the additional leave paid to workers employed under special conditions**, the Single Collective Labour Agreement at national level for 2007-2010 provides for the following:
Article 57 (1) In each calendar year, workers employed in degrees of disability are entitled to an additional leave lasting 3 days, whereas blind staff are entitled to 6 days.
(2) Employees operating in special conditions are granted additional annual leave of at least 3 days.
Article 58. The collective labour agreements at other levels, will determine the criteria by which employees shall receive their annual leaves and higher additional annual leave.

The Committee again recalls that while Article 2§4 requires provision for reduced working hours or additional paid holidays in dangerous and unhealthy occupations where it has not yet been possible to eliminate or reduce risks sufficiently, it considers, in view of the overriding health and safety aims of this provision, that other means of reducing the length of exposure to risks may also satisfy the Revised Charter.

The standard retirement ages according to Law nr. 19/2000 on the public system of pensions and other social insurance benefits for the people insured in the public pension system can be reduced based on their

particular workplace. Within the meaning of the Law nr.19/2000, jobs in special work conditions shall be those that, permanently or temporarily, may essentially affect the working capacity of the insured, owing to high exposure to risks.

According to the Law no. 319/2006 on health and safety at work, the employer shall have the duty to ensure the safety and health of workers in every aspect related to the work. Among his responsibilities, the employer shall take the necessary measures for the protection of workers' health and safety, the prevention of occupational risks, the provision of information and training, for ensuring the organizational framework and the means necessary for health and safety at work.

The employer shall be alert to the need to adjust the measures referred by taking account of changing circumstances and aiming to improve the existing situation.
The Law no. 319/2006 on the health and safety at work transposes the Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work, published in the Official Journal of the European Communities (OJEC) L 183/1989.

Since the entry into force of the Law on health and safety at the work, there is no more possible to place jobs in special and difficult work conditions.

The Committee asks that the next report contain detailed information on the implementation of measures taken to eliminate risks in dangerous or unhealthy occupations where it has not yet been possible to eliminate or sufficiently reduce these risks.

The Law no. 319/2006 on health and safety at work, published in the O.J. no. 646/26.07.2006 has repealed the former Law no. 90/1996 on Labour protection as well as the Labour Protection General Regulations which were approved by Joint Order no. 508/933/2002 of the Ministry of Labour and Social Solidarity and the Ministry of Health and Family.

Art.7 par.(1) letter (b) of Law no.319/2006 stipulates that the employer has the obligation to take the necessary measures for the prevention of occupational risks, whereas the second paragraph of the article stipulates that the employer has the obligation to be alert to the need to adjust the measures referred to in paragraph (1) by taking into account of changing circumstances and **aim to improve the existing situations**.

Under the Law no.319/2006 on health and safety at work, there were elaborated 22 Government Decisions through which were transposed all the specific Directives in the field of health and safety at work (see Annex 1). These acts specify - as obligation for the employer – to assess the risks at the workplace and to take the necessary measures in order to prevent work accidents and occupational diseases.

The Government Decision no. 1425/2006 for approval of the Methodological Norms for the implementation of Law no.319/2006 on Health and Safety at Work, in the Articles 14, 15 and the following, define and detail the activities for protection and risks prevention, as well as the organization of these activities at enterprise level.

Paragraph 5 – Weekly rest period

The Committee considers that twelve consecutive days of work before entitlement to a two-day rest period is a maximum (Conclusions XIV-2, p. 703), but before reaching a decision in this case it requested an explanation of the nature of the exceptions1 as well as information on the criteria

taken into account by the Labour Inspectorate in granting the permissions concerned. It also wished to know how frequently such permissions were granted.
In order to assess whether the postponement of the weekly rest period for 15 days is truly exceptional the Committee again asks for information how frequently permission is granted by the Labour Inspectorate.

Article 120 of Law 53/2003 on the Labour Code provides for the following:
"(1) In case that the compensation by days off is not possible within the period provided by Art. 119 par.(1) during the following month, additional work will be paid to the employee by adding an appropriate salary increase proportionate to the duration of the extra-work.
(2) The additional pay for extra-work, granted as provided in par.(1), is determined by negotiations inside the collective labour contract or, where appropriate, the individual employment contract, and cannot be less than 75% of basic salary."

According to **Art. 132** of the Labour Code, weekly rest is granted on two consecutive days, usually Saturdays and Sundays.
(2) If the rest on Saturday and Sunday would be prejudicial to public interest or the normal course of work, weekly rest period may be granted on other days, too, determined by the applicable collective Labour agreement or the internal regulations.
(3) In the case provide for at par.(2), employees will benefit from an increase in wages set by collective Labour agreement or, where appropriate, through the individual employment contract.
(4) In exceptional situations, weekly rest days can be granted cumulatively over a period of continuous activity which may not exceed 14 calendar days, with the authorization of the Labour Inspectorate and with the union's consent or, where appropriate, the employees' representatives consent.
(5) Employees whose weekly rest shall be granted under par.(4) are entitled to **double compensation** due under Art. 120 par.(2), above mentioned.

Employees who are granted the weekly rest period, under the terms of the Labour Code, Article 132 (4), are entitled to the double of the compensation due according to Article 120 (2) of the Labour Code, which means it shall not be lower than 150% of the basic pay.

For example, a worker who works 14 calendar days continuously, without benefiting from weekly rest accumulates a total of 32 additional hours. If the normal hourly wage is 100 monetary units, the worker will receive 4 days of rest per week and an increase in salary of 4800 monetary units.

In the year 2008 the Labour inspectorates issued 19 such permissions.

In the first 6 months of 2009, the Labour inspectorates issued 15 permits for granting cumulative weekly rest days. Applications were accompanied by the union's or employee representatives' consent.
The applicant employers' areas of activity were such as: artistic activities, metallurgy, navigation, processing of vegetables and fruits. Permits were granted taking into account the commitments for tours abroad, the honoring of contracts in order to avoid unemployment etc.

The small number of authorisations issued in 2008 underlines the fact that the period of continuous work that cannot be longer than 14 calendar days is an exception.

Moreover, during their controls, labour inspectors did not find that there would be such periods of continuous work without prior authorisation from the territorial labour inspectorate.

Paragraph 6 – Information on employment contract

The report provides an example of a model contract of employment which was approved by Government Order 64/2003. The model contains clauses as to the parties to the contract, the place of work, the type of work, the working conditions including leave, wages, safety and health measures, rest periods as well as the duration of the contract, notice periods, trial periods and other general obligations. The Committee considers that such a model is in conformity with the requirements of this provision of the Revised Charter. However it seek confirmation that this model contract is mandatory.

The framework-template of the individual employment contract is approved through **Order of the Minister of Labour and Social Solidarity no. 64/2003** with the subsequent modifications approved by the **Order 76/2003 (see Annex 2).**

According to **Article 2 par.(1) and 2** of the employment contract, **"**The individual employment contract concluded between the employer and the employee shall mandatorily include the elements stipulated in the framework-template. By means of negotiation between the parties, the individual employment contract may also include specific clauses, according to the law."

Also, the Single Collective Labour Agreement at national level for 2007-2010, particularly its Article 71 (3), stipulates that the individual employment contract shall include at least the clauses set up in Annex 3 to the Agreement, which contain the framework template of the general individual employment contract.

To conclude, the Collective Labour Agreement to the National, provided for under the **Order no. 76/2003, amending and completing the model framework of individual employment contract** (enclosed in the Annex to the Order of the Minister of Labour, Family and Social Welfare no. 64/2003), applies to all employees and employers and it is binding.

Paragraph 7 – Night work

Therefore the Committee asks to receives information on periodical medical examinations (as opposed to information on medical examinations prior to the take up of night work) and on any procedures in place for consulting workers' representatives on the introduction of night work etc.

Under **Article 124** of 53/2003-Codul Labour Law, employees who are to perform night work in the terms set by Art. 122 par.(1 ^ 1) are subject to a free health assessment before starting work and periodically thereafter. The conditions for carrying medical examinations and their frequency are determined by regulations approved by joint order of the Minister of Labour, Social Solidarity and Family and the Minister of Health. Employees performing night work and have medical problems recognized as being related to that will be switched to day work for which they are suited.

Under **G.D. no. 355/2007** on the supervision of health workers, staff working in night shifts (i.e. between 22.00-06.00) receive regular medical examination.
According to **Article 1** of that legal act: "The present Decision establishes minimum requirements for health surveillance of workers from risks to safety and health, prevention of workers from getting ill with occupational diseases caused by harmful chemical, physical, chemical or biological agents that are characteristic to the workplace, and from over-straining various body organs or systems at the workplace."

Annex 1 to Government Decision nr. 355/2007 establishes detailed prophylactic medical services according to occupational exposure. For staff who works in night shifts, Fiche 145 contains the following:

"Medical examination before employment:
a) according to data in the medical file
b) - glucose test results
- ECG
- psychological examination – at the indication of occupational medicine specialist
- psychiatric examination - at the indication of occupational medicine specialist.

Periodic medical examination:
- general clinical examination – annually
- glucose test results – annually
- ECG – annually
- psychological examination – annually
- psychiatric examination – at the indication of occupational medicine specialist

Contraindications:
- Decompensate diabetes
- Epilepsy
- Manifest psychosis"

According to **G.D. no. 355/2007**, **Article 21**, the frequency of the periodical medical examination is established in the fiches on the prophylactic medical services detailed on the basis of professional exposure and which can be modified only at the proposal of the occupational medicine physician, once s/he informed the employer.

According to **Article 24** and **Article 25 (2)** of the **Law no. 319/2007 of health and safety at work**, in conjunction with **Article 4 (1) of the Government Decision nr. 355/2007**, the measures to ensure an appropriate supervision of the workers` health in terms of risks to health and safety at work will be established so that each worker shall receive health surveillance at regular intervals, whereas the monitoring the health of workers will be provided by practitioners of occupational health.

Section 6 of the Law no. 319/2007 on health and safety at work provides for the consultation and participation of workers in the discussion of all issues relating to health and safety at work – **Article 18 et seq**. referring also to issues arising from health surveillance of workers working in night shifts.

Regarding the procedures applied in the consultation of workers' representatives on the introduction of night work a/o, according to **Art. 29 of Law no. 319/2007**, in order to promote measures for adaptation of workers to jobs and to improve of working and environmental conditions, occupational medicine physicians provide counseling on occupational health and hygiene to workers and their representatives in the company and in the committee for health and safety at work, as the case may be, and cooperate with other relevant bodies in the field of health and safety at work.

As regards the Committee's question concerning **the procedures in place for consulting workers' representatives on the introduction of night work,** under **Article 179 of the Labour Code** employers with at more than 50 employees shall establish a Committee for Health and Safety at Work at enterprise level in order to ensure employees' participation in any decision regarding health and safety at work. Under **Article 180 (5)** of the same Labour Code, employers with less than 50 employees shall ensure employees' participation in any decision regarding health and safety at work through the workers' representative for health and safety.

Article 4 – Right to a fair remuneration

Legal framework

- Law no. 53/2003 on the Labour Code
- Law no. 130/1996, republished on the collective Labour agreement
- Collective Labour Agreement at national level for the years 2007 - 2010

Paragraph 1 – Adequate remuneration

The Committee notes that the report does not contain any information on the level of gross and net average and minimum wages for the reference period. It recalls that each national report on this provision should provide this information.

The evolution of the minimum and average wage, gross and net, at national level, show as follows:

Year	Period in that respective year	Government Decision (G.D.)	Minimum **gross** basic wage at national level garanteed in payment (RON)	Minimum **gross** basic wage at national level garanteed in payment – Euro/ month **)	Average annual exchange rate (RON/Euro) communicated by the National Bank of Romania
2005	Jan. – Dec	G.D. no. 2346/2004	310 ***)**	85.63	3.62
2006	Jan. – Dec.	G.D. no. 1766/2005	330	93.75	3.52
2007	Jan. – Dec.	G.D. no. 1825/2006	390	116.76	3.34
2008	Jan. – Sept.	G.D. no. 1507/2007	500	135.86	3.68
2008	Oct. – Dec.	G.D. no. 1051/2008	540	146.73	3.68

Year	The average monthly **gross** wage (RON)	The average monthly **net** wage (RON)	The average monthly **gross** wage (Euro)	The average monthly **net** wage (Euro)
2005	967	738	266.80	203.60
2006	1150	862	326.28	244.57
2007	1410	1043	422.39	312.50
2008	1742	1282	473.07	348.18

*) The corresponding value in 2005 is given in RON.
**) The values of minimum gross salary at national level guaranteed in payment assessed in Euro/month were calculated based on average annual exchange rate (RON/EUR), communicated by the National Bank of Romania.

Year	The ratio between the **gross** average wage (RON) and the **gross** minimum wage at national level garanteed in payment (RON)
2005 (Jan. – Dec.)	3.12 %
2006 (Jan. – Dec.)	3.48 %
2007 (Jan. – Dec.)	3.61 %
2008 (Jan. – Sept.)	3.48 %
2008 (Oct. – Dec.)	3.22 %

Number of employees			
Year	Regies autonomes and trade companies	Budgetary units	Total
2005	3,200,615	871,216	4,071,831
2006	3,286,140	887,365	4,173,505
2007	3,356,525	929,917	4,286,442
2008	3,431,639	956,633	4,388,272

From the above data shows it results that the gross minimum wage at national level guaranteed in payment increased each year over this period.

