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EUROPEAN SOCIAL CHARTER

10th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF UKRAINE

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

for the period 01/01/2013 - 31/12/2016

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CYCLE 2018

EUROPEAN SOCIAL CHARTER (REVISED)

10th National Report on the implementation of the European Social Charter (revised)

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THE GOVERNMENT OF UKRAINE

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

for the period

01.01.2013 – 01.01.2016

In accordance with Article C of the European Social Charter (Revised) and Article 23 of the European Social Charter the copies of the Report have been communicated to the Federation of Trade Unions of Ukraine, the Confederation of Free Trade Unions of Ukraine, the All-Ukrainian Union of the Workers Solidarity and the Federation of Employers of Ukraine

All Ukrainian legal acts are available on the website of the Verkhovna Rada of Ukraine at: www.rada.gov.ua

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Article 2 – The right to just conditions of work
Paragraph 1

I. General legal framework

The relevant legal framework has not changed during the reference period.

II. Measures taken to implement the legal framework
Answers to the additional questions of the European Committee of Social Rights

Q.1 *The Committee asks what rules apply to on-call service and whether inactive periods of on-call duty are considered as a rest period in their entirety or in part.*

Answer. Employee involvement in standby duty/in an on-call duty is regulated by the Resolution of the Secretariat of the All–Union Central Council of Trade Unions No.233 of 2 April 1954 "On Stand-by Duty at Enterprises and Institutions", which is in force in Ukraine in accordance with Resolution issued by the Verkhovna Rada of Ukraine "On the Procedure of Temporary Action of Certain Acts of the USSR in the territory of Ukraine" № 1545 of 12 September 1991 in the part, which is not regulated by the legislation of Ukraine.

According to this Resolution, standby duty after the end of the working day, on weekends and public holidays may be introduced in exceptional cases and only with the consent of the trade union body.

At the same time, it is not allowed to involve employees in standby duty more than once a month.

The duration of standby duty or work together with standby duty cannot exceed the normal working time. If an employee is involved in standby duty on the weekend or the public holiday, he/she must be given time off within the next 10 days. The duration of the time off must be equal to the duration of the standby duty.

The standby duty schedule is approved by the employer with the consent of the trade union body. Employee involvement in standby duty is undertaken by written order (regulation) of the employer, which must include rest days, granted to the employees after standby duty.

Thus, standby duty on a day off is not subject to payment, but it is subject to time off and in the timesheet these hours of standby duty are not indicated.

In accordance with Article 7 of the Law of Ukraine "On Collective Agreements and Contracts" collective agreement establishes mutual obligations of the parties to regulate production, labour and socio-economic relations, the procedure for involvement employees to the standby duty should be defined in collective agreement of the enterprise with observance of norms and guarantees established by the current legislation and the Sectoral Agreement.

For example, the Sectoral Agreement between the Ministry of Energy and Coal Mining of Ukraine and the Trade Union of Energy and Electrical Engineering

Workers of Ukraine provides for operational needs to organize standby duty/on-call duty of managers, specialists and drivers at home.

At the same time, the standby duty/on-call duty at home (without the right of absence in the case of job call) is undertaken at the rate for every hour of standby duty/on cell duty - 1/4 of the hour of normal working time. Another day of rest is granted for the standby duty /on-call duty at home within one month from the day of standby duty/ on-call duty.

The Sectoral Agreement between the State Administration of Railway Transport of Ukraine and trade unions also provides for the introduction of standby duty/ on-call duty of workers at the facility and at home, etc.

III. Statistics

	Number of detected violations			
	2013	**2014**	**2015**	**2016**
Article 50 "Normal working hours" of the Code of Labour Laws of Ukraine (hereafter referred to as CLL of Ukraine)	444	273	17	177
Measures taken to influence over employers	420 Orders issued to eliminate the detected violence; 307 Protocols on administrative offenses were issued; 157 submissions concerning the bringing to disciplinary liability were made	244 Orders issued to eliminate the detected violence; 172 Protocols on administrative offenses were issued; 89 submissions concerning the bringing to disciplinary liability were made	17 Orders issued to eliminate the detected violence; 11 Protocols on administrative offenses were issued; 2 submissions concerning the bringing to disciplinary liability were made	155 Orders issued to eliminate the detected violence; 139 Protocols on administrative offenses were issued; 37 submissions concerning the bringing to disciplinary liability were made; 83 financial sanctions were imposed
Article 54 "Working hours at Night" of the CLL of Ukraine	75	43	3	40
Measures taken to influence over employers	74 Orders issued to eliminate the detected violence; 13 Protocols on administrative offenses were	43 Orders issued to eliminate the detected violence	3 Orders issued to eliminate the detected violence; 2 Protocols on administrative	38 Orders issued to eliminate the detected violence; 2 Protocols on administrative

	issued; 2 submissions concerning the bringing to disciplinary liability were made		offenses were issued	offenses were issued; 2 financial sanctioni were imposed

Source: State Labour Service of Ukraine

Article 2 – The right to just conditions of work
Paragraph 2

I. General legal framework

The relevant legal framework has not changed during the reference period.

II. Measures taken to implement the legal framework
Answers to the additional questions of the European Committee of Social Rights

Q.1 *The Committee asks to clarify whether these rules apply to both the public and the private sector and to all category of workers, including those not remunerated on a monthly basis or whose contract provides for the regular performance of work on public holidays.*

Answer. Guarantees for increase in pay for the work performed on a public holiday are the state social guarantees for remuneration and shall be applied to all enterprises, institutions and organizations in public and private sectors to all category of workers, who perform work within a contract of employment.

