



European
Social
Charter

Charte
Sociale
Européenne



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

28 June 2012

**FIRST REPORT
ON THE NON-ACCEPTED PROVISIONS
OF THE EUROPEAN SOCIAL CHARTER**

UKRAINE

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I. SUMMARY

The procedure on non-accepted provisions is based on the decision adopted by the Ministers' Deputies in December 2002 in relation to Article 22 of the 1961 Charter. The Deputies decided that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned".

In accordance with this decision, five years after ratification of the Revised Charter (and every five years thereafter), the European Committee of Social Rights ("the Committee") reviews non-accepted provisions with the authorities of the state concerned with a view to securing a higher level of acceptance. Experience has shown that governments tend to overlook that selective acceptance of Charter provisions is intended to be transitory. The aim of the new procedure is therefore to require them to review the national situation at regular intervals and encourage them to accept more provisions.

The Charter entered into force for Ukraine in 2006 and this country was therefore concerned by the procedure on non-accepted provisions for the first time in 2011. For this purpose the Committee and Ukrainian Government agreed to hold a meeting in Kyiv on 29-30 September 2011 (see the programme at Appendix 2).

On ratification Ukraine accepted 74 of the Charter's 98 paragraphs and the purpose of the meeting was to discuss law and practice in the light of the Committee's case law in respect of the 24 non-accepted provisions and, where possible, to encourage the Ukrainian authorities to accept additional provisions.

In his opening remarks at the meeting the Deputy Minister of Social Policy of Ukraine, Mr Viacheslav Kolomiiets, confirmed that the Government is committed to accepting additional provisions and that the Interministerial Task Force overseeing work on the Charter was actively considering the options in this respect. However, Mr Kolomiiets also emphasised that on-going evolutions in the economy and the need for labour market reforms had to be taken into account.

The Committee delegation consisting of the President, Mr Luis Jimena Quesada, as well as Mr Andzej Swiatkowski, explained that the procedure on non-accepted provisions is a means of forming a complete picture of law and practice in the States Parties with regard to all the standards contained in the Charter. It further expressed the hope and expectation that the meeting would give the Committee a better understanding of the situation in Ukraine, and on the other hand, permit the Government to have more certainty as to the actual scope of the Committee's case law on the non-accepted provisions. The logic of the Charter's "*a la carte*" principle is that States progressively accept more provisions to the extent that their socio-economic development allows it.

On the basis of the information presented at the meeting, the discussions that took place and not least the detailed written contribution provided subsequently, in May 2012, by the Government, the Committee is of the view that there are no significant obstacles in law and in practice to the immediate acceptance of the following provisions of the Charter:

- Article 2§3 - *Annual holiday with pay*
- Article 12§3 - *Development of the social security system*
- Article 13§2 - *Non-discrimination in the exercise of social and political rights*
- Article 13§4 - *Specific emergency assistance for non-residents*
- Article 19§1 - *Assistance and information on migration*
- Article 19§2 - *Departure, journey and reception*
- Article 19§3 - *Co-operation between social services of emigration and immigration states*
- Article 19§7 - *Equality regarding legal proceedings*
- Article 19§9 - *Transfer of earnings and savings*
- Article 19§12 - *Teaching mother tongue of migrant*

In respect of certain provisions the Committee was not in a position to reach a firm opinion, in particular due to further clarifications being needed on key issues or due to lack of relevant information, namely the following:

- Article 12§2 - *Maintenance of a social security system at a satisfactory level at least equal to that required for ratification of the European Code of Social Security*
- Article 13§3 - *Prevention, abolition or alleviation of need*
- Article 19§5 - *Equality regarding taxes and contributions*
- Article 19§6 - *Family reunion*
- Article 19§8 - *Guarantees concerning deportation*
- Article 19§10 - *Equal treatment for the self-employed*

Finally, with respect to the following provisions it appears to the Committee that the situation in Ukraine at present is not fully in compliance with the Charter:

- Article 4§1 - *Decent remuneration*
- Article 12§1 - *Existence of a social security system*
- Article 12§4 - *Social security of persons moving between states*
- Article 13§1 - *Adequate assistance for every person in need*
- Article 19§4 - *Equality regarding employment, right to organise and accommodation*
- Article 19§11 - *Teaching language of host state*
- Article 25 - *Right of workers to protection of their claims in the event of insolvency of the employer*
- Article 31§3 - *Affordable housing*

Celebration of the 50th anniversary of the European Social Charter

The meeting on the non-accepted provisions was the opportunity for a celebration of the 50th anniversary of the Charter organized by the Ministry of Social Policy which was held in the morning of 29 September 2012 at the Hotel Rus and involved about 50 participants.

The ceremony consisted of allocutions *inter alia* by Deputy Minister of Social Policy Mr Kolomiets (replacing Vice-Premier and Minister of Social Policy Mr Tigipko at the last moment), by a representative from the Office of the Human Rights Ombudsman (Mr Yatsenko), the Presidential Ombudsman for Children (Mr Pavlenko) as well as the Committee members present. In addition a message from the Ukrainian Foreign Minister was read out to the participants. The allocutions were followed by a debate and a reception. For further details, see the programme at Appendix 3

The collective complaints procedure

Finally, the meeting on the non-accepted provisions was also the occasion for a detailed presentation and discussion of the collective complaints procedure. The Ukrainian authorities indicated that acceptance of the collective complaints procedure is under consideration.

The Committee, considering that the collective complaints procedure is an essential instrument in ensuring the proper implementation of the Charter, welcomed this signal from the Ukrainian authorities and referred to the declaration of the Committee of Ministers adopted under the Ukrainian chairmanship in October 2012 which invites the member States of the Council of Europe to consider acceptance of this procedure (see Appendix 5). The Committee also emphasised its availability – and that of its Secretariat – to assist the Ukrainian authorities in preparing acceptance of the procedure.

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

During the meeting the Committee's case law was presented by the delegation members while the national situation was presented by officials from the different Ukrainian ministries and agencies (see the programme at Appendix 3). Representatives of the social partners and civil society organisations also took part in the discussions.

The description of the situation in Ukraine as well as the Committee's opinions set out below are based on the information presented at the meeting, the discussions that took place and in particular on the detailed written contribution provided subsequently (in May 2012) by the Ukrainian Government.

Article 2§3

Situation in Ukraine

Legal framework

- Constitution of Ukraine, dated June 28, 1996, № 254/96-VR;
- Labour Code of Ukraine, dated December 10, 1971, № 322-VIII;
- Law of Ukraine "On Vacations", dated November 15, 1996, № 504/96-VR;
- 1970 ILO Convention № 132 "On Annual Holidays with Pay";
- International Covenant on Economic, Social and Cultural Rights (ratified October 19, 1973)

In accordance with Article 6 of the Law of Ukraine "On vacations", employees are granted an annual basic leave with the duration of at least 24 calendar days per year that an employee worked, beginning from the date when the employment contract was signed.

Industrial personnel in the coal-mining, shale, metallurgy and electric power industries, those employed in open-cast mining and on the surface of mines, pits and quarries, in building and assembly works in mine construction, as well as in transportation and mineral dressing operations, shall be granted an annual vacation of 24 calendar days, with an increase by 2 calendar days for every two work years that an employee completed, but not to exceed 28 calendar days.

Personnel engaged in underground mining works and in cuts, quarries and mines with the depth of 150 meters and below, shall be granted an annual vacation of 28 calendar days, regardless of their total work duration, and those employed in cuts, quarries and mines up to the depth of 150 meters - 24 calendar days, with an increase of 4 calendar days for employment at that enterprise for 2 years or more.

Employees in the timber industry and forestry, state parks, national parks possessing forest areas, hunting farms, permanent logging and forestry divisions of other companies, and forestries, shall be granted an annual vacation of 28 calendar days, according to the List of Works, Professions and Positions approved by the Cabinet Ministers of Ukraine.

Paramilitary personnel of mine-rescue crews shall be granted an annual basic leave of 30 days, and civilian personnel of mine-rescue crews – 24 calendar days, with an increase of 2 calendar days for every two work years completed, but no to exceed 28 calendar days.

Managerial staffs at educational institutions, training (teaching) subdivisions (units) with other agencies and institutions, and teaching and research staff shall be granted annual leaves of up to 56 calendar days, in accordance with the procedures approved by the Cabinet of Ministers of Ukraine.

Disabled persons with the 1st and 2nd degree of disability shall be granted an annual basic leave of 30 days, and disabled persons with the 3rd degree of disability - 26 days.

Persons under the age of eighteen years shall be granted annual basic leave of 31 calendar days.

In addition to the basic annual leave, employees may be granted an additional annual leave.

Thus, under Article 7 of the Law of Ukraine "On vacations", an additional annual leave for work in hazardous and arduous conditions, with the duration of up to 35 calendar days, is granted to workers engaged in operations connected with adverse health effects of harmful factors specified in the List of production operations, workshops, professions and positions, approved by the Cabinet of Ministers of Ukraine.

Article 8 of the Law of Ukraine "On vacations" provides that an additional annual leave for the special nature of work is granted to:

- 1) certain categories of workers whose work is associated with an increased neuro-emotional and intellectual stress, or which performed in special natural geographic and geological conditions, and in conditions of increased health risks - up to 35 calendar days, according to the List of production operations, workshops, professions and positions, approved by the Cabinet of Ministers of Ukraine;
- 2) employees with irregular working hours - up to 7 calendar days, in accordance with Lists of positions, works and professions, as defined by a collective bargaining agreement or a contract.

The exact duration of an additional annual holiday for the special nature of work shall be established by the collective agreement or labour contract, depending on the duration of an employee's work in those conditions.

In accordance with Article 10 of the Law of Ukraine "On vacations", employees' right to the full-duration annual basic and additional vacations in the first year of their employment shall emerge following expiration of six months of continuous work at that specific enterprise.

In case an employee is granted an annual leave prior to expiration of the six-month continuous work period, their duration is determined in proportion to the actual work time.

It should be noted that the full-duration annual leaves shall be granted prior to expiration of the six-month continuous work at an enterprise, upon an employee's request:

- 1) to women – before a maternity leave or after it, as well as to women with two or more children aged under 15, or with a disabled child;
- 2) to disabled persons;
- 3) to persons under the age of eighteen;
- 4) to men whose wives are on a maternity leave;
- 5) to persons released after completion of mandatory military service or civil alternative (non-military) service, if, upon dismissal from the service, they were employed within three months, not including the time for return to their place of permanent residence;
- 6) to dual job holders – simultaneously with the leave at the main place of employment;
- 7) to employees who successfully study at educational institutions and wishing to combine their vacation time with the time period for examinations and tests, and for writing of their graduation, course, laboratory and other works as stipulated by the curriculum;
- 8) to employees who did not use their annual basic holiday, either fully or partially, and did not receive monetary compensation for it at their previous place of employment;
- 9) to employees who have a pass (voucher) for spa (spa outpatient) treatment;
- 10) to parents employed as teachers at foster care homes;
- 11) in other cases stipulated by law, by a collective agreement or labour contract.

Measures allowing deviation from legislative regulations, effective in Ukraine as regards work day and work week duration (short-time or part-time work) do not affect the duration of the annual basic holiday, that is, employees who work part-time or on the short working hours basis, shall be granted a full-duration annual leave.

As regards additional annual leaves for work in hazardous or arduous working conditions and for a special nature of work, those shall be granted to employees based on the time of work in those conditions.

Procedures for transfer of an annual leave are specified by Article 11 of the Law of Ukraine "On vacations".

According to the above-mentioned Article, an annual leave shall be transferred to another period or extended in the event of an employee's temporary incapacity for work, certified in accordance with the applicable procedures.

The national legislation does not contain provisions as to employees' right to waive their vacation.

The right to a leave is ensured by:

- a guaranteed granting of a specified-duration leave, with retention of employment (position) and salary (aid) for the period of its duration, in cases stipulated in that Law;
- a ban on substitution of a leave with monetary compensation, except in cases envisaged in Article 24 of this Law.

Article 24 of the Law of Ukraine "On vacations" envisages that an employee may substitute their annual leave with a monetary compensation, provided that the total duration of that employee's annual and additional leave is not shorter than 24 calendar days for the relevant work year.

The ILO Convention No. 132 on Holidays with Pay (revised in 1970), ratified by Ukraine, stipulates that a leave may in no event be shorter than three working weeks per year of service.

Opinion of the Committee

Article 2§3 of the Charter guarantees the right to a minimum of four weeks (or 20 working days) annual holiday with pay.

The Committee notes that Ukrainian law provides for basic annual leave of 24 calendar days per year worked (counted from the date when employment contract was signed). It recalls in this respect that under the Charter workers may be required to have been employed for twelve months before they become eligible for annual paid leave.¹ The Committee understands that the notion of "calendar days" includes weekends and in order to properly assess the situation it would need clarification as to whether all workers in practice enjoy an annual holiday of at least 20 working days.

The Committee notes in this respect the provisions for additional holidays in certain occupations and for certain categories of workers. It also notes that part-time workers and those working shorter than normal hours have the right to a full-duration annual leave (i.e. at least 24 calendar days).

The Committee further notes that there is a ban on substituting annual leave with monetary compensation where it would lead to a leave of less than 24 calendar days (Article 24 of the Law of Ukraine on vacations). This principle is

¹ Conclusions I, Norway, Sweden, p. 20.

in conformity with Article 4§3², however confirmation is needed that annual holiday may not be waived under other circumstances.

The Committee understands that parts of annual leave may be postponed but not later than 12 months after the end of the working year for which the leave was due. The Committee recalls its case law according to which an employee must take at least two weeks uninterrupted annual holidays during the year the holidays were due. Annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement.³

Article 11 of the Law of Ukraine on vacations would seem to guarantee the principle that workers who suffer from illness or injury during their annual leave are entitled to take the days lost at another time so that they receive the four week annual holiday provided for under this paragraph, possibly under the condition of producing a medical certificate. This is in conformity with the Charter.⁴

Subject to the clarifications referred to above, there would seem to be no major obstacles to acceptance by Ukraine of Article 2§3.

Article 4§1

Situation in Ukraine

Legal framework

- Labour Code of Ukraine, dated December 10, 1971, № 322-VIII;
- Law of Ukraine "On Remuneration of Work", dated March 24, 1995, № 108/95-VR;
- Law of Ukraine "On Collective Contracts and Agreements", dated July 1, 1993, № 3356-XII;
- International Covenant on Economic, Social and Cultural Rights (ratified by Ukraine on October 19, 1973);
- 1949 ILO Convention № 95 "On the Protection of Wages" (ratified by Ukraine on August 04, 1961);
- 1970 ILO Convention (No. 131) concerning Minimum Wage Fixing, with Special Reference to Developing Countries (ratified by Ukraine on October 19, 2005)

In accordance with Article 1 of the Law of Ukraine "On Remuneration of Work", wage is a compensation calculated, as a rule, in monetary terms, which, in accordance with a labour contract, an owner or its authorized body, pays to employees for the work they perform.

² Conclusions I, Ireland, p. 171.

³ Conclusions 2007, Statement of interpretation on article 2§3, p.11.

⁴ Conclusions XII-2, Statement of Interpretation on Article 2§3, p. 62.

The wage size depends on the complexity and conditions of work, professional and business skills of an employee, and the results of their labour and business activities conducted by an enterprise.

The scope of state-stipulated and contract-based regulation of wages is clearly delineated in Ukraine.

The state regulation of wages, in particular, concerns fixing of minimum wage and conditions of payment and sizes of salaries of employees at budget-financed enterprises, institutions and organizations.

Terms and conditions for definition, and procedures for fixing of minimum wage set by the Verkhovna Rada of Ukraine are provided for in Articles 9 and 10 of the Law of Ukraine "On Remuneration of Work".

In accordance with the provisions in those Articles, the minimum salary size is to be determined with account to the financial and economic situation of the country and to the sources of budget costs, and is fixed, upon proposal by the Cabinet of Ministers of Ukraine, in the Law on the State Budget of Ukraine, with account to proposals prepared through negotiations between the social partners.

In accordance with Article 3 of the Law of Ukraine "On Remuneration of Work", a minimum salary is a state social guarantee binding across the entire territory of Ukraine on enterprises of all forms of ownership and management, as well as individuals who use hired labour.

Beginning from November 1, 2009, the minimum wage is set at the subsistence level for labour-capable persons.

In that respect, according to Ukrainian legislation, the minimum wage is a tariff part of wages of an unskilled worker.

Throughout 2010, the minimum wage grew by almost 24 per cent. In 2011, the minimum wage grew by nearly 9 per cent. Taking into account the macroeconomic growth indicators for the next year, the minimum wage in 2012 is planned to be increased by 12.9 per cent.

Setting the minimum wage is one of the mechanisms that the state uses to regulate the compensations of employees' labour at enterprises of all forms of ownership.

The Minimum wage is the basis for formation of pay scales (salary plans) for enterprises of all ownership and management. In the event of a change in the minimum salary size, employees' tariff rates (salaries) should be reviewed towards raising.

The Minimum social security benefits in labour compensation are also provided for in the general agreement, sectoral (regional) agreements and in

collective agreements, at an appropriate level exceeding the minimum guarantees set at the state level.

In September 2011, the average salary in Ukraine, after deduction of social security contributions and personal income tax, was UAH 2,242.7.

In December 2011, the minimum wage in Ukraine was UAH 1,004 per month. According to the latest statistical data, in Ukraine out of the total number of employees who worked the full time in September 2011, 137.5 thousand (or 1.9% of full-time employees who worked full September), had their wages payment within the limits of the minimum wage.

The Dynamic of the National Minimum Wage

Period	Average weighted minimum wage (MW), UAH.	Average weighted monthly wage (AMW), UAH.	MW or AMW ratio (per cent)
2006	364,58	1041	35.0
2007	430.00	1351	31.8
2008	532.50	1806	29.5
2009	643.17	1906	33.7
2010	888.25	2239	39.7
2011	963	2633	36,7

Opinion of the Committee

The Committee recalls that in order to be considered fair within the meaning of Article 4§1, a wage must not fall too far short of the national average wage. The threshold adopted by the Committee is 60%.⁵ If the minimum or lowest actual wage lies between 50% and 60%, the state is asked to demonstrate that the wage is sufficient for a decent standard of living, e.g. by providing detailed information on the cost of living.⁶ However, a net wage which is less than half the net national average wage will be deemed to be unfair and therefore the situation of the Party concerned will not be in conformity with Article 4§1.

From the information provided by the Government it appears that the minimum wage in Ukraine is well below 50% of the average wage and the Committee can therefore only note that the situation does not comply with the requirements of the Charter.

⁵ Conclusions XIV-2, Statement of Interpretation on Article 4§1, pp. 50-52.

⁶ Conclusions 2003, France, p. 120.

Article 12§1

Situation in Ukraine

Legal framework

- Law of Ukraine "On Fundamentals of Ukrainian Legislation On Mandatory State Social Insurance", dated January 14, 1998, № 16/98-VR;
- Law of Ukraine "On Mandatory State Social Insurance against Temporary Disability and Expenses Caused by Burial", dated January 18, 2001, № 2240-III;
- Law of Ukraine "On Mandatory State Social Unemployment Insurance", dated March 2, 2000, № 1533-III;
- Law of Ukraine "On Mandatory State Social Insurance against Industrial Accidents and Occupational Diseases in Inability to Work", dated September 23, 1999, № 1105-XIV;
- Law of Ukraine "On Collection of and Accounting for the Single Contribution to Compulsory State Social Insurance", dated July 8, 2010, № 2464-VI;
- Law of Ukraine "On Mandatory State Pension Insurance", dated July 9, 2003, № 1058-IV;
- Law of Ukraine "On Non-State Pension", dated July 7, 2003, № 1057-IV;
- Law of Ukraine "On Pension Provision", dated November 5, 1991, № 1788-XII;
- Law of Ukraine "On Status and Social Protection of People Suffering from Chernobyl Disaster", dated from February 28, 1991, № 796-XII;
- Law of Ukraine "On Pension Benefits for Persons Released from Military Service and Certain other Persons", dated April 9, 1992, № 2262-XII;
- Law of Ukraine "On Status of Veterans, Guarantees of their Social Protection", dated October 22, 1993, № 3551-XII;
- Law of Ukraine "On Main Principles of Social Protection of the Labour Veterans and other elderly people in Ukraine", dated December 16, 1993, № 3721-XII;
- Law of Ukraine "On victims of Nazi Persecution", dated March 23, 2000, № 1584-III;
- Law of Ukraine "On the Donation of Blood and its Components", dated June 23, 1995, № 239/95-VR;
- Law of Ukraine "On Contributions under Mandatory State Pension Insurance", dated June 26, 1997, № 400/97-VR

The system of mandatory state social insurance of Ukraine provides for citizens' constitutional right to financial security in old age, in case of a complete, partial or temporary labour incapacity, loss of the sole family supporter, and unemployment for circumstances beyond their control.

At present, the following types of mandatory state social insurance are effective in Ukraine:

- unemployment;
- temporary loss of labour capacity and against expenses related to burial;
- accidents and occupational diseases that resulted in loss of labour capacity;
- pension insurance.

Almost 100% of hired employees are subject to social insurance against unemployment, in connection with temporary labour incapacity, against accidents at work and pension provision.