During 2005-2008, the evolution of the gross minimum wage at national level guaranteed in payment was consistent with the developments of the macroeconomic indicators.

In July 2008, a Tripartite Agreement was concluded between the Romanian Government, the trade union confederations and employers' confederations representative at national level, with a view to ensure the minimum gross wage growth during 2008 – 2014. The Agreement ensures a rapidly rise in the gross minimum wage during that period so that the share of gross monthly minimum wage in the gross monthly average wage to reach the target of 50% in 2014.

The average number of employees in total economy (regies autonomes, trade companies and budgetary units) from 2005 to 2008, had the following evolution:

For the staff in regies autonomes and trade companies there is the Single Collective Labour Agreement at national level, which usually is concluded each year, and this agreement is applicable to everyone in Romania.

For the staff in the budgetary sector there are concluded special collective agreements in areas such as: industry, education, health. The number of people accounted to about 600,000.

As a result, the coverage of workers with collective wage agreements in 2008 was approx. 92% (4032 thousand people/ 4388 thousand people).
(4,032,000 people = 3,431,639 + 600,000 people)

Paragraph 2 – Increased rate of remuneration for overtime work

In its previous conclusion the Committee asked whether the compensatory time-off in lieu of increased remuneration for overtime hours was equivalent or higher than the overtime worked.

For the contractual budgetary staff, the regulatory acts that have covered their salaries during the period 2005-2008 are as follows:
- For year **2005** - Government Ordinance no. 9/2005 (Art. 13)
- For year **2006** - Government Ordinance no. 3/2006 (Art. 18)
- For year **2007** - Government Ordinance no. 10/2007 (Art. 18)
- For year **2008** - Government Ordinance no. 10/2008 (Art. 18).

Regulation of overtime is reflected in the regulations referred to above.
These regulations provide that work performed over the normal working time by the contractual staff employed in executive or management positions is considered overtime and is compensated with time off accordingly. If the compensation of overtime with corresponding free time was not possible within 30 days after the overtime was done, it will be paid in the following month with a benefit applied to the basic salary, as follows:

a) 75% of the basic salary for the first two hours that exceed the normal working day;
b) 100% of the basic salary for the next hours as well as for the hours worked during the weekly rest days or other days that, in accordance with the regulations in force, are not working days.

The jobs at the normal duration of working time was reduced according to the law than 8 hours per day, exceeding the approved work program may be only temporarily in very special circumstances, the mandatory compensation by time off accordingly.

For civil servants, the regulatory acts that have covered their salaries during the period 2005-2008 are as follows:
- For year **2005** - Government Emergency Ordinance no. 92/2004 (Article 16)
- For year **2006** - Government Ordinance no. 2/2006 (Art. 13)
- For year **2007** - Government Ordinance no. 6/2007 (Art. 13)
- For year **2008** - Government Ordinance no. 9/2008 (Art. 13) - to amend Government Ordinance no. 6/2007.

These regulations provide that for the hours worked over the normal working time, the civil servants appointed in executive or management positions or the other categories of high civil servants are entitled to recover the time worked or to receive a bonus applied to the basic salary, as follows:

a) 75% of the basic salary for the first two hours exceeding the normal working day;
b) 100% of the basic salary for the next hours. The increase of 100% is also paid for the hours worked on weekly rest days or in other days that, in accordance with the regulations in force, are not working days.

During 2005-2008, the remuneration of the **staff in the competitive sector** (employees whose salaries are set by negotiation), was regulated by a series of acts such as: Law no. 53/2003 on the Labour Code, the collective employment contract at national level, the collective agreements at industry level, the collective agreements at the level of group of units and the collective agreements at company level.

Par.(1) of **Article 109** of Law no. 53/2003, as completed and modified, provides that for employees employed full time the normal working time is 8 hours a day and 40 hours per week.

Par.(1) of **Article 110** provides that the distribution of working time throughout the week is usually uniform, 8 hours a day for 5 days, with two rest days.

Article 111 provides that the statutory maximum working time may not exceed 48 hours per week, including overtime. Exceptionally, the duration of the working hours, including overtime, may be extended beyond 48 hours per week, provided that the average working hours, calculated over a reference period of 3 calendar months, do not exceed 48 hours per week.

Article 119 provides that additional work is compensated by paid time off within 30 days after they were performed. In these circumstances, the employee may receive the appropriate wage for the hours worked over the normal working time.

Article 120 provides that if compensation by paid time off is not possible within the above time framework, i.e. in the following month, the additional work will be paid to the employee by adding an appropriate salary increase according to the time effectively worked.

The benefit for overtime, granted in the afore-mentioned conditions, shall be determined by negotiations under the collective employment contract or, where appropriate, under the individual employment contract, and it will not be less than 75% of the basic salary.

Under **Article 14** of the Single Collective Labour Agreement at national level for 2007 - 2010, registered at the Ministry of Labour, Family and Social Protection under no. 2895/21/29.12.2006 (contract concluded for a period of four years, with possibility of annual review), the hours performed at the employer's request, over the normal working time established in the unit shall be considered overtime.

Employees may be called upon to perform extra hours only with their consent.

In order to prevent or remove the effects of natural disasters, of accidents or other force majeure, employees are required to perform overtime work required by the employer.

Also, **Article 15** of the Single Collective Labour Agreement at national level for 2007 – 2010 states that additional work is compensated by paid time off within 30 days after it was performed.
In these circumstances, the employees receive the appropriate salary for the hours worked over the normal working time.

The regulations on overtime afore-mentioned have existed also in the Single Collective Labour Agreement at national level for 2005-2006, registered at the Ministry of Labour, Family and Social Protection under no. 20.01/31.01.2005, contract amended by Addendum no. 710/2006.

Paragraph 4 – Reasonable notice of termination of employment

The Committee concludes that the situation in Romania is not in conformity with Article 4§4 of the Revised Charter on the ground that fifteen days' notice is insufficient in the case of employees with more than six months' service.

Article 73 (1) of Law no. 53/2003 on the Labour Code, with subsequent amendments and completions, provides that persons laid off under Art. 61 letters c) and d), Art. 65 and Art. 66 have the right to a notification that can not be less than 15 days.

According to **Art. 74 (2) of the Single Collective Labour Agreement at national level for 2007-2010,**

applicable to all employees and employers, in case that the unit is obliged by law to give notice for the termination of employment, **the notice period will be 20 working days**.

The regulations provided for by Law no. 53/2003 on the Labour Code, with amendments and completions, were the result of negotiations between the social partners, who considered that a notice period of 15 days, as stipulated by the Labour Code, respectively 20 working days as determined under the Single Collective Labour Agreement at national level for 2007-2010, was reasonable as protective measure for employees in case of termination of employment for reasons that does not relate to the employee.

Moreover, under **Article 31** of **Law no. 130/1996** on the collective employment contract, republished, the terms of the collective employment contract may be modified during its execution, in the terms set by law, whenever the parties agree to.
Therefore, any proposed amendments to those provisions relating to the period of notice shall be subject to the discussion with the social partners.

Paragraph 5 – Limitation of deduction from wages

The Committee reiterates that under Article 4§5 of the revised Charter, deductions from wages are allowed only under the conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards. **It asks therefore for the next report to outline these conditions and limits in more detail, focusing in particular on a description of the relevant legislation.**

Art. 164 of **Law no. 53/2003** on the Labour Code, provides for the following:
(1) no deduction from wages can not be operated, except for the cases and conditions provided by law.
(2) deductions for damage caused to the employer cannot be made unless the employee is outstanding debt, liquid and due, and has been found as such under a definitive and irrevocable court decision.
(3) in case of plurality of creditors of the employee there will be observed the following order:
a) maintenance obligations under the Family Code;
b) contributions and taxes due to the state;
c) damage to the public property by illegal acts;
d) cover of other debts.
(4) the aggregate deductions from wage shall not exceed half of the monthly net wage.

In accordance with **Art. 273** of the same act, the amount established to cover the damages shall be withhold in monthly installments from the wage of the person concerned by the employer with whom the person is employed. Rates cannot be more than one third of the net monthly wage, and cannot exceed together with all the other withholds which the person might have, half of his/her salary.

Article 5 – Right to organize

Legal framework

- Law. 54/2003 on trade unions
- Law. 356/2001 on employers' organizations
- Law. 571/2003 on the Fiscal Code
- Law. 188/1999, republished, on the status of civil servants
- Law. 344/2004 on amending Art. 27 of Law no. 188/1999
- Law. 360/2002 on the status of police
- G.E.O. no. 153/2008 on amending and completing Law no. 360/2002
- Law no. 14/1992 on the organization and functioning of the Romanian Intelligence Service, with subsequent modifications and completions
- Law no. 191/1998 on the organization and functioning of the Service of Protection and Guard, with subsequent modifications and completions
- Law no. 92/1996 on the organization and functioning of the Special Telecommunications Service, with subsequent modifications and completions
- Law no. 1/1998 on the organization and functioning of the Foreign Intelligence Service, with subsequent modifications and completions
- Law no. 109/1997 on the organization and functioning of the Economic and Social Council
- Law no. 58/2003 amending and supplementing Law no. 109/1997 on the organization and functioning of the Economic and Social Council
- G.E.O. no. 41/2006 for the modification of Law no. 109/1997 on the organization and functioning of the Economic and Social Council

Right to join or not to join a trade union

In its previous conclusion (Conclusions 2004, p. 454), the Committee noted that the unlawful grounds for employment discrimination were listed exhaustively in the relevant order and that membership of a trade union was not one of them. **It asked for information on the protection afforded to ordinary union members against possible employer reprisals for trade union membership and examples of court rulings on the subject. Since the report fails to provide this information, the Committee reiterates its question. It also asks whether there is any *de facto* direct or indirect discrimination against employees.**

The current regulatory framework establishes the principle of free trade union membership and this membership is never a discriminatory condition when hiring an employee.

As regards the protection granted to ordinary union members against possible retaliation by an employer on grounds of belonging to a union, Law no. 54/2003 on trade unions establishes in Art. 2 par.(3) the general principle that no person can be forced to participate or not in a trade union, or to withdraw or not from a trade union. Obviously, this legal provision is incumbent upon the employer.

Moreover, the same piece of legislation states the independent character of trade unions with regard both to public authorities and political parties, as well as to employers' organizations.

In accordance with **Art. 10 par.(2)** of **Law no. 54/2003** it is forbidden the amendment/ termination of individual employment contracts of both the elected representatives in the trade unions' governing bodies, **as well as of the trade union members**, at the employer's initiative, on grounds relating to union activity. Therefore no representative of the union, regardless of the position occupied in the organization (manager

or executive), may be subjected to reprisals by the employer on the grounds of belonging to a union, without infringing the legal provisions in this regard.
It worth mentioning that the same legal protection is enjoyed by civil servants in their professional relations, as provided for by Art. 10 par.(4) of Law no. 54/2003.

In the exercise of the provisions set by law, trade unions have the right to take any legal action, **including the legal proceedings on behalf of their members without needing an express mandate from those concerned.**
The action will not be brought or continued by the trade organization if the person concerned opposes or waives the trial.
Law sanctiones with imprisonment from 6 months to 2 years or with fine from 2,000 to 5,000 RON (approx. 460 to 1,160 Euro) the prevention of exercising the right of free association and trade union organization, as the act is deemed offense.

Personal scope

Under section 27 of the new Act on the status of civil servants (no. 344/2004), the right to organize is guaranteed to all civil servants except high civil servants. (…) The Committee emphasizes that under Article 5 of the Revised Charter, civil servants and public service staff must enjoy the right to organize. Under Article G of the Revised Charter restrictions must be "prescribed by law and … necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals". **The Committee finds that section 27 of the Act does not satisfy these conditions as it is too general and hence that the situation is not in conformity.**

According to **Art. 40** of the **Romanian Constitution**, republished, **citizens may freely associate** into political parties, **trade unions**, employees' associations and other forms of association.
Under the provisions of Article 2, paragraph 1 of Trade Union Law no. 54/2003, employed persons and **public servants have the right to form trade union organizations and to join them**.

According to the provisions of the fundamental law, **Law no. 188/1999** stipulates in principle **the right of public servants to establish and join trade unions** – Art. 29, paragraph 1 and 2. Restriction on the exercise of certain rights for certain categories of persons is allowed in the terms established by **Art. 53** of the Romanian Constitution, republished. According to the Romanian Constitution, republished, the measure shall be proportional to the situation having caused it, **applied without discrimination and without infringing on the existence of such rights or freedom.**

Law no. 188/1999 on the status of public servants, republished, was amended and completed by the entry into force of the Law no. 251/2006, on 19 July 2006. Thus, the content of the Art. 27 reads as follows:
„ Art. 27 – (1) The right to form and join trade unions is guaranteed to public servants.
(2) The public servants may freely establish trade unions, join them or exercise any mandate within trade unions.
(3) In the situation where high public servants and public servants holding management positions are elected in a trade unions' governing body, they become subject to the obligation to choose one of the two functions within 15 days after the date of their election in that governing body. If the public servant chooses to carry on his activity in the trade unions' governing body, he shall be suspended from service for a period equal to the mandate for a management position in the trade unions' governing body.
(4) Public servants may form or join professional organizations and other forms of organization aimed to protect their professional interests."