III. Statistics

	Number of detected violations			
	2013	**2014**	**2015**	**2016**
Article 107 “Remuneration of work on holiday and day-off” of the CLL of Ukraine	1290	706	72	396
Measures taken to influence over employers	1198 Orders issued to eliminate the detected violence; 1047 Protocols on administrative offenses were issued; 521 submissions concerning the bringing to disciplinary liability were made	651 Orders issued to eliminate the detected violence; 584 Protocols on administrative offenses were issued; 278 submissions concerning the bringing to disciplinary liability were made	68 Orders issued to eliminate the detected violence; 62 Protocols on administrative offenses were issued; 21 submissions concerning the bringing to disciplinary liability were made	378 Orders issued to eliminate the detected violence; 345 Protocols on administrative offenses were issued; 96 submissions concerning the bringing to disciplinary liability were made; 171 financial sanctions were imposed

Source: State Labour Service of Ukraine

Article 2 – The right to just conditions of work

Paragraph 4

I. General legal framework

- Order of the Ministry of Health of Ukraine "On Approval of Sanitary Norms and Rules "Hygienic Classification of Labour by Indicators of Harmful and Dangerous actors of the Working Environment, Severity and Intensity of the Labour Process" No. 248 of 8 April 2014 *(registered with the Ministry of Justice under No. 472/25249 of 6 May 2014)*
- Order of the Ministry of Energy and Coal Industry of Ukraine "On Approval of the Regulation on the Labour Inspection Management System at the Electric Power Companies" No. 73 of 9 February 2015 *(registered with the Ministry of Justice under No. 397/26842 of 9 April 2015)*

II. Measures taken to implement the legal framework
Answers to the additional questions of the European Committee of Social Rights

Q.1 *The Committee asks to provide comprehensive and updated information on the effective implementation of measures aimed at eliminating or reducing occupational risks, in particular those related to inherently dangerous or unhealthy sectors and activities, such as mining, quarrying, steel making and shipbuilding and occupations exposing employees to ionizing radiation,* _ftn1*extreme temperatures and noise.*

Answer. The Order of the Ministry of Health of Ukraine "On Approval of Sanitary Norms and Rules "Hygienic Classification of Labour by Indicators of Harmful and Dangerous actors of the Working Environment, Severity and Intensity of the Labour Process" No. 248 of 8 April 2014 states that the state and sanitary norms are aimed at hygienic assessment of working conditions and nature of work in the workplaces and applied in the public sector as well as in private sector according to national law. In accordance with Order № 248 hygienic assessment of the working conditions is defined in the case of chemical factor, biological factor, noise, infrasound, ultrasound, under the influence of production vibration, on the parameters of the microclimate, under the influence of atmospheric pressure, electromagnetic fields and radiation, on the indicators of ambient light, for the severity and intensity of the labour process, in the case of aeroionization. Moreover, hygienic assessment of working conditions is carried out in general.

Results of investigations (measurements) and hygienic assessment of working conditions conducted by using criteria of this Hygienic Classification of Labour can be applied, in particular, in the health care institutions which provide medical assistance to workers, conduct medical examinations of workers, establish connection between diseases and working conditions; by employers to develop measures aimed at improvement of working conditions and prevention of adverse effect on health of workers; by workers (for the purpose of obtaining information on working conditions in their workplaces at the time of employment and in the

course of work); by social and health insurance bodies in the cases where the rates of deductions depend on the level of harm and danger of working conditions as well damage to health.

In difficult cases, working conditions of employees are assessed taking into account the indicators of occupational diseases, functional state of the organism and morbidity according to the data of the worker's medical records.

Difficult cases are as follows:

- special forms of organization of work (duration of shift is more than 8 or 9 hours, work in shifts, etc.);
- work related mainly to the movements and influence on the employee of factors that vary in intensity, time of action and nature;
- work that worsens the functional state of the employee and requires to be provided with special means of personal protection;
- complex combination of factors of the production environment and labor process (including the combinative influence of several factors).

Regulation on the System of Labour Management at the Electric Power Companies (hereinafter referred to as SLMC) was approved by the Order of the Ministry of Energy and Coal Industry of Ukraine № 73 of 9 February 2015.

The SLMC is intended to provide protection of the life, health and safety of workers, including temporary workers, contractor staff, and other persons in the enterprises. Planning of the SLMC provides for, in particular, ensuring hazards identification and assessment of the risks associated with them, definition and implementation of the necessary security measures to prevent potential incidents.

The examination involves monitoring and measuring performance of the indicators of the labour protection; assessment of regulatory requirements observance; investigation of incidents; introduction of corrective and preventive actions and evaluation of their effectiveness; conducting internal audits of the SLMC. The management review involves consideration of a number of issues related to the functioning of the SLMC in order to assess its suitability, adequacy and effectiveness and to identify possible ways of improvement of the labour protection.

An authorized person from the management of the company is appointed who ensures development, implementation and maintenance of the functioning of the SLMC and reports to the employer on the general status of functioning of the SLMC and the needs for its improvement and efficiency gains. Employees of the enterprises shall be informed on appointment of the authorized person, his duties and powers. Heads of the structural divisions of the enterprise shall ensure compliance with the requirements of legal acts and documents on safe execution of works, maintenance the culture of safety, improvement of indicators of the labor protection. Employees must comply with labor protection requirements in their workplaces.

Employees of the enterprises shall be trained in order to get familiar with the dangers and risks of production activity, with the consequences of non-compliance with regulatory requirements; with the professional duties, as well as the importance of compliance with labour protection policies, methods and

requirements of the SLMC, in particular requirements for emergency preparedness and response; possible consequences of deviation from the regulatory requirements.

In order to ensure the achievement of the required level of competence in labour protection it is required to appoint the competent persons who will be responsible for identifying in a timely manner the needs for the improvement of competence. Training programmes for newly recruiting staff and frequency of training and instructions on labour protection shall be determined. Moreover, evaluation of the effectiveness of training and other actions aimed at raising the level of competence of employees shall be conducted.