The self-employed persons, including individual entrepreneurs, are subject to mandatory state pension insurance and unemployment insurance, on the voluntary basis, they are subject to the state social insurance in case of a temporary loss of labour capacity and expenses related to burial, and against accidents at work and occupational diseases that resulted in labour incapacity (voluntarily insured persons constitute an insignificant minority).

Under mandatory state social insurance against unemployment, the following types of financial benefits are granted:

- unemployment benefits;
- for the duration of training, retraining or qualifications upgrading of an unemployed person;
- for burial in the event of death of an unemployed person or a person who was on their maintenance.

Entitlement to **unemployment benefits** depends on payment of insurance contributions and duration of work before unemployment (26 calendar weeks during the year) for all insured persons. The amount of unemployment benefits is determined on the per-case bases and depends on the existing insurance period and the duration of a person's unemployment period, which improves motivation to accelerate the job search.

For persons who lost their jobs for reasons beyond their control and who worked at least 26 calendar weeks before emergence of unemployment, unemployment benefits are set as a part of their average wage (income), depending on their insurance record, at the following rates:

- up to 2 years – 50%;
- from 2 to 6 years – 55%;
- from 6 to 10 years – 60%;
- over 10 years – 70%.

With the increase of duration of those persons' stay in the state of unemployment, the size of unemployment benefits decreases: the first 90 days - 100% of the determined size, the subsequent 90 calendar days – 80%, and 70% after that period.

As regard payment of unemployment benefits to persons who retired for other reasons, then, particularly when a person left their job on their own accord, without a valid reason, the insurance period is also taken into account while determining the size of unemployment benefit, but its payment begins only on the 91st calendar day.

For those who have worked less than 26 calendar weeks before emergence of unemployment, or who wish to resume their career after a long break (exceeding 6 months), unemployment benefits shall be determined without account to their insurance period, at the minimum level stipulated by law.

The Unemployment benefits in no case can exceed the average salary size that formed in sectors of the national economy in the region for the previous month, and be below the subsistence minimum stipulated by law.

The financial support under mandatory state social insurance in case of temporary loss of labour capacity and against expenses related to burial, includes provision of such benefits:

- temporary loss of labour capacity (sickness benefit);
- maternity benefits;
- funeral support.

Temporary labour incapacity benefits are provided to an insured person in the form of financial benefits that fully or partially compensate for loss of wages (income) in case of occurrence of the insurance event.

In Ukraine, insured persons' right to social security for the period of sickness emerges with the occurrence of the insurance event - temporary loss of labour capacity - within the period of work (including probation period and the day of dismissal), unless otherwise provided by law.

The benefits for temporary loss of labour capacity caused by an illness or injury not related to industrial accidents or an occupational disease shall be paid to the insured persons by the Fund of Social Insurance against Temporary Loss of Labour Capacity beginning from the sixth day of labour incapacity.

The payment of the first five days of labour capacity caused by an illness or injury not related to industrial accidents or an occupational disease shall be covered at the expense of the employer.

The temporary labour incapacity allowance shall be payable to insured persons depending on the insurance period duration, in the following amounts:

- 60% of the average wage (income) – to insured persons who have an insurance record up to five years;
- 80% of the average wage (income) – to insured persons who have an insurance period of five to eight years;

100% of the average wage (income) – to insured persons who have an insurance record exceeding eight years;

100% of the average wage (income) – to insured persons assigned to either of the Chernobyl disaster survivor category 1 to 4; to one the parents, or to a person in their lieu caring after a sick Chernobyl disaster survivor child under 14; to war veterans and to persons covered by the Law of Ukraine "On the Status of Veterans and Guarantees of Their Social Security"; to persons assigned to the category of Nazi persecution victims, under the Law of Ukraine "On Victims of Nazi Persecution"; to donors who are eligible for benefits stipulated in Article 10 of the Law of Ukraine "On Donation of Blood and Its Components".

Ukraine has established grounds for *denial* of temporary labour incapacity benefits:

- 1) In case an insured person was injured or developed an illness in connection with committing a crime;
- 2) in case of intentional harm to their health in order to evade work or other duties, or simulating a disease;
- 3) for the time in custody and for the period of forensic medical examination;
- 4) for the period of compulsory, ordered by a court decision;
- 5) in case of temporary labour incapacity due to illness or injury that occurred as a result of intoxication with alcohol, narcotic or toxic substances, or actions related to such intoxication;
- 6) for the period of an insured person's stay on leave without pay, research leave, additional leave in connection with education.

The insured persons who, during the period of receiving temporary labour incapacity benefits, deviate from the regimen prescribed by a doctor or fail to appear at the appointed time, without a valid reason, for physical examination, including by a treatment-and-consultation commission (TCC) or medical-social expert commission (MSEC), lose the right to those benefits (payments *discontinued*) beginning from the date when the violation occurred, for a period established by the decision of the body that granted the temporary labour incapacity benefits.

Maternity benefits are granted to an insured person in the amount of 100% of the average wages and are independent of the insurance period.

In accordance with Article 38 of the Law of Ukraine "On Mandatory State Social Insurance for Temporary Loss of Labour Capacity and Against Funeral Expenses", maternity benefits shall be granted to an insured person in the form of financial aid that compensates for loss of wages (incomes) for the period of the maternity leave. Those benefits shall be payable to an insured person for the entire period of their maternity leave, the duration of which is 70 calendar days before childbirth and 56 (an in case of obstructed labour or giving birth to two or more children - 70) calendar days after delivery. Women assigned to either of the Chernobyl disaster survivor categories 1 to 4, shall be granted maternity benefits for 180 calendar days of the leave (90 days before and 90 days after delivery).

The benefits under **social insurance against accidents and occupational disease** are provided in the form of assistance in case of occurrence of temporary labour incapacity, monthly and one-time insurance payments, and financing (compensation) of extra costs related to the patient's health damage.

Temporary labour incapacity benefits are granted and paid by the Fund for Social Insurance against accidents at work beginning from the sixth day of labour incapacity. The first five days of labour incapacity period are payable by the employer. The size of the benefit is set as 100% of average earnings and is independent of the insured person's insurance period. Benefits are payable for the entire period of the temporary labour incapacity until rehabilitation or until a permanent loss of professional capacity has been confirmed.

One-time benefits to patients are determined based on the rate of a patient's average earnings for each per cent point of loss of professional capacity, but not more than four times the total amount of wages (income) that is used as the basis of contributions to the Fund.

The size of lump sum benefits paid to the patient's family in the event of his or her death shall be no less than the patient's wages for five years and, apart from that, not less than the patient's annual income per person who was on the patient's maintenance, as well as for a child born within a period not exceeding ten months after the patient's death.

The amount of the monthly insurance payments to the victim shall be set according to the degree of loss of professional capacity and the patient's average earnings before health damage occurred. Any loss of professional capacity, confirmed by a medical and social expert commission (MSEC) and established for a certain period or indefinitely, shall be considered to be a permanent loss.

In case of a patient's death, the amount of insurance payments to eligible persons shall be determined based on the patient's average earnings, with deduction of a share belonging to the patient and labour-capable persons who were dependent on them but not entitled to those benefits.

The amounts of monthly insurance benefits shall be recalculated in the event of an increase, during the preceding calendar year, of the average wage across different branches of the national economy, according to the central executive authority on statistics. Such recalculation is done beginning on March 1 the following year.

On March 1, 2011, Board of the Fund for Social Insurance Against Accidents and Occupational Diseases passed a decision to recalculate the size of monthly insurance premiums by 10.2 per cent.

Pension insurance in Ukraine is the main component of the social protection system covers labour-incapable elderly persons, disabled persons, persons who lost the sole family supporter (survivors); payments to them are made in

the form of pensions, allowances and increases to pensions, compensation, supplementary pensions and state social assistance to persons not entitled to a pension, and persons with disabilities.

Beginning from the 1st of January, 2004, Ukraine introduced a reformed pay-as-you-go pension system and a voluntary -financial-defined contributions system through private pension provision.

In 2008, the value of one year in an insurance period was increased for pension calculating – from 1% to 1.35%, which made it possible to provide pensions in the amount of 40% of earnings, in presence of 30-years-long record. After the value of one year in an insurance period was increased, the ratio of the average pension to average wage reached 48.5 per cent.

Beginning from the 1st of April, 2008, the minimum pension payment amount was set at a level not lower than the subsistence minimum for persons who lost labour capacity, including persons who are not entitled to a pension (persons who reached an age (of 63 years for men, and 58 years for women) and are not entitled to a pension under the effective legislation).

Minimum pension (as of the year end)

2008	2009	2010	2011
UAH 544	UAH 601.40	UAH 734	UAH 800

As of November 01, 2011, the average size of monthly pension paid to pensioners registered with the Pension Fund offices (13.7 million persons or 30% of Ukraine's population) was UAH 1230.46.

Opinion of the Committee

Based on the information provided by the Government it appears to cover most of the traditional risks addressed by Article 12§1: mandatory state social insurance comprises unemployment benefits, sickness and maternity benefits, occupational accidents and diseases and pensions (old-age, disability, survivors). Medical care is not yet implemented as a part of state social insurance, but on the basis of the Constitution (Article 49) and health care legislation it is according to the Government provided free of charge to 100% of the population.

On this basis it would appear to the Committee that Ukraine maintains a social security system in the meaning of Article 12§1. This system also appears to have a significant personal scope.

However, as regards social security benefits and their adequacy the figures provided by the Government indicate that the situation is not in conformity. The Committee recalls income-replacement benefits should be such as to

represent a reasonable proportion of the previous income and should not fall below the poverty threshold defined as 50% of median equivalised income, as calculated on the basis of the Eurostat at-risk-of-poverty threshold value; otherwise the level is inadequate⁷.

Unemployment benefits only amounts 50% of previous average wage for workers with an insurance record of up to two years and decreases to 80% of that after 90 days and to 70% after 180 days of unemployment.

Minimum pensions are set at the level of the subsistence minimum (800 hryvnias – UAH - in 2011) and although information on median equivalised income is not available to the Committee, it observes that average wage in 2011 was UAH 2.633. It would therefore seem that minimum pensions are manifestly inadequate and not in conformity with the Charter.

Article 12§2

Situation in Ukraine

Legal framework

- Constitution of Ukraine, dated June 28, 1996, № 254k/96-VR;
- Law of Ukraine "On Fundamentals of Ukrainian Legislation On Mandatory State Social Insurance", dated January 14, 1998, № 16/98-VR;
- Law of Ukraine "On Mandatory State Pension Insurance", dated July 9, 2003, № 1058-IV;
- Law of Ukraine "On Mandatory State Social Unemployment Insurance", dated March 2, 2000, № 1533-III;
- Law of Ukraine "On Mandatory State Social Insurance Against Temporary Disability and Expenses Caused by Burial", dated January 18, 2001, № 2240-III;
- Law of Ukraine "On Mandatory State Social Insurance Against Industrial Accidents and Occupational Diseases in Inability to Work", dated September 23, 1999, № 1105-XIV.

Medical Assistance

The current health care system in Ukraine is nationwide and provides envisages regulation and funding from the state budget. Mandatory state health insurance, stipulated by Article 4 of "On Fundamentals of Ukrainian Legislation on Mandatory State Social Insurance", has not yet been implemented in Ukraine.

Voluntary health insurance, introduced in accordance with Article 6 of the Law of Ukraine "On Insurance" (1996), currently has limited use in Ukraine.

⁷ Conclusions 2006, Bulgaria, p. 118.

In accordance with Article 49 of the Constitution of Ukraine and Articles 6 and 7 of the "On Fundamental Principles of Legislation of Ukraine on Health Care" (hereinafter referred to as "Fundamental principles of legislation") every citizen of Ukraine has the right to health care. It is also envisaged that citizens of Ukraine staying abroad are guaranteed the right to health care in the form and amount stipulated by international treaties to which Ukraine is a party (Article 6 of the Fundamental Principles of Legislation).

Apart from that, it is stipulated that foreign citizens and stateless persons permanently residing in Ukraine enjoy the same rights and bear the same responsibilities in the sphere of health care as citizens of Ukraine, unless otherwise stipulated by international agreements or legislation of Ukraine. Rights and obligations, related to health care, of foreign citizens and stateless persons who stay in Ukraine temporarily are determined by legislation and relevant international treaties (Article 11 Fundamental Principles of Legislation). Therefore, 100% of Ukraine's population have the right to free medical care.

In accordance with Article 35 of the Fundamental Principles of Legislation of the State guarantees: provision of affordable social acceptable primary medical and preventive care as a basic component of health care to population, which envisages doctor's advice, simple diagnostics and treatment of the most common, injuries and poisonings, preventive measures, and reference of the patient for specialized and highly specialized care. Primary treatment-and-prevention care is usually provided on a territorial basis, by family doctors or other general practitioners. Specialized (secondary) treatment and preventive care is provided by doctors who have an appropriate specialization and are able to provide more qualified advice, diagnostics, and prevention and treatment than general practitioners. Tertiary (tertiary) treatment and preventive care is provided by a physician or a group of physicians who are adequately trained in the domain of diseases that are difficult to diagnose and treat, in case of treatment of diseases that require special methods of diagnostics and treatment, as well as for diagnostics and treatment of diseases that rarely occur.

In addition, Article 37 of Fundamental Principles of Legislation stipulates that medical personnel are required to provide first aid in case of accidents and acute diseases. Medical care is provided by the emergency care service or the nearest health care facilities, regardless of departmental subordination and ownership, with subsequent cost reimbursement. Provision of free medical assistance to citizens in emergency situations (natural disasters, catastrophes, accidents, mass poisonings, epidemics, epizootics, radioactive, bacteriological and chemical contamination, etc.) is assigned primarily to specialised permanent-readiness emergency medical assistance teams, with reimbursement of the full amount of relevant expenses borne by local health care facilities from centralised funds.

As regards providing patients with medicines, in accordance with Article 54 of the Fundamental Principles of Legislation, citizens are provided with medicines and immunobiological preparations through pharmacies and

medical institutions. The procedures for provision of citizens with medicines and immunobiological preparations on a gratuitous or cut-rate basis are defined by the legislation of Ukraine. In particular, the right to free medicines is granted to war veterans (the Law of Ukraine "On the Status of Veterans and Guarantees of Their Social Security"), the Chernobyl disaster survivors (Law of Ukraine "On the Status and Social Protection of People Affected by the Chernobyl Disaster"), veterans of military service (the Law of Ukraine "On the Status of Military Veterans, Veterans of Bodies of Internal Affairs and Certain Other Persons, and Their Social Protection") and some other persons.

It is necessary to note that, apart from provision of medical care, the right to health care in Ukraine envisages the following (Article 6 of the Fundamental Principles of Legislation):

- a) living standards, including food, shelter, medical care and social services and support that is necessary for maintaining health;
- b) safe and healthy environment;
- c) sanitary and epidemiological safety of the territory and the place of residence where one lives;
- d) safe and healthy conditions for work, education, everyday life and recreation;
- e) professional health care, including unrestricted choice of a doctor and a medical facility;
- f) accurate and timely information about their own health condition and health status of the population, including existing and potential risk factors and their degree;
- g) participation in discussion of draft legislation and submitting proposals on public policy in health care sector;
- h) participation in management of health care sector and in conducting of public assessment of these issues, following the procedures stipulated by law;
- i) possibilities to associate in public organizations to promote health care;
- j) legal protection against any illegal discrimination related to health status;
- k) compensation for health damage;
- l) appeal against illegitimate decisions and actions of employees and public health facilities and authorities;
- m) possibilities for an independent medical examination in case of a citizen's disagreement with the conclusions by the state medical examination, application of coercive treatment to them and in other cases where actions by health care professionals may have violated the patient's universally recognized human and civil rights.

In order to receive medical assistance specified in Article 10 of the Code, no qualification record is provided. The laws of Ukraine do not limit the duration of medical care.

Sickness benefits

See Article 12§1.

Unemployment

See Article 12§1.

Old Age

According to Ukraine's national legislation, persons are entitled to old-age pension after reaching the age of 60 and in presence of an insurance record of at least 15 years.

The Constitution of Ukraine provides that pensions, other social payments and assistance that is the main source of livelihood, must ensure a standard of living that is not lower than the subsistence minimum stipulated by law.

Government ensured the full implementation of provisions stipulated by Article 46 of the Constitution of Ukraine and set the minimum pension payment at a level that is not lower than the subsistence minimum for who lost their labour capacity.

Pensions to working pensioners are paid without regard to wages (income) or pension benefits that they receive, which enables this group of people to remain full members of society as long as possible.

Wages that are used for calculation of pensions have been modernised, which significantly influenced the expansion of pension differentiation.

The value of one year of an insurance period for calculating pensions was raised from 1% to 1.35%, which is consistent with Article 65 of the European Code of Social Security, provisions of the 1952 ILO Convention in № 102 on Social Security (Minimum Standards) as regards provision of pensions, in presence of 30-year-long work record, to 40% of earnings. After the value of one year in an insurance period was increased, after retirement an employee is granted 66% of their earning, compared with 49% in 2007.

Work accidents and occupational diseases:

See Article 12§1.

Maternity

See Article 12§1.

Disability

In accordance with Article 30 of the Law of Ukraine "On mandatory state pension insurance", dated July 7, 2003, № 1058-IV, a disability pension is granted in case of disability that resulted in complete or partial loss of labour capacity due to illness (including an injury not to work, and childhood disability), in presence of an insurance period stipulated by Article 32 of this Law.

Disability pensions are granted regardless of the time when the disability occurred: during employment, before employment or after its termination.

Disability pensions in connection with an industrial accident and occupational disease shall be granted in accordance with the Law of Ukraine "On mandatory state social insurance against industrial accidents and occupational diseases that caused loss of labour capacity".

In accordance with Article 33 of this Law, depending on the degree of disability, disability pensions are granted in the following amounts:

- To disabled persons in group I – 100% of the old-age pension;
- To disabled persons in group II – 90% of the old-age pension;
- To disabled persons in group III - 50% of the old-age pension, calculated in accordance with Articles 27 and 28 of this Law.

Non-working disabled persons in group II, upon their choice, shall be eligible for awarding of a disability pension in the amount of the old-age pension, calculated in accordance with Articles 27 and 28 of this Law, in present of an insurance period as follows:

- for women - 20 years and for men - 25 years, in case their disability was confirmed for the first time at the age of up to 46 years inclusive;
- for women - 21 years and for men - 26 years, in case their disability was confirmed for the first time at the age of up to 48 years inclusive;
- for women - 22 years and for men - 26 years, in case their disability was confirmed for the first time at the age of up to 50 years inclusive;
- for women - 23 years and for men - 28 years, in case their disability was confirmed for the first time at the age of up to 53 years inclusive;
- for women - 24 years and for men - 29 years, in case their disability was confirmed for the first time at the age of up to 56 years inclusive;
- for women - 25 years and for men - 30 years, in case their disability was confirmed for the first time at the age of up to 59 years inclusive.

Non-working disabled persons in group II, confirmed to be disabled after they reached a retirement age as stipulated in Article 26 of this Law, and disabled persons in group III, upon their choice, shall be eligible for awarding of a disability pension in the amount of the old-age pension, calculated in accordance with Articles 27 and 28 of this Law, in presence of an insurance period as specified in the first paragraph of the first part of Article 28 of this Law.

Death of the breadwinner

In accordance with Article 36 of the said Law, a survivor's pension shall be granted to the deceased sole family supporter's labour-incapable family members, who were dependent on them, provided the sole family supporter, as of the day of their death, had an insurance record that would have necessary to be awarded a III group disability pension, and in the event of death of the pensioner or persons referred to in Article 32 of this Law -

regardless of the length of insurance period. In that respect, children are awarded a survivor pension regardless of whether they were dependent on the sole family supporter.

Parents and the surviving spouse of the deceased, who were not his dependents, are entitled to a survivor's pension if they lost their source of livelihoods.

The provisions of this Law related to the family of the deceased person respectively apply to the family of a person declared missing or dead in the manner stipulated by law.

Survivor's pensions in connection with loss of the sole family supporter who died as result of an accident or occupational disease shall be granted in accordance with the Law of Ukraine "On mandatory state social insurance against industrial accidents and occupational diseases that caused loss of labour capacity."

In accordance with Article 37 of the said Law, survivor's pensions shall be appointed in the following amounts: for one disabled family member - 50% of the deceased survivor's old-age pension, for two or more disabled family members - 100% of the deceased survivor's old-age pension that is divided between them in equal shares.

Orphans are granted a survivor's pension in the amounts specified in part one of this Article, based on the size of each parent's old-age pension.

The mechanism for monetary payment calculation

The mechanism for calculation of monetary payments in Ukraine follows different procedures than those set forth in respective provisions of the Code. The national legislation does not operate with such typical beneficiary categories as "skilled worker" and "skilled male employee" (standard beneficiary: "skilled manual male employee" (Article 65) or "an ordinary adult male labourer" (Article 66).