After the date of entry into force of the Law no. 251/2006, the Law no. 188/1999 was republished in Romania's Official Journal, Part I no. 365 of 29/05/2007, and **Art. 27** was renumbered as **Art. 29**.

In 2008, following the coming into force of the Government Emergency Ordinance no. 125/2008 for amending and completing **Art. 29** of Law no. 188/1999 on the status of public servants, this article has been amended as follows:
„ **Art. 29 – (1)** The right to form and join trade unions is guaranteed to public servants.
(2) The public servants may freely establish trade unions, join them or exercise any mandate within trade unions.
(3) In the situation where high public servants and public servants, **holding the quality of authorising officers**, are elected in a trade unions' governing body, they become subject to the obligation to choose one of the two functions within 15 days after the date of their election in a governing body. If the public servant chooses to carry on his activity in a trade unions' governing body, he shall be suspended from service for a period equal to the mandate for a management position in the trade unions' governing body.
(3^1) The public servants, other than those mentioned in paragraph (3), may hold simultaneously the public function and the management position in the trade unions' governing body, having the obligation to comply with the regime of incompatibilities and conflicts of interest which are applicable in this case.
(4) Public servants may form or join professional organizations and other forms of organizations aimed to protect their professional interests."

Thus, Art. 29 doesn't prohibit the right to form and join trade unions for high public servants and public servants holding the quality of authorising officers, but only the right to hold at the same time a management position in the trade unions' governing body and a public function which involves the quality of authorising officer or a high public servant position. The proposed measure involves the reservation of the function owned by the public servant and ensures, during the exercise of the management function in a trade unions' governing body, the normal activity in both the public institution and the trade union organization.

Article G of Revised European Social Charter provides that *„the restrictions must by prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of **public order**, national security, public health or morals."*

This amendment was determined as a result of Recommendation no. 092007ROM087, issued by the International Labour Organization, relating to regulation of trade union rights of public servants from Romania, in order not to restrict, in principle, the access to leadership positions in trade union organizations.
Moreover, the amendment to Art. 29 was generated by the requests of certain union organizations (National Trade Union Confederation Cartel Alfa, „Forum" Trade Union from public administration, affiliated to the National Federation of Unions of Public Administration, which reported that the „application of the (current) legal provisions seriously affects the trade union freedom of important categories of public servants, namely the public servants holding a management position."

Thus, considering the above-mentioned aspects, we consider that the provisions of **Art. 29 of the Law no. 188/1999,** currently in force, are in accordance with the provisions of the Revised European Social Charter.

In order to **avoid conflicts of interest**, taking into account the supremacy of general interest in relation with the particular one, it was necessary to restrict the right to hold a management position in the trade unions' governing body for the public servants coming from the **category of high public servants** and for

the public servants **holding the quality of authorising officers**, in terms of suspension of service reports for these public servants, during the exercise of a management position in the trade unions.
In this context, it was considered that holding a public function from the categories mentioned above and, at the same time, a management position in the trade unions would lead to the inability to achieve goals for which the trade union organizations are formed and, at the same time, to the inability to apply the jurisdiction conferred by law for the central and local public administration system.
This way, it may be reached the unacceptable situation that the same person should represent both the interests of public institutions and authorities and the interests of trade union's members, in a context in which, to use specific means for defending the interests of trade union's members, such as negotiations, procedures for solving the dispute through mediation, arbitration and conciliation, petitions solving etc., it is necessary to have partners in the debate (employers and trade unions).

Both at the level of ministries and in the prefectures there are organized committees for social dialogue which include representatives of trade unions and employers' organisations as well the Secretaries General of ministries, at central level, as well as Prefects or Deputy Prefects at territorial level. For the observation of the principle *of tripartite assembly,* in the committees for social dialogue (trade unions - employers – government), Prefects, Deputy Prefects or Secretaries General of the ministries can participate only as representatives of the government in these committees. We appreciate that high civil servants would be in conflict of interests if they would participate both as representatives of the government and trade union in the same social dialogue committees. Negotiations and consultations between trade unions and the public administration inside the social dialogue committees cannot be objective and impartially if high civil servants have to double act, as both representatives of the government and of trade unions.

With regard to judges, public prosecutors and members of staff of the Ministry of Justice**, the Committee asks for the next report to explain why these people are denied their right to form or join trade** unions and how their right to organize to defend their economic and social interests is protected.

As regards the manner in which judges, prosecutors and staff from the Ministry of Justice and Civil Liberties are observed their right to organize and are protected their interests, **Law no. 303/2004** on the status of judges and prosecutors provides as follows:
Article 76 - "Judges and prosecutors are free to organize or join local, national or international professional organizations in order to protect their professional interests, as well as those organizations provided for in Art. 11 par.(3).
Article 11. (3) – "Judges and prosecutors may be members of scientific and academic societies and of any private legal persons without patrimonial purpose."

Moreover, it worth mentioning that that **other staff of courts, prosecution and civilian personnel of the Ministry of Justice** have the right to organize or join trade unions. (Law no. 54/2003 Art. 2 para.1)
The magistrates have the right to organize in vocational associations and other organizations aiming to represent their interests, promote training and protect their status.

In accordance with **Art. 125 par.(3)** in conjunction with **Art. 132 par.(2)** of the **Romanian Constitution** the positions of judge and prosecutor are incompatible with any other public or private position, except for that of academic education.

The provisions of Law no. 54/2003 should be read in conjunction with those of Art. 63 of Law no. 168/1999 on the settlement of Labour disputes in which the right to strike is prohibited to prosecutors, judges, staff of the Ministry of National Defense, Ministry of Interior and units subordinated to these ministries, staff of the Romanian Intelligence Service, Foreign Intelligence Service, Special

Telecommunications Service, military personnel employed in the Ministry of Justice and in the units in its subordination.

The Superior Council of Magistracy considers that "the Constitution of Romania protects the right of magistrates to join unions or the right of their professional associations to promote their economic and social interests".
In relation to the provisions of Article 9 of the Constitution of Romania, republished, the Superior Council of Magistracy (SCM) held that "the legal provisions which restrict the right of judges and prosecutors to join trade unions which would promote their economic and social interests are contrary to the constitutional dispositions".

Thus, according to SCM, the provisions of Article 4 of Law no. 54/2003 on trade unions and the provisions of Article 76 of Law no. 303/2004 on the status of judges and prosecutors, republished, with subsequent amendments and supplements, are not fully in line with the constitutional provisions.

Under Article 9 of the Constitution of Romania, republished, "trade unions, employers' associations and vocational organizations are set up and operate according to their statutes, in the terms set by law. They contribute to the protection of rights and to promoting the professional, economic and social interests of their members."

The constitutional level does not establish any prohibition for the magistrates to be part of trade unions. When the constituent legislature wanted such a ban, it expressed it clearly (Article 40 (3) of the Constitution expressly provides that "judges of the Constitutional Court, Ombudsmen, magistrates, active members of the military, police and other public services as determined by organic law may not join political parties").

The Constitution establishes the general right of association in trade unions, employers' associations and professional organizations, without distinguishing between them, but makes reference to the legislator which is to establish the conditions under which these organizations shall operate.

On that basis, therefore, the Law no. 54/2003 set a ban for magistrates to be part of trade unions.
In the interpretation of the magistrates' limitation of right to association, the Constitutional Court, Decision no. 469/2003, held the following:
"Art. 40 par.(1) of the Constitution, republished, stipulates the right of citizens to associate freely in political parties, trade unions, employers' organizations and other forms of association. This right is exercised through participation in the association or accession to existing associations.

Envisaging the possibility of creating several types of associations, which are not listed in a limitative way, the constitutional dispositions provide for the possibility of limiting the scope of persons who may set up or may adhere to different types of associations, depending on the scope of activity and purpose of these associations, limitations which are materialized in laws, taking account of the objectively different situations of certain categories of persons, without prejudicing by this the principle of equal rights enshrined in Article 16 par.(1) of the Constitution, republished (...). Therefore, it is clear that limiting the categories of persons who may set up or may adhere to certain forms of association, in this case trade unions, does not contravene to the constitutional principle on freedom of association.

From the constitutional provisions (...) it results that there are several types of associative forms, with different objects of activity and purposes. Members of various professional associations have different rights and economic or social interests which means that the categories of persons who may be part of the various associations are also different. Both old and new constitutional text provided for the setting up

and carrying out of associations' activities according to their statutes, in the terms set by law. Therefore, the law may provide for certain mandatory conditions on associations' set up and activity, including the categories of persons who may take part in various associations, from which their statutes cannot waive. The categories of persons who cannot set up or cannot join certain types of associations can be part of other organizations, and thus their right to free association is not prejudiced. "

The prohibition of magistrates' right to join trade unions may be justified, just as in the case of officials that they are not subject to collective labour agreements and contracts. They need no protection before any employer, since they represent the highest authority of the state ("Treaty of Labour law", Alexandru Țiclea, 2007, page 174). Moreover, justice is an essential service to society which cannot be affected by the use of instruments specific to union struggle. The magistrates have no individual employment contracts, therefore they cannot negotiate, they are not subject to dispute settlement procedures through mediation, arbitration and conciliation, and have no right to strike.

The purpose of defending the professional, economic and social interests of magistrates can be achieved, however, by the existing opportunity that magistrates set up professional associations to represent their interests and which are consulted whenever the question of the status of their profession or their rights are at stake, as it happens in practice.

With regard to the Romanian Intelligence Service, the Protection and Guard Service, the Foreign Intelligence Service, the Special Telecommunications Service and their subordinate bodies, the Committee asks for information on the organization, the aims and the functions of these services in order to assess whether the situation is in conformity with Article 5.

Article 5 of the European Social Charter Revised provides for the freedom of association in trade unions, stipulating that "the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom."
At the same time, as regards the guarantees to the right to join trade unions, it is further provided that "the principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category **shall equally be determined by national laws or regulations**."

The **Law no. 14/1992** provides for the organisation and functioning of the **Romanian Intelligence Service**.
The Romanian Intelligence Service organises and conducts activities on the collection, verification and valuation of information necessary to know, prevent and counteract any actions which, according to the law, constitute threats to the national security of Romania.
The Romanian Intelligence Service ensures the security of state secrets and the prevention of the information leakage, which cannot be disclosed, according the law.
In applying the legal provisions concerning the protection of state secrets, the Romanian Intelligence Service organises and effectuates the transportation of official correspondence all throughout the territory of Romania.
The military and civilian employees of the Romanian Intelligence Service are required to strictly keep the state secret and the professional secret too, inclusively after leaving in any manner of their service.
Any disclosure of information or data known by a person who has the quality of employee of the Romanian Intelligence Service is prohibited and punishable, unless that information is authorized by law.

Internal documents of any of the Romanian Intelligence Service (RIS) have a state secret character, shall be kept in its own archive and shall be consulted only with the approval of RIS Director, in the terms set by law.
The documents, data and information of the Romanian Intelligence Service can become public only after a period of 40 years from the filing.

The provisions of **Art.118** of the **Constitution** regarding the armed forces in conjunction with **Art. 1 para.1 of Law no. 14/1992** on the organization and functioning of the Romanian Intelligence Service, with subsequent amendments and completions, stipulate that "The Romanian Intelligence Service is the state organized entity specialized in the field of intelligence concerning the national security of Romania. It is **part of the national defence system**, and its activity is organized and coordinated by the Supreme Council for National Defence."

Moreover, the personnel of the Romanian Intelligence Service has "all the rights and **obligations** that the regulations and the military statutes and rules provide for the military personnel of the Romanian army" – **Art. 27 (3)** of **Law no. 14/1992**, also with respect to the restriction of the exercise of certain fundamental rights and liberties.

Taking into account the above-mentioned aspects, we consider that although Law no. 80/1995 on the statute of the military personnel, with subsequent modifications and completions, expressly prohibits the right to set up or join trade unions – Art. 29 letter (e), these provisions are not consistent with those of Article 5 of the ESCR given the exemption instituted for the members of armed forces. Moreover, Art. G of Part V of the ESCR provides that **the rights and principles established by the Charter may be subject to restrictions or limitations** that are necessary in a democratic society "for the protection of public interest, **national security**, public health, or morals".

Art. 27 of Law no. 14/1992 provide for the following:
"The staff of the Romanian Intelligence Service shall consist of permanent military cadres and civil employees, who shall carry out operative and administrative powers.

Those who, while belonging to the repressive structures of the totalitarian state, have committed abuses, the informers and collaborators of the Security as well as former activists of the communist party, guilty of offences against the fundamental rights and freedoms of man shall be debarred from acting in the Romanian Intelligence Service.

The military cadres of the Romanian Intelligence Service shall have all the rights and obligations provided for the military of the Romanian Army, by statutory regulations, military statutes and rules.
The civil employees shall be subject to the provisions of the Labour Code and other statutory provisions and regulations of the Romanian Intelligence Service."

Similarly, the provisions of the military personnel statute are not inconsistent with the terms of the **Convention of the International Labour Organization no. 87/1948** on the freedom of trade union association and of the right to join trade union associations, ratified by Romania by the Decree no. 213/1957, published in the Official Journal, part I, no. 4 of 18 January 1958, which in Art. 9 par.1 states that "the national legislation shall establish the extent to which the guarantees provided by this convention apply to the armed forces and police."