Operational risk assessments are carried out to manage risks associated with hazards in labour protection. Industrial and other activities related to identified hazards, in respect of which security measures are required, to reduce risks to an acceptable level, are being defined. Different acceptable security methods, such as physical devices (including fences, access control), signage, pictograms, and alarms shall be used.

Q.2 *Committee asks to provide further details on the type of compensatory measures applied, specifying wherever possible what measures apply to the different categories of workers exposed to residual risks, and what the percentage of such workers covered by these compensatory measures at issue is.*

Answer. In accordance with Article 7 of the Law of Ukraine "On Labour Protection" the employer can at his own expense additionally establish under collective contract (an agreement, employment contract) benefits and compensations to the employee which are not stipulated by legislation.

When the work associated with harmful and dangerous working conditions, as well as work related to contamination or unfavourable meteorological conditions, workers are given free of charge special clothing, special shoes and other personal protective equipment established by the rules, and also detergents and detoxifying products. Workers involved in one-time work related to elimination of the consequences of accidents, natural disasters, etc., that is not provided for by the employment contract, must be secured by the indicated means.

The employer shall provide purchase, equipment, distribution and maintenance of personal protective equipment at his own expense in accordance with labor protection regulatory acts including collective agreement.

If premature wear of these tools is not employee's fault the employer is obliged to replace them at his/her own expense. If the employee purchases protective clothing, other personal protective equipment, detergents and detoxifying products at his own expense the employer is obliged to compensate all expenses on conditions, provided by the collective agreement.

According to the collective agreement, the employer can additionally, over established norms, provide personal protective equipment to the employee, if actual working conditions of this employee require use of them.

According to statistical bulletin "Conditions of Work of Hired Workers in

2015" (http://www.ukrstat.gov.ua) the number of regular employees entitled to at least one of the types of benefits and compensations was 1503,8 thousand people as at 31.12.2015 (37.6% of the total number of regular employees), including workers with harmful working conditions entitled to:

- additional leave according to the List approved by the Cabinet of Ministers of Ukraine - 17.8%;
- additional leave provided by the collective agreement - 2,6%;
- reduced working week - 4%;
- additional payment for working conditions - 16.7%;
- receiving milk or other equivalent food products - 7.9%;
- receiving therapeutic and preventive nutrition - 0,8%.

The number of employees who work with harmful and dangerous working conditions, entitled to an old-age pension on preferential terms as at 31 December 2015, is:

- under List № 1 - 169,8 thousand people;
- under List № 2 – 223,5 thousand people.

III. Statistics

	Number of detected violations			
	2013	**2014**	**2015**	**2016**
Article 51 "Reduced working hours" of the CLL of Ukraine	63	34	2	14
Measures taken to influence over employers	63 Orders issued to eliminate the detected violence; 51 Protocols on administrative offenses were issued	34 Orders issued to eliminate the detected violence; 28 Protocols on administrative offenses were issued	2 Orders issued to eliminate the detected violence; 2 Protocols on administrative offenses were issued	14 Orders issued to eliminate the detected violence; 11 Protocols on administrative offenses were issued

ource: State Labour Service of Ukraine

Article 2 – The right to just conditions of work
Paragraph 5

I. General legal framework

The relevant legal framework has not changed during the reference period.

II. Measures taken to implement legal framework
Answers to the additional questions of the European Committee of Social Rights

Q.1 *The Committee asks whether, when a double compensation is granted, the workers forfeit their weekly rest and this is not postponed to a later date. It furthermore asks whether there are circumstances under which a worker may be made to work more than twelve consecutive days before being granted a two day rest period, and what guarantees apply in this respect. In the meantime, it reserves its position on this issue.*

Answer. The Second report stated that work on a day-off may be compensated, given mutual consent of the parties, by provision of another day of rest or in a monetary form at double rate (Art. 71 of the Code of Labour Laws of Ukraine (hereinafter referred to as the CLL of Ukraine).

Therefore, when a double compensation is granted, another day of rest is not provided.

Overtime work shall not exceed four hours during two successive days and 120 hours per year for every employee. Under the hourly system of the remuneration of labour, overtime work is paid at double hourly rate (Article 106 of the CLL of Ukraine). According to the piece-rate system of the remuneration of work, the overtime work is paid in surcharge of 100 % percent of the tariff rate of worker of the relevant qualification, whose remuneration of labour is made under the hourly system – for all overtime hours worked. In case of the summarized account of the working hours, all hours worked in excess of the working time in the accounting period are paid as overtime in the manner provided for by first and second parts of Article 106. The compensation for the overtime works by granting a day off is not allowed

III. Statistics

	Number of detected violations			
	2013	**2014**	**2015**	**2016**
Article 67 “Day-offs” of the CLLof Ukraine	343	257	12	97
Measures taken to influence over employers	241 Orders issued to eliminate the detected violence; 202 Protocols on administrative offenses were issued; 74 submissions concerning the bringing to disciplinary liability were made	168 Orders issued to eliminate the detected violence; 139 Protocols on administrative offenses were issued; 63 submissions concerning the bringing to disciplinary liability were made	8 Orders issued to eliminate the detected violence; 6 Protocols on administrative offenses were issued; 3 submissions concerning the bringing to disciplinary liability were made	72 Orders issued to eliminate the detected violence; 55 Protocols on administrative offenses were issued; 18 submissions concerning the bringing to disciplinary liability were made; 19 financial sanctions were imposed

Source: State Labour Service of Ukraine

Article 2 – The right to just conditions of work
Paragraph 6

I. General legal framework

The relevant legal framework has not changed during the reference period.