Opinion of the Committee

The Committee notes that Ukraine has not ratified the European Code of Social Security, but recalls that when a State Party has not ratified the Code the Committee may make its own assessment of conformity with Article 12§2. The non-ratification of the Code is therefore not in itself an obstacle to acceptance of Article 12§2.⁸

In the context of the procedure on non-accepted provisions and nhaving regard to the information at its disposal the Committee is not in position to make a definite assessment of the situation. Although it appears that the

⁸ Countries such as Austria and Finland have accepted Article 12§2 without being Parties to the Code (or to ILO Convention No. 102).

situation in certain branches may not fully comply with the Code (notably unemployment benefits) Ukraine could possibly be considered to maintain the social security system at a level at least equal to that necessary for the ratification of the European Code of Social Security.⁹

Article 12§3

Situation in Ukraine

Legal framework

- Law of Ukraine "On Mandatory State Pension Insurance" dated July 09, 2003, № 1058-IV;
- Law of Ukraine "On Measures to Ensure the Legislative Reform of the Pension System", dated July 08, 2011, № 3668-VI

In order to define measures for further reform of the pension system and to balance the PAYG payment insurance system, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Measures to Ensure the Legislative Reform of the Pension System", which became effective on October 1, 2011.

After adoption of the Law, old-age pension is granted after a person reached the age of 60 years (2011 to 2021 is the transition period to raise the retirement age for women by 6 months every year, from 55 to 60 years), and in presence of an insurance record of at least 15 years.

The minimum old-age pension is granted in the amount of the subsistence minimum for persons who lost their labour capacity, as stipulated by law, in presence of insurance record of 35 years for men and 30 years – for women. The minimum pension payment for non-working pensioners was UAH 800, beginning from December 2011.

A maximum pension size was set, equal to 10 times the subsistence minimum for labour-incapable persons (beginning from December 1, 2011 – UAH 8000.), as well as the maximum amount of an insured person's income, to which contributions for mandatory social insurance are charged in the amount of 17 times the minimum wage (beginning from 1 December 2011 – UAH 17,068).

Pensions to working pensioners shall be paid without regard of their wages (incomes) or pension benefits, which enables that group of people to remain useful members of the society as much as possible.

The Law "On measures to ensure the legislative reform of the pension system" envisages:

⁹ It is recalled that the European Code of Social Security requires acceptance of six of its nine parts although certain branches count for more than one part medical care counts as two parts, and old age counts as three.

- reduction of salaries as the basis of calculation of civil servants' pensions from 90 to 80 per cent;
- pensions to people's deputies, judges, public prosecutors and military officers shall be granted based on the amounts of their salaries to which the single social contribution is charged, in the same manner as for other groups of pensioners;
- an increase of the retirement age for male civil servants to 62 years, beginning from 2013, gradually, by 6 months every year;
- early retirement pensions for people's deputies, in the event of termination of their mandate, shall not be granted two years before they reach the retirement age but eighteen months, in the same manner as for other groups of pensioners, as well as a number of other positions aimed at balancing of the PAYG system.

The Law also envisages a system of compensatory mechanisms:

- As a temporary measure, for 3 years, women are granted an opportunity for voluntary retirement after reaching the age of 55, with a decrease in their pension size by 0.5% for each month of the early retirement. In that respect, they have an opportunity to restore full pension, in case of employment later;
- For every six months of a later retirement (in the age over 55 years), a woman will receive a pension increased by 2.5 per cent. That is, for retirement deferred by 5 years, their pension will increase by 25 per cent;
- For employees in the sphere of education, culture, health care and social security, payment of a one-time cash benefit at retirement as civil servants is envisaged, in the amount of 10 times the size of their monthly pensions.

Also, the said Law envisages:

- to introduce the second pillar of the pension system, which will ensure a deficit-free budget of the Pension Fund;
- to make savings insured for funded pension fund of individual retirement accounts to further their inheritance;
- to recognise insured persons under the age of 35 years, as of the date of implementation of insurance contribution transfer to the financial defined pension system, to be participants of the level II system.

The private pension support system gradually develops. As of July 1 this year, the total number of participants in private pension funds is 557,176 people. The total volume of assets generated by private pension funds equals UAH 1,265.9 million. Over the second quarter 2011, the assets of private pension funds increased by 3.6% (to UAH 44.5 million.).

Law of Ukraine "On Collection of and Accounting for the Single Contribution to Compulsory State Social Insurance", (dated July 08, 2010, № 2464-VI) became effective from January 1, 2011. The law envisages introduction in Ukraine of a unified system to collect insurance contributions to mandatory state social insurance funds. The single social contribution is a single payment to the Pension Fund, which encompasses a number of contributions for social insurance (unemployment, temporary labour incapacity and industrial accidents), as well as pension insurance.

Splitting the amount of the single social tax is done by the State Treasury of Ukraine, which credits the components of the social contribution to the accounts of the respective social funds, in accordance with rates set forth by legislation. The single authority that collects and controls the payment of the single social contribution is the Pension Fund of Ukraine. It maintains a public register of insured and registered persons.

Opinion of the Committee

The Committee recalls that Article 12§3 requires states to improve their social security system even though the social security system has not attained the levels required under the two first paragraphs of Article 12.¹⁰ The expansion of schemes, protection against new risks or increase of benefits, are examples improvement.¹¹

A restrictive evolution in the social security system is not automatically in violation of Article 12§3 and measures taken in order to consolidate public finances may be considered as a necessary means to ensure the maintenance and sustainability of the social security system.

The information provided by the Government in respect of Article 12 describes a mix of improvements and restrictive evolutions in recent years, in particular as regards pension insurance: on the one hand, minimum pensions have gone up and the value of one year of an insurance period was raised and on the other hand it was decided to raise the retirement age for women and reduction of the salary basis when calculating the pensions of civil servants.

On the whole, however, the Committee does not consider that the information at its disposal indicates any major obstacle to acceptance of Article 12§3 by Ukraine.

Article 12§4

Situation in Ukraine

Legal framework

- Law of Ukraine "On Mandatory State Pension Insurance", dated July 9, 2003, № 1058-IV;
- Law of Ukraine "On Mandatory State Social Unemployment Insurance", dated March 2, 2000, № 1533-III;
- Law of Ukraine "On Mandatory State Social Insurance Against Temporary Disability and Expenses Caused by Burial", dated January 18, 2001, № 2240-III;

¹⁰ Conclusions 2009, Statement of Interpretation on Article 12, §3 p. 11.

¹¹ Conclusions XVI-1, Statement of Interpretation on Article 12, p. 11.

- Law of Ukraine "On Mandatory State Social Insurance Against Industrial Accidents and Occupational Diseases in Inability to Work", dated September 23, 1999, № 1105-XIV;
- Law of Ukraine "On Collection of and Accounting for the Single Contribution to Compulsory State Social Insurance", dated July 08, 2010, № 2464-VI

Ukraine concludes bilateral agreements aimed at coordination of social protection systems to ensure equality between its citizens and citizens of other Parties in relation to the right to social security, including preservation of privileges granted under legislation on social security, regardless of migration of protected persons across the territories of the Parties.

The said agreements envisage preservation of acquired rights and rights in the process of being acquired in the sphere of social insurance, account to the insurance (labour) record acquired on the territory of a foreign country, as well as possibilities for payment of benefits abroad.

***List of Agreements and Treaties
(territorial principle)***

№	Country	International agreements (treaties)
	Belarus	Agreement on guarantees for the rights of citizens of the Commonwealth of Independent States in the sphere of pension insurance, dated March 13, 1992, effective as of the date of signature
	Armenia	
	Kazakhstan	
	Kyrgyzstan	
	Russian Federation	
	Tajikistan	
	Turkmenistan	
	Uzbekistan	
1.	Hungary	Agreement between the USSR and the People's Republic of Hungary on cooperation in the social security sphere, signed on December 20, 1962, ratified on May 31, 1963, entered into force on April 12, 1963
2.	Moldova	Agreement between the Government of Ukraine and Government of the Republic of Moldova on guarantees of citizens' rights in the sphere of pension insurance, signed on August 29, 1995, ratified by the Verkhovna Rada of Ukraine on October 29, 1996, entered into force on December 19, 1996
3.	Georgia	Agreement between the Government of Ukraine and the Government of the Republic of Georgia on cooperation in the sphere of pension insurance, signed on September 01, 1995, ratified by the Verkhovna Rada of Ukraine on November 22, 1995, entered into force on December 22, 1995

4.	Azerbaijan	Agreement between the Government of Ukraine and the Republic of Azerbaijan on cooperation in the field of pensions, signed on July 28, 1995, ratified by the Verkhovna Rada of Ukraine on May 07, 1996, entered into force on November 2, 1996
5.	Mongolia	Agreement between the USSR and the Mongolian People's Republic on cooperation in the social security sphere, signed on April 06, 1981, ratified on December 02, 1981, entered into force on January 28, 1982
6.	Romania	Agreement between the USSR and the Romanian People's Republic on cooperation in the social security sphere, signed on December 24, 1960, ratified on October 05, 1961, entered into force on June 27, 1961
7.	Belarus	Agreement between the Government of Ukraine and Government of the Republic of Belarus on guarantees of citizens' rights in the sphere of pension insurance,, signed on December 14, 1995, ratified on November 22, 1996, entered into force on February 11, 1997.

***List of Agreements and Treaties
(proportional principle)***

№	Country	International treaties (agreements)
1.	Latvia	Agreement between Ukraine and the Republic of Latvia on cooperation in the social security sphere, signed on February 26, 1998, ratified by the Verkhovna Rada of Ukraine on March 19, 1999, came into force on June 11, 1999
2.	Kingdom of Spain	Agreement between Ukraine and the Kingdom Spain on social security of citizens, signed on October 07, 1996, ratified by the Verkhovna Rada of Ukraine on December 17, 1997, entered into force on March 27, 1998
3.	Lithuania	Agreement between Ukraine and the Republic of Lithuania on social security, signed on April 23, 2001, ratified by the Verkhovna Rada of Ukraine on January 10, 2002, entered into force on February 8, 2002
4.	Estonia	Agreement between the Government of Ukraine and Government of the Republic of Estonia on cooperation in the field of social security, signed on February 20, 1997, ratified by the Verkhovna Rada of Ukraine on April 11, 1997, entered into force on January 28, 1998
5.	Slovakia	Agreement between Ukraine and the Slovak Republic on social security, signed on December 05, 2000, ratified by the Verkhovna Rada of Ukraine on September 20, 2001, entered into force on January 1, 2002

6.	Czech Republic	Agreement between Ukraine and the Czech Republic on social security signed on July 04, 2001, ratified by the Verkhovna Rada of Ukraine on November 22, 2002, entered into force on April 1, 2003
7.	Bulgaria	Agreement between Ukraine and the Republic of Bulgaria on social security, signed on September 04, 2001, ratified by the Verkhovna Rada of Ukraine on November 22, 2002, entered into force on April 1, 2003
8.	Portugal	Agreement between Ukraine and the Republic of Portugal on social security, signed on July 07, 2009 (has not entered in force)

In accordance with Articles 2 and 3 of the Law of Ukraine "On mandatory state social insurance against temporary labour incapacity and against expenses related to funerals," Article 4 of the Law of Ukraine "On mandatory state social insurance against industrial accidents and occupational diseases that caused loss of labour capacity", Articles 1 and 3 of the Law of Ukraine "On mandatory state social insurance of Ukraine against unemployment", the right to financial support and social services under mandatory state social insurance shall be extended to foreigners, stateless persons and members of their families who reside in Ukraine, unless otherwise stipulated by international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine.

In case and international agreement of Ukraine, ratified by the Verkhovna Rada of Ukraine, establishes other rules than those stipulated by legislation of Ukraine on mandatory state social insurance, provisions of international treaties shall be applicable.

In accordance with Article 4 of the Law of Ukraine "On collection and accounting of the single state social insurance contribution", hired employees who are foreigners (unless otherwise stipulated by international treaties, ratified by the Verkhovna Rada of Ukraine) and stateless persons, as well as their employers, shall be payers of the single contribution for the mandatory state social insurance.

In accordance with the Law of Ukraine "On Mandatory State Pension Insurance" foreigners and stateless persons staying in Ukraine on legal grounds, are entitled to pension benefits and social services from the system of mandatory state pension insurance on a par with citizens of Ukraine, on conditions and in the manner stipulated by that Law, unless otherwise stipulated by international treaties ratified by the Verkhovna Rada of Ukraine.

Opinion of the Committee

The Committee recalls that Article 12§4 applies to nationals of other States Parties who no longer reside on the territory concerned but who did reside or worked regularly there in the past and acquired social security rights. The guarantee of equal treatment within the meaning of Article 12§4 requires states to remove all forms of discrimination from their social security

legislation against foreigners in so far as they are nationals of other States Parties.

The Committee notes that mandatory social insurance shall be extended to foreigners, stateless persons and members of their families who reside in Ukraine, unless otherwise stipulated by international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine. Having noted that equal treatment under the Law of Ukraine on "Mandatory State Pension Insurance" should be granted "on conditions and in the manner stipulated by that law" clarification would be needed as to whether the legislation stipulate any restrictive conditions or eligibility criteria, for instance length of residence requirements.

With respect to the principles retention of accrued rights (exportability) and maintenance of accruing rights (aggregation) the Committee takes note of the bilateral agreements concluded by Ukraine. However, as this "network" of agreements only covers a limited number of States Parties, the situation is not in conformity unless it can be demonstrated that the above-mentioned principles by unilateral measures or through multilateral agreements.

As no information has been provided to indicate that this is the case, it would appear that the situation is not currently in conformity with Article 12§4 of the Charter.

Article 13§1

Situation in Ukraine

Legal framework

- Law of Ukraine "On State Social Assistance to Low-Income families", dated June 1, 2000, № 1768-III;
- Law of Ukraine "On Social Services", dated June 19, 2003, № 966-IV;
- Law of Ukraine "On the State Budget of Ukraine for 2011", dated December 23, 2010, № 2857-VI;
- Resolution by the Cabinet of Ministers of Ukraine, dated February 24, 2003, № 250 "On approval of the procedures for awarding and payment of state social assistance to low-income families;
- Resolution by the Cabinet of Ministers of Ukraine, dated December 29, 2009, № 1417, "Some issues of activities by territorial centres of social services (provision of social services)";
- Resolution by the Cabinet of Ministers of Ukraine, dated August 17, 1998, № 1303 "On regulation of gratuitous and cut-rate dispensing of medicines prescribed by doctors in the case of outpatient treatment of certain population groups and for certain categories of diseases";
- Resolution by the Cabinet of Ministers of Ukraine, dated September 05, 1996, № 1071 "On the purchase of medicines by health care institutions and facilities financed from the budget";
- Order of the Ministry of Labour and Social Policy of Ukraine, dated December 29, 2001, № 549 "On approval of the standard provisions on boarding homes for the elderly, disabled persons and children"

State social assistance to low-income families shall be granted and paid in a monetary form to low-income families residing on the territory of Ukraine, with the average total income below the subsistence minimum for families. In that respect, a single person has the rights of a family member.

The amount of such benefits shall be determined as the difference between the subsistence minimum for the family and their average monthly aggregate income, which is determined by the Methodology for calculation of the total income for all types of social assistance. Until the economic situation in Ukraine has stabilised, the size of state social assistance is determined with account to the level of subsistence minimum.

The subsistence minimum level is set based on the actual capabilities of the expenditure part of the State Budget of Ukraine and approved simultaneously with the adoption of the Law on the State Budget of Ukraine for the respective year.

Article 23 of the Law of Ukraine "On State Budget of Ukraine for 2011" sets the subsistence level (guaranteed minimum) for awarding of benefits under the Law of Ukraine "On state social assistance to low-income families" as a percentage share of the subsistence minimum level for main social and demographic groups, for labour-capable persons - 21% (from December 1, 2011 – UAH 210.84), for children - 50% (from 1 December 2011: for children under 6 years – UAH 435, from 6 to 18 years – UAH 521, from 18 to 23 – UAH 502); for those persons who lost labour-capacity and for the disabled - 75% (from 1 December 2011 – UAH 600) of the respective subsistence minimum.

Social assistance shall be awarded and paid by the Departments of labour and social protection under district, district in the cities of Kyiv and Sevastopol state administrations, departments of labour and social protection of the executive bodies of city and city district (if established) councils, at the place of registration of an authorized representative of a low-income family.

Opinion of the Committee

Under Article 13§1 States Parties must guarantee a subjective right to social and medical assistance to persons who are in need. The obligation to provide assistance arises as soon as a person is in need, i.e. unable to obtain "adequate resources". This means the resources needed to live a decent life and "meet basic needs in an adequate manner".^{12 13} Social assistance can take the form of benefits in cash or in kind. The Committee has observed that "an income guarantee has been established in most Contracting Parties",¹⁴ but has not in theory made the introduction of an income guarantee system a condition of conformity with Article 13§1.

¹² Conclusions XIII-4, Statement of Interpretation on Article 13§1, pp. 54-57.

¹³ Conclusions XIV-1, Portugal, pp. 701-702.

¹⁴ Conclusions XIII-4, Statement of Interpretation on Article 13§1, pp. 54-57.

The Committee notes that under Ukrainian law state social assistance to low-income families shall be granted and paid in a monetary form to low-income families residing on the territory of Ukraine, with the average total income below the subsistence minimum for families. In that respect, a single person has the same rights as a family member. As previously noted, medical care including emergency medical assistance is provided free of charge to all persons resident in Ukraine. In this respect clarification is needed as to whether social and medical assistance is granted on an equal footing to nationals of other States Parties lawfully residing in Ukraine without any restrictive conditions such as length of residence requirements and without distinctions between permanent and temporary residents.

The right to assistance may not depend solely on the discretion of the administrative authorities: it must constitute an individual right laid down in law and be supported by an effective right of appeal to an independent body.¹⁵ It is not clear from the information at the Committee's disposal whether the right of appeal is properly guaranteed and clarification is therefore needed on this point.

Article 13 assistance must be "appropriate", i.e. make it possible to live a decent life and to cover the individual's basic needs. In order to assess the level of assistance, the Committee takes into account basic benefits, additional benefits and the poverty threshold in the country, which is set at 50% of the median equivalised income. In this respect the Committee notes that social assistance in Ukraine is set as a percentage share of the national subsistence minimum, for instance 21% or UAH 210.84 for a "labour-capable" person (the 2011 subsistence minimum was UAH 800). Although the Government does not provide information on median equivalised income, the Committee having regard to other indicators such as the average wage considers this level of assistance to be manifestly inadequate.

In view of the inadequate level of social assistance and having regard to the key issues where clarifications are outstanding, the situation in Ukraine cannot at present be considered to be in conformity with Article 13§1.

Article 13§2

Situation in Ukraine

Legal framework

- Constitution of Ukraine, dated June 28, 1996, № 254/96-VR;
- International Covenant on Economic, Social and Cultural Rights (ratified by Ukraine on October 19, 1973)

In accordance with Article 24 of the Constitution of Ukraine, citizens enjoy equal constitutional rights and freedoms and are equal before the law. There can be no privileges or restrictions based on race, colour, political, religious

¹⁵ Conclusions I, Statement of Interpretation on Article 13§1, p. 64.

and other beliefs, gender, ethnic or social origin, property status, place of residence, linguistic or other characteristics. Equal rights of women and men is ensured: by providing women equal opportunities with men in public, political and cultural activities, education and professional training, in work and remuneration; by special measures for occupational safety and health of women and by establishing pension privileges; by creating conditions that enable women to combine work and motherhood; by legal protection, material and moral support for mothers and children, to include granting of paid vacations and other privileges to pregnant women and mothers.

In accordance with Article 46 of the Constitution of Ukraine, citizens have the right to social protection, including the right to material support in cases of complete, partial or temporary labour incapacity, loss of the sole family supporter, unemployment for circumstances beyond their control, as well as in old age and in other cases provided by law. That right is guaranteed by the general mandatory state social insurance based on insurance contributions by citizens, enterprises, institutions and organizations, as well as budgetary and other sources of social security; by creation of a network of state, municipal and private institutions to care for the those incapable of labour. Pensions and other social payments and benefits that are the main source of livelihood, should ensure a standard of living that is not lower than the subsistence minimum established by law.

Opinion of the Committee

Under Article 13§2, persons receiving assistance must not suffer as a result any diminution of their political or social rights. Any discrimination against persons receiving assistance that might result from an express provision must be eradicated.^{16 17}

Although certain clarifications are needed, such as on the political rights of assistance recipients and on the situation of persons without a fixed place of residence, the information in the Committee's possession does not indicate any particular obstacles to immediate acceptance by Ukraine of Article 13§2.

Article 13§3

Situation in Ukraine

Legal framework

- Law of Ukraine "On Social Services", dated 19.06.2003, № 966-IV;
- Resolution by the Cabinet of Ministers of Ukraine, dated December 29, 2009, № 1417, "Some issues of activities by territorial centres of social services (provision of social services)";

¹⁶ Conclusions I, Statement of Interpretation on Article 13§2, p. 64.

¹⁷ Conclusions XIII-4, Statement of Interpretation on Article 13§2, pp. 58-59.

- Order of the Ministry of Labour and Social Policy of Ukraine, dated December 29, 2001, № 549 "On approval of the standard provisions on boarding homes for the elderly, disabled persons and children"

In order to provide social services to citizens who are in difficult life circumstances and require external assistance at home, on the permanent, temporary or day-care basis, territorial centres shall be established.

The right to state social assistance is granted to low income families who reside in the territory of Ukraine.

As of January 01, 2011, the network of territorial centres of social services (provision of social services) encompassed 736 institutions that served about 2 million people.