As pronounced by the **Decision no. 147/2004** of the Constitutional Court, Art. 40 par.1 of the Constitution of Romania stipulates the right of citizens to freely associate in political parties, trade unions, employers' organizations and other forms of association. However, this fundamental social and political right is not an

absolute right, according to the same article of the fundamental Law, which also takes into consideration the possibility to restrict the category of individuals who can set up or join different types of associations, depending on the subject of activity and the purpose of such associations. The law establishes this restriction taking into account the objectively different circumstances of certain categories of individuals. Thus, for instance, Art.40 par.3 of the Constitution and the provisions of other organic laws (including the Statute of Military Personnel) specify certain categories of individuals that cannot join political parties.

The information requested by the ECSR concerning the organization, objectives and functions of the **Protection and Guard Service** are provided for by **Law no. 191/1998** on the organization and functioning of the Protection and Guard Service, published in the Official Journal of Romania no. 402 of 22 October 1998.

The Protection and Guard Service is the state body responsible for national security, specialised in ensuring the protection of Romanian officials, foreign officials and their families during their stay in Romania, in the limits of legal provisions, as well as in ensuring the guard on diplomatic premises and residences, in accordance with the decisions of the Supreme Council for National Defence.

The Protection and Guard Service has a military structure and is part of the national defence system.
The Supreme Council for National Defence approved the organisational structure, the effectives in peacetime and in time of war, as well as the organisational and functioning regulation of the Service of Protection and Guard, on the proposal of the Director of the Protection and Guard Service.

The dispositions of Law no. 80/1995 regarding the status of military personnel, with subsequent modifications and completions, published in the Official Journal no. 155 of 20 July 1995, are also applicable to the military personnel of the Protection and Guard Service.

According to **Art. 4** of the Law no. 54/2003 on trade unions, the Protection and Guard Service is mentioned among the institutions whose military personnel cannot set up trade unions, given the special status of the military personnel, which is different from that of the personnel employed on the basis of a labour contract, as well as from that of civil servants. The law expressly allows for these categories of personnel to establish and join different organizations set up in order to defend their economic and social rights.

The interdiction to set up trade unions was considered to be a natural consequence of the special status of the military personnel who is in the service of their nation. The character of their activity restricts their freedom to establish and join such organizations, on grounds of efficiency of the military institutions, military order and discipline, including the application of the principle of unity of command and action. The limitation of such liberties for the military personnel was provided for by the legislation, as these measures were deemed necessary in a democratic society, in the interest of national security and public order.
The military profession belongs to a domain of social activity which is organized and functions on the basis of specific principle that define national security.

Considering the fact that the privations of military service involve the supreme sacrifice at war, and at peace time they bring about drastic limitations of the fundamental human rights and liberties, the status of military personnel clearly singles out this social category. Taking into account the fact that these privations cannot be negotiated, trade unions were deemed inappropriate for this category of personnel.

The personnel of the Protection and Guard Service is composed of military personnel and civilian employees. The military personnel in the Protection and Guard Service has all the rights and duties established for military forces and operate as provided by law and military regulations.

The civilian employees are applied the Labour Code and other legal provisions and specific regulations of the Protection and Guard.

Thus, **Art. 15** of Law no. 191/1998 provides for the following:
"**(1)** The personnel of the Protection and Guard Service is composed of military personnel and civilian employees.
(2) In the performance of duties, the operational staff is vested with the exercise of public authority.
(3) Military and civilian personnel who meet specific tasks to achieve operational activities fall into groups I and II of work.
(4) The criteria for employment in groups I and II of the work and those receiving group I or II of work are established by order of the Director of the Protection and Guard Service."

Article 16 (1) "The personnel of the Protection and Guard Service has all rights and duties established for military forces and operate as provided by law and military regulations.
(2) The civilian employees are applied the Labour Code and other legal provisions and specific regulations of the Protection and Guard. "

In conclusion, we appreciate that the disposition of Art. 4 of the Law no. 54/2003 on trade unions regarding the interdiction that the military personnel of the Protection and Guard Service should establish trade unions is in conformity with Article 5 of the European Social Charter Revised.

The organization and functioning of the **Foreign Intelligence Service** is governed by **Law no. 1/1998** on the organization and operation of the Foreign Intelligence Service, with subsequent modifications and completions.
The Foreign Intelligence Service is the state institution specialized in foreign intelligence for the national security and defense of Romania and its interests.

The Foreign Intelligence Service is part of the national defense system. Its work is organized and coordinated by the Supreme Council of National Defense. The Foreign Intelligence Service staff is composed of military personnel, military staff employed under a contract and civilian employees.

Active military staff, in reserve or retired staff from the Foreign Intelligence Service has all the rights and duties under the applicable regulatory provisions of the Romanian army and under the regulations specific to this service.

Military staff employed under a contract is invested with public authority during and in relation with the tasks and duties of office, in the limits the competences established by law for military staff in activity.

The civilian employees are applied, as appropriate, the provisions of the Labour Code, of the status of civil servants and other normative acts and specific regulations of the Foreign Intelligence Service. Civilian employees must file the oath with regard to respect the Constitution, the laws of the country and of the regulations specific to the Foreign Intelligence Service.

The disclosure in any way of any data or information subject to the Foreign Intelligence Service activity is prohibited and punishable by law.

The Foreign Intelligence Service personnel is operating in open or covert, in accordance with the needs for achieving national security.

As regards the organization, goals and functions of the **Foreign Intelligence Service**, they are provided for by the Law no. 1/1998 which stipulates the following:
Art. 1 - "The Foreign Intelligence Service is the state body specialized in foreign intelligence concerning the national security and the safeguarding of Romania and its interests."
Art. 2. (1) – "The Foreign Intelligence Service is part of the national defence system. Its activity is organized and coordinated by the Supreme Council for National Defence."
Art. 2. (2) – "Every year, or whenever the circumstances call for it, the Director of the Foreign Intelligence Service submits to the Supreme Council for National Defence reports on the way the Service discharges the missions incumbent on it."
Art. 5 (1) – "The Foreign Intelligence Service is organized and functions as an autonomous administrative authority".
Art. 5 (2) – "The organizational structure, the staff during peace time and upon mobilization, the regulations on the functions and the attributes of the Foreign Intelligence Service are approved by the Supreme Council for National Defence."
Art. 9 (1) – "The Foreign Intelligence Service carries out its activity in keeping with the Constitution of Romania, the laws of the country, the decisions of the Supreme Council for National Defence, and military regulations."

According to **Art. 13** of Law no. 1/1998 on the organization and operation of the Foreign Intelligence Service, "The Foreign Intelligence Service staff is composed of military personnel, military staff on contract and civilian employees."
Article 14 (1) – The active military staff, in reserve or retired staff of the Foreign Intelligence Service have all the rights and duties under the applicable regulatory provisions of the Romanian army and the regulations specific to this service. "
Article 14 (2) - "Military staff on contract are vested with authority during and in relation with the tasks and duties of office, in the limits of competences established by law for military staff in activity. The modality of employment, duration of contract, rights and duties of military staff on contract are provided for in the applicable regulatory provisions of the Romanian army and by order of the Director of Foreign Intelligence Service."
Article 14 (3) - "Civilians employees are applied, where appropriate, the provisions of the Labour Code, of the status of civil servants and of other normative acts and regulations specific to the Foreign Intelligence Service."
Article 14 (4) - "Civilian employees must file the oath with regard to respect the Constitution, the laws of the country and the special regulations of the Foreign Intelligence Service."
Article 15 - "The personnel of the Foreign Intelligence Service cannot be members of parties or political organizations nor to conduct propaganda by any means or other activities for such organizations."
Article 16 - "The personnel of the Foreign Intelligence Service who is entrusted with the exercise of public authority has all rights and obligations provided by law for that capacity."

Law no. 54/2003 on trade unions provides at Art. 4 that "persons holding management positions, high public officials in the terms set by law, judges, military personnel, the staff of the Ministry of National Defense, Ministry of Interior, Ministry of Justice, the Romanian Intelligence Service, the Protection and Guard Service, the Foreign Intelligence Service and **the Special Telecommunications Service,** as well as from the subordinated units, cannot set up trade unions."

According to **Art. 1 par.(1)** of **Law no. 92/1996** on the organization and operation of the Special Telecommunications Service, with subsequent modifications and completions, the Special

Telecommunications Service is the central specialized legal entity that organises, leads, conducts, controls and coordinates the activities in telecommunications for public authorities in Romania and for other users.
Art. 1 par.5 of the same act, provides that "the Special Telecommunications Service has military structure and is part of the national defence system" and, therefore, the specific military legislation, i.e. Law no.80/1995 on the statute of military staff, with subsequent modifications and completions, is totally applicable.

The military and civilian employees of the Special Telecommunications Service have an obligation to ensure strictly confidentiality in the use of special telecommunications, and the interception of communications is banned.
The personnel of the Special Telecommunications Service are required to keep strictly the state, military and professional secrets, including after leaving the service.
Annex 3 presents Law no. 92/1996 on the organization and operation of the Special Telecommunications Service.

The Committee notes that the situation, which it has previously found to be incompatible with the Charter (Conclusions 2004, p. 454) because of excessive restrictions on police officers' right to organise (under Act no. 360/2002), has not changed. The Committee would point out that compulsory membership of organisations is incompatible with Article 5 (Conclusions I, p. 31). Furthermore, police officers must enjoy the main trade union rights, which are the right to negotiate their salaries and working conditions and freedom of association (European Council of Police Trade Unions v. Portugal, Collective Complaint no 11/2001, decision on the merits of 22 May 2002). Consequently, it reiterates its conclusion of non-conformity in this respect.

Regarding the conclusion of the European Committee of Social Rights that the police officers are required to adhere to the National Police Corps and membership would be compulsory, the Ministry of Administration and Interior presents the following clarifications:

According to **art. 6** of **Law no. 218/2002** on the organizing and functioning of the Romanian Police, with subsequent modifications and completions, „the National Police Staff Corps carries on its activity within the Romanian Police as a legal person of public law, whose attributions are established by the Law on the police officer status".

According to **Art. 49** of **Law no. 360/2002** on the policeman status**,** with its subsequent modifications and completions, the National Police Corps is established as a legal person of public law, representing a form of organisation on professional, autonomous, non-political and non-profit criteria that promotes the interests of the police staff and defends their rights.

Organization and Functioning Regulation of the National Police Staff Corps approved by **Government Decision no. 1305/2002,** provides that National Police Staff Corps is functioning according to the law, within the Ministry of Administration and Interior, being composed of departments and territorial organizations. In order to fulfil the purpose for which it was established, the corps and its structures, through management and executive bodies, exercises the following attributions:

a) undertakes measures to develop, among the police staff, the feelings of dignity, honour and attachment to the tradition and moral values, which they need to share and defend;

b) promotes and supports in relationship with other public institutions and civil society, the traditions, interests and generous goals pursued by policemen for defending the fundamental values and human rights;

c) participates, along with specialized structures, in initiating actions aimed at increasing the efficiency of police activity;

d) issues standpoints in the elaboration of draft laws that refer to policing or the status of the police staff;

e) issues standpoints, according to the law and the hierarchical levels of competence, when it is consulted by the Minister of Administration and Interior, where appropriate, by general inspectors and directors, on:

1. the elaboration by the Minister of Administration and Interior, or where appropriate, by general inspectors and directors, of orders, instructions or dispositions which concerns the policemen's interests and rights, as stipulated in Art. 2 par.(2);
2. the establishment or re-organization of police units;
3. the organization of working hours and weekly rest period.

h) at request, through its departmental or territorial structures, where appropriate, its represents the interests of the police officers/agents against whom disciplinary measures have been taken and provides free legal assistance to those being judged in a trial for acts committed during their service;

i) through its management bodies, represents the police profession, together with the heads of police units and bodies, in relation with professional and scientific authorities, public institutions and authorities, as well as with other legal or natural persons from the country or abroad;

j) takes part in the elaboration of the Ethic and Deontological Code of the Police Staff, whose provisions are compulsory in the performance of the police profession, and acts for its application;

k) edits and manages its own media, in order to promote policemen' image, activity and interests;

l) keeps and permanently updates the records of its members;

m) grants, upon request or ex officio, for cases that are thoroughly justified, scholarships and assistance for policemen and/or their family members, which are in a material or financial difficulty;

n) promotes international relations with similar organisations and professional institutions, with which it can associate;

o) establish their own awards and confer degrees of excellence and honour;

p) organises activities for the commemoration of heroes belonging to the Ministry of Administration and Interior;

r) supports the scientific research activity conducted by policemen and their family members;

s) it can provide services in specific areas of activity, according to the law;

ş) organises and conducts scientific, cultural and sport events activities;

t) conducts activities to support the policemen interests in front of domestic and international authorities.