II.Measures taken to implement legal framework
Answers to the additional questions of the European Committee of Social Rights

Q.1 *The Committee recalls that, under Article 2§6, when starting employment, workers are entitled to written information covering at least the following elements:*

- *the identities of the parties;*
- *the place of work;*
- *the date of commencement of the contract or employment relationship;*
- *in the case of a temporary contract or employment relationship, the expected duration thereof;*
- *the amount of paid leave;*
- *the length of the periods of notice in case of termination of the contract or the employment relationship;*
- *the remuneration;*
- *the length of the employee's normal working day or week;*
- *where appropriate, a reference to the collective agreements governing the employee's conditions of work.*

The Committee asks to confirm that all elements of information provided in the report including the length of the periods of notice in case of termination of the contract or the employment relationship, are well available in a written form to all workers entering an employment relationship.

Answer. The Sixth report stated that according to Article 24 of the CLL of Ukraine the employment contracts are usually entered into in writing.

It must be executed in writing in the following cases:
1) organized recruitment of employees;
2) entering into labour contract on work in the regions with specific natural geographical and geological conditions and conditions of increased risk for health;
3) entering into the contract;
4) if employee insists on entering into labour contract in writing;
5) entering into labour contract with a minor;
6) entering into labour contract with an individual;
7) in other cases prescribed by legislation of Ukraine.

When the employment contract in written form, all abovementioned elements shall be included.

Statistics

	Number of detected violations			
	2013	**2014**	**2015**	**2016**
Article 29 “Obligation of owner or authorized by him/her body to instruct employee and allocate workplace thereto” of the CLL of Ukraine	2181	1555	120	953
Measures taken to influence over employers	1944 Orders issued to eliminate the detected violence; 1334 Protocols on administrative offenses were issued; 665 submissions concerning the bringing to disciplinary liability were made	1349 Orders issued to eliminate the detected violence; 851 Protocols on administrative offenses were issued; 602 submissions concerning the bringing to disciplinary liability were made	113 Orders issued to eliminate the detected violence; 66 Protocols on administrative offenses were issued; 29 submissions concerning the bringing to disciplinary liability were made	895 Orders issued to eliminate the detected violence; 624 Protocols on administrative offenses were issued; 204 submissions concerning the bringing to disciplinary liability were made; 379 financial sanctions were imposed

Source: State Labour Service of Ukraine

Article 2 – The right to just conditions of work
Paragraph 7

I. General legal framework

The relevant legal framework has not changed during the reference period.

II. Measures taken to implement legal framework

Answers to the additional questions of the European Committee of Social Rights

As to the possibility for workers to use the guarantees provided for Article 7, paragraph 2 it should be mentioned the Regulation on Working Hours and Rest periods for Drivers of Wheeled Vehicles which was approved by the Order of the Ministry of Transport and Communications of Ukraine No. 340 of 7 June 2010 (registered with the Ministry of Justice of Ukraine under No. 811/18106 of 14 September 2010). Moreover, the Regulation on the Medical Examination of Candidates for Drivers and Drivers of Vehicles was approved by the Order of the Ministry of Health of Ukraine and the Ministry of Internal Affairs of Ukraine under No. 65/80 of 31 January 2013 (registered with the Ministry of Justice under No. 308/22840 of 22.02.2013). According to Order No. 65/80, the medical examinations of candidates for drivers and drivers of vehicles are divided into: preliminary, periodic, and pre-rally and post-ride reviews during all shifts, as well as extraordinary examinations.

With regard to the possibility of transferring from night work to day work, national practice regulates this issue in the light of taking into account shift work, as it was indicated in the Sixth Report. Under shift work, which includes work at night, workers succeed each other in accordance with the procedure established by the rules of internal labour regulations. Switching from one shift to another, as a rule, should take place every working week in time defined by the shift schedule. That is, within shift working hours, employees work in turns, both in night shifts, and in the day shifts. Shift schedules (work schedules) are approved by the employer upon the agreement with the trade union committee of the undertaking.

Moreover, it should be mentioned that Articles 137 and 285 of the new draft Labour Code (Ref.No.1658) which currently is preparing for second listening, define the definition “night workers” and provide for preliminary and periodical medical examination.

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2013 concerning certain aspects of the organisation of working time is currently under consideration, whose rules are similar to ILO Convention No. 171 with regard to aspects of night work.

Article 4 – The right to a fair remuneration
Paragraph 2

I. General legal framework

- Law of Ukraine “On Civil Service” No. 889-VIII of 10 December 2015

II. Measures taken to implement legal framework
Answers to the additional questions of the European Committee of Social Rights

Q.1 *The Committee recalls that the right of workers to an increased rate of remuneration for overtime work allows for exceptions in certain specific cases. These “special cases”have been defined by the Committee, Ireland), which are:*
- State employees: the only acceptable exception is the category of senior officials, such as police commissioners or administrative court judges. Exceptions to a higher rate of overtime pay for all state employees or public officials, irrespective of their level of responsibility, is not in conformity with Article 4§2.
- Managers: exceptions may be applied to all senior managers. However, the Committee ruled that certain limits must apply, particularly on the number of hours of overtime that are not paid at a higher.
The Committee asks whether the legislation complies with this standard.

Answer. In accordance with Article 56 of the Law of Ukraine “On Civil Service” No. 889-VIII of 10 December 2015 civil servants with no restrictions of the working time under the Law, on the basis of the order of the head of civil service which shall be made known to the elected body of a primary trade union organization (if available) shall be obliged to come to their workplace and work over the established working hours and during the weekends, holidays, days off and night shifts in order to perform exigent or unforeseen tasks. Work during the mentioned days (time) shall be compensated in the amount and manner determined by the labour legislation, or within one month additional days off shall be granted to civil servants upon their requests.