In order to maintain life and social activity of persons with disabilities, veterans of war and labour, and retirees, within the regional centres there are:

- 908 units of social assistance at home, which serve about 500 thousand people (social workers from departments of social care provide social services at home to single labour-incapable citizens, including disabled persons and sick persons (from among persons in working age for the period until their disability status has been established) who, according to a doctor's conclusion about their health status, require assistance in the home and have no contraindications to the service);
- 233 medical and social rehabilitation units (for social and medical services) (serving more than 148.0 thousand people). Single labour-incapable persons are admitted for the service provision, including disabled people who do not require constant care and do not have medical contraindications to stay in a group of people, upon reference by the district medical institutions, their personal application and a health examination record. A unit carries out a series of health care measures, provides consultations by doctors and other specialists; organizes leisure activities aimed at maintaining life and social activities for pensioners and disabled people.

602 offices of an organization for monetary and in-kind assistance to low-income labour-incapable citizens, which in 2010 provided in-kind assistance to over one million people.

In order to receive social services (provision of social services) by units of the territorial centre, citizens submit their written application to a labour and social protection administration at the place of their residence.

A department of the organization for targeted in-kind and financial assistance under a regional centre (hereinafter referred to as the "Targeted assistance department") provides services to low-income citizens upon receiving of their written application, statement of family composition (form № 3), information on income of all family members and a statement of inspection of material living conditions of a low-income citizen.

A targeted assistance department has the right to organize the provision, on a paid and gratuitous basis, of shoemaker's, tailor's, hairdressing services, services for repair of windows, doors, apartments (houses), bathrooms, roofs, fences, home appliances, radio devices, refrigerators, shoes; services of fuel procurement and delivery, firewood cutting, etc.

The right to free services by targeted assistance departments is granted to:

- citizens who are not capable of independent living in connection with old age, sickness or disability and who have no relatives to provide them with care and assistance;
- other elderly persons, disabled, sick persons (from among persons of working age for the period until their disability status has been established, but not longer than for four months) who have dependent minor children, disabled children, elderly persons, disabled persons, provided that the average total income of their families is lower than 1.5 times the size of a subsistence minimum for a family;
- people who are in a difficult life situation in connection with unemployment and who are registered with state employment service as job seekers; a natural disaster or an accident (and have dependent minor children, disabled children, elderly persons, disabled persons), in case the average total income of their family is lower than the subsistence minimum for families.

The permanent social services network consists of 324 boarding houses, including 74 nursing homes for the elderly and general-profile disabled persons; 38 boarding houses for war and labour veterans and 152 neuropsychiatric facilities, housing about 55 000 people, including approximately 18 000 people staying in general-profile nursing homes and over 30 000 people with intellectual disabilities and mental illness.

The main objectives of a boarding house is to provide proper conditions for living, everyday-life services, medical assistance to elderly and disabled people who need care and aid.

The matter of free provision of specific population groups with medicines prescribed by doctors in case of their outpatient treatment has been regulated by Resolution of the Cabinet of Ministers of Ukraine, dated August 17, 1998, № 1303 "On regulation of gratuitous and cut-rate dispensing of medicines prescribed by doctors in the case of outpatient treatment of certain population groups and for certain categories of diseases".

The said population groups are provided, free of charge, with medicines included in the List of medicines of domestic and foreign manufacture, which can be purchased by health care institutions and facilities fully or partially funded from the state and local budgets, approved by the Resolution of the Cabinet of Ministers of Ukraine, dated September 05, 1996, № 1071 "On the procedures for procurement of medicines by health care institutions and facilities financed from the budget" (as amended), by pharmacies, according to prescriptions by doctors at treatment and prevention facilities at those persons' place of residence.

The costs associated with providing war veterans with medicines free of charge, are covered by general fund allocations envisaged by the respective health care budgets.

Territorial centres encompass:

- 612 social rehabilitation units (at present, social adaptation departments), which provided services to 440.0 thousand people. Those units provide a range of measures including provision of specific services aimed at restoring the knowledge and skills for orientation in the home, housekeeping, independent living and behaviour in society, etc. (everyday-life rehabilitation); labour therapy, organization of leisure and recreation (lectures, discussions, meetings, tours, creation of amateur art groups, interest clubs, etc.), consultations by experts of different qualifications, as may be needed;
- 339 permanent units for temporary or permanent residence, where close to 12 thousand people live and receive social services. The number of these institutions grows every year (in 2002, there was 175 of those, and as of the end of 2010 - 339). These branches make it possible for war veterans to remain in their customary living conditions and to continue to maintain family and social ties.

Opinion of the Committee

Article 13§3 is concerned specifically with services offering advice and personal assistance to persons without adequate resources or at risk of becoming so. The provision has close links to other provisions of the Charter such as Article 14 and Article 30 (both of which Ukraine has accepted), but one important distinguishing feature is that the services must be provided free of charge (since the target group is persons in need).

Although the services and benefits described by the Government on the whole fall within the ambit of Article 13§3 and correspond to the aims and objectives, information is lacking on two key issues, namely equal treatment of foreigners and possibilities of appeal in case access to services is refused (see also the comments above under Article 13§1).

Pending clarification on these issues the Committee is not in a position to make a firm assessment of the situation in Ukraine.

Article 13§4

Situation in Ukraine

Ukraine is not a State Party to the European Convention on Social and Medical Assistance, signed in Paris on December 11, 1953.

Opinion of the Committee

The Committee recalls that States Parties that have ratified the Charter but are not parties to the Convention may accept Article 13§4, "provided that they

grant to nationals of other [states that have ratified the Charter] a treatment which is in conformity with the provisions of the said convention”.

Since the personal and material scope of Article 13§4 is defined in the Charter (nationals of other States Parties lawfully present in the territory), the only link between Article 13§4¹⁸¹⁹ and the 1953 Convention concerns states’ right to repatriate foreigners because they are in need of assistance, in accordance with the Convention’s provisions on repatriation. The conditions governing repatriation (Articles 7-10 of the Convention) are: Article 7 authorises parties to repatriate persons on the sole ground that they are in need of assistance. This option may only be applied in the greatest moderation and then only where there is no objection on humanitarian grounds, and subject to the following specific conditions:

- those concerned have not been continuously resident in the party’s territory for at least five years. This condition does not apply to nationals of states party to the Charter since foreign nationals legally present in another party may not in any case be repatriated on the ground that they need assistance;
- they are in a fit state of health to be transported;
- they have no close ties in the territory in which they are resident.

In addition, repatriating states must bear the cost of repatriation as far as the frontier of the territory to which the national is being repatriated (Article 8) and provide relevant information to the diplomatic or consular authorities of the country of origin and the authorities of any country or countries of transit (Article 10). Finally, if the country of which an assisted person claims to be a national does not recognise him or her as such, the grounds of the disclaimer must be forwarded to the country of residence (Article 9).

However as noted above, the requirement to accept and apply the Article 13§4 provision on repatriation is not conditional on ratification of the 1953 Convention, which means that States that are bound by Article 13§4 must also comply with the Convention provisions on the conditions and arrangements for repatriation of nationals of Charter parties that have not ratified the Convention. According to the Appendix to Article 13§3, states that have ratified the Charter but are not parties to the Convention may accept Article 13§4, “provided that they grant to nationals of other [states that have ratified the Charter] a treatment which is in conformity with the provisions of the said convention”.

Further clarifications are needed as regards entitlement to emergency social and medical assistance for foreigners who are lawfully present, but not resident, on the territory of Ukraine.

¹⁸ Conclusions XIV-1, Statement of Interpretation on Article 13, p. 52.

¹⁹ Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

Nevertheless, based on the information at the Committee's disposal there would seem to be no legal obstacles to the immediate acceptance by Ukraine of Article 13§4.

Article 19 : Introductory remark by the Committee

The Committee notes that Ukraine ratified the European Convention on the Legal Status of Migrant Workers (CETS No. 093) on 2 July 2007. This treaty, which entered into force for Ukraine on 1 October 2007, contains a number of provisions which set out obligations which are similar, if not identical, to certain provisions of Article 19 of the Charter. The provisions concerned of the Convention include Article 6 (information), Article 7 (travel), Article 10 (reception), Article 12 (family reunion), Article 13 (housing), Article 14 (education/training), Article 15 (teaching of the migrant worker's mother tongue), Article 16 (conditions of work), Article 17 (transfer of savings), Article 23 (taxation), Article 26 (access to courts) and Article 28 (right to organize).

In so far as Ukraine has already undertaken the obligations that follow from the Convention (except as far as the right to organize is concerned, see below under Article 19§4), the Committee invites Ukraine to consider acceptance of several paragraphs of Article 19 of the Charter, and at least those in respect of which the Committee has found no significant obstacles in law and in practice. This would in the Committee's view ensure consistency with respect to Ukraine's international law obligations in this particular field.

Article 19§1

Situation in Ukraine

Legal framework

- Law of Ukraine "On Immigration", dated June 7, 2001, № 2491-III;
- Law of Ukraine "On Legal Status of Foreign Ukrainians", dated March 4, 2004, № 1582-IV;
- Law of Ukraine "On Legal Status of Foreigners and Stateless Persons", dated September 22, 2011, № 3773-VI;
- Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection", dated July 8, 2011, № 3671-VI;
- Law of Ukraine "On Licensing of Certain Business Activities", dated June 1, 2000, № 1775-III;
- Decree of the President of Ukraine "On the Concept of the State Migration Policy", dated from May 30, 2011, № 622/2011;
- Resolution by the Cabinet of Ministers of Ukraine "On approval of the Procedures for formation of the immigration quota, the Procedures for processing of the applications for immigration permits and proposals concerning their withdrawal and for enforcement of decisions, Procedures for processing and issuing a permit for permanent residence", dated December 26, 2002, № 1983;

- Resolution of the Cabinet of Ministers of Ukraine "On approval of an action plan for implementation of the Concept of the state migration policy", dated October 12, 2011, N 1058-p

The official web sites of state authorities, including the Ministry of Foreign Affairs of Ukraine and consulates of Ukraine, Ministry of Social Policy of Ukraine, State Employment Centre, State Migration Service, constantly update detailed information on immigration to Ukraine, employment abroad, documents necessary to process permits for employment of foreigners or stateless persons in Ukraine, and specific characteristics of migration legislation of recipient countries.

Law of Ukraine "On Licensing of certain economic activities" defines types of economic activities that are subject to licensing, procedures for their licensing, establishes the state control in the sphere of licensing, scopes of responsibility of economic entities and licensing authorities for violation of legislation in the sphere licensing.

According to Article 9 of the said law, the List of economic activities that require licensing, contains, in particular, mediation in employment abroad.

In accordance with Resolution of the Cabinet of Ministers of Ukraine, dated November 14, 2000, № 1698, "On Approval of Licensing Authorities", Ministry of Labour and Social Policy of Ukraine is appointed as the licensing authority for business entities that provide services of mediation in employment abroad.

Using the services of the above-mentioned intermediate structures, citizens of Ukraine have an opportunity to find legal work outside the country and receive social security on part of a foreign employer.

Ministry of Labour, as the licensing authority, following legislation in the field of licensing, created a system of state control over business entities. As of January 5, 2012 the Ministry database contains 687 business entities licensed for mediation in employment abroad.

In case Ministry of Social Policy receives a complaint about the placement of false information on issues related to employment abroad by a business entity engaged in mediation services for employment abroad, an extraordinary inspection of the intermediary entity is carried out, and, in case the fact of violation is confirmed, an orders for it elimination is issued. In case of non-compliance with the requirements by a supervisory authority, the intermediary entity's license to carry out the said activity may be withdrawn.

In 2011, the Ministry conducted 230 inspections of businesses as to their compliance with licensing terms and conditions for mediation in employment abroad, which resulted in cancellation of 27 licenses and 3 licenses were declared null; 92 licensees were issued orders to eliminate violations revealed as a result of inspection.

According to various expert estimates, 2.5 to 4 million citizens of Ukraine are currently employed abroad. A sampling study of population as to migration of Ukrainian citizens, conducted in 2008 by the State Statistics Committee of Ukraine with support of the International Organization for Migration, found that over the past three years nearly 1.5 million Ukrainians travelled to find employment abroad.

At present, the official information on the number of migrant workers who legally work abroad is the State statistical reporting data on the number and composition of the citizens of Ukraine who temporarily work abroad (Form 1-TM), which is formed on the basis of data by business entities providing mediation services for employment abroad.

According to the said State statistical reporting data, 80,401 citizens of Ukraine were employed abroad in 2010; in the first half of 2011 – 43,663 citizens of Ukraine.

The majority of the employed people are representatives of marine professions, who were employed on ships sailing under foreign flags (almost 70%); others are engaged in construction, hotel and restaurant sector, agriculture, processing industries, trade and provision of individual services.

Among the employed persons, only 7.5% are employed in workplaces that do not require a profession or specialisation. Over 50% were employed by their profession; 40% occupied positions of managers, professionals and clerical employees.

Flows of Ukrainian citizens' foreign labour migration are directed mainly to the EU member states and the Russian Federation. Nearly all migrant workers are people of working age; over 60% of them are persons aged 18 to 40 years. As to their gender distribution, 93% are male and only 7% - female.

The web site of the State Employment Service (www.dcz.gov.ua) contains information about documents that are necessary to secure a permit for employment of foreigners or stateless persons in Ukraine.

A prerequisite for hiring foreigners to work is the registration of a Ukrainian employer with the local employment centre as a payers of insurance contributions for mandatory state social insurance against unemployment.

Permits for employment of foreigners are issued to employers by the State Employment Centre under Ministry of Social Policy, or on its instruction, by the Employment Centre of the Autonomous Republic of Crimea, and Kyiv and Sevastopol City Employment Centres.

For consideration of the application for issuance of a work permit or extension of its validity, the employer shall be charged a fee equal to four times the minimum wage size.

Decision of the State Employment Service to grant or deny a permit to employ foreigners shall be taken within a period of time, not to exceed 30 days upon receipt of documents. The decision taken by the respective employment centre shall be communicated to the applicant in writing.

Permits for employment of foreigners shall be issued to employers for a period up to one year. A permit for employment of foreigners entitles the employer to temporarily employ a foreigner for a particular job or in a specific position. Therefore a transfer foreign worker to another position requires obtaining of a new permit.

Under the effective legislation of Ukraine, the obligation to secure a permit for employment of foreign workers is assigned to the employer. Accordingly, permits for use of foreign labour should be kept by the employer.

Permits for employment of foreigners is the basis for obtaining visa of the respective type by a foreigner, registration at the place of temporary stay in Ukraine and issuance of a temporary residence certificate for the term of validity of the permit.

Permits	2008	2009	2010	2011	Total:
Granted:	21166	8939	7801	8119	46025
Denied:	1433	1085	499	360	3377

The Decree of the President of Ukraine, dated May 30, 2011, approved the Concept of State Migration Policy defining strategic directions of the state migration policy of Ukraine and mechanisms for its implementation. These include introduction, on the legislative level, of mechanisms for an additional and temporary protection of foreigners and stateless persons, definition of immigration quotas in Ukraine with account to current and future demographic situation and the situation on the labour market; creation of conditions for freedom of movement, free choice of place of residence and free leaving of the territory of Ukraine for the citizens of Ukraine, foreigners and stateless persons who lawfully reside or temporarily stay in Ukraine; counteraction to manifestations of racism, xenophobia and religious intolerance; formation of a tolerant attitude towards migrants; creation of favourable conditions and mechanisms for return to Ukraine of Ukrainian citizens residing in other states in order to reduce emigration flows, etc.

In order to implement the Concept of the migration policy, Order of the Cabinet of Ministers of Ukraine, dated October 12, 2011, № 1058-r, approved an action plan for its implementation. The said Plan envisages, in particular, to ensure cooperation on exchange of information on migrant workers in recipient countries; study of opportunities for establishing of resource centres on immigration issues in order to facilitate legal immigration, protection of Ukrainian immigrants abroad, prevention of irregular migration, promotion of voluntary repatriation, raising of population awareness on the procedures for resolution of issues related to employment abroad and migration risks, specific features of immigration legislation in recipient countries, in part, by

use of official websites of interested bodies. Creation of public service announcements, distribution of printed materials.

As regards counteraction to manifestations of racism, racial discrimination and xenophobia, it should be noted that the Law of Ukraine, dated November 5, 2009, "On Amendments to the Criminal Code of Ukraine regarding responsibility for crimes on the grounds of racial, national or religious intolerance", racial, ethnic or religious Intolerance is defined as an aggravating circumstance for qualification of such crimes as murder, grave or moderate bodily harm, battery and torture, or threat of murder. The range of grounds, which can be regarded as humiliating national honour and dignity or insult to senses has been expanded – these can be race, ethnic origin, skin colour, language. Not only citizens of Ukraine but also foreigners and stateless persons may be regarded as objects of criminal acts of humiliation of national honour and dignity or insult to senses. Ministry of Internal Affairs of Ukraine on its official website provides information on investigation of crimes committed against foreigners, as well as official statistics on crimes against foreigners and stateless persons.

Office of the International Organization for Migration in Ukraine created a network of Centres for Migrant Advice (CMA) operating in Ukraine since September 2005 under the programme to improve migration management. CMAs are present in six regions of Ukraine by six partner NGOs (in the cities of Lviv, Ternopil, Kharkiv, Vinnytsia, Uzhgorod, Odessa) and one centre at the International Organization for Migration (IOM) in Ukraine (Kyiv).

CMAs help people who plan to go abroad to realise the realities of traveling outside of Ukraine, and consequences of illegal entry and residence in foreign countries. Clients of CMAs receive knowledge required to cope with unpleasant surprises that can happen when traveling abroad. CMA also provide advice to foreigners in Ukraine and Ukrainians who returned from abroad and need readjustment assistance.

CMAs provide the following services:

- Information on workers' rights abroad.
- Assistance in explanation of terms and conditions of a contract offered by a foreign employer or an employment intermediary.
- Information on fraudulent schemes in the field of migration and on how to protect oneself from them.
- Information on legal migration, including labour migration.
- Information on dangers of illegal migration.
- Assistance with understanding of requirements for visa applications.
- Assistance with adaptation after returning from abroad.
- Consultations to foreign citizens temporarily staying in Ukraine or in transit through its territory.
- Internet access for finding information on migration issues.

Staffs at the Centres for Migrant Advice provide advice in the state language (Ukrainian) and in languages that are recognized in Ukraine as international (Russian, English).

CMAs cooperate with representatives of state structures to improve their work in the field of migration. CMAs work primarily with government agencies such as Ministry of Social Policy of Ukraine, the State Employment Service of Ukraine, Ministry of Internal Affairs of Ukraine, State Committee on Nationalities and Religions of Ukraine.

Opinion of the Committee

The Committee recalls that Article 19§1 guarantees the right to free, reliable and objective information concerning migration for work purposes. It also requires States Parties to take measures to prevent misleading propaganda relating to immigration and emigration, including legal and practical measures to tackle racism and xenophobia as well as women trafficking.

The Committee takes note of the detailed information provided, in particular on the information facilities put in place and on the legislative steps taken to counteract racism, xenophobia and religious intolerance. While the situation practice would require more detailed examination, the Committee does not find that there are any major legal obstacles to acceptance by Ukraine of Article 19§1.

Article 19§2

Situation in Ukraine

Legal framework

- Constitution of Ukraine, dated June 28, 1996, № 254/96-VR;
- Law of Ukraine "On the Procedures for Departure from Ukraine and Entry into Ukraine by Citizens of Ukraine", dated January 21, 1994, № 3857-XII;
- Law of Ukraine "On Legal Status of Foreigners and Stateless Persons", dated September 22, 2011, № 3773-VI;
- Law of Ukraine "On Labour Protection", dated October 14, 1992, № 2694-XII

In accordance with Article 33 of the Constitution of Ukraine, everyone who legally stays on the territory of Ukraine is guaranteed freedom of movement, free choice of place of residence, the right to freely leave the territory of Ukraine, with the exception of restrictions established by law.

Pursuant to paragraph 11 of the "Rules for entry of foreigners and stateless persons in Ukraine, their exit from Ukraine and transit through its territory", approved by Resolution of the Cabinet of Ministers of Ukraine, dated December 29, 1995, № 1074, foreigners and stateless persons who stay in Ukraine on the basis of an employment permit by a respective Employment

Centre may enter Ukraine by passport with a note on availability of a work permit and a temporary residence certificate.

In accordance with Article 1 of the Law of Ukraine "On the procedures for departure from Ukraine and entry into Ukraine by citizens of Ukraine", dated January 21, 1994, № 3857-XII, citizens of Ukraine may leave Ukraine, except in cases envisaged by that Law, and enter Ukraine.

Citizens of Ukraine who submitted a request to leave Ukraine, shall be subject to all provisions of applicable law; they enjoy all the rights and assume all duties stipulated by law. Citizens of Ukraine retain the title to property, funds, securities and other valuables on its territory, which belong to them on private ownership rights. Any restriction of their civil, political, social, economic and other rights shall not be permissible.

The procedures for entry into a foreign country shall be governed by the laws of the respective state. No citizens of Ukraine under any circumstance may be restricted in their right to enter Ukraine.