The membership of National Police Staff Corps may be acquired, according to the law, by any policeman, regardless of function or professional degree, **by filling the adhesion form and paying the contribution**. By the date when the regulation has come into force, the policemen already covered by the provisions of Law no. 360/2002 have become members of the corps, and those subsequently appointed, had to pay the registration fee to become members, besides the above mentioned conditions. **The policemen are not obliged to joint the National Police Staff Corps.**

Although the **Government Decision no. 1305/2002** contained provisions which indeed stipulated that at its entry into force all the policemen being subject to its provisions were becoming *de jure* members of the National Police Staff Corps, the law has provided for policemen a right and not an obligation, opinion sustained by other articles from this act, that establish regulatory mechanisms to give up this membership:

► according to **Art. 13**, it offers the possibility, for every policeman, to give up his membership. The waiver is made in writing, by a communication addressed to the territorial organization or, if necessary, to the department where the policeman carries on his activity;

► according to **Art. 9 par.(4)**, it offers to the subsequently appointed policemen the possibility to become members of the National Police Staff Corps;
► **Art. 12** regulates the loss of membership.

The wording *„de jure"* has created a presumption of affiliation, a personal right. The reason for acquiring the membership under the Government Decision no. 1305/2002 was to enable each policeman to join a professional organization that aims primarily to promote the interests of this professional category.

Therefore, no policeman is obliged to remain a member of the National Police Staff Corps, and any policeman, at any time, may express his intention to give up to the membership.
It must also be outlined that membership of this organization does not exclude the possibility for the policeman to be a member of a trade union and to enjoy the main trade union rights, such as the right to negotiate wages, working conditions, and freedom of association.

Also, analyzing **Articles 49 to 52** of Law no. 360/2002, the Constitutional Court revealed by **Decision no. 426/2009** that the legal provisions do not contain rules of a nature to affect the right of association, as stipulated by art. 40 of the Constitution, including its negative aspect – individual freedom not to associate.

Considering the afore-mentioned issues, it worth mentioning that the membership of National Police Staff Corps is not compulsory and therefore, does not violate the provisions of the European Social Charter Revised, as the policemen, both members and non-members of National Police Staff Corps, have been associated in trade unions organizations, established and currently operating such as:

- ***National Union of Police Officers and Contractual Personnel;***
- ***National Union of Police Officers and Customs Workers „Pro Lex";***
- ***National Union of Police Officers „Diamantul";***
- ***National Union of Police Agents.***

Moreover, as regards the National Police Staff Corps, since 2004 until now there have been set up and are operational **several police trade unions** which benefit from all the rights provided by the law on the organisation and association in trade unions. In these trade unions the members are police officers, contractual personnel, customs police. These trade unions are affiliated to EUROCOP, the largest trade union organisation of policemen from 21 states, and at local level they are affiliated to trade union confederations representative at national level.

With regard to persons holding management positions or high public office, the Committee considers that under Article G of the Charter (see above), section 4 of Act no. 54/2003 is incompatible with Article 5 of the Revised Charter because it is too general.

According to **Art. 4 of Law no. 54/2003 on trade unions,** „the persons holding leadership positions, **functions of public dignity**, according to the law (...) cannot set up trade unions". **Art. 4 of Law no. 54/2003** makes reference to persons that hold positions of *public dignity*, **i.e. public functions that are occupied by a mandate obtained directly through organized elections** (ex. President of Romania/of Senate/of Deputy Chamber, deputies, senators, mayors etc.) **or indirectly, by designation** (ex. prime minister, minister, secretary of state etc.), according to the law.
Thereby, once the translation error is removed, the ECSR's conclusion can be reassessed in the light of the juridical reality.

In a previous conclusion (Conclusions 2002, pp. 125-131), the Committee found that the situation in Romania was not in conformity with Article 5 of the Revised Charter because only Romanian nationals

could be elected to a trade union's governing body (section 9 of Act no. 54/1991) or represent management or labour on the Economic and Social Council (section 14a of Act no. 109/1997, establishing that body).

Indeed, for being a member in the Economic and Social Council (ESC) the representatives of trade unions, employers' organisations and government must have only Romanian citizenship and domicile in Romania, in accordance with **Article 14 par.(a).**

The prerequisite for holding the Romanian citizenship in order to be able to participate in the ESC existed before Romania's accession to the EU. After Romania became EU Member State it became imperative to eliminate that restrictive condition. This amendment will be considered at the next modification of the Law on organisation and functioning of the Economic and Social Council.

Article 6 – Right to collective bargaining

Legal framework

- Law. 53/2003 on the Labour Code
- Government Decision no. 369/2009 on the establishment and functioning of social dialogue commissions in public administration at central and territorial level
- O.U.G. no. 65/2005 on amending Law no. 53/2003
- O.U.G. no. 55/2006 on amending Law no. 53/2003
- Law no. 371/2003 for approval G.E.O. no.65/2005 on amending Law no. 53/2003
- Law no. 94/2007 for approval G.E.O. no. 55/2006 on amending Law no. 53/2003
- Law no. 237/2007 amending par.(1) of Art. 269 of Law no. 53/2003
- Law no. 202/2008 amending par.(1) of Art. 134 of Law no. 53/2003
- G.E.O. no.148/2008 on amending Law no. 53/2003
- Law no. 109/1997 on the organization and functioning of the Economic and Social Council
- Law no. 58/2003 on amending and supplementing Law no. 109/1997 on the organization and functioning of the Economic and Social Council
- G.E.O. no. Law no. 41/2006 on amending Law no. 109/1997 on the organization and functioning of the Economic and Social Council
- Law no. 130/1996, republished, on the collective Labour agreement
- Law no. 168/1999 on the settlement of Labour disputes
- Law no. 261/2007 amending and completing Law no. 168/1999 on the settlement of Labour disputes

Paragraph 1 – Joint consultation

The Committee further notes that social dialogue commissions exist at ministry and territorial level comprising representatives of the relevant ministries at the national level or representatives of prefects offices at the territorial level as well as representatives of employers' organizations and trade unions. The representatives of employers' organizations and trade unions on national and territorial level are appointed by the employers' confederations and trade unions which are considered to be representative at national level. The **Committee asks what are the applicable representativeness requirements in this respect**.
The Committee has deferred the conclusion two consecutive times due to the lack of evidence for steps taken by the Government to promote effective social dialogue at all levels. It acknowledges the efforts made by the Government to establish a legal framework promoting joint consultation between employees and employers on matters of mutual interest at national, regional and enterprise level. **It nevertheless whishes the next report to provide information on how the aforementioned various legislative measures are implemented in practice at national, regional and enterprise level with a view to ensure efficient joint consultation procedures at all levels.**
It also wishes the next report to specify what are the requirements of representativeness to which participation in the various procedures of joint consultation is subject and what are the measures to promote joint consultation in the public sector including the civil service.

The **Law no. 109** of 2nd of July 1997 on the organisation and functioning of the Economic and Social Council was amended by **Government Emergency Ordinance no. 41/2006**. The main changes concern the following areas:

- the Economic and Social Council is composed of 45 members who constitute the plenary of the Economic and Social Committee, appointed by the social partners as follows:
  a) 15 members appointed jointly by the employers' confederations representative at national level,

b) 15 members appointed by common agreement by the trade union confederations representative at national level,

c) 15 members appointed by the Government.

- Plenary debates are conducted in the presence of at least 24 members, provided that each social partner is represented by at least 8 persons.

By the **Government Decree no. 369** of 25 March 2009 on the setting up and functioning of the committees for social dialogue in the public administration, at central and local level, inside the ministries and other public institutions, as well as at county level and at the level of Bucharest Municipality, there were set up and are functioning social dialogue committees. The committees shall be made up of representatives of central and local government, representatives of employers' organizations representative at national level and representatives of trade unions representative at national level.

The activity of the social dialogue committees has a consultative character and aims particular at the following:
a) ensuring relations of social partnership between administration, employers organisations and trade unions, which would allow a permanent mutual information on issues that cover the administration's and the social partners' areas of competence, with a view to ensure a climate of peace and social stability;
b) compulsory consultation of the social partners on legislative initiatives or of another nature, having an economic and social character;
c) other issues within the scope of activity of the central of the public administration or of the counties and Bucharest Municipality, upon which the social partners agree to discuss.

The social dialogue committees organized at the level of public ministries consist of:
a) Representatives of ministries or the respective public institutions appointed by order of the minister or by the head of the public institution, respectively;
b) Representatives of employers' organisations, appointed by the employers' confederations representative at national level;
c) Trade union representatives selected by the trade union confederations representative at national level.

The social dialogue committees organised at regional level consist of:
a) the prefect, as well the prefect's representatives and representatives of the decentralized public services of ministries and of other bodies of central public administration, appointed by the prefect;
b) the chair of the County Council or the General Mayor, for municipality of Bucharest;
c) one representative appointed by each employers' organization representative at national level,
d) one representative appointed by each trade union representative at national level.

The unitary elaboration of the national policies on social dialogue and the methodological coordination of the social dialogue committees are ensured by the Ministry of Labour, Family and Social Protection.
The committees for social dialogue at the level of central public administration include representatives of the social partners – representatives of trade unions and employers' confederations representative at national level, in conformity with the copies of final judicial decisions submitted to the committee for social dialogue secretariat. Both trade unions and employers' organisations shall designate a titular and one alternate member in the social dialogue committees at the level of ministries.

In the committees for social dialogue at the level of local public administration are included representatives of the social partners - trade unions and employers' organisations confederations, which are representative at national level, in conformity with the copies of the final judicial decisions

submitted to the secretariat of the committee for social dialogue, set up at the level of the Ministry of Administration and Interior.

The criteria for representativeness of trade union and employers' organisations were established in line with the provisions of Law no. 130/1996 on the collective employment contract, republished.

As regards the representativeness of those trade unions, there must be met in cumulative way the following conditions:

a) *at national level*:
- to have a legal statute of trade unions confederation;
- to have organizational and economic independence;
- to have their own union structures in at least half of the counties, including Bucharest;
- to have in their structure trade union federations representative in at least 25% of the branches of activity;
- the constitutive trade unions have cumulatively an amount of members that is at least equal to 5% of the total number of employees in the national economy.

b) *at branch level:*
- to have legal statute of trade unions federation;
- to have organizational and economic independence;
- the constitutive trade unions have cumulatively an amount of members that is at least equal to 7% of the total number of employees in that respective branch.

c) *At enterprise level:*
- to have legal status of trade union organization;
- the members of that union represent at least one third of the total number of employees in the unit.

The Ministry of Labour, Family and Social Protection has a legislative timetable to amendment Law no. 130/1996 on the collective employment contract, republished. The main changes will focus on establishing more clear criteria for representativeness and a more rigorous assessment of fulfilling the representativeness criteria.

Moreover, the Ministry of Labour, Family and Social Protection intends to amend by the end of next parliamentary session the following acts:

Law no. 168/1999 on the mitigation of disputes;
Law no. 54/2003 on trade unions;
Law no. 356/2001 on employers' organisations.

Employers' associations representative at national level are likewise representative at branch level as well as at the level of groups of units, by the instrumentality of the federative-type components.

As regards the representativeness of employers' organizations there must be met in cumulative way the following conditions:

a) At national level:
- to have organizational and patrimonial independence;
- to represent employers whose units which operate in at least half of the counties, including Bucharest;
- to represent employers whose units operate in at least 25% of the branches of activity;

- to represent employers whose comprise at least 7% of the total number of employees in the national economy.

b*) at branch level*:
- to have organizational and patrimonial independence;
- to represent employers whose units comprise at least 10% of the total number of employees in that branch.

Paragraph 2 – Negotiation procedures

In 2005, the Ministry of Labour, Social Solidarity and Family proposed substantial amendments to the Labour Code, i.e. outside the reference period. **The Committee asks the next report to specify whether and how the provisions pertaining to collective negotiation procedures have been amended following such proposal.**

The Labour Code was amended by **Government Emergency Ordinance no. 65/2005**. A new provision was introduced on the assistance by third parties, in accordance with their choices, of either party to the negotiation, conclusion or amendment of the individual employment contract.

As concerns the frequency of communication on the economic and financial situation of the unit, this shall be established by the collective employment contract, following the collective bargaining.
G.E.O. no. Law no. 55/2006 amended 53/2003 by ruling that all employees who perform work are recognized the right to collective bargaining, right to the protection of personal data and the right to protection against unlawful dismissals.

In 2007, **Government Decision no. 833/2007 on the rules for organizing and functioning of the parity commissions and the conclusion of collective agreements** was adopted in order to ensure the necessary legal framework for parity consultations between the leaders of public institutions and the civil servants (the parity commission is a committee established within a public authority or institution, having the task of consulting public institutions and civil servants when an agreement is to be concluded). Moreover, relevant for the reporting period is the fact that the conclusion of collective agreements for civil servants was also regulated. In this respect, **Art. 22, par.(1)** of the Government Decision no. 833/2007 defines the collective agreement as the convention concluded in a written form, between the public authority or institution, represented by its leader, and the civil servants of the public authority or institution, through the unions representing them or through elected representatives.

Collective agreements can be concluded on:
- **a)** setting up and using of funds designed to improve working conditions;
- **b)** health and safety at work;
- **c)** daily work programme;
- **d)** vocational training;
- **e)** other measures than those stipulated by law, concerning the protection of the elected governing bodies of trade unions or of the designated representatives of civil servants.

Paragraph 4 – Collective action

Who is entitled to take collective action?