III. Statistics

	Number of detected violations			
	2013	**2014**	**2015**	**2016**
Article 106 "Remuneration for overtime work " of the CLL of Ukraine	1061	561	72	328
Measures taken to influence over employers	1031 Orders issued to eliminate the detected violence; 867 Protocols on administrative offenses were issued; 503 submissions concerning the bringing to disciplinary liability were made	530 Orders issued to eliminate the detected violence; 465 Protocols on administrative offenses were issued; 254 submissions concerning the bringing to disciplinary liability were made	71 Orders issued to eliminate the detected violence; 64 Protocols on administrative offenses were issued; 25 submissions concerning the bringing to disciplinary liability were made	320 Orders issued to eliminate the detected violence; 286 Protocols on administrative offenses were issued; 99 submissions concerning the bringing to disciplinary liability were made; 128 financial sanctions were imposed

Source: State Labour Service of Ukraine

Article 4 – The right to a fair remuneration
Paragraph 3

I. General legal framework

The relevant legal framework has not changed during the reference period.

II. Measures taken to implement legal framework
Answers to the additional questions of the European Committee of Social Rights

Q.1 *The Committee asks whether a victim may take his/her case before the courts in addition or alternatively to the Commissioner. It also asks what rules apply as regards the guarantees of enforcement of the equal pay principle, burden of proof and sanctions, as well as domestic case law on equal pay litigations.*

Answer. Article 14 of the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" No. 5207 of 6 September 2012 (hereinafter - Law of Ukraine No. 5207-VI) stipulates that the person who thinks that there was a discrimination against him\her, has the right to submit a complaint to the state authorities, authorities of the Autonomous Republic of Crimea, local self-government authorities and their officials, the Ukrainian Parliament Commissioner for Human Rights and/or to the court according to the procedure provided by law.

Article 16 of the Law of Ukraine No. 5207-VI and Article 24 of the Law of Ukraine "On Ensuring Equal Rights and Opportunities" (hereinafter - Law No. 2866-IV) stipulate that persons guilty of violation of the requirements of the law on preventing and combating discrimination shall bear civil, administrative and criminal responsibility.

According to Article 81 of the Civil Procedure Code of Ukraine, in discrimination cases, the Claimant shall provide reliable facts which confirm that discrimination took place. If there are such facts, a Respondent has to prove their absence.

Methods of comparison and other measures

Q.2 *The Committee asks whether in equal pay litigation it is possible to make comparisons of pay and jobs outside the company directly concerned.*

Answer. According to the information provided by the Highest Specialized Court of Ukraine it is not possible to find out the facts about unequal pay for work of equal value on the results of comparison of pay and jobs outside the company directly, taking into account the contractual nature of determining the wage between a particular company and an employee in private sector.

Please see the attachment concerning the average monthly wages and salaries of women and men by type of economic activity provided by the State Statistic Service of Ukraine.

Q.3 *The Committee asks what measures are taken to reduce the equal pay gap.*

Answer. Within the framework of the implementation of the Association Agreement between Ukraine and EU it is envisaged to transpose the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) in the domestic law.

Article 4 – The right to a fair remuneration
Paragraph 4

I. General legal framework

- Law of Ukraine "On amendments to the Code of Labour Law concerning the Probationary Period" No. 1367-VIII of 17 May 2016

II. Measures taken to implement the legal framework
Answers to the additional questions of the European Committee of Social Rights

Concerning provision for a two month notice period under circumstances noted by the ESCR in its Conclusions (*termination of employment for refusal to agree to a transfer when the undertaking relocates or refusal to accept essential changes in working conditions (grounds given in Article 36, paragraph 1, number 6 of the Code); dismissal upon changes in the organization of production or labour or a reduction in staff numbers; on grounds of unfitness for medical reasons, lack of qualification or withdrawal of access to top-secret information; the reinstatement of the previous post holder (grounds given in Article 40, paragraph 1, numbers 1, 2 and 6 of the Code), beyond seven years of service; termination of employment or dismissal on all other grounds, beyond five years of service)* it should be mentioned that information provided in the previous report remains valid. It means that under these circumstances the employee receives a severance payment in the amount not less than the average monthly wage according to Article 44 of the Code of Labour Law (hereafter – CLL of Ukraine): within three months after notice period for termination of employment according to paragraph 6 of the Article 36 of the CLL of Ukraine and within one month for termination of employment according to paragraphs 2 and 6 of the CLL of Ukraine. Moreover, the employee has the right to be registered by the Employment Service and has the right to unemployment benefit.

Q.1 *The Committee asks for information on the right to continued payment of salary and/or assistance benefits paid by the employment office under Article 49.2, paragraph 3 of the Code.*

Answer. Paragraph 3 of Article 49.2 of the CCL of Ukraine provides for that together with notice period for termination of employment in connection with change in the production and labour organization the employer or authorized by him body shall offer the employee another job at the same enterprise, institution, organization. If there is no job on the respective profession or occupation, as well as in case employee's refusal of transfer to another job at the same enterprise, institution, organization, the employee at his own discretion shall apply to State Employment Service for unemployment benefit or shall seek employment for him/her own.

***Q.2** The Committee considers that the lack of any notice and/or compensation during probationary periods is not in conformity with Article 4§4 of the Charter.*

Answer. provisions on notice period and compensation cover all workers regardless of whether they have a fixed-term or a non-fixed-term labour agreement. These provisions of CLL of Ukraine are not applied for dismissal due to serious violation. According to the Law of Ukraine "On Amendments to the Code of Labour Law about the Probationary Period" No. 1367-VIII of 17 May 2016 (Article 28) in case of an established employee's inconsistency with position requirements to which he/she was employed, the employer has the right within the probationary period to terminate the employment by notifying the employee in writing at least three days in advance. Termination of labour agreement for these reasons may be claimed against by the employee in accordance with the procedure established for consideration of labour disputes on dismissal.