In accordance with the Law of Ukraine "On the legal status of foreigners and stateless persons", dated September 22, 2011, № 3773-VI, foreigners and stateless persons enter and exit Ukraine in presence of a passport document, stipulated by that Law or an international treaty of Ukraine, and a visa obtained in compliance with applicable procedures, unless otherwise stipulated by law or international treaties that Ukraine is a party to. This rule shall not apply to foreigners and stateless persons who cross the state border of Ukraine for the purposes of their recognition as refugees or individuals requiring additional or temporary protection or asylum.

The period of stay of foreigners and stateless persons in Ukraine is determined by their visa, legislation of Ukraine or an international treaty of Ukraine.

The provision of medical care for foreigners and stateless persons who temporarily stay in Ukraine is regulated by Resolution of the Cabinet of Ministers of Ukraine, dated May 22, 2011, № 667 "On approval of Procedures for provision of medical care to foreigners and stateless persons who temporarily stay in Ukraine, and on recognition of certain resolutions of the Cabinet of Ministers of Ukraine null and void".

The legislation of Ukraine does not impose any restrictions on access of foreign migrant workers to health care, medical and health rehabilitation institutions in Ukraine and they have the right to receive necessary medical care on equal grounds with citizens of Ukraine.

The legislation of Ukraine does not envisage any special procedures for medical examination of potential migrant workers. Law of Ukraine "On Labour Protection", dated October 14, 1992, № 2694-XII, defines the general requirements concerning preliminary and regular medical examinations of workers. In particular, Article 17 "Mandatory medical examinations of

employees of certain categories" provides that an employer is obliged, at its own expense, to finance and organize the preliminary (in the course of hiring) and regular (over the period of employment), medical examinations of workers engaged in heavy-duty work, work in unhealthy or dangerous working conditions or those where there is a need for professional selection, and annual mandatory medical examinations of persons under the age of 21. Based upon to the results of regular medical examinations, as maybe necessary, the employer must provide appropriate health rehabilitation measures. Medical examinations are conducted by relevant health care institutions, staffs of which are responsible, in accordance with legislation, for consistency of a medical report with a worker's actual health status. Procedures for medical examinations shall be determined by the central executive body in the sphere of health protection.

An employer has the right, following the procedures stipulated by law, to bring an employee who avoids taking the mandatory medical examination, to disciplinary responsibility, and shall also be obligated to suspend that employee from work without pay.

At its own expense, an employer must provide an extraordinary medical examination of employees:

- at an employee's request, if they believe that the deterioration of their health is connected with working conditions;
- upon its own initiative, if an employee's health condition does not make it possible for them to perform their job duties.

Employees retain their job (position) and average earnings for the time of the medical examination.

Opinion of the Committee

Under Article 19§2 States must adopt special measures for the benefit of migrant workers, beyond those which are provided for nationals to facilitate their departure, journey and reception.²⁰

The Committee notes the information on visa requirements and medical examinations and it observes in particular that Ukrainian legislation does not impose any restrictions on access of foreign migrant workers to health care, medical and health rehabilitation institutions and they have the right to receive necessary medical care on an equal footing with citizens of Ukraine. More information would be required on specific measures taken for the benefit of migrant workers during their departure, journey and reception.

Nevertheless, the Committee does not find any major obstacles to immediate acceptance by Ukraine of Article 19§2.

²⁰ Conclusions III, Cyprus, p. 88.

Article 19§3

Situation in Ukraine

Legal framework

- Provisions on the State Migration Service of Ukraine, approved by the Decree of President of Ukraine, dated April 6, 2011, № 405/2011

The State Migration Service of Ukraine is a part of the system of executive authorities implementing the state policy in the sphere of migration (immigration and emigration), including counteraction to irregular (illegal) migration, citizenship, registration of private individuals, refugees and other categories of migrants as defined by the legislation.

Pursuant to Article 24 of the Provisions, the State Migration Service, in accordance with its tasks, carries out international cooperation, takes part in drafting and conclusion of international treaties of Ukraine on citizenship, migration, refugees, people requiring other forms of protection, registration of private individuals and readmission; within the scope of its competence, ensures implementation of international treaties that Ukraine is a party to.

The mechanism of cooperation between respective competent authorities of executive power of the origin and destination countries is defined in the texts of bilateral agreements on employment concluded by Ukraine.

Opinion of the Committee

Under Article 19§3 contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin.²¹ Formal arrangements are not necessary, especially if there is little migratory movement in a given country. In such cases, the provision of practical co-operation on a needs basis may be sufficient.

Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed.²²

The Committee notes that the State Migration Service takes part in international cooperation and that mechanism of cooperation between Ukraine

²¹ Conclusions XIV-1, Belgium, p. 137.

²² Conclusions XIV-1, Finland, pp. 165-166.

and relevant authorities of other countries are defined in bilateral agreements on employment. While more details would be required on such cooperation and notably on the content of the bilateral agreements referred to, the Committee sees no significant obstacles to immediate acceptance by Ukraine of Article 19§3.

Article 19§4

Situation in Ukraine

Legal framework

- Constitution of Ukraine, dated June 28, 1996, № 254/96-VR;
- Labour Code of Ukraine, dated December 10, 1971, № 322-VIII;
- Law of Ukraine "On Employment of Population", dated March 01, 1991, № 803-XII;
- Law of Ukraine "On Trade Unions, their Rights and Guarantees for their Activities", dated September 15, 1999, № 1045-XIV;
- Law of Ukraine "On Legal Status of Foreigners and Stateless Persons", dated September 22, 2011, № 3773-VI

The Article 26 of the Constitution of Ukraine stipulates that foreigners and stateless persons staying in Ukraine on legal grounds enjoy the same rights and freedoms and also assume the same responsibilities as citizens of Ukraine - with the exceptions defined by the Constitution, laws or international agreements of Ukraine.

Pursuant to Article 43 of the Constitution of Ukraine, every person has the right to work, which includes opportunities to earn one's living by work that one freely chooses or to which one freely agrees. In order to implement this principle, citizens of Ukraine have the right, in particular, to enter labour contracts with foreign employers both in Ukraine and abroad, as well as Ukrainian employers to work abroad, and foreigners have the right to work in Ukraine at Ukrainian enterprises, institutions or organizations, or engage in other labour activities under the legislation of Ukraine.

In accordance with Article 2-1 of the Labour Code of Ukraine (Labour Code) Ukraine provides equal labour rights of all citizens of Ukraine, regardless of their origin, social and property status, race and ethnicity, gender, language, political opinions, religious beliefs, type and nature of occupation, place of residence and other circumstances.

According to the requirements in Article 8 of the Labour Code of Ukraine labour relations of Ukrainian citizens who work abroad, as well as labour relations of foreign nationals working at enterprises, institutions and organizations in Ukraine, shall be governed by the laws of the host country of employment, and by international treaties of Ukraine.

Pursuant to paragraph 2 in the "Procedures for issuance renewal and cancellation of permits for employment of foreigners and stateless persons"

(approved by Resolution of the Cabinet of Ministers of Ukraine, dated April 8, 2009, N 322), permits for employment of foreigners and stateless persons (hereinafter – "foreigner"), which entitle an employer to temporarily employ a foreigner on a particular job or in a particular position, shall be issued to the employer in case of absence of workers in that country (region) who are able to perform the respective functions, or in existence of sufficient evidence in favour of feasibility of employment of foreigners, unless otherwise stipulated by international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine.

The permits for employment of foreigners shall be issued to employers by the State Employment Centre or, upon its instructions, by the Employment Centre of the Autonomous Republic of Crimea, and Kyiv and Sevastopol city employment centres (hereinafter - "Employment Centre").

Pursuant to paragraph 13 of the Procedures, employers are entitled to employ foreigners who permanently reside in Ukraine, and other foreigners in cases stipulated by international treaties, ratified by the Verkhovna Rada of Ukraine, without issuance of a permit for employment of foreigners.

When entering into an employment agreement (contract), an entrepreneur must provide for adequate and safe working conditions, labour compensation that is not less than the minimum, stipulated by law and its timely receipt by workers, as well as other social benefits, including social and health insurance and social security in compliance with the legislation of Ukraine.

Paragraph 14 of the Procedures states that, regardless of the labour market and trends in its development, permits for employment of a foreigner shall not be issued or extended if a labour agreement (contract) envisages a foreigner's work conditions that are worse, and wages lower than those for citizens of Ukraine who perform similar work.

The employment centres of the Autonomous Republic of Crimea, oblasts and Kyiv and Sevastopol conduct surveys of enterprises, institutions and organizations regarding clarification of possibilities for their ensuring adequate conditions for foreigners' stay and living; analyse how effectively their work is used during the term of validity of the permit and, if necessary, inform the State Employment Centre.

Specifics of legal regulation, principles of creation, rights and guarantees of trade unions are stipulated by Law of Ukraine "On trade unions, their rights and guarantees for their activities."

In accordance with Article 2 of the Law, trade unions are established for the purpose of representation and protection of labour, social and economic rights and interests of union members.

In accordance with Article 6 of the Law, foreign nationals and stateless persons may not establish unions, but may join trade unions, if required by their charters.

The Ministry of Justice of Ukraine registered three nation-wide trade unions of migrant workers:

- Ukrainian Trade Union of Workers Abroad;
- All-Ukrainian Trade Union of Migrant Workers in Ukraine and Abroad;
- All-Ukrainian Independent Trade Union of employees in the Tourism Industry and Service Sector in Ukraine and Worldwide

The effective Ukrainian legislation does not envisage any discrimination regarding access of migrant workers to housing and in relation to rent. In that respect, the Ukrainian legislation contains no special provisions for housing of migrant workers and the criteria to be met by residential premises, if such premises are made available to migrant workers.

The Migrant workers' right to housing is secured in compliance with the Constitution of Ukraine, in particular, according to Article 26, foreigners and stateless persons staying in Ukraine on legal grounds enjoy the same rights and freedoms and assume the same responsibilities as citizens of Ukraine - with the exceptions stipulated by the Constitution, laws or international treaties of Ukraine.

In accordance with Article 47 of the Constitution of Ukraine, every person has the right to housing. The State creates conditions under which each citizen has an opportunity to build it, purchase for their ownership or rent. Citizens in need of social protection are provided with housing by the state and bodies of local self-government free of charge, or for a price affordable to them, according to law. No one shall be forcibly deprived of housing except under the law by a court decision.

Also, Article 12 of the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons" provides that the right of ownership of housing is acquired by foreigners and stateless persons in accordance with the legislation of Ukraine. In that respect, Ukrainian legislation does not envisage any restrictions concerning acquisition of apartments or houses by migrant workers for their ownership .

Opinion of the Committee

The Committee recalls that Article 19§4 guarantees the right of migrant workers to a treatment not less favourable than that of the nationals in three areas: (i) remuneration and other employment and working conditions, (ii) trade union membership and the enjoyment of benefits of collective bargaining, and (iii) accommodation.

The Committee understands that the Ukrainian Constitution (Articles 26 and 49) the Labour Code (Articles 2 and 8) as well as work permit regulations guarantee equal treatment of foreign workers as regards wages and other working conditions.

With respect to trade union rights the Committee notes that the applicable legislation provides that foreigners may join trade unions, but are not allowed to form trade unions. The Committee considers that this is contrary to the Charter and it refers in this respect to its statement of interpretation in the General Introduction to Conclusions 2011:

“Under Article 19§4b the States Parties undertake to secure for migrant workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of membership of trade unions and enjoyment of the benefits of collective bargaining.

The Committee has consistently held that by way of the expression "membership of trade unions" Article 19§4b guarantees not only the right to join a trade union, but also to participate in trade union activities, **including the right to be founding member of a trade union**²³ (see, inter alia, Conclusions XIV-1, Turkey).”

The Committee further observes in this respect that when ratifying the European Convention on the Legal Status of Migrant Workers Ukraine made the following reservation: “Ukraine recognizes the migrant workers' right to organise for the protection of their economic and social interests except political parties and trade unions.”

Finally, as regards accommodation the Committee observes the Government’s statement that there is no discrimination Ukrainian legislation regarding the access of foreign workers to housing and in relation to rent. In conclusion, it is the Committee’s opinion that the situation in Ukraine is not fully in compliance with Article 19§4 as migrant workers do not have the right to form trade unions.

Article 19§5

Situation in Ukraine

Legal framework

- Law of Ukraine "On Collection of and Accounting for the Single Contribution to Compulsory State Social Insurance", dated July 8, 2010, № 2464-VI

In accordance with Article 4 of the Law of Ukraine "On collection and accounting of the single state social insurance contribution", hired employees who are foreigners (unless otherwise stipulated by international treaties, ratified by the Verkhovna Rada of Ukraine) and stateless persons and their employers shall be payers of the single state social insurance contribution.

Opinion of the Committee

²³ Emphasis added.

Article 19§5 recognises the right of migrant workers to equal treatment in law and in practice in respect of the payment of employment taxes, dues or contributions.²⁴

The Government affirms that there is no distinction between nationals and foreigners in relation to the payment of social security contributions. The Committee considers that this in line with Article 19§5, however in view of the paucity of the information the Committee is unable to reach a firm opinion as regards any other taxes, dues and contributions.

Article 19§6

Situation in Ukraine

General legal framework

- Law of Ukraine "On Legal Status of Foreigners and Stateless Persons", dated September 22, 2011, № 3773-VI;
- Law of Ukraine "On Protection of Childhood", dated April 26, 2001, №2402-III;
- [Resolution of the Cabinet of Minister of Ukraine, dated December 29, 1995 № 1074](#) "On approval of Rules for entry of foreigners and stateless persons in Ukraine, their exit from Ukraine and transit through its territory";
- [Resolution of the Cabinet of Minister of Ukraine, dated June 1, 2011, № 567](#) "On approval of Rules for issuance of visas for entry in Ukraine and transit through its territory"

Article 1 of the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons" defines a family reunion as an entry and temporary or permanent residence in Ukraine of a foreigner's or a stateless person's family residing in Ukraine on legal grounds and able to confirm by relevant documents availability of sufficient financial resources to provide for the family members in Ukraine, with the purpose of living together, regardless of the time when the family relations emerged, before or after the foreigner's or the stateless person's arrival in Ukraine.

A foreigner's or a stateless person's family members are a spouse, minor children, including the spouse's minor children, disabled parents and other persons who are considered family members under the law of the country of origin.

In accordance with paragraph 19 of the "[Rules for Entry of Foreigners and Stateless Persons in Ukraine, their exit from Ukraine and transit through its territory](#)", foreigners and stateless persons who arrived in Ukraine on legal grounds may temporarily stay in the country by a passport document registered following the procedures stipulated by those Rules. A passport document is submitted by a foreigner and a stateless person for registration at

²⁴ Conclusions II, Norway, p. 68.

the state border checkpoint to an official of the State Border guard Service. Registration is done for a short period of time - for foreigners and stateless persons arriving from countries requiring a visa - for the period of its validity, but not to exceed 90 days within 180 days from the date of first entry, unless a different period of time is stipulated by international agreements; for foreigners and stateless persons arriving from countries with visa-free entry procedures — for a term not to exceed 90 days within 180 days from the date of first entry, unless a different period of time is stipulated by international agreements. Foreigners and stateless persons may be exempted from registration of the passport document under a relevant international treaty of Ukraine, on the basis of reciprocity.

Pursuant to paragraph 27 of the said Rules, in order to extend their stay in Ukraine, foreigners and stateless persons who arrived for a long time for study, employment, for private matters, etc., apply to a local migration authority, following the procedures stipulated by the MIA. The relevant documents are issued on the basis of written applications by a foreigner or a stateless person and the host party, which are to be submitted not later than 3 working days before the expiration of registration. The extension may be denied in the absence of grounds for that and the funds sufficient to cover costs associated with the stay of foreigner's or stateless person's stay in Ukraine, or the appropriate guarantees from the host.

It should be noted that in accordance with subparagraph c) of paragraph 20 of "Rules for entry of foreigners and stateless persons in Ukraine, their exit from Ukraine and transit through its territory", foreigners who have not reached the age of 18 are exempt from registration of passport documents.

Apart from that, Article 16 of Law of Ukraine "On Protection of Childhood", dated April 26, 2001, № 2402-III, provides that a child whose parents reside in different states, shall have the right to regular personal relations and direct contact with both parents. For reunification of the family, the child and his or her parents are entitled to free entry to Ukraine and exit from Ukraine in the manner stipulated by law.

According to Article 13 of the Law of Ukraine "On legal status of foreigners and stateless persons", a foreign citizen may be denied entry to Ukraine in the interests of national security of Ukraine, or if doing so is necessary for the health, rights and legitimate interests of citizens of Ukraine and other persons residing in Ukraine.

Opinion of the Committee

Article 19§6 obliges States to allow the families of migrants legally established in their territory to join them. The worker's children entitled to family reunion are those who are dependent and unmarried, and who fall under the legal age-limit in the receiving state (under the Charter the age limit for admission under family reunion is set at the age of majority, which in most countries is 18 years).

The Committee notes that Article 1 of the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons" contains a definition of family reunion,

however no information is provided on the conditions and modalities to which such family reunion is subjected. The Committee recalls that family reunion may not be refused on health grounds (except in defined exceptional cases)²⁵, that any length of residence requirements prior to family reunion should not be excessive (one year is considered acceptable)²⁶ and that any housing or financial means requirements should not be so restrictive as prevent any family reunion.^{27 28}

The Committee also refers to its statement of interpretation on Article 19§6 in the General Introduction to Conclusions 2011:

“The Committee notes that with regard to the implementation of Article 19§6, several States have invoked the application of the Directive of the European Union (EU) 2003/86/EC on the right to family reunification. In this regard, the Committee recalls that it rules on the Charter and not on EU law. In any case, it notes that the above directive, *expressis verbis*, is without prejudice to more favourable provisions of the Charter.

Referring to its decision of 23 June 2010 on the merits of Complaint No. 55/2009, *Confédération générale du Travail (CGT) v. France* (§§ 31-42), the Committee concludes that the above-mentioned directive contains provisions allowing the member states concerned to adopt and apply rules that infringe Article 19§6 of the Charter.

These provisions concern in particular:

a) the length of residence requirement for migrant workers wishing to be joined by members of their family. In this connection, the Committee has always considered (cf. Conclusions I, Germany), taking account of the provisions of the European Convention on the Legal Status of Migrant Workers (ETS No. 93), that a length of more than one year is excessive and, consequently, in breach of the Charter.

b) the exclusion of social assistance from the calculation of the income of a migrant worker who has applied for family reunion (in connection with the criteria relating to available means). The Committee notes that the Court of Justice of the EU (CJEU) has already limited the possibility provided by the above-mentioned Directive to restrict family reunification on the ground of available income (see CJEU judgment of 4 March 2010, case Chakroun, C-578/ 08, paragraph 48).

The Committee recalls in this respect that migrant workers who have sufficient income to provide for the members of their families should not be automatically denied the right to family reunion because of the origin of such income, in so far as they are legally entitled to the benefits they may receive.

²⁵ Conclusions XVI-1, Greece, p. 316.

²⁶ Conclusions I, Germany, p. 216-217.

²⁷ Conclusions IV, Norway, p. 126.

²⁸ Conclusions XIII-1, The Netherlands, p. 209.

In view of the above and of the relevant case-law of the European Court of Human Rights (ECtHR) - see judgment of 19 February 1996, *Gül v. Switzerland*, No. 23218/94 – the Committee considers that the above-mentioned exclusion is such as to prevent family reunion rather than facilitating it. It accordingly constitutes a restriction likely to deprive the obligation laid down in Article 19§6 of its substance and is consequently not in conformity with the Charter.

c) the requirement that members of the migrant worker's family sit language and/or integration tests to be allowed to enter the country, or pass these tests once they are in the country to be granted leave to remain. In this connection, the Committee considers that, in so far as this requirement, because of its particularly stringent nature, discourages applications for family reunion, it constitutes a condition likely to prevent family reunion rather than facilitating it. It accordingly constitutes a restriction likely to deprive the obligation laid down in Article 19§6 of its substance and is consequently not in conformity with the Charter.”

In view of the above and on the basis of the information at its disposal the Committee is unable to reach a firm opinion as to the conformity of the situation in Ukraine in relation to Article 19§6.

Article 19§7

Situation in Ukraine

Legal framework

- Constitution of Ukraine, dated June 28, 1996, № 254/96-VR;
- Law of Ukraine "On Judicial System and Status of Judges", dated July 7, 2010, № 2453-VI

In accordance with Articles 7 and 9 of the Law of Ukraine "On Judicial System and Status of Judges", every person is guaranteed the protection of their rights, freedoms and legitimate interests by an independent and impartial tribunal, established under the law. Foreigners, stateless persons and foreign legal entities are entitled to judicial protection in Ukraine, on equal grounds with citizens and legal entities of Ukraine.

In accordance with Article 12 of that Law proceedings and record keeping in Ukraine shall be conducted in the official state language. Courts guarantee citizens' right to use their mother tongue or a language they speak, and an interpreter's services, in the course of court proceedings.

Article 59 of the Constitution of Ukraine and Article 10 of the said Law stipulate that every person has the right to legal assistance. In cases provided by law, this assistance is provided free of charge.

Every person is free to choose an advocate of their rights. The procedure and conditions for legal aid are defined by law. To secure the right to protection

from prosecution and provision legal assistance in the course of consideration of cases in courts, a system of advocacy exists in Ukraine.