The Committee held in its previous Conclusions (Conclusions 2002, pp. 134 -137 and Conclusions 2004, pp. 456 – 461) that the situation was not in conformity with Article 6§4 of the Revised Charter since

according to Article 42 of the Act no. 168/1999 a trade union can only take collective action if it meets representativeness criteria and if the strike is approved by at least half of the respective trade union's members. **The Committee notes that the situation has not changed in this respect and reiterates its conclusion of non-conformity on this point.**

The decision to strike is taken by the representative trade union organizations that take part in the conflict of interest, with the consent of at least **half** the members of those unions.

For employees of establishments where representative unions are not organized, the decision to declare a strike is taken by secret ballot, with the consent of at least a **quarter** of the number of employees of the establishment or, as the case may be, of the division, compartment or group of employees in that conflict of interest.

Restrictions on the right to take collective action

i. Restrictions related to essential services/ sectors

The report specifies that the said provision is applicable to sanitary units, social assistance, telecommunications, public radio and television, railways, public transports and salubrity services, gas supply, electricity, heating and water supply, employees in the national energetic system, in the operative units of nuclear sectors and units with 24 hours activity.
The Committee asks whether the mere fact that a strike takes place within one of these sectors allows a referral to compulsory arbitration even, e.g. in the event basic needs are secured by the provisions of minimum services during strike action or whether further conditions have to be met to qualify such referral as being necessary for "humanitarian interests" and what would be these conditions. Meanwhile, it reserves its position on this point.
The Committee further reiterates its question as to whether employers can make recourse to arbitration when strikes last more than twenty days without there being a threat to any humanitarian interest. The Committee points out that should no such information be provided in the next report it would not be able to assess the conformity of the situation with the requirements of the Revised Charter in this respect.
According to Section 61 of the said Act the procedure before the court or an appeal against its decision is subject to the rules on the resolution of labour disputes. **The Committee asks the next report to specify what are the applicable rules in this respect.** The report further states that in the event the court rules that a strike is illegal and orders its termination, it may also sentence the party having called the strike to pay damages. **The Committee asks the next report to confirm that a requisitioning of striking workers to provide minimum services is not provided for under Romanian law.**

Employers may submit a conflict of interest to the attention of an arbitration committee **only if the strike lasted over a period of 20 days** and the parties have not reached an agreement, and if **the continuation of the strike would affect humanitarian interests.**
If the humanitarian interests are not affected, the employer cannot prevail of his right to resort to arbitration.

According to **Article 284** of the **Labour Code,** the trial of labour disputes is under the jurisdiction of courts established by the Code of Civil Procedure.
The applications shall be addressed to the competent court in whose district the petitioner is domiciled or resident or where the enterprise premises are, as the case may.

Applications relating to the mitigation of labour disputes are judged in a regime of emergency. The procedure of formal notice to the parties shall be deemed legally done when it is conducted with at least 24 hours before the time of trial.

The burden of proof in labour disputes rests with the employer, who is required to submit evidences for his defence until his first day of appearance in court.
The administration of evidences is done in emergency regime, the court being entitled to disqualify from the benefit of burden of proof the party who unjustified delays the administration of proofs.

Moreover, Law no. 168/1999 on the mitigation of labour provides in Section 2 on "The procedure for mitigation of disputes of rights".

Regarding the request addressed to the striking workers to provide a minimum of services, the law stipulates the following:
- in sanitary and health units, in telecommunications, public radio and television, in railway units – including railway guards, in the units providing transport and sanitation for localities, as well as in gas supply for people and in electricity, heat and water supply, strike is permitted on the condition that **the strike organizers and leaders provide essential services, not less than one third of their normal work activities**, with meeting the minimum needs of life for the local communities.
- the employees in units of the national energy system, in the operational units of nuclear sectors and in units working around the clock **may declare a strike provided they ensure at least a third of their activity**, and this does not endanger the life and health of people and ensures the functioning of facilities perfectly safe.
- strike organizers together with the management of that unit **are required that throughout the strike they protect the enterprise assets and the continuous operation of machines and installations** whose stopping could be hazardous to people's life or health.

The Committee points out that the right to strike embodied in Article 6§4 of the Revised Charter is not absolute and may be restricted, but only in accordance with the conditions laid down in Article G of the Revised Charter. In order to be able to assess whether court intervention on the basis of Sections 55 and 58 of the Act no. 168/1999 falls within the limits of Article G of the Revised Charter, **the Committee asks the next report to provide detailed information on any corresponding decisions restricting the right to strike during the reference period.**

The right to strike can be exercised only within the limits prescribed by law.
If the unit considers that the strike was declared or continued in violation of the law, it can address the court in whose constituency it has its headquarters, with a petition demanding the cessation of strike.

ii. Restrictions related to public officials

Simply prohibiting all employees in the internal affairs, national defence and state security sectors from striking, without any distinction as to function, cannot be considered proportionate, and therefore necessary in a democratic society (Conclusions 2004, Bulgaria, p. 44). **Again, the report does not provide the requested information and the Committee therefore is unable to assess the conformity of the situation with Article 6§4 of the Revised Charter in this respect.**

According to Article. 43 par.(2) of the Romanian Constitution, republished, "the law defines the conditions and limits to this right, and guarantees necessary to ensure the essential services to society." However, the exercise of rights or freedoms, including the right to strike, may be restricted only by law, according to Art. 53, "and only if necessary, as appropriate, for: the defense of national security, public

order, health or morals, citizens' rights and freedoms ...". The extent to which the exercise of a right is restricted must be proportionate to the situation that caused it, must be applied without discrimination and without prejudice to the existence of such right or freedom.

In this respect, the special law on the matter, i.e. **Law no. 168/1999** on the settlement of Labour disputes, with subsequent modifications and completions, regulates by way of exception, the prohibition of the right to strike for certain categories of personal in the field of defense, public order and national security. The restrictions concern all personnel of the Ministry of National Defense, without being set conditions and without distinction between categories of personnel on the nature or level of their responsibility. According to **Art. 63** of Law no. 168/1999, "can not strike: prosecutors, judges, staff of the Ministry of National Defense and the institutions and structures in their subordination or coordination, the staff employed by foreign armed forces stationed on the Romanian territory, the military personnel and civil servants with special status within the Ministry of Administration and Interior and the institutions and structures in the subordination or coordination thereof, the military personnel of the Romanian Intelligence Service, the Foreign Intelligence Service, the Special Telecommunications, the Protection and Guard Service and other staff, which by organic laws are prohibited from the exercise of this right."

Consequently, the interdiction for military of the right to strike is determined by the provisions of **Art. 28** letter c) of **Law no. 80/1995** on the status of the military, with modifications and completions, according to which "the active military staff is prohibited to exercise the following rights: ... to declare and to participate in strike."
Moreover, soldiers and graded volunteers are forbidden implicitly the participation in strike by the provisions of **Art. 25** of **Law no. 384/2006** on the status of soldiers and graded volunteers, which stipulate that "military staff in activity is prohibited or restricted the exercise of rights and freedoms, as laid down by law."

With regard to civilian and contractual personnel, they are applied the provisions of **Art. 250** and **Art. 251** of the **Labour Code**, under which employees are entitled to strike to defend the professional, economic and social interests, and "the limitation or prohibition of the right to strike may only intervene in cases and for categories of employees specifically provided by law", namely Law no. 168/1999. Similarly, for civil servants it is recognized "... the right to strike, in the terms set by law", i.e. by the provisions of **Art. 30 par.(1) of Law no. 188/1999** on the status of civil servants, with subsequent modification and completions.

Regarding the question of ECSR on banning strikes by the Ministry of National Defence and the Ministry of Administration and Interior, i.e. if it relates to all staff or only to staff who given the nature or level of responsibility is most directly involved in issues of national security and public interest, there are necessary several clarifications:

According to **Art. 45 par.(1) letter e) of the Law no. 360/2002** on policeman statute, with subsequent modifications and completions, "the policeman is barred the following: (...) e) to declare or participate in strikes, as well as in rallies, demonstrations, processions or any other meetings of a political nature". This provision has not suffered any change so far.
The restriction in question applies to occupational category represented by policemen.

Also, in the case of the Ministry of Administration and Interior, Art. 63 of **Law no. 168/1999** on the settlement of labour disputes, with its subsequent modifications and completions, as a result of the changes occurred in **Law no. 261/2007** (which modifies Law no. 168/1999), prohibits the right to undertake strike actions only for military personnel and public servants with special status (policemen) from the Ministry of Administration and Interior (MAI) and from the institutions and structures being

under its coordination, for the other categories of MAI personnel, provided for by **Art. 17** of **Government Emergency Ordinance no. 30/2007** on the organization and functioning of the Ministry of Administration and Interior, approved with amendments by **Law no. 15/2008**, with its subsequent modifications and completions, being applicable other legal provisions in the matter (i.e. Law no. 188/1999 regarding the Status of public servants, republished, with its subsequent modifications and completions and Law no. 53/2003 on the Labour Code, with its subsequent modifications and completions), that stipulates the possibility to exercise the right to go on strike.

Thereby, at present, following the coming into force of the **Law no. 261/2007**, it has been instituted the distinction regarding the prohibition on strike actions for MAI staff, aiming only that category of personnel that, given the nature or level of their responsibility, is most directly concerned with national security and public interest (policemen and militaries), distinction that serves a legitimate aim and which is necessary in a democratic society.

The Constitutional Court of Romania pronounced its **Decision no. 1225** from 20 December 2007, published in Romania's Official Journal no. 100 on 8 February 2008, concerning the constitutionality of **Art. 45 paragraph (1) letter e)** of **Law no. 360/2002** and **Art. 63** of **Law no. 168/1999** and dismissed the objection of unconstitutionality raised by the National Union of Police Officers and Customs Workers in a dossier of the Bucharest Court of Appeal - Section VII administrative and fiscal contentious. On this occasion, the court noted that none of the relevant international instruments in this field (The International Covenant on Economic, Social and Cultural Rights ICESCR, ratified by Romania by Decree no. 212/1974, International Labour Organization Convention no. 87/1948 regarding the freedom of association and protection of the right to organise, ratified by Romania by Decree no. 213/1957, and the European Social Charter Revised), expressly mentions the prohibition on strike actions for policemen, giving the state the possibility, by the national legislation, to establish to what extent the guarantees provided by these documents will apply to policemen.

The constituent legislator has expressly recognized the right to strike only for employees. The legislator also established certain prohibitions and restrictions on the right to strike, in order to ensure the smooth running of the social and economic activity and to protect the general interests. To this end, the prohibitions established by the Romanian legislator appear as natural and fully justified, both by **Art. 45 paragraph (1) letter e)** of **Law no. 360/2002** on the policeman status, under the control of constitutionality and by **Art. 63** of **Law no. 168/1999** on the settlement of labour disputes, as amended by **Law no. 261/2007**, providing that „*the following categories are not permitted to undertake strike actions: prosecutors, judges, the personnel from the Ministry of National Defence and from the institutions and structures under its coordination, the personnel employed by foreign armed forces stationed on the Romanian territory, the military personnel and public servants with special status (policemen) from the Ministry of Administration and Interior and from the institutions and structures under its coordination, (...)".*
Moreover, the Court holds that the prohibition to exercise the right to undertake strikes does not make this socio-professional category unable to defend its professional and social interests and legitimate rights. Thus, the policeman have the possibility, through National Police Staff Corps, to use friendly means of solving labour conflicts with the central administration, consisting in conciliation, mediation and arbitration, in order to meet their interests, but they are not permitted to take part in strike actions.

The consequences of collective action

According to Article 253 of the Labour Code, the participation in a strike, as well as its organization in accordance with the applicable law, shall not be considered a violation of the employees' obligations and

may not trigger disciplinary sanctions. **The Committee asks what are the consequences and sanctions in the event a worker is dismissed following participation in a lawful strike.**

Article 59 par.1 letter b) of **Law no. 53/2003 on the Labour Code** prohibits the dismissal of employees for the exercise, in the terms set by law, of the right to strike and of the trade union rights.

The dismissal ordered in breach of procedure prescribed by law is **absolutely invalid**.
If the dismissal was effected unlawful, the court shall order its cancellation and will require the employer to pay compensation equal to wages indexed, increased and updated and other rights that would have benefited the employee.
At the employee's request, the court that ordered the cancellation of dismissal shall put parties back in the situation prior to issuing the notice of dismissal.

According to the information held by the National Agency of Public Servants for the period 2005–2008, there have not been registered petitions or intimations on cases of disciplinary sanctions applied to public servants following their participation in a legal strike.