***Q.3** The Committee asks for the next report to list all the other cases of termination of employment or immediate dismissal provided for by the law and, if relevant, notice periods and/or compensation applicable to dismissal for disciplinary reasons (ground given in Article 149, paragraph 1, No. 2 of the Code); dismissal of an employer's representative at the request of a trade union representative for breach of labour law or collective agreements (ground given in Article 45, paragraph 1 of the Code); termination of employment following sentencing to attend a medical centre for occupational rehabilitation (ground given in Article 37 of the Code); and labour agreements in which the conditions for termination of employment are freely negotiated (ground given in Article 21, paragraph 3 of the Code).*

Answer. CLL of Ukraine provides for the following grounds for termination.

Article 36 Grounds for termination of labour agreement

Grounds for termination of labour agreement are the following:

1) agreement of the parties;

2) completion of validity period (clauses 2 and 3 of Article 23), except for the cases when labour relations are actually continuing, and neither party put the demand on termination thereof;

3) call to military duty or enter of the employee or owner-natural person into military duty, appointment to alternative (non-military) service, except for the cases when an employee keeps his/her workplace and position according to part 3 and 4 of Article 119 of the CLL of Ukraine;

4) termination of labour agreement on the initiative of the employee (Articles 38, 39), on the initiative of the owner or authorized by him/her body (Articles 40, 41), or at the request of trade union or other representative body authorized by labour collective (Article 45);

5) transfer of the employee by his/her consent to another enterprise, institution or organization, or transfer to the elective position;

6) refusal of the employee of transfer to another job in other locality together with enterprise, institution or organization, as well as refusal to continue working in connection with changes in essential working conditions;

7) entry of court judgment into legal force condemning the employee (except for the cases of indemnification from servicing punishment with probation) to imprisonment or to other punishment, which excludes possibility to continue this work;

7-1) conclusion of the labour agreement (contract) in contrary the Law of Ukraine “On Prevention of Corruption” which provides for requirements to persons who have released or otherwise have stopped their activity linked with performance of functions related to public or local self-government within one year after its termination.

7- 2) grounds prescribed by the Law of Ukraine “On Purification of Power”

8) grounds prescribed by the contract.

In cases under paragraphs 7 and 7-1 part 1 of this Article a person is to be dismissed within three days from the date of receipt by the state authority, local self-government body, enterprise, institution, organization of a copy of the corresponding court decision, which has become legally valid, and in the case provided for in clause 7-2, the person is to be dismissed according to the procedure established by the Law of Ukraine “On Purification of Power".

Changes in subordination of enterprise, institution or organization shall not terminate the validity of labour agreement.

In case of replacement of the owner of enterprise, as well as in case of reorganization thereof (merger, affiliation, division, split-off, transformation) validity period of labour agreement of the employee shall continue. Termination of labour agreement on the initiative of the owner or authorized by him/her body is possible only in case of reduction of number or staff of employees (clause 1 of part one of Article 40).

(Article 37 was deleted)

Article 38 Termination of labour agreement entered into for indefinite period of time on employee’s initiative

Employee shall be entitled to terminate labour agreement entered into for indefinite period of time having sent a two-month notice to the owner or authorized by him/her body in writing. In case the employee's letter of resignation was caused by impossibility to continue working (movement to new place of residence; transfer of spouse to job in other locality; entry to educational institution; impossibility to live in this locality proven by medical opinion; pregnancy; care of child until it reaches fourteen years old, or of disabled child; care of ill family member according to medical opinion, or of 1st group disablement; retirement; competitive employment, as well as for other valid reasons), the owner or

authorized by him/her body shall terminate labour agreement within the period requested by the employee.

If upon completion of dismissal notice period the employee failed to leave job and demands no termination of labour agreement, the owner or authorized by him/her body shall not be entitled to dismiss him/her on the ground of previously filed application, except for the cases when other employee is invited for his/her office who according to legislation may not be refused in entering into labour agreement.

The employee shall be entitled within the period determined by him/her to terminate labour agreement at his/her own free will, if the owner or authorized by him/her body fails to observe labour legislation, provisions of collective or labour agreement.

Article 39. Termination of labour agreement on employee's initiative

Term-fixed labour agreement (clauses 2 and 3 of Article 23) shall be subject to early termination at employee’s request in case of his/her disease or disablement which prevent performance of work under the agreement, violation by the owner or authorized by him/her body of labour legislation, collective or labour agreement, and in cases prescribed by part one of Article 38 of this Code.

Article 40 Termination of labour agreement on the initiative of owner of authorized by him/her body

Labour agreement entered into for indefinite period of time, as well as term labour agreement prior to completion of its validity period may be terminated by the owner or authorized by him/her body only in the following cases:

1) changes in production and labour organization, including liquidation, reorganization, bankruptcy or conversion of enterprise, institution, organization, reduction of number or staff of employees;

2) revealed inconsistency of the employee with job or with work performed as the result of insufficient qualification or state of health which prevent continuing this work, as well as in case of cancellation of access to state secret, if fulfillment of obligations imposed on him/her requires an access to state secret;

3) systematic failure to fulfill by the employee without good reasons obligations imposed on him/her under labour agreement or internal regulations, if disciplinary or civil sanctions have been previously applied thereto;

4) absence from work (including absence from work for over three hours during the working day) without valid reasons;

5) absence from work within more than four successive months as the result of temporary disablement, except for maternity leave, unless longer period of

workplace (office) preservation at particular disease established by legislation. Employees who lost capability in connection with labour injury or occupational disease shall retain their workplace (office) until rehabilitation or establishment of disablement;

6) reinstatement in a job of the employee who had been previously performing this work;

7) showing up for work intoxicated with alcohol, narcotics or other toxic substances;

8) on-the-job embezzlement (including petty one) of owner's property established by court judgment that became effective, or by resolution of the body which competence includes imposing administrative sanction or taking measures of social influence.