In a court of appeals, participation of a lawyer in cases, envisaged by part one of this article, is mandatory if the appeal raises the question of deterioration of the situation of the convicted or acquitted person.

Opinion of the Committee

Under Article 19§7 States Parties must ensure that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals.²⁹ This obligation applies to all legal proceedings concerning the rights guaranteed by Article 19 (i.e. pay, working conditions, housing, trade union rights, taxes).³⁰

Having noted that foreigners are entitled to equal treatment in legal proceedings and that everyone has a right to legal assistance (free of charge in cases defined by the law), the Committee considers that there are no obstacles to immediate acceptance by Ukraine of Article 19§7.

Article 19§8

Situation in Ukraine

Legal framework

- Law of Ukraine "On Legal Status of Foreigners and Stateless Persons", dated September 22, 2011, № 3773-VI;
- Resolution of the Cabinet of Ministers of Ukraine "On Approval of procedure for issuance, extension and cancellation of permits for employment of foreigners and stateless persons", dated April 8, 2009, № 322

Pursuant to paragraph 10 of the "Procedures for issuance, extension and cancellation of permits for employment of foreigners and stateless persons", approved by Resolution of the Cabinet of Ministers of Ukraine, dated April 8, 2009, № 322, permits for employment of a foreigner are issued for the term of up to one year. For extension of the term of the permit, the employer submits documents, referred to in paragraph 5 and 6 of the Procedures, to the employment centre no later than one month prior to the expiry of the permit.

Permits the employment of a foreigner who belongs to the category of "intra-corporate transferees" or "persons providing services without commercial presence in Ukraine", shall be issued for a period of time not exceeding three years. The term of validity of this permit may be extended for two years, for which purpose the employer submits documents, referred to in paragraph 7 of

²⁹ Conclusions I, Italy, Norway, Turkey, p. 86.

³⁰ Conclusions I, Germany, p. 217.

the Procedures, to the employment centre no later than one month before the expiry of the permit.

Pursuant to paragraph 17 of the Procedure, within three working days from the date of commencement and termination of the foreigner's employment, the employer shall notify the Employment Office on the date of commencement and termination of work, provides for registration of the foreigner's passport document with the relevant territorial authority or subdivision of the State Migration Service, notifying the local employment centre about the fact within five working days.

In accordance with paragraph 3 of Article 17 of the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons", a foreigner or stateless person may be denied extension of their stay in absence of grounds for that and lack of financial support to cover costs associated with their stay in Ukraine, or respective guarantees from their host.

Pursuant to paragraph 4 of the Law, the term for stay in Ukraine is extended by territorial bodies of the central executive body in charge of implementation of the state migration policy, following the procedures established by the Cabinet of Ministers of Ukraine.

The number of foreigners who temporarily work in Ukraine, by country of residence (the reporting period being the first half of 2011) is shown in Appendix I.

Opinion of the Committee

Article 19§8 obliges States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality.³¹

In a statement of interpretation in the General Introduction to Conclusions 2011 the Committee stated that

“The legislation of a number of countries has already gone beyond this requirement by providing that neither may expulsion be imposed, even where the right to reside is forfeited especially in connection with circumstances of unemployment, upon migrant workers who have previously resided lawfully in their territory for a certain time and/or entered into marriage there or had offspring.

Both in these countries and in those whose legislation embodies no provision of this kind, several types of problem are posed by the situation of migrant workers who, being without employment, are ineligible for renewal of their residence permits and thereby at risk of removal from the territory:

1. Firstly, if they have conferred the right of residence on a spouse and/or children, loss of their own right of residence cannot affect their

³¹ Conclusions VI, Cyprus, p. 126.

family members' independent rights of residence, which may have a longer term of validity than their own, a contagious effect, so the Committee has consistently held.

2. Secondly, for as long as a migrant workers' family members hold a right of residence it must not be possible to remove even a foreigner, who has personally lost this right except where they endanger national security or offend against public interest or morality; such is the implication of Article 8 of the European Convention for the Protection of Human Rights as often interpreted by the ECtHR, especially by the decisions in the cases of *Berrehab v. Netherlands* of 21 June 1988 and *Mengesha Kimfe and Agrau v.*

Switzerland of 2010. The *Berrehab* decision found that the "economic well-being of the country" was not apt to justify the expulsion or removal of a foreigner whose daughter also resided in the territory of the state wishing to take this measure. The *Kimfe and Agrau* decisions disallow the same ground with regard to a restricted residence measure in two different cantons imposed on two spouses whose removal does not seem feasible at least for some time.

3. Thirdly, the impossibility of expelling or removing a migrant worker which follows either from a State Party's undertakings pursuant to the Charter or from choices specific to that state and enshrined in its legislation, presupposes that the migrant worker is not placed in a situation of non-law as regards residence, i.e. holds the necessary documents to travel both in the country and beyond its borders and to obtain the social benefits which can be claimed by migrant workers whose situation is in order.

4. Lastly, national legislation should reflect the legal implications of Article 18§1 of the Charter read in conjunction with Article 19§8 as informed by the case-law of the ECtHR, in keeping with the developments which, for several decades now, have transformed migratory trends. Foreign nationals who have been resident for a sufficient length of time in a state, either legally or with the tacit acceptance of their illegal status by the authorities in view of the host country's needs, should be covered by the rules that already protect other foreign nationals from deportation. In order to assess the current practices of States Parties to the Charter, either in accordance with their legislation or in parallel with it, the Committee therefore invites the States to notify it of their usual practices in this respect."

The Committee further recalls that expulsion for offences against public order or morality can only be in conformity with the Charter if they constitutes a penalty for a criminal act, imposed by a court or a judicial authority, and are not solely based on the existence of a criminal conviction but on all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of his/her presence in the territory of the State.

Risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment.³²

The fact that a migrant worker is dependent on social assistance can not be regarded as a threat against public order and cannot constitute a ground for expulsion.³³

States must ensure that foreign nationals served with expulsion orders have a right of appeal³⁴ to a court or other independent body, even in cases where national security, public order or morality are at stake.

The information provided by the Government concerns mainly the extension of work permits and the Committee is therefore unable to reach a firm opinion as to whether the situation in Ukraine meets the requirements of Article 19§8.

Article 19§9

Situation in Ukraine

Legal framework

- Law of Ukraine "On Payment Systems and Money Transfers in Ukraine", dated April 05, 2001, № 2346-III

The effective legislation of Ukraine does not impose any special limits for transfer of migrant workers' earnings and savings.

In accordance with Article 4 of the Law of Ukraine "On Payment Systems and Money Transfers in Ukraine", funds may be transferred both in cash and non-cash form.

The procedures for the transfers by authorized banks on behalf of individuals (both resident and non-resident) are regulated by the Rules for individuals' transfers beyond the borders of Ukraine and in Ukraine by current non-commercial transactions and their payment in Ukraine (hereinafter referred to as "the Rules").

Paragraph 1.2. of the Rules stipulates that the individuals' transfer from their compensation for labour belong to private individuals' remittances by current non-commercial transactions.

Under the effective regulations, if a non-resident individual who worked in Ukraine intends to leave the territory of Ukraine, such an individual has the right to transfer the balance on their current account in foreign currency beyond Ukraine, without any restrictions as to its amount.

³² Conclusions V, Germany, p. 138.

³³ Conclusions V, Italy, pp. 138-139.

³⁴ Conclusions IV, United-Kingdom, pp. 129-130.

If the current account of a non-resident individual has a remaining balance in *hryvnias*, the non-resident individual may freely buy a foreign currency for the *hryvnias* on their current account, upon presentation of documents confirming the origin of the *hryvnias*. Transfers of foreign currency from the non-resident's current account are carried out without any restrictions as to the amount.

At the same time it is necessary to note that, as of December 2011, transboundary transfers in Ukraine are carried out by 30 international money transfer systems, the payment organizations of which are non-residents.

Opinion of the Committee

Article 19§9 obliges States not to place excessive restrictions on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country.³⁵

Migrants must be allowed to transfer money to their own country or any other country.

The Committee notes that Ukrainian legislation does not impose any special limits for transfer of migrant workers' earnings and savings and it therefore sees no obstacles to the immediate acceptance by Ukraine of Article 19§9.

Article 19§10

Situation in Ukraine

Legal framework

- Law of Ukraine "On Personal Income Tax", dated May 22, 2003 № 889-IV

According to Article 1 of the Law of Ukraine "On personal income tax", a taxpayer who is a subject of business activity or who is engaged in independent professional activity and is not hired by a person in entrepreneurial or independent professional activity, is regarded as self-employed. Incomes generated by self-employed persons are not wages and are not regulated by labour legislation but by civil law. In view of the above, we believe that self-employed persons cannot be regarded as migrant workers.

Opinion of the Committee

The Committee notes the view expressed by the Government that self-employed persons cannot be regarded as migrant workers. It wishes to point out that while paragraphs 1 to 9, 11 and 12 concerns migrant workers and their families only, the very purpose of Article 19§10 is precisely to extend the

³⁵ Conclusions XIII-1, Greece, p. 212.

protection of these provisions to self-employed migrant workers and their families.³⁶

States must ensure that there is no unjustified treatment which amounts to discrimination, in law or in practice between wage-earners and self-employed migrants; In addition equal treatment between self employed migrants and self employed nationals must be guaranteed in the areas covered by this provision.

Although there is nothing in the information at the Committee's disposal to indicate that self-employed persons do not enjoy equal treatment in the meaning of Article 19§10, explicit confirmation is required to confirm that this is the case, including references to the relevant legal sources.

Article 19§11

Situation in Ukraine

Legal framework

- Law of Ukraine "On Education", dated May 23, 1991, № 1060-XII;
- Law of Ukraine "On Secondary Education", dated May 13, 1999, N 651-XIV;
- Law of Ukraine, dated July 11, 2001, № 2628-III "On Pre-School Education"

Migrant workers and their families have the right to acquire secondary, vocational and higher education under the in accordance with general rules of admission to respective institutions. No restrictions as to admission of migrant workers' children to general, vocational and higher education institutions have been identified.

In accordance with paragraph 3 of Article 9 of the Law of Ukraine, dated July 11, 2001, № 2628-III "On Pre-School Education", foreigners and stateless persons staying in Ukraine on legal grounds acquire pre-school education in the manner established for the citizens of Ukraine.

In accordance with paragraph 4 of Article 3 of the Law of Ukraine "On Education", dated May 23, 1991, № 1060-XII, foreign nationals and stateless persons acquire their education in educational institutions of Ukraine in accordance with applicable laws and international treaties.

In accordance with paragraph 4 of Article 6 of the Law of Ukraine "On Secondary Education", dated May 13, 1999, N 651-XIV, foreigners and stateless persons staying in Ukraine on legal grounds, acquire full secondary education in the manner established for the citizens of Ukraine.

³⁶ Conclusions I, Norway, p. 87.

Mandatory learning of the state language (Ukrainian) is organised at the general secondary schools in Ukraine. As may be necessary, teaching staff conduct individual classes with children.

According to the effective regulations of Ukraine, foreigners may be granted government scholarships in accordance with international agreements, national programs and other international obligations of Ukraine. Those persons shall be admitted for education on the basis of referrals by Ministry of Education and Science within the scope of government orders.

Migrant workers' diplomas and professional qualifications shall be recognized in Ukraine. Recognition of the documents is carried out through a special procedure, nostrification.

Opinion of the Committee

The Committee recalls that Article 19§11 requires States to promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of their families who are no longer of school age.³⁷ The teaching of the national language of the receiving state is the main means by which migrants and their families can integrate into the world of work and society at large.

The Committee notes that under Ukrainian migrant workers and their families have access to general education, vocational training and higher education on an equal footing with nationals in accordance with the generally applicable admission rules. However, the fact that the national language is automatically taught to children throughout their formal education, is not in itself sufficient to fulfil the obligations arising out of Article 19§11. States must endeavour to introduce additional educational support alongside formal schooling for migrant workers' children who have not attended the first few primary school years and who may therefore lag behind their classmates who are nationals of the receiving state.

In the absence of specific language teaching measures benefitting migrant workers and their families in addition to the teaching provided as part of the ordinary formal education, the situation in Ukraine would appear to be not fully in compliance with Article 19§11.

Article 19§12

Situation in Ukraine

The state takes measures to create opportunities migrant workers' children to learn their mother tongue. Azeri, Armenian, Georgian, Pashto, Dari, Farsi (language, literature, history, ethnic culture and traditions) are taught at the cultural and educational centres and Sunday schools, the activities of which are supported by education authorities and national culture societies.

³⁷ Conclusions 2002, France, pp. 55-57.

Requirements in the learning of Russian by children of migrant workers who are citizens of the Russian Federation are met in full scope.

Opinion of the Committee

Under Article 19§12 States must promote and facilitate the teaching, in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory.³⁸ In practical terms, States should therefore promote and facilitate the teaching of the mother tongue where there are a significant number of children of migrants who would follow such teachings.

The Committee notes that Ukraine is taking measures to facilitate the teaching the mother tongue for children of migrant workers. While the Committee would need to know more about the representation of languages among migrant workers in Ukraine, it does not see any major obstacles to the immediate acceptance by Ukraine of Article 19§12.

Article 25

Situation in Ukraine

Legal framework

- Law of Ukraine "On Restoring of Debtor Solvency or Declaring a Debtor Bankrupt", dated May 14, 1992, № 2343-XII;
- Law of Ukraine "On Employment of Population", dated March 01, 1991, № 803-XII;
- Labour Code of Ukraine, dated December 10, 1971, № 322-VIII;
- Commercial Code of Ukraine, dated January 16, 2003, № 436-IV;
- 1992 ILO Convention № 173 "Protection of Workers' Claims (Employer's Insolvency)"

All employees, irrespective of nature of their labour relations, have equal rights to protection in the event of their employer's bankruptcy.

In accordance with Article 1 of the Law of Ukraine "On Restoring of Debtor Solvency or Declaring a Debtor Bankrupt" and Article 29 of Chapter 23 of the Commercial Code of Ukraine, "bankruptcy" is a debtor's inability, recognised by an economic court, to re-establish its solvency and to satisfy the court-recognized claims of creditors except as through a liquidation procedure.

In accordance with Article 31 of the Law, the enterprise employees, included in the list of creditors, shall be guaranteed payment of wages due to them for three months of work preceding the bankruptcy petition or termination of their labour relations in case of the employee's dismissal prior to such petition; monetary compensation for all unused days of their annual leave and additional leave granted to employees who have children, the right to which

³⁸ Conclusions 2002, Italy, pp. 102-103.

emerged during the two years preceding the filing of the bankruptcy petition or termination of employment; other compensations due to the employees in connection with paid absence from work (compensation for idle time that occurred through no default of the employee, guarantees for the period of fulfilment of their state or civil duties, guarantees and compensations in the course of business travel, guarantees for employees sent for qualification upgrading training, guarantees for donors, guarantees for employees sent for medical examination to a medical facility, social benefits for temporary labour incapacity at the expense of the enterprise, etc.), the right to have emerged over the three months preceding the filing of bankruptcy petition or termination of employment, as well as severance pay owed to the employees in connection with termination of employment, including reimbursement of credit received for those purposes.

In accordance with Article 25 of the Law on, the liquidator is assigned the duty to make the above payments to the hired employees who are dismissed in connection with the enterprise liquidation as a result of declaring it bankrupt, on the first-priority basis.

Satisfaction of creditors' claims in the event of the bankrupt liquidation is closely connected with the sale of its assets, and therefore possibilities to pay severance and other compensations to the employees in many cases are dependent on the need to generate funds by sale of the said property. At the same time, in accordance with the first paragraph of Article 47 and the first paragraph of Article 116 of the Labour Code of Ukraine, the payment of amounts due to employees shall be provided on the day of their dismissal. Since payment of the above-mentioned claims depends on the generation of funds from the sale of the debtor's property, and this situation causes a delay in payment of the above-mentioned employees' claims, the Law envisages a possibility to receive a loan to pay severance to employees who are dismissed due to the liquidation of the bankrupt entity (paragraph nine of Article 25).

In accordance with the Law, the court applies liquidation procedures in the following cases:

- by decision of the creditors committee (as a result of the property disposition procedure (part eight of article 16 of the Law));
- as a result of unsatisfactory sanitation procedures (part six of Article 18, part twelve of Article 19, parts six and eleven of Article 21 of the Law);
- In case of bankruptcy of an absent debtor (Article 52 of the Law);
- in accordance with the specifics of applications of the bankruptcy procedures to the debtor being liquidated by the owner (article 51 of Law);
- bankruptcy of individual entrepreneurs (Articles 47-49 of the Law).

In the event of an employer's bankruptcy, funds generated by sale of the bankrupt entity's property, are aimed, on the first-priority basis, at satisfying the employees' following claims:

1) claims in relation to payment of wages due to them for three months of work preceding the bankruptcy petition or termination of their labour relations in case of the employee's dismissal prior to such petition; monetary compensation for all unused days of their annual leave and additional leave granted to employees who have children, the right to which emerged during the two years preceding the filing of the bankruptcy petition or termination of employment; other compensations due to the employees in connection with paid absence from work (compensation for idle time that occurred through no default of the employee, guarantees for the period of fulfilment of their state or civil duties, guarantees and compensations in the course of business travel, guarantees for employees sent for qualification upgrading training, guarantees for donors, guarantees for employees sent for medical examination to a medical facility, social benefits for temporary labour incapacity at the expense of the enterprise, etc.), the right to have emerged over the three months preceding the filing of bankruptcy petition or termination of employment, as well as severance pay owed to the employees in connection with termination of employment, including reimbursement of credit received for those purposes;

2) expenses of the Deposit Insurance Fund connected with its acquisition of the creditor rights in relation with the bank - in the amount of all compensations on private individuals' deposits;

3) creditors' claims under insurance contracts;

4) costs connected with the bankruptcy proceedings in an economic court and work of the liquidation commission, including:

- costs for payment of state duty;
- claimant's costs for publication of an announcement about opening of the bankruptcy case;
- costs of announcement of the sale of the bankrupt's property in official printed publication;
- costs of announcement in the media about the resumption of the bankruptcy proceedings in connection with recognition of the settlement agreement null and void;
- costs of court-appointed manager (property manager, readjustment manager, liquidator) associated with maintenance and preservation of property assets of the bankrupt entity;
- creditors' costs related to conducting an audit if the audit was conducted by the decision of an economic court at their expense; costs for compensation of labour of court-appointed managers (property managers, readjustment managers, liquidators).

On the second-priority basis, claims are met that arise from the bankrupt entity's obligations before the employees of the bankrupt enterprise (except for the return of the labour collective members' contributions to the authorized capital of the enterprise), with the exception of claims satisfied on the first-priority basis, liabilities that emerged in connection with injury to citizens' life and health, through capitalization of the relevant payments, including to the Fund for social insurance against industrial accidents and occupational

diseases of Ukraine for citizens who are insured in the Fund, following the procedures established by the Cabinet of Ministers of Ukraine; obligations as regards payment of insurance contributions for mandatory pension insurance and other types of mandatory state social insurance; and claims by citizens who are principals (investors) in trust companies or other subjects of entrepreneurial activities that mobilise property (funds) of principals (investors).

On the third-priority basis, claims in relation to payment of taxes and duties (mandatory payments) are met. The requirements of central government body that manages the state reserve.

On the fourth-priority basis, creditors' claims not secured by a collateral, including creditors' claims arising from obligations in the process of disposition of the debtor's property or the debtor's reorganization procedure, are met.

On the fifth-priority basis, claims as to the return of the labour collective members' contributions to the authorized capital are met.

Other claims are met *on the sixth-priority basis*.

Benefits and compensation for dismissed workers are envisaged by Article 33 of the Law, which stipulates that:

- matters of employment of dismissed workers shall be decided according to the Law of Ukraine "On employment of population";
- the debtor's dismissed employees are covered by guarantees established by Article 26 of the Law of Ukraine "On employment of population".

Article 44 of the Labour Code of Ukraine stipulates the liquidator's obligation to pay hired employees, who are dismissed in connection with the liquidation of the enterprise as a result of declaring it bankrupt, a severance pay in the amount that is not lower than the average monthly earnings. In that respect, collective bargaining agreements and contracts may envisage other, larger sizes of such severance pay. In that case, the severance should be paid in the amount provided for by such collective contracts and agreements.

In connection with their claims that emerged prior to opening of bankruptcy proceedings, employees, within 30 days after publication of the announcement about opening of bankruptcy proceedings in the official printed body, must submit to the economic court their written claims to the debtor. The number of such creditors' claims is unlimited.

On December 22, 2011, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to the Law of Ukraine "On Restoring of Debtor Solvency or Declaring a Debtor Bankrupt ", which envisages improvements in the bankruptcy procedures and a first-priority meeting of claims concerning payment of back wages to working and dismissed employees of the bankrupt enterprise. The Law is to enter into force beginning on January 18, 2013.

In order to create additional legal safeguards and conditions for protection of employees' monetary claims in the event of insolvency of their employer and for the purposes of adaptation of the Ukrainian legislation to the legislation of the European Union, Ministry of Social Policy, jointly with the central bodies of executive power, for a period of time was drafting a Law of Ukraine "On protection of employees' monetary claims in the event of bankruptcy of their employer".