Article 21 – Right of workers to be informed and consulted

Legal framework

- Law no. 467/2006 establishing a general framework for informing and consulting employees
- Government Decision no. 187/2007 on procedures for information, consultation and other means of involving employees in the work of European Society
- Government Decision no. 188/2007 on procedures for information, consultation and other means of involving employees in the work of a European Society
- Law no. 54/2003 on trade unions
- Law no. 53/2003on the Labour Code
- G.E.O. no.65/2005 on amending Law no. 53/2003
- G.E.O. no.55/2006 on amending Law no. 53/2003
- Law no. 371/2003 for approval G.E.O no.65/2005 on amending Law no. 53/2003
- Law no. 94/2007 for approval G.E.O. no.55/2006 on amending Law no. 53/2003
- Law no. 237/2007 amending par.(1) of Art. 269 of Law no. 53/2003
- Law no. 202/2008 amending par.(1) of Art. 134 of Law no. 53/2003
- G.E.O no.148/2008 on amending Law no. 53/2003

The Committee notes that in the years 2005 and 2006, i.e. outside the reference period, a draft law with the aim of coordinating the different legal provisions with respect to information and consultation was under discussion which is supposed to implement Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community. (…) the new law was supposed to enter into force beginning of 2007 and **the Committee wishes the next report to provide information on the status of the legislative procedure and the scope of the new law as regards the workers' right to be informed and consulted within the undertaking.**

Directive 2002/14/EC of the European Parliament and Council of 11 March 2002, establishing a general framework for informing and consulting employees in the European Union has been transposed into the national law by **Law no. 467/2006** laying down the general framework for informing and consulting employees, published in the Official Journal no. 1006 of 18 December 2006. The date of entry into force of this law was 1 January 2007.

In Section 1 "Information and consultation arrangements", Law no. 467/2006 provides for the following:

Article 5
(1) Employers shall inform and consult employee representatives in the terms set by the laws in force on:
a) the recent and probable development and economic situation of the enterprise;
b) the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular where there is a threat to jobs;
c) decisions that can lead to significant changes in work organization or contractual relations in employment relationships, including those covered by the Romanian legislation on specific information and consultation procedures for collective redundancies and protect the rights of employees, in case of transfer of the company.
(2) Information is made at a time, in a manner and with appropriate content to allow employee representatives to consider the issue properly and to prepare, if appropriate, consultation.
(3) consultation takes place:
a) at a time, in a manner and with appropriate content to allow employee representatives to consider the issue properly and develop a point of view;

b) at the relevant level of representation of management and employee representatives, according to the subject discussed;
c) based on the information provided by the employer, in accordance with Art. 3 letter e), and on the point of view that employee representatives are entitled to formulate;
d) to allow employee representatives to meet with the employer and obtain a reasoned response to any point of view that they may bring;
e) to negotiate an agreement on decisions that fall within the employer's obligations provided for in par.(1) letter c).

Article 6
(1) arrangements for informing and consulting employees can be defined freely and at any time, in collective agreements and contracts concluded in the terms set by law;
(2) contracts and agreements referred to in par.(1) and any subsequent renewals thereof may provide other dispositions than those provided in Art. 5, with the observance of the provisions set in Art. 2 (2).

Article 7
(1) employee's representatives and experts who assist them during the course of any consultation or collective bargaining procedures are prohibited from disclosing any information to employees or third parties who, in the legitimate interest of the company, have been provided to them explicitly as confidential. This obligation shall apply to representatives or experts also after their term expires. The type of information subject to confidentiality is agreed by the parties in collective agreements or otherwise approved by the partners and is subject to a confidentiality agreement.
(2) The employer is not required to disclose information or undertake consultation when this is likely to seriously harm the functioning of the undertaking or prejudice his interests. The decision not to communicate such information or to not undertake consultations must be motivated to employee's representatives.
(3) When the employee's representatives do not consider justified the employer's decision to invoke the confidentiality of information or to not provide relevant information or to not initiate consultations under par.(1) and (2), they may apply to the competent courts of law.

The Committee understands from this information that the legal stipulations governing the employees' right to information and consultation apply to workers in undertakings controlled and managed by public authorities and wishes the next report to confirm that this is actually the case.

The regulation of the information and consultation procedures of employees in specific areas of activities was done by the **Government Decision no. 187/2007** of 20 February 2007 on procedures for information, consultation and other methods of employee involvement in European Society, published in the Official Journal no. 161 of 7 March 2007 and by the Government Decision no. 188/2007 of 20 February 2007 on procedures for information, consultation and other ways of involving employees in the European Society, published in the Official Journal no. 162 of 7 March 2007.

The laws governing the right of employees to information and consultation shall apply to any enterprise, whichever **public or private** entity, performing an activity of an economic or non-profit character. The employer is defined as the natural or legal person, party to the employment contract or the employment relationship with the employees, according to the Romanian legislation in force.

The Committee asks whether elected personnel representatives may continue their activities in the event trade union representation is subsequently established at an enterprise.

The elected representatives of employees can continue their activities **only where there are no legally established and representative trade union organizations**. Where no established such trade union organizations exist, members of the special negotiating group are appointed by the employees' representatives or, if such representatives do not exist, by the majority of employees.

The Committee wishes the next report to specify in this context what is the proportion of workers out of the total workforce in the private as well as in the public sector subject to a right to information and consultation within the undertaking through trade unions or elected representatives.

The percentage of workers in the total of employed workers, both in the public and private sector, that have the right to information and consultation through trade unions or employee's representatives is applied to the vast majority of workers, i.e. over 80%.

In its previous conclusion, the Committee had noted that pursuant to Section 9 of Act No. 54/1991, only trade union delegates that are Romanian nationals may be elected to participate in the meetings of the managing boards. **The Committee notes that Law No. 54/2003 on Trade Unions does not contain a corresponding stipulation and asks the next report to confirm that no such restriction exists under Romanian law.**

Law no. 54/2003 on trade unions does not expressly stipulate the necessity of acquiring Romanian citizenship to meet the eligibility requirements to be elected in a governing body of trade union organizations.
Section 2 of the law, named "Management of trade unions", provides in **Art. 8** that "there may be elected in the governing bodies of trade unions members who have full capacity of exercise and who do not execute the complementary penalty of banned right to hold a function or exercise a profession of nature to that which was used for an offense sentenced".

The Committee notes from another source that an evaluation report "Information, consultation and participation of employees in Romania" commissioned by the Romanian Economic and Social Council and completed in December 2005, i.e. outside the reference period, found that in general, employees are not informed of the current and future development strategy of the undertaking that employs them. Moreover, only half of the employers covered by the survey have implemented methods to evaluate their procedure of information, communication and consultation of employees. **The Committee asks for the Governments' comments on these findings in the next report**.

As regards the scope of application of the assessment methods of procedures for information and consultation of employees**, there were not achieved statistics on the number of employers**.

The Committee recalls that, under Article 21 of the Revised Charter, workers or their representatives shall be consulted in good time on proposed decisions that could substantially affect their interests, particularly on those decisions that could have an important impact on the employment situation in the undertaking. **It asks for examples of the corresponding rules in collective agreements and wishes to receive information on what is the proportion of employees covered by such collective agreements. It further asks what are the rules with respect to employers not bound by collective agreements.**

The finding and application of sanctions or contraventions are made by authorized persons in the Ministry of Labour, Family and Social Protection.
All employees directly or through their representatives **have the capacity and active standing to trigger an administrative action** against the employer and are entitled to exercise an appeal before a court.

The Committee noted in its previous conclusion that violations of the employer's obligation to inform and consult the employees may be investigated and sanctioned by the Ministry of Labour and Social Solidarity as well as by the Bucharest municipal services with fines between 85.5 € to 171 €. **It asked whether all employees or their representatives have a legal capacity to trigger an administrative action against their employer and whether they have a subsequent right of appeal before a court. The report does not provide the requested information.**
The Committee notes that pursuant to Law No. 54/2003 on Trade Unions, these have the right to bring action to court with a view to defending the interests of any of their members and asks the next report to confirm that this includes cases of violation of the workers' rights to be informed and consulted within the undertaking.
As regards elected employees' representatives, Article 226 of the Law No. 53/2003 on the Labour Code states that they have the right to notify the Labour Inspectorate about the non-observance of the provisions of the law and applicable collective agreements and **the Committee asks whether they also have a right of appeal before a court in this event.**

Representative trade unions have the right to take any action under the law, including the legal proceedings on behalf of their members without needing an express mandate from those concerned. Subject to court action may be related to violating the rights of workers to be informed and consulted in the company. Action will not be brought or continued by the trade union organization if the employee in question opposes or waive the trial.

Employees are entitled to notify the Labour Inspection of the non-observance of the legal provisions and applicable collective agreements and may exercise an appeal before a court in this case (appeal and recourse, respectively).

The Committee further notes from another source, that the draft law to transpose the provisions of Directive 2002/14/EC includes provisions on adequate protection of and guarantees for the parties involved. The law is supposed to set minimum and maximum limits of sanctions to be applied by the Ministry of Labour, Social Solidarity and Family in the event an employer infringes the provisions governing the right to information and consultation of his employees. **Again, the Committee asks for information on the status of the legislative procedure and the content of the corresponding stipulations.**

The **Law no. 467/2006** laying down the general framework for information and consultation of employees, published in the Official Journal no. 1006 of 18 December 2006, provides for the contraventions and penalties as follows:

a) fine from 1,000 RON to 20,000 RON (approx. 232 – 4,650 Euro) for the non-observance by the employer of the obligation to provide the employees' representatives the information which is listed in Article 5(1);

b) from 2,500 RON to 25,000 RON (approx. 580 – 5,800 Euro) for employer's failure to initiate consultations as provided under Article 5 (3);

c) fine from 5,000 RON to 50,000 RON (approx. 1,160 - 11,600 Euro), for providing in bad faith incorrect or incomplete information, as provided for by Article 5 (2), that would not allow the employees' representatives to formulate a pertinent point of view in the preparation of future consultations.

Article 28 – Right of workers' representatives to protection in the undertaking and facilities to be accorded to them

Legislative framework

- Law no. 53/2003 on the Labour Code;
- G.E.O. no. 65/2005 amending and completing Law no. 53/2003;
- G.E.O. no. 55/2006 amending and completing Law no. 53/2003;
- Law no. 371/2003 for approving G.E.O. no. 65/2005 amending and completing Law no. 53/2003;
- Law no. 94/2007 for approving G.E.O. no. 55/2006 amending and completing Law No. 53/2003;
- Law no. 237/2007 amending paragraph (1) of Article 269 of the Law no. 53/2003;
- Law no. 202/2008 amending paragraph (1) of Article 134 of the Law no. 53/2003;
- G.E.O. no. 148/2008 amending and completing Law no. 53/2003;
- Law no. 54/2003 on trade unions;
- Law no. 217/2005 on the establishment, organization and functioning of European Works Councils, republished in 2007.

The Committee assessed the situation as regards the protection of trade union representatives and the facilities accorded to them in its previous conclusion (Conclusions 2003). **It asked whether there is any additional form of workers' representation and if so what protection such representatives enjoy and what facilities they are provided with.**

The employers who are engaged in more than 20 employees and if none is a member of the union, their interests can be promoted and defended by their representatives, elected and appointed for that purpose. Employee representatives are elected in the general meeting of employees, by a vote of at least half of all employees.
Employees' representatives may not conduct activities that are recognized by law only unions.
There may be elected as employees' representatives, employees who have reached the age of 21 years who worked at the employer at least one year without interruption.
The length in service is not required for the election of the representatives of employees in start-up enterprises.
The number of elected representatives of employees shall be agreed with the employer, in relation to the number of its employees.
The term of office for the employee' representatives cannot be more than 2 years.

The employees' representatives shall have the following main tasks:
a) monitor the observance of the employees' rights under the legislation in force, collective labour agreements applicable to the individual employment contracts and internal rules;
b) participate in designing the internal regulations;
c) promote the employees' interests on salary, working conditions, working time and rest time, stability at work, as well as any other professional, economic and social interests related to work relations;
d) notify the Labour Territorial Inspectorate on violations of legal provisions and the applicable collective employment contract.

The prerogatives of the employee' representatives, how to achieve them and the duration and extent of their office shall be determined in a general meeting of employees, in the terms set by law.

The time allocated to the employee's representatives to meet the mandate that they received is 20 hours per month and is considered time worked actually, which therefore is properly remunerated.

The Committee asks for clarification whether the trade union's prior consent is necessary in any case of dismissal of a trade union representative irrespective of the grounds of such dismissal.

Throughout the exercise of their mandate, the employees' representatives cannot be dismissed for reasons not related to the employee, for not being compatible on professional reasons or for any reasons of fulfilling the mandate they received from employees.

Paragraph 3 of Article 223 of the Labour Code as well as Section 12 of the Law No. 54/2003 on Trade Unions further state that additional protection for trade union representatives shall be provided for by special laws as well as in the applicable collective agreements and **the Committee asks the next report to specify what are these rules and what is their scope.**

Employee representatives are those selected and authorized persons to represent employees in a situation where in that unit or undertaking there is not constituted a legally trade union. The employees' representatives benefit from protection and guarantees that enable them to perform adequately the obligations that have been entrusted to them in accordance with the Romanian legislation, throughout the exercise of their mandate.

Authorities and public institutions may conclude annually, in the terms set by law, agreements with representative trade unions of civil servants or with the representatives of the civil servants. If the union is not representative or the civil servants are not organized in trade unions, the agreement is concluded with the representatives of civil servants from that respective authority or public institution, appointed by vote by the majority of civil servants from that authority or public institution.
The representatives of civil servants are entitled to participate in parity committees and commissions for discipline.

If the employer intends to carry out collective redundancies, it is required to initiate, in a timely manner and for the purpose of reaching a settlement, as provided by law, consultation with the union or, where appropriate, with employees' representatives. The employees' representatives may make proposals to avoid or reduce the number of employees redundant. The employees' representatives may propose to the employer a series of measures to avoid redundancies or reducing the number of employees dismissed.