(Clause 9 was canceled)

10) conscription or mobilization of the owner - natural person during the special period;

11*)* in case of an established employee's inconsistency with position requirements to which he/she was employed within the probationary period;

Dismissal on the grounds mentioned in clauses 1, 2 and 6 of this Article may be allowed, if the employee may not be transferred to another job by his/her consent.

Dismissal of the employee on the initiative of the owner or authorized by him body may not be allowed within the period of his/her temporary disablement (except for dismissal according to clause 5 of this Article), as well as within the period of his/her staying on leave. This rule shall not apply to cases of full liquidation of enterprise, institution or organization.

Article 41 Additional grounds for termination of labour agreements on the initiative of owner or authorized by him/her body with particular categories of employees under certain conditions

In addition to grounds prescribed by Article 40 of this Code, the agreement may be terminated on the initiative of the owner or authorized by him/her body in the following cases:

1) single gross violation of labour obligations by the director of enterprise, institution or organization of all forms of ownership (subsidiary, representative office, division and other separated subdivision), his/her deputies, chief accountant of enterprise, institution or organization, his/her deputies, as well as officials of

customs authorities, state tax inspectorates who were given personal ranks, and officials of state supervision and auditing service and state authorities exercising control over prices;

1-1) guilty actions of the manager of enterprise, institution or organization which resulted in untimely salary payment or in the amounts lower than minimum salary amount established by legislation;

2) guilty actions of employee directly servicing monetary, commodity or cultural valuables, if these actions give reasons to loose trust thereto on part of the owner or authorized by him/her body;

3) commitment by the employee who fulfils educational functions of immoral act being incompatible with continuing this work.

4) staying contrary to the requirements of the Law of Ukraine "On Prevention of Corruption" in direct subordination to a close person;

5) termination of powers of officials.

The owner or an authorized body of his/her own initiative is obliged to terminate an employment agreement with an official in case of repeated violation of the requirements of legislation in the field of licensing, issues of issuance of permits or in the provision of administrative services provided for in Articles 166-10, 166-12 , 188-44 of the Code of Ukraine on Administrative Offenses.

Termination of the labour agreement prescribed by this Article shall be effected subject to observance of the requirements of part three of Article 40, and in cases prescribed by clauses 2 and 3 – of the requirements of Article 43 of this Code as well.

Termination of the labour agreement in the case provided for in paragraph 4 of part one of this Article shall be carried out if it is impossible to transfer the employee with his consent to another job.

When dismissal due to disciplinary enforcement the Labor Code does not provide for notification or compensation because such dismissal is due to a serious violation of the labour agreement by an employee.

In case of dismissal of a manager at the request of an elective body of the primary trade union organization, the Labor Code does not provide for notification or compensation, because such dismissal is not due to initiative of employer.

Q.4 *The Committee requests to provide detailed information on the notice period and/or compensation applicable in the event of termination of employment by means of*

agreement of the parties or under an employment contract (grounds given in Article 36, paragraph 1, Nos. 1 and 8 of the Code).

Answer. Concerning the termination of employment by means of agreement of the parties and under an employment contract (Article 36, clauses 1 and 8) it should be mentioned that the date of the termination of employment is to be determined by means of agreement of the parties. The law does not require special procedure such as notification or compensation. There are cases when a collective agreement provides for additional compensations, for example, in case of termination of employment by means of agreement of the parties (Article 36, clause 1) the employee receives financial assistance in the amount of average monthly wage.

When terminating employment agreement, the employee is entitled to payment in lieu of untaken annual leave.

In case of termination of employment by means of agreement of the parties, the employee acquires the legal status of the unemployed and has the right to receive unemployment benefits at the Employment Service at the place of residence starting from the 8th day (Articles 22, 23 of the Law of Ukraine "On Compulsory State Insurance against Unemployment" № 1533-III of 2 March 2000.

In case of termination of employment pursuant to clause 1 (agreement of the parties) and clause 8 of the part one (grounds specified in the contract) of Article 36 of the CLL of Ukraine there is no notification or compensation, because this is no dismissal on the employer's initiative. Moreover, the provisions of the labor agreement (that is, contracts concluded between the employee and the employer), which worsen the situation of employees in comparison with the legislation of Ukraine on labor, are not valid (Article 9 of the CLL of Ukraine).

III. Statistics

	Number of detected violations			
	2013	**2014**	**2015**	**2016**
Article 49-2 "Procedure of Dismissal of Employees" of the CLL of Ukraine	67	50	4	53
Measures taken to influence over employers	64 Orders issued to eliminate the detected violence; 32 Protocols on administrative offenses were issued; 26 submissions concerning the bringing to disciplinary	47 Orders issued to eliminate the detected violence; 18 Protocols on administrative offenses were issued; 14 submissions concerning the bringing to disciplinary	4 Orders issued to eliminate the detected violence; 2 Protocols on administrative offenses were issued; 2 submissions concerning the bringing to	59 Orders issued to eliminate the detected violence; 36 Protocols on administrative offenses were issued; 11 submissions concerning the bringing to

	liability were made	liability were made	disciplinary liability were made	disciplinary liability were made; 22 financial sanctions were imposed

Article 4 – The right to a fair remuneration
Paragraph 5

I. General legal framework

- Tax Code of Ukraine No. 2755-VI of 2 December 2010
- Law of Ukraine "On Amendments to the Tax Code of Ukraine and Some Other Legislative Acts of Ukraine" № 1621-VII of 31 July 2014
- Law of Ukraine "On Enforcement Proceedings" № 1404-VIII of 2 June 2016
- Law of Ukraine "On Amendments to the Tax Code of Ukraine and Some Other Legislative Acts of Ukraine Regarding the Balance of Budget Revenues in 2016" № 909-III of 24 December 2015

The Law of Ukraine "On Amendments to the Tax Code of Ukraine and Certain Other Legislative Acts of Ukraine" No. 1621-VII of 31 July 2014 temporarily introduced a 1,5 % military tax based on employee's income.