The said draft law envisaged creation of a Fund for labour compensation guarantees of Ukraine (hereinafter referred to as "the Fund"), revenues of which were to be formed by the mandatory contributions by business entities, except for budget-funded institutions and employers that are not subject to the Law of Ukraine "On Restoring of Debtor Solvency or Declaring a Debtor Bankrupt", charitable contributions and other receipts. The mandatory contributions were planned to be charges as a percentage of payroll. The majority of stakeholders did not support the draft law.

Since in conditions of the Pension Fund deficit redistribution of mandatory social insurance for the benefit of that Guarantee Fund is impossible, and introduction of additional deductions from payroll of business entities will increase the tax burden, which is inexpedient in the condition of an economic crisis, it is advisable to consider the draft law once the economy has stabilised.

Apart from that, at present, the international experience on that issue is being studied, and acceptable ways are being searched for the Government to ensure protection of employees' rights in case of their employer's insolvency. In view of the above, at present time Ukraine is not ready to join Article 25 - "Workers' right to protection of their rights in case of their employer's bankruptcy".

Opinion of the Committee

Article 25 of the Charter guarantees individuals the right to protection of their claims in the event of the insolvency of their employer. Protection must be adequate and effective, also in situations where the assets of an enterprise are insufficient to cover salaries owed to workers. Moreover, the protection should also apply in situations where the employer's assets are recognised as insufficient to justify the opening of formal insolvency proceedings.³⁹

In order to demonstrate the adequacy in practice of the protection, States must provide information, inter alia, on the average duration of the period from a claim is lodged until the worker is paid and on the overall proportion of workers' claims which are satisfied by the guarantee institution and/or the privilege system.⁴⁰

³⁹ Conclusions 2003, see, for example, p. 199.

⁴⁰ Conclusions 2003, Sweden, p. 632.

States may limit the protection of workers' claims to a prescribed amount. The Committee has found three times the average monthly wage of the employee to be an acceptable level.⁴¹

Certain categories of employees may, exceptionally, be excluded from Article 25 protection because of the special nature of their employment relationship. However, it is for the Committee to determine on each occasion whether the nature of the employment relationship warrants such an exclusion. Under no circumstances may this be a reason for the exclusion of part-time employees and employees on fixed-term or other temporary contract.⁴²

The Committee notes that Ukrainian legislation on bankruptcy of the employer and protection of workers' claims operates on the basis of a privilege system, i.e. the workers are included on the list of creditors whose claims are to be satisfied using funds arising from the liquidation of the enterprise (sale of assets, etc.). The Committee considers that a privilege system standing alone cannot guarantee protection required by the Charter. Although Ukrainian law provides that workers' claims have first priority, this is not sufficient in cases where there are no assets in the enterprise and/or where bankruptcy is not formally declared. In these cases the States Parties ensure that a mechanism exists to satisfy the workers' claims.

The Committee notes with interest that the Ministry of Social Policy recently elaborated a draft law on the creation of a guarantee fund, which however did not receive support from the majority of stakeholders. The Government is currently studying international experiences in this field before deciding on any further steps.

On the basis of the information at its disposal the Committee can only concur with the view expressed by the Government that the situation in Ukraine is not at present in compliance with Article 25.

Article 31§3

Situation in Ukraine

Legal framework

- Constitution of Ukraine, dated June 28, 1996, № 254/96-VR;
- Law of Ukraine "On Prevention of the Influence of the Global Financial Crisis on Development of the Construction Industry and Housing", dated December 25, 2008, № 800-VI;
- Resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedures for provision of state aid to provide affordable housing to citizens", dated February 11, 2009, № 140;
- Resolution of the Cabinet of Ministers of Ukraine "On approval of the State target-oriented social and economic programme for

⁴¹ Conclusions 2005, Estonia, pp. 211-212.

⁴² Conclusions 2008, Statement of Interpretation of Article 25, p. 11-12.

construction (purchase) of affordable housing for years 2010-2017", dated November 11, 2009, № 1249;

- Resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedures for use of funds in 2010 envisaged in the state budget for provision of housing to the Great Patriotic War veterans in the I group of disability, who have stayed on the housing waiting list for a long time", dated May 12, 2010, № 354;
- Resolution of the Cabinet of Ministers of Ukraine, dated March 28, 2011, № 334, "Certain matters of use of state capital expenditures in 2011";
- Resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedures for use of funds envisaged in the state budget for provision of housing to the Great Patriotic War veterans in the I group of disability, who have stayed on the housing waiting list for a long time", № 437, dated April 20, 2011.

Article 47 of the Constitution of Ukraine states that:

- every person has the right to housing;
- the state creates conditions to enable every citizen to build, purchase for ownership, or rent housing;
- citizens who require social protection are provided with housing by the state and bodies of local self- government, free of charge or at affordable rates, in accordance with the law;

In order to implement new conceptual approaches to formation of the state policy on matters of housing, it is expedient to establish uniform standards and conditions for provision of housing to all categories of citizens, as stipulated by the Constitution of Ukraine.

In that respect, along with gratuitous provision of housing with regard to benefits envisaged by legislation (by occupation: military, academic; by degree of social protection: the disabled, large families, young families, etc.), a gradual transition to affordable housing with governmental support is envisaged, which fully meets the requirements of the Constitution of Ukraine stating *that the citizens who need social protection, are provided with housing by the state and bodies of local self-government free of charge or at rates affordable for them, in accordance with the law.*

The mechanisms for constitution of affordable housing is regulated by Article 4 of the Law of Ukraine "On prevention of the influence of the global financial crisis on development of the construction industry and housing", which, in particular, identified the notion of 'affordable housing' and public support for its construction or acquisition, the range of persons entitled to such support, sources of funding for construction of affordable housing, basic requirements for such housing and conditions for decrease in its prices.

The Procedures for the state support for provision of affordable housing to citizens was approved by Resolution of the Cabinet of Ministers of Ukraine

№ 140, dated February 11, 2009, "On approval of the Procedures for provision of state support to provide affordable housing to citizens."

The State support is provided by:

- payment of 30% of the price of the specified area of affordable housing from the state and / or local budget. At the same time, a citizen deposits funds on their current account, opened with an authorized bank, in the amount of 70% of the price of the specified area of affordable housing;
- provision, by authorized banks or by a contractor (in case it is envisaged by law), of a preferential mortgage loan for up to 30 years. The interest rate for such loans is set at no more than the discount rate of the National Bank of Ukraine plus 2 per cent.

The right to state support is granted to the following citizens:

- those who are registered as citizens who require improvement of housing conditions and are defined by central bodies of executive power or bodies of local self-government in charge of such registration as being eligible for affordable housing;
- those whose average monetary income (wages, pension, social and financial benefits, scholarships and other social benefits, income from business, academic, teaching, creative activities and other independent professional activities, all types of rewards, monetary allowance of military personnel, dividends, interest, royalty, income from alienation of securities and corporate rights), together with those of members of their families per capita, does not exceed five times the size of the average wage in the region, calculated according to data of the State Committee for Statistics.

The Resolution of the Cabinet of Ministers of Ukraine № 1249, dated November 11, 2009, approved the State target-oriented social and economic programme for construction (purchase) of affordable housing for years 2010-2017 (hereinafter referred to as "the Programme").

The Program indicators envisage to build and acquire 265.8 thousand apartments (16.6 million square meters) over the period from 2010 to 2017. With account to the population's funds to be raised within the programme, its economic effect is much greater than in case of direct budget funding.

The objects that can participate in the Programme will be selected by a specially created Interdepartmental Commission for consideration of proposals as to formation of a list of objects of housing construction, completion (building) of which, or purchase of living space in which, can be funded. The Provisions of the Interagency Commission passed the state registration.

In order to participate in the Programme, developers (clients, managers, sales representatives) submit respective documents to the Ministry of Regional Development, Construction and Housing for consideration at a session of the special Interdepartmental Commission.

Implementation of the Programme in 2010-2011.

To reach goals, defined by the Programme, respective funds are annually allocated from the State Budget of Ukraine, depending on available possibilities. In 2010-2011, UAH 200 million were envisaged in the budget.

During the period of the Programme implementation, the Commission identified 226 objects of unfinished housing construction that can participate in the Programme (133 objects - in 2010, 118 objects - in 2011, including 25 sites participating in 2010 -2011).

The developers offered a total of 10,613 apartments, with the total area of 745,514.6 square meters, to participate in the Programme. The total price of the apartments offered is UAH 4,623.8 million.

In general, by the results of the work conducted in 2010-2011, out of the 226 objects approved by the Commission, citizens expressed their readiness to buy affordable housing in 79 objects.

As of November 10, 2011, 1,149 people across Ukraine took part in the Programme and concluded agreements. UAH 387.2 million of private individuals' funds and UAH 147.4 million in state support were raised and used.

Provision of housing for Great Patriotic War veterans in the I group of disability.

In order to implement decisions of the President of Ukraine and the Government, in 2010 the State Committee on Veterans under the Ministry of Labour and Social Policy of Ukraine provided the Ministry of Finance of Ukraine with data on **520** Great Patriotic War veterans in the I group of disability, who had been on the waiting list for housing for a long time, for the purpose of calculating the required state budget expenditures.

Proceeding from the said data, the State Budget for 2010 envisaged expenditures in the amount of UAH 140.4 million.

Resolution of the Cabinet of Ministers of Ukraine № 354, dated May 12, 2010 approved the respective Procedures for the use of the funds. Ministry of Regional Development and Construction created a financial network, which included **120** fund managers at lower levels (executive committees of city, village and town councils, as well as the Kyiv and Sevastopol City State Administrations), and distributed the funds between those.

As a result of the above Programme, the necessary housing, to the total of UAH 130,145.501 was purchased in 96 cities for 485 Great Patriotic War veterans in the I group of disability.

In the end of last year, the Ministry of Labour and Social Policy, proceeding from data of the Council of Ministers of the Autonomous Republic of Crimea,

Oblast and Kyiv and Sevastopol City State Administrations amended the lists of persons with disabilities. Their number increased.

In accordance with the Resolution of the Cabinet of Ministers of Ukraine № 334, dated March 28, 2011, "Certain matters of use of state capital expenditures in 2011", the Ministry of Regional Development, Construction and Housing provided budget allocations in the amount of UAH **40** million for this purpose.

Resolution of the Cabinet of Ministers of Ukraine № 437, dated April 20.04.2011, approved the respective Procedures for use of the funds. The Procedure stipulate that the lists of persons with disabilities shall be prepared by the State Service for Matters of Disabled Persons and Veterans of Ukraine.

Currently, the number of disabled people requiring improvement of housing conditions is 170 persons in 59 cities.

As of the end of November, 2011, all funds intended for implementation of the Programme to provide housing for Great Patriotic War veterans in the I group of disability were channelled to fund managers, according to which in 41 cities and villages 103 apartments out of 170 planned are purchased as a results of tender proposals opening.

Opinion of the Committee

Under Article 31§3 an adequate supply of affordable housing must be ensured for persons with limited resources.

The Committee holds that housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other housing-related costs (e.g. utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located.⁴³

To comply with this provision States must:

- adopt appropriate measures for the provision of housing, in particular social housing;⁴⁴ social housing should target, in particular, the most disadvantaged;⁴⁵
- adopt measures to ensure that waiting periods for the allocation of housing are not excessive; legal and non-legal remedies must be available when waiting periods are excessive;⁴⁶

⁴³ Conclusions 2003, Sweden, p. 655.

⁴⁴ Conclusions 2003, Sweden, p. 656.

⁴⁵ International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 98-100.

⁴⁶ International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, § 131.

– introduce housing benefits at least for low-income and disadvantaged sections of the population.⁴⁷ Housing benefit is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal.⁴⁸

All these rights must be guaranteed without discrimination, including not least in respect of Roma or travellers.⁴⁹

As regards the situation in Ukraine the Committee notes that Article 47 of the Constitution guarantees the right to housing, and stipulates, *inter alia*, an obligation for the authorities to provide housing free of charge or at affordable rates to “persons who require social protection”. On this basis Ukrainian legislation provides measures to facilitate access to affordable housing, including price subsidies, preferential mortgage rates and support for construction of affordable housing.

While the measures indicated by the Government on the whole seem to fall within the ambit of Article 31§3, however in order to assess the situation the Committee would need to know more about the quantitative impact of the measures in relation to the extent of the demand from the relevant target groups (those without adequate resources). Confirmation is also required that the applicable measures are provided without discrimination.

On the basis of the information at its disposal and also having regard to the conclusions of non-conformity reached by the Committee in respect of Articles 31§1 and 31§2 – provisions accepted by Ukraine – the Committee is not able to conclude that the situation as regards Article 31§3 is in conformity with the Charter.

⁴⁷ Conclusions 2003, Sweden, p. 656.

⁴⁸ Conclusions 2005, Sweden, p. 734.

⁴⁹ *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 149-155.

APPENDIX 1

UKRAINE AND THE EUROPEAN SOCIAL CHARTER

Situation of Ukraine as of January 2012

Ratifications												
Ukraine ratified the Revised European Social Charter on 21/12/2006 and has accepted 74 of the Revised Charter's 98 paragraphs.												
It has not ratified the Additional Protocol Providing for a System of Collective Complaints.												
Table of accepted provisions												
1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1	
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3	
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1	
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2	
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1	
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3	
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22	
23	24	25	26.1	26.2	27.1	27.2	27.3	28	29	30	31.1	
31.2	31.3								Grey = Accepted provisions			
The Charter in domestic law												
Automatic incorporation into domestic law.												
Reports *												
Between 2008 and 2011 Ukraine has submitted 4 reports on the application of the Charter.												
The 3rd report , submitted on 13/10/2010, concerns the accepted paragraphs of Thematic Group 4 "Children, families, migrants" (Articles 7, 8, 16, 17, 27, 31§§1 and 2). Conclusions in respect of these provisions were published in January 2012.												
Ukraine submitted its 4th report on 1 November 2011 concerning accepted paragraphs of the Charter relating to Thematic Group 1 "Employment, training and equal opportunities", i.e.												
<ul style="list-style-type: none">- the right to work (Article 1),- the right to vocational guidance (Article 9),- the right to vocational training (Article 10),- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),- the right of men and women to equal opportunities (Article 20),- the right to protection in cases of termination of employment (Article 24).												
Conclusions in respect of these provisions will be published in December 2012.												
<hr/>												
Following a decision taken by the Committee of Ministers in 2006 , the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years												

Situation of Ukraine with respect to the application of the Charter

Examples of progress achieved in the implementation of social rights under the Social Charter⁵⁰

Thematic Group 2 “Health, social security and social protection”

- ▶ As a result of actions taken in 2008-2009 the average size of pensions increased by 64.5% compared to 2007.

Cases of non-conformity

Thematic Group 2 “Health, social security and social protection”

- ▶ *Article 23 - Right of the elderly to social protection*

The level of minimum old-age pensions – both contributory and social – are manifestly inadequate.

([Conclusions 2009](#))

Thematic Group 3 “Labour rights”

- ▶ *Article 2§7 - Right to just conditions of work - Night work*

There is no provision in the legislation for a compulsory medical examination for persons about to take up night work.

([Conclusions 2010](#))

- ▶ *Article 4§4 - Right to a fair remuneration - Reasonable notice of termination of employment*

Two months notice is insufficient for workers with ten or more years' service.

([Conclusions 2010](#))

- ▶ *Article 4§5 - Right to a fair remuneration - Limits to deduction from wages*

Deductions from wages are not reasonable and may deprive workers and their dependents of their very means of subsistence.

([Conclusions 2010](#))

- ▶ *Article 6§4 - Right to bargain collectively - Collective action*

All civil servants are denied the right to strike.

([Conclusions 2010](#))

Thematic Group 4 “Children, families, migrants”

Article 7§1 - Right of children and young persons to protection - Prohibition of employment under the age of 15

⁵⁰ “The [European Committee of Social Rights] rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.” (Article 2 of the Rules of the Committee).

The definition of light work is not sufficiently precise because there is no definition of the types of work which may be considered light or a list of those which are not.

([Conclusions 2011](#))

▶ *Article 7§10 - Right of children and young persons to protection - Special protection against physical and moral dangers*

- all children under 18 are not effectively protected against child prostitution;
- all children under 18 are not effectively protected against child pornography;
- simple possession or production of child pornography is not a criminal offence;
- measures taken to address the problem of street children are insufficient and disproportionate in the circumstances.

([Conclusions 2011](#))

▶ *Article 16 - Right of the family to social, legal and economic protection*

Measures implemented to address the problem of domestic violence have not been sufficient.

([Conclusions 2011](#))

▶ *Article 31§1 - Right to housing - Adequate housing*

- it has not been established that the right to adequate housing is effectively guaranteed;
- insufficient measures were taken by public authorities to improve the substandard housing conditions of many Roma and Crimean Tatars.

([Conclusions 2011](#))

▶ *Article 32§2 - Right to housing - Reduction of homelessness*

Right to shelter is not guaranteed to persons unlawfully present in Ukraine, including children, for as long as they are in its jurisdiction.

([Conclusions 2011](#))

The European Committee of Social Rights has been unable to assess compliance with the following provisions and has invited the Ukrainian Government to provide more information in the next report:

Thematic Group 1 “Employment, training and equal opportunities”

(Report to be submitted by 31 October 2011)

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Thematic Group 2 “Health, social security and social protection”

(Report to be submitted by 31 October 2012)

- ▶ Article 3§§2, 3 and 4 - Conclusions 2009
- ▶ Article 11§§1, 2 and 3 – Conclusions 2009
- ▶ Article 14§1 – Conclusions 2009
- ▶ Article 30 – Conclusions 2009

Thematic Group 3 “Labour rights”

(Report to be submitted by 31 October 2013)

- ▶ Article 2§§2 and 6 – Conclusions 2010
- ▶ Article 5 – Conclusions 2010
- ▶ Article 6 §§1, 2 and 3 – Conclusions 2010
- ▶ Article 21 – Conclusions 2010
- ▶ Article 26§§1 and 2 – Conclusions 2010
- ▶ Article 28 – Conclusions 2010
- ▶ Article 29 – Conclusions 2010

Thematic Group 4 “Children, families, migrants”

(Report to be submitted by 31 October 2014)

- ▶ Article 7§§2, 3, 5 and 7 – Conclusions 2011
- ▶ Article 8§§1, 2 and 5 – Conclusions 2011
- ▶ Article 17§§1 and 2 – Conclusions 2011
- ▶ Article 27§3 – Conclusions 2011

APPENDIX 2



European
Social
Charter

Charte
Sociale
Européenne



With funding from the Council of Europe

SEMINAR

*WITH REPRESENTATIVES OF THE
UKRAINIAN GOVERNMENT*

*ON PROVISIONS OF THE REVISED
EUROPEAN SOCIAL CHARTER*

NOT ACCEPTED BY UKRAINE

Kyiv, 29-30 September 2011
(Ministry of Social Policy of Ukraine, 8/10, Esplanadna St.,
Room 1907)

Representatives of the Council of Europe:

1. **Mr Luis Jimena Quesada**, President of the European Committee of Social Rights.
2. **Mr Henrik Kristensen**, Deputy Head of Department of the European Social Charter, Council of Europe.
3. **Mr Andrzej Swiatkowski**, member of the European Committee of Social Rights.
4. **Ms Nino Chitashvili**, Administrator in the Department of the European Social Charter, Council of Europe.