The **Single Collective Labour Agreement at national level for 2007 – 2010**, **no. 2895/21 of 29 December 2009**, contains provisions which give additional protection to union representatives.
The activity in trade unions as well as the trade union membership cannot be grounds for termination of the individual employment contract at the employer's initiative.

The parties to the collective employment contract agree on the need and obligation to improve the vocational competences of all categories of employees, including of union leaders who were out of production, when their term expires.
The trade union shall participate, through its mandated representatives, at any examination held for the graduation of a training course inside the enterprise.
The Board of Directors and/or its equivalent bodies is/are required to invite trade union representatives to attend its meetings, as provided by law.

The elected representatives of trade unions with legal personality, who work directly in the unit as employees, are entitled to a **reduced monthly work program up to 5 paid days** for union activities, receiving wages not lower than the wages they would have received in normal conditions.

Employers recognize the right of trade unions' representatives to check the manner in which there are respected at the work place the employees' rights as provided for by the collective employment contract.

Mandated people of the governing bodies of employers' organizations and trade unions shall check, upon notification of a party, how workers' rights are observed under the collective employment contract. The employers will ensure the access in the unit, in accordance with the Internal Rules and the unit protection, during the checking, in compliance with the legislation in force.

Article 229 of Law No. 53/2003 on the Labour Code stipulates that for the duration of their mandate, these employees' representatives shall not be dismissed for reasons related to their office. **The Committee asks whether such protection lasts for an additional period following termination of the employee representative's mandate like it is the case with respect to trade union representatives (see above). It further asks for information on protection of elected employee representatives against prejudicial acts short of dismissal.**

During their mandate and within 2 years following the end of it, elected representatives in the governing bodies of trade unions shall not be changed or terminated their employment contract **for reasons not attributable to them,** that the law leaves to the discretion of the employer, **but only with the written consent of the collective managing body of trade union organization**. The written agreement of the managing body of the trade union is needed **only in case of dismissal of elected representatives in the management of the union**.

The legal provisions aforementioned **shall not apply** to those who **were dismissed from positions of union leadership for breaching the statutory or legal requirements**.

The Committee further wishes to know who has the burden of proof in the event of a court procedure regarding the dismissal of a workers' representative, what are the sanctions for the employer in the event of a dismissal in violation of the aforementioned rules and whether unlawfully dismissed workers' representatives are entitled to seek reinstatement and to receive compensation.

The employees' representatives cannot be dismissed for reasons not related to the employee nor for professional miss-match nor for reasons related to the fulfilling the mandate received from the employees, **during the exercise of his mandate**.
The protection of workers' elected representatives against prejudicially actions cease when the mandate expires.

Article 59 of the **Law no. 53/2003** provides for the prohibition of dismissal of employees on criterion related to trade union membership or activity. Also **Article 60** of the same act provides that dismissal is prohibited during the exercise of a function in an eligible trade union body, unless the dismissal is based on serious disciplinary infringement or for repeated disciplinary violations.
The elected representatives of the illegally dismissed workers are entitled to request the reintegration in the job previously held and to receive compensation for the damage created.

The general rule (applicable on the employees representatives, too) is stipulated in **Article 287** of the Labour Code which provides that **the burden of proof in conflicts of work lies with the employer**, the later being required to submit evidence for his defence, until the first day of appearance.

The total amount of paid time off and the number of the persons who may benefit from these shall be established by collective agreement. **The Committee understands from the said law that in the event**

workers representatives are not remunerated by the trade union, they are granted paid time off from work for the exercise of their functions and asks the next report to confirm that this is actually the case.

The time allocated to the employees' representatives to fulfil the mandate that they received is **20 hours per month and it is considered time actually worked** which is paid by the employer (as provided by **Article 228** of the Labour Code).
Article 174 of the Labour Code establishes the obligation of employer to consult with trade union representatives and with the employees in developing safety and health at work measures as well as with the Committee on the health and safety at work.

In the units with fewer than 50 employees, the responsibilities on health and safety at work fall with the employees' representatives who have specific responsibilities for health and safety at work.

Government Decision no. 1425/2006 for approving the Methodological Norms for applying the provisions of **Law no. 319/2006** regulates the **Committee on health and safety at work**. The Committee is composed of representatives of workers with specific responsibilities on health and safety, on the one hand, and the employer or employer's representatives in equal number with the representatives of workers and the occupational medical practitioner, on the other hand. The representatives of workers on health and safety at work will be elected for a period of 2 years. The employer must give to each employees' representative in the *Committees on health and safety at work* the time needed for fulfilling his specific tasks.

The Committee wishes the next report to provide information on further facilities provided by the employer for the performance of the employees' representatives functions, such as premises, means of communication and other technical conditions or financial contributions, if any.
The Committee asks, whether any further kind of workers' representatives exist in Romania, such as e.g. works councils, health and safety representatives or employee representatives in supervisory or other bodies in the undertaking and if so what are the rules governing their protection against acts prejudicial to them and what are the facilities accorded to them. It notes in this context (…) that in 2005, i.e. outside the reference period, Law No. 217/2005 on European Works Councils was published and was supposed to enter into force on 1 January 2007 and **asks the next report to specify what are the relevant rules on the protection of such representatives and the facilities accorded to them under the new legislation.**

Law no. 217/2005, republished on the setting up, organization and functioning of the European Works Councils provides on the **Article 12** that in Romania**,** the members of the special negotiating body shall be appointed by the representatives of employees in Romania of the company of Community-scale[1] or of the group of companies of Community-scale. In case no such representatives exist, **members of the special negotiating body shall be appointed by a majority of employees** in Romania of the undertaking of Community-scale or of the group undertakings of Community-scale.

The European Works Council is composed of employees of the company or group of companies of Community-scale nominated or elected by the employees' representatives or, failing that, by the whole of the employees.
The **Chapter 5** of the **Law no. 217/2005** governs the protection of employees' representatives. Thus, members of the special negotiating body of the European Works Council and employees' representatives who are employed in Romania **shall benefit, in the exercise of their function, by all**

[1] A company with 1,000 or more workers, and at least 150 employees in each of two or more EU Member States.

rights provided for by the relevant legislation in the field of employees' representatives and the elected governing bodies of trade unions.
Particularly, there were considered the participation in the meetings of the special negotiating body or of the European Works Council, as well as the payment of wages for the personnel of the company or of the group of companies of Community-scale, during their absence in the exercise of their responsibilities.

The members of the special negotiating body may not be dismissed or subject of any discrimination or other penalties, as a result of performing their duties in accordance with the above-mentioned Law.
Members' of the special negotiating group, of the European Works Council and the employees' representatives **must be given enough time and means to enable them on informing the employees about the progress and results of the information and consultation process**.

Article 29 – Right to information and consultation in collective redundancy procedures

Legal framework

- Law no. 53/2003 on the Labour Code;
- G.E.O. no. 65/2005 amending and completing the Law no. 53/2003;
- G.E.O. no. 55/2006 amending and completing the Law no. 53/2003;
- The Law no. 371/2003 for approving G.E.O. no. 65/2005 amending and completing the Law no. 53/2003;
- The Law no. 94/2007 for approving G.E.O. no. 55/2006 amending and completing the Law no. 53/2003;
- Law no. 237/2007 amending par.(1) of art. 269 of the Law no. 53/2003;
- Law no. 202/2008 amending par.(1) of art. 134 of the Law no. 53/2003;
- G.E.O. no. 148/2008 amending and completing the Law no. 53/2003.

The Committee asks the next report to provide more information on the procedures available to trade unions/or employee representatives to invalidate redundancies where the required information and consultation procedures have not been followed and information on any compensation is payable to these (as opposed to individual employees).

In accordance with **Art. 68** of **Law no. 53/2003** on the Labour Code, collective redundancy means the dismissal in a period of 30 calendar days, arranged in one or more of the grounds referred to in Art. 65 par.(1), a number of:
a) at least 10 employees if the employer has less than 20 and more than 100 employees;
b) at least 10% of employees, if the employer has less than 100 and more than 300 employees;
c) at least 30 employees if the employer has at least 300 employees.

In determining the actual number of the employees collectively made redundant, there are taken into account also those employees who have ceased their individual employment contracts at the employer's initiative, for one or more reasons not related to the individual employee, provided there are at least 5 redundancies.

Art. 69 of the same act provides for the following:
(1) when the employer intends to initiate collective redundancies, he is obliged to start, in due time and with the purpose to reach an agreement, consultations with the trade union or, where appropriate, the employees' representatives, on at least the following aspects:

- the means to avoid collective redundancies or to reduce the number of employees that will be laid-off;
- the mitigation of collective redundancies' effects by recourse to social measures, aiming *inter alia* at improving vocational competences or vocational reconversion of the redundant employees.

(2) During the consultations held to allow the trade union or the employees' representatives to put forward proposals in due course, the employer is required to provide all the relevant information and to notify in writing the following:
a) total number and categories of employees;
b) reasons for dismissal;
c) the number and categories of employees who will be affected by redundancy;
d) the criteria considered, by law and/or collective agreements for determining the order of priority for redundancy;
e) the measures envisaged to limit the number of redundancies;

f) measures to mitigate the consequences of redundancy and compensation granted to employees to be dismissed, according to the laws and/or applicable collective employment agreement;
g) the date on which or period during which there will be redundancies;
h) the time within which the union or, where appropriate, the employees' representatives may make proposals to avoid or reduce the number of redundant employees.
(3) Obligations under par.(1) and (2) shall be maintained regardless of whether the decision resulting in collective redundancies is taken by the employer or an undertaking controlling the employer.
(4) If the decision leading to collective redundancies is taken by an undertaking controlling the employer, the later cannot rely, in not complying with the obligations set out in par.(1) and (2), of the fact that the undertaking did not provided him with the necessary information.

According to **Art. 70 par.(1)** of the Labour Code, employers shall notify in writing the trade union or, where appropriate, the employees' representatives on the intention to proceed to collective redundancies with at least 30 calendar days prior to issuing a decision to dismiss.

Under **Article 71 par.(1)** of the Labour Code, the union or, where appropriate, the employees' representatives may propose the employer measures to avoid redundancies or to reduce the number of employees redundant within 15 calendar days of receipt of notification.
According to **par.(2)** of the same article, the employer is obliged to respond in writing and reasoned to the proposals made under the provisions of par.(1), within 5 calendar days from receipt.

Where, after consultation with the trade union or employees' representatives, according to Art. 69 and 71, the employer decides the measure of collective redundancies, he shall notify in writing the Labour Inspectorate and the territorial Employment Agency at least 30 calendar days prior to issuing a decision to dismiss.

The notification must contain all relevant information about the planned redundancies provided for in Art. 69 par. (2), and the results of consultations with trade union or employees' representatives, under art. 69 par. (1) and Art. 71, in particular the reasons for redundancies, the total number of employees, number of employees affected by the dismissal and the date on which or period during which the redundancies will take place.

The employer is required to communicate a copy of the notification to the union or the employees' representatives, at the same time it announced the Labour Inspectorate and the territorial employment agency.

The trade union or the employees' representatives may send in return any views to the Labour Inspectorate.

On reasoned request of either party, the Labour Inspectorate, with notification from the territorial employment agency, may decide the reduction of the period of 30 days notice, without bringing any prejudice to the individual rights, as regards the notification period.

The Labour Inspectorate is obliged to timely inform the employer and trade union or employees' representatives, as appropriate, on reducing the period of 30 days and the reasons that were at the basis for that decision.

Moreover, the territorial employment agency shall seek solutions to problems raised by collective redundancies and will timely notify the employer and trade union or, where appropriate, the employees'

representatives.

On reasoned request of either party, the Labour Inspectorate, in consultation with the territorial employment agency, may postpone the issuing of dismissal decision with maximum 10 calendar days if the issues related to collective dismissal cannot be resolved by the date fixed in the notification of redundancies provided for in Art. 71 par. (1).

The Labour Inspectorate is obliged to inform in writing the employer and the union or the employees' representatives, as appropriate, on the postponing of issuing the dismissal decision, as well as on the reasons that stood at the basis for that decision.

The employer who disposed collective redundancies cannot make new appointments on the jobs of the redundant employees for 9 months from the date of their dismissal. When during this period there are resumed the activities whose cessation led to collective redundancies, the employer is required to send to the employees who were dismissed a written notice to that effect and to re-employ them on the same jobs they have previously occupied, without examination or contest or trial period.
Employees shall have a term not exceeding 10 working days from the date of the employer's communication to manifest their consent in writing for the job offered.

In accordance with **Art. 76** of the Labour Code, the dismissal ordered in breach of procedure prescribed by law is absolutely invalid.

According to **Art. 77** of the same act, in case of Labour dispute, the employer cannot plead in court for other reasons of fact or law than those specified in the decision to dismiss.

According to **Art. Article 78 (1)** of the Labour Code, if the dismissal was effected unjustified or unlawful, the court shall order its cancellation and will require the employer to pay compensation equal to wages indexed, increased and updated and other rights which would have benefited the employee.
Par.(2) of the same article stipulates that at the employee's request the court that ordered the cancellation of dismissal shall put the parties in the situation prior to issuing notice of dismissal.