Thursday, 29 September 2011

14.30-15.00 Registration of participants

15.00-15.15 **Opening**

Welcome address by the Ministry of Social Policy of Ukraine

- **Mr Vijacheslav Kolomiez**, Deputy Minister-Head of Staff (*to be confirmed*)

Welcome address by the Council of Europe

- **Mr Henrik Kristensen**, Deputy Head of Department of the European Social Charter

15.15-16.15 **Article 2§3** – The right to just conditions of work – provide for a minimum of hour weeks’ annual holiday with pay

- **Mr Andrzej Swiatkowski**, member of the European Committee of Social Rights

Article 4§1 – The right to a fair remuneration – recognise the right of workers to a remuneration such as will give them and their families a decent standard of living

Ms Nino Chitashvili, Administrator in the Department of the European Social Charter, Council of Europe

Article 25 –the right of workers to the protection of their claims in the event of the insolvency of their employer

- **Mr Henrik Kristensen**, Deputy Head of Department of the European Social Charter, Council of Europe

Article 31§3 –The right to housing – make the price of housing accessible to those without adequate resources

- **Mr Luis Jimena Quesada**, President of the European Committee of Social Rights

Presentation of the national situation

- Representative of the Ministry of Social Policy of Ukraine
- Representative of the Ministry of Regional Development, Construction, Housing and Communal Services of Ukraine

Questions and answers

16.15-16.30 Coffee break

16.30-17.30 Article 12 §§ 1-4 - The right to social security

- **Mr Andrzej Swiatkowski**, member of the European Committee of Social Rights

Presentation of the national situation

- (Representative of the Ministry of Social Policy of Ukraine)

Questions and answers

Conclusions of the first work day

17.30-18.15 Buffet

Friday, 30 September 2011

9.30-10.15 Article 19 §§ 1-6 – The right of migrant workers and their families to protection and assistance

- **Mr Andrzej Swiatkowski**, member of the European Committee of Social Rights

§§ 7-12

- **Mr Luis Jimena Quesada**, President of the European Committee of Social Rights

Presentation of the national situation

- Representative of the Ministry of the Interior of Ukraine
- Representative of the Ministry of Justice of Ukraine
- Representative of Health of Ukraine
- Representative of the Ministry of Social Policy of Ukraine
- Representative of the Ministry of Regional Development, Construction, Housing and Communal Services of Ukraine
- Representative of the Ministry of [Education, Youth and Sports of Ukraine](#)

Questions and answers

Conclusion of the Council of Europe Experts

**10.15-11.00 Exchange of views on Collective Complaints Procedure
Prospects for acceptance by Ukraine of the Collective Complaints Procedure**

- **Mr Henrik Kristensen**, Deputy Head of Department of the European Social Charter, Council of Europe

Questions and answers

11.00-11.15 Coffee break

11.15-12.15 Article 13 §§ 1-4 - The right to social assistance

- **Ms Nino Chitashvili**, Administrator in the Department of the European Social Charter, Council of Europe

Presentation of the national situation

- Representative of the Ministry of Social Policy of Ukraine
- Representative of the Ministry of Health of Ukraine

Questions and answers

12.15-12.30 End of the Seminar

- Representantive of the Ministry of Social Policy of Ukraine

13.00 Lunch

APPENDIX 3



European Social Charter | Charte Sociale Européenne



With funding from the Council of Europe

CELEBRATION OF THE 50TH ANNIVERSARY OF EUROPEAN SOCIAL CHARTER (opened for signature in Turin on 18 October 1961)

Kyiv, 29 September 2011

PROGRAMME

9.30 – 10.00 Registration of participants

10.00 -11.00 Opening ceremony, statements by

- Mr Serhiy **TIHIPKO** - Vice-Prime Minister of Ukraine – Minister of Social Policy of Ukraine
- Message from the Foreign Minister, Mr **GRYSHCHENKO**
- Luis Jimena **QUESADA** - President of the European Committee of Social Rights
- Mr Volodymyr **YATSENKO** –Representative of Ukrainian Parliamentary Commissioner for Human Rights
- Mr Yuriy **PAVLENKO** – Presidential Ombudsman for Children

(Moderator : Natalia Popova, Head of International Relations Department)

11.00 – 12.00 Overview of implementation of the European Social Charter in Ukraine

Ukraine and the European Social Charter 2006-2011

- Mr Andrzej **SWIATKOWSKI** – member of the European Committee of Social Rights
- Mr Vjacheslav **KOLOMIETS** - Vice-Minister of Social Policy of Ukraine
- Mr Vasyl **KHARA** - People’s Deputy, Head of Committee on Social Policy and Federation of Trade Unions of Ukraine
- Mr Volodymyr **MASLAKOV** – Head of State Service on Invalids and Veterans Affairs of Ukraine
- Mrs Natalia **TOCHYLENKOVA** –expert, Ukrainian Women’s Consortium, non-governmental organisation

Closing of the ceremony

- Mr Luis Jimena **QUESADA** -President of the European Committee of Social Rights
- Mr Serhiy **TIHIPKO** - Vice-Prime Minister of Ukraine – Minister of Social Policy of Ukraine

TABLE of Ukrainian Legislation

№	Articles and items of the European Social Charter (revised)	Constitution of Ukraine	The laws of Ukraine adopted on	The laws of Ukraine which should be adopted
	<p>Article 2. The right to just conditions of work</p> <p>With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:</p>	<p>Article 45.</p> <p>Everyone who is employed has the right to rest.</p> <p>This right is ensured by providing weekly rest days and also paid annual vacation, by establishing a shorter working day for certain professions and industries, and reduced working hours at night.</p>	<p>The laws of Ukraine adopted on 01.09.2011.</p>	
<p>Item 3:</p> <p>To provide for a minimum of four weeks' annual holiday with pay.</p>	<p>Article 45.</p> <p>Everyone who is employed has the right to rest.</p> <p>The maximum number of working hours, the minimum duration of rest and of paid annual vacation, days off and holidays as well as other conditions for exercising this right, are determined by law.</p>	<p>Articles 74 and 75 of the Labor Code of Ukraine (10.12.1971 № 322-VIII).</p>	<p>Article 6 of the Law of Ukraine on Vacations(15.11.1996 № 504/96-BP).</p>	

	<p>This right is ensured by providing weekly rest days and also paid annual vacation, by establishing a shorter working day for certain professions and industries, and reduced working hours at night.</p> <p>The maximum number of working hours, the minimum duration of rest and of paid annual vacation, days off and holidays as well as other conditions for exercising this right, are determined by law.</p>	<p>Paragraph 2 of Article 7 of the Law of Ukraine on Collective Contracts and Agreements (01.07.1993 № 3356-XII).</p>	
<p>Article 4. The right to a fair remuneration</p> <p>With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:</p>	<p>Articles 43</p>	<p>Article 106 of the Labor Code of Ukraine (10.12.1971 № 322-VIII).</p>	
<p>2.</p> <p>Item 2</p> <p>To recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases.</p>	<p>Articles 43</p> <p>Everyone has the right to labour, including the possibility to earn one's living by labour that he or she freely chooses or to which he or she freely agrees.</p> <p>The State creates conditions</p>	<p>Article 106 of the Labor Code of Ukraine (10.12.1971 № 322-VIII).</p>	

	<p>for citizens to fully realise their right to labour, guarantees equal opportunities in the choice of profession and of types of labour activity, programmes of vocational education, training and retraining of personnel according to the needs of society.</p> <p>The use of forced labour is prohibited. Military or alternative (non-military) service, and also work or service carried out by a person in compliance with a verdict or other court decision, or in accordance with the laws on martial law or on a state of emergency, are not considered to be forced labour.</p> <p>Everyone has the right to proper, safe and healthy work conditions, and to remuneration no less than the minimum wage as determined by law.</p> <p>The employment of women and minors for work that is hazardous to their health, is</p>		
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	<p>prohibited. Citizens are guaranteed protection from unlawful dismissal. The right to timely payment for labour is protected by law.</p> <p>Article 48 Everyone has the right to a standard of living sufficient for himself or herself and his or her family that includes adequate nutrition, clothing and housing.</p>		
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<p>Article 12. The right to social security. With a view to ensuring the effective exercise of the right to social security, the Parties undertake:</p>	<p>Article 46. Citizens have the right to social protection that includes the right to provision in cases of complete, partial or temporary disability, the loss of the principal wage-earner, unemployment due to circumstances beyond their control and also in old age, and in other cases established by law.</p> <p>This right is guaranteed by general mandatory state social insurance on account of the insurance payments of citizens, enterprises, institutions and organisations, and also from budgetary and other sources of social security; by the establishment of a network of state, communal and private institutions to care for persons incapable of work.</p> <p>Pensions and other types of social payments and assistance that are the principal sources of subsistence, shall ensure a standard of living not lower than</p>		
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	the minimum living standard established by law.	
<p>3.</p> <p>Item 1: To establish or maintain a system of social security.</p>		<p>The Laws of Ukraine:</p> <ul style="list-style-type: none"> - The Principles of Legislation of Ukraine on Obligatory State Social Insurance. - The Law of Ukraine On Mandatory State Social Insurance against Temporary Disability and Expenses Related Funeral (18.01.2001 № 2240). - The Law of Ukraine Onandatory State Social Insurance Against unemployment (02.03.2000 № 1533-III). - The Law of Ukraine On Mandatory State Social Insurance against Industrial Accident and Occupational Disease that Caused Disability (23.09.1999 № 1105-XIV). - The Law of Ukraine On Mandatory State Pension Insurance (09.07.2003 №1058-IV).
<p>4.</p> <p>Item 2: To maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security.</p>	<p>Part 3 of Article 46. Pensions and other types of social payments and assistance that are the principal sources of subsistence, shall ensure a standard of living not lower than the minimum living</p>	<p>Article 28 of the Law of Ukraine On Mandatory State Pension Insurance (09.07.2003 №1058-IV).</p>

<p>Item 3: To endeavour to raise progressively the system of social security to a higher level.</p>	<p>standard established by law.</p>		
<p>Item 4: to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure: a) equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties; b) the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.</p>	<p>Part 1 of Article 26. Foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine.</p>	<p>Paragraphs 2,4 of the Article 1 of The Law of Ukraine On Pension Provision (05.11.1991 № 1788-XII). Part 4 of Article 2, Part 4 of Article 8 of the Law of Ukraine On Mandatory State Pension Insurance (09.07.2003 №1058-IV). Articles 2, 3 of the Law of Ukraine On Mandatory State Social Insurance against Temporary Disability and Expenses Related Funeral (18.01.2001 № 2240). Article 4 of the Law of Ukraine On Mandatory State Social Insurance against Industrial Accident and Occupational Disease that Caused Disability (23.09.1999 № 1105-XIV). Articles 1, 3 the Law of Ukraine On Mandatory State Social Insurance Against unemployment (02.03.2000 № 1533-III). Article 4 of the Law of Ukraine On</p>	

		<p>Collection and Accounting of Unified Mandatory State Social Insurance (08.07.2010 № 2464-VI).</p> <p>Article 5 of the Law of Ukraine On Basic Principles of Social Protection of Labour Veterans and Other Elderly Citizens in Ukraine (16.12.1993 № 3721-XII).</p> <p>Article 3 of the Law of Ukraine On Status of War Veterans, Guarantees of Their Social Protection (22.10.1993 № 3551-XII).</p>	
<p>Article 13. The right to social and medical assistance</p> <p>With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:</p>	<p>Part I of Article 46.</p> <p>Citizens have the right to social protection that includes the right to provision in cases of complete, partial or temporary disability, the loss of the principal wage-earner, unemployment due to circumstances beyond their control and also in old age, and in other cases established by law.</p> <p>Part I of Article 49</p> <p>Everyone has the right to health protection, medical care and medical insurance.</p>	<p><u>Laws of Ukraine:</u></p> <p>The Law of Ukraine on Social Services (19.06.2003 № 966-IV).</p> <p>Article 5 of the Law of Ukraine On Basic Principles of Social Protection of Labour Veterans and Other Elderly Citizens in Ukraine (16.12.1993 № 3721-XII).</p> <p>The Law of Ukraine On the Fundamentals of Social Protection of the Homeless Citizens and Gutter Children (02.06.2005 № 2623-IV).</p> <p>Law of Ukraine On Social Adaptation of Individuals, who Served a Sentence in the Form of Custodial Restraint or a Term in Prison (17.03.2011 № 3160).</p>	

<p>Item 1: To ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition.</p>		<p>The Law of Ukraine On Fight against Tuberculosis of (05.07.2001 № 2586-III). The Law of Ukraine On State Social Aid to Indigent Families (01.06.2000 № 1768-III). Article 5 of the Law of Ukraine On Social Services (19.06.2003 № 966-IV). Article 37 Article 5 of the Law of Ukraine On Basic Principles of Social Protection of Labour Veterans and Other Elderly Citizens in Ukraine (16.12.1993 № 3721-XII). Article 17 of the Law of Ukraine On the Fundamentals of Social Protection of the Homeless Citizens and Gutter Children (02.06.2005 № 2623-IV). Article 9 of the Law of Ukraine On Social Adaptation of Individuals, who Served a Sentence in the Form of Custodial Restraint or a Term in Prison (17.03.2011 № 3160).</p>	
<p>Item 2: To ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or</p>		<p>Article 3 of the Law Of Ukraine on Social Services (19.06.2003 № 966-IV). Law of Ukraine On State Social Aid to</p>	

<p>social rights.</p>		<p>Indigent Families (01.06.2000 № 1768-III), Article 3 the Law of Ukraine On the Fundamentals of Social Protection of the Homeless Citizens and Gutter Children (02.06.2005 № 2623-IV). Article 4 of the Law of Ukraine On Social Adaptation of Individuals, who Served a Sentence in the Form of Custodial Restraint or a Term in Prison (17.03.2011 № 3160).</p>	
<p>9. Item 3: To provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want.</p>		<p>Article 3 of the Law Of Ukraine on Social Services (19.06.2003 № 966-IV). The Law of Ukraine On State Social Aid to Indigent Families (01.06.2000 № 1768-III). Article 33, 35, 36 of the Law of Ukraine On Basic Principles of Social Protection of Labour Veterans and Other Elderly Citizens in Ukraine (16.12.1993 № 3721-XII). Article 17 of the Law of Ukraine On the Fundamentals of Social Protection of the Homeless Citizens and Gutter Children (02.06.2005 № 2623-IV). Article 9 of the Law of Ukraine On Social</p>	

<p>0.</p> <p>Item 4:</p> <p>To apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.</p>	<p>Parts 1, 2 of Article 46.</p> <p>Citizens have the right to social protection that includes the right to provision in cases of complete, partial or temporary disability, the loss of the principal wage-earner, unemployment due to circumstances beyond their control and also in old age, and in other cases established by law.</p> <p>This right is guaranteed by general mandatory state social insurance on account of the insurance payments of citizens, enterprises, institutions and organisations, and also from budgetary and other sources of social security; by the establishment of a network of state, communal and private institutions to care for persons incapable of work.</p>	<p>Adaptation of Individuals, who Served a Sentence in the Form of Custodial Restraint or a Term in Prison (17.03.2011 № 3160).</p> <p>Article 6 of the Law Of Ukraine on Social Services (19.06.2003 № 966-IV).</p> <p>Article 5, 37 of the Law of Ukraine On Basic Principles of Social Protection of Labour Veterans and Other Elderly Citizens in Ukraine (16.12.1993 № 3721-XII).</p> <p>Article 4 of the Law of Ukraine On the Fundamentals of Social Protection of the Homeless Citizens and Gutter Children (02.06.2005 № 2623-IV).</p> <p>Article 2 of the Law of Ukraine On Social Adaptation of Individuals, who Served a Sentence in the Form of Custodial Restraint or a Term in Prison (17.03.2011 № 3160).</p>	
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<p>Article 19. The right of migrant workers and their families to protection and assistance.</p> <p>With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:</p>	<p>Paragraphs 1, 2 of the Article 46.</p> <ul style="list-style-type: none"> • Citizens have the right to social protection that includes the right to provision in cases of complete, partial or temporary disability, the loss of the principal wage-earner, unemployment due to circumstances beyond their control and also in old age, and in other cases established by law. • This right is guaranteed by general mandatory state social insurance on account of the insurance payments of citizens, enterprises, institutions and organisations, and also from budgetary and other sources of social security; by the establishment of a network of state, communal and private institutions to care for persons incapable of work. <p>Article 26</p> <p>Foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same</p>	<p>Article 11 of the Law of Ukraine of On Employment of Population (01.03.1991 № 803-XII).</p> <p>Article 11 of the Law of Ukraine of On Legal Status of Foreigners and Stateless Persons (04.02.1994 № 3929-XII).</p>
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	<p>rights and freedoms and also bear the same duties as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine.</p> <p>Foreigners and stateless persons may be granted asylum by the procedure established by law.</p>	<p>Paragraph 2 of the Article 4 of the Law of Ukraine of On Employment of Population (01.03.1991 № 803-XII).</p>	
<p>Item 1: To maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propoganda relating to emigration and immigration.</p>		<p>Article 10 of the Law of Ukraine of On Legal Status of Foreigners and Stateless Persons (04.02.1994 № 3929-XII).</p>	
<p>Item 2: to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good</p>	<p>Part 4 of Article 43. Everyone has the right to proper, safe and healthy work conditions, and to remuneration no less than the minimum wage as determined by law. Parts 1, 2 of Article 49.</p>	<p>Article 10 of the Law of Ukraine of On Legal Status of Foreigners and Stateless Persons (04.02.1994 № 3929-XII).</p>	

	hygienic conditions during the journey.	Everyone has the right to health protection, medical care and medical insurance. Health protection is ensured through state funding of the relevant socio-economic, medical and sanitary, health improvement and prophylactic programmes.		
13.	Item 3: To promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries.		Article 11 of the Law of Ukraine of On Legal Status of Foreigners and Stateless Persons (04.02.1994 № 3929-XII).	
14.	Item 4: To secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters: a) remuneration and other employment and working conditions; b) membership of trade unions and enjoyment of the benefits of collective bargaining;	Article 43. Everyone has the right to labour, including the possibility to earn one's living by labour that he or she freely chooses or to which he or she freely agrees. The State creates conditions for citizens to fully realise their right to labour, guarantees equal opportunities in the choice of profession and of types of labour activity, implements programmes of vocational education, training	Part 1 of the Article 8 of the Law of Ukraine On Legal Status of Foreigners and Stateless Persons (04.02.1994 № 3929-XII). Articles 16 and 12 of the Law of Ukraine On Legal Status of Foreigners and Stateless Persons (04.02.1994 № 3929-XII). Article 16 of the Law of Ukraine On Entrepreneurship (07.02.1991 № 698-XII).	

<p>c) accommodation;</p>	<p>and retraining of personnel according to the needs of society.</p> <p>The use of forced labour is prohibited. Military or alternative (non-military) service, and also work or service carried out by a person in compliance with a verdict or other court decision, or in accordance with the laws on martial law or on a state of emergency, are not considered to be forced labour.</p> <p>Everyone has the right to proper, safe and healthy work conditions, and to remuneration no less than the minimum wage as determined by law.</p> <p>The employment of women and minors for work that is hazardous to their health, is prohibited.</p> <p>Citizens are guaranteed protection from unlawful dismissal.</p> <p>The right to timely payment for labour is protected by law.</p>		
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	<p>Article 44.</p> <p>Those who are employed have the right to strike for the protection of their economic and social interests.</p> <p>The procedure for exercising the right to strike is established by law, taking into account the necessity to ensure national security, health protection, and rights and freedoms of other persons.</p> <p>No one shall be forced to participate or not to participate in a strike.</p> <p>The prohibition of a strike is possible only on the basis of the law.</p> <p>Article 45.</p> <p>Everyone who is employed has the right to rest.</p> <p>This right is ensured by providing weekly rest days and also paid annual vacation, by establishing a shorter working</p>	
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<p>5.</p> <p>Item 5:</p> <p>To secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons.</p>	<p>day for certain professions and industries, and reduced working hours at night.</p> <p>The maximum number of working hours, the minimum duration of rest and of paid annual vacation, days off and holidays as well as other conditions for exercising this right, are determined by law.</p>	<p>Article 16 of the Law of Ukraine On Entrepreneurship (07.02.1991 № 698-XII).</p>	
<p>6.</p> <p>Item 6:</p> <p>To facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory.</p>		<p>The Law of Ukraine On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950, First Protocol and Protocols ra N 2, 4, 7 and 11 of Convention (17.07.1997 № 475/97-BP).</p> <p>Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights (ECHR)) - adopted 04.10.1950.</p>	

<p>17. Item 7: To secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article.</p>	<p>Article 55. Human and citizens' rights and freedoms are protected by the court. Everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers. Everyone has the right to appeal for the protection of his or her rights to the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine. After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant. Everyone has the right to protect his or her rights and</p>	<p>Article 22 of the Law of Ukraine of On Legal Status of Foreigners and Stateless Persons (04.02.1994 № 3929-XII).</p>
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8.	<p>Item 8: To secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality.</p>	<p>freedoms from violations and illegal encroachments by any means not prohibited by law.</p>	<p>Article 32 of the Law of Ukraine On Legal Status of Foreigners and Stateless Persons (04.02.1994 № 3929-XII).</p> <p>The Law of Ukraine On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950, First Protocol and Protocols ra N 2, 4, 7 and 11 of Convention (17.07.1997 № 475/97-BP).</p> <p>Article 4 of the Protocol № 4 of Convention for the Protection of Human Rights and Fundamental Freedoms.</p> <p>Article 1 of the Protocol № 7 of Convention for the Protection of Human Rights and Fundamental Freedoms.</p>	
9.	<p>Item 9: To permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire.</p>			
10.	<p>Item 10: To extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply.</p>			

21.	<p>Item 11</p> <p>To promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families.</p>			
22.	<p>Item 12</p> <p>To promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.</p>			
23.	<p>Article 25.</p> <p>The right of workers to the protection of their claims in the event of the insolvency of their employer.</p> <p>With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection.</p>			

<p>Article 31 The right to housing.</p> <p>With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:</p>	<p>Article 47.</p> <p>Everyone has the right to housing. The State creates conditions that enable every citizen to build, purchase as property, or to rent housing.</p> <p>Citizens in need of social protection are provided with housing by the State and bodies of local self-government, free of charge or at a price affordable for them, in accordance with the law.</p> <p>No one shall be forcibly deprived of housing other than on the basis of the law pursuant to a court decision.</p>	<p>Articles 1, 9, 150 of the Residential Code of the Ukrainian SSR.</p>	<p>Draft Project of the Residential Code of Ukraine.</p>
<p>f.</p> <p>Item 3</p> <p>To make the price of housing accessible to those without adequate resources.</p>			

APPENDIX 5



Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter

*(Adopted by the Committee of Ministers on 12 October 2011
at the 1123rd meeting of the Ministers' Deputies)*

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter, opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 (“the Charter”);

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasising that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;
2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;
3. Recognises the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;
4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;

5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;
6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;
7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.