The Law of Ukraine "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine regarding the Balance of Budget Revenues in 2016" No. 909-VIII of 24 January 2015 introduced a single personal income tax rate at 18% of gross salary starting from January 1, 2016.

Accounting payroll deduction example

For January, 2016 the wage of an employee amounted to 4530 UAH. It is necessary to keep from wage:
Military tax:
4530 UAH * 1.5% = 67.95 UAH.
Income tax:
4530 UAH * 18% = UAH 815.40
Accordingly, the employee received:
4530 UAH - UAH 67.95 - UAH 815.40 = 3646,65 UAH.

II. Measures taken to implement the legal framework

Answers to the additional questions of the European Committee of Social Rights

Q.1 *The Committee asks to state whether compensation in connection with the liability of workers for damage they inflict on employers is subject to the limit of 20% of the wage. It also asks for the next report to give the full list of grounds for deduction of up to 50% of the wage provided for by the law. It asks for the next report to complete the list of grounds for deductions from wages, such as for example social security contributions; income tax; manufacturing defects (Article 111 of the Code); reductions in activity (Article 112 of the Code); production stoppages (Article 113, paragraphs 1 and 2 of the Code); and transfers to a less well-paid job (Article 114, paragraph 1 of the Code). It also asks for information on the limitation of deductions from wages applicable to workers governed by the State Civil Service Act, the Merchant Shipping Code and the Mining Resources Act.*

Answer. There are three ways of compensation for damage caused by an employee to an employer:

1. Voluntary reimbursement.
2. Penalty on the Order of the owner or his / her authorized body.
3. Reimbursement juridical.

Damage caused by the employee is covered at the rate not exceeding the average monthly earnings (Articles 132, 136 of the Labour Code). Withholding the amount of material damage from wage, Articles 128-129 of the Labour Code shall be taken into account: the total amount may not exceed 20 % of the worker's remuneration or 50 % in specific cases stipulated by the legislation.

In accordance with Article 70 of the Law of Ukraine "On Enforcement Proceedings" the amount of deductions, in particular, from the debtor's salary is deducted from the amount remaining after the taxes and fees deduction. This limitation on the amount of all deductions by 20 % of the employee's wage is a prohibition on deduction, which is carried out based on acts of bodies or officials authorized to establish the deductions.

There are provisions when the maximum amount of deduction increases up to 50 %. It takes place in the event of compensation for damage caused by injury, other damage to health or death of a person, loss of breadwinner, property and / or moral damage caused by a criminal offense or other socially dangerous actions.

The issue of wage deductions is not the subject of the Laws of Ukraine "On Civil Service", the Code of Merchant Shipping, the Mining Law.

Eligibility of wage payment to a third party

Answer. Employment agreement may be extended to the provisions of the Civil Code of Ukraine (hereinafter - the CC of Ukraine) in part that is not regulated by the provisions of the Labour Code of Ukraine, in particular rules concerning the conclusion of a contract in favour of a third person. In accordance with Article 636 of the CC of Ukraine, the contract in favour of a third person is an agreement providing for a debtor to be obligated to perform his / her duty in favour of a third party, which is established or not specified in the contract. Thus, an employer (wage debtor) and an employee (wage lender) may conclude the contract that the wage or part thereof must be paid by the employer (the debtor) in favour of a third party. For example, when an employee asks the employer to transfer part of his/her salary to the bank to repay the loan. Another example is an agreement on the payment of maintenance for a child in the amount of 50% of wages of an employee. In accordance with Article 25 of the Law of Ukraine "On Remuneration for Work", it is prohibited, in any way, to restrict the employee from freely disposing of his/her wage, except in cases stipulated by law. Thus, the payment of wage by the employer under the free order of the employee may be in favour of third parties without any restrictions: in part or in full at the discretion of the employee.

III. Statistics

	Number of detected violations			
	2013	2014	2015	2016
Article 127 “Limitation of the Deductions from Wage” of the CLL	115	39	14	51
Measures taken to influence over employers	111 Orders issued to eliminate the detected violence; 66 Protocols on administrative offenses were issued; 48 submissions concerning the bringing to disciplinary liability were made	36 Orders issued to eliminate the detected violence; 21 Protocols on administrative offenses were issued; 20 submissions concerning the bringing to disciplinary liability were made	13 Orders issued to eliminate the detected violence; 7 Protocols on administrative offenses were issued; 42 submissions concerning the bringing to disciplinary liability were made	48 Orders issued to eliminate the detected violence; 27 Protocols on administrative offenses were issued; 11 submissions concerning the bringing to disciplinary liability were made; 20 financial sanctions were imposed
Article 129 “Prohibition of the Deductions from Severance pay, Compensatory and other Payments” of the CLL	30	16	3	19
Measures taken to influence over employers	29 Orders issued to eliminate the detected violence; 22 Protocols on administrative offenses were issued; 9 submissions concerning the bringing to disciplinary liability were made	16 Orders issued to eliminate the detected violence; 7 Protocols on administrative offenses were issued; 8 submissions concerning the bringing to disciplinary liability were made	2 Orders issued to eliminate the detected violence; 1 Protocols on administrative offenses were issued; 1 submissions concerning the bringing to disciplinary liability were made	19 Orders issued to eliminate the detected violence; 15 Protocols on administrative offenses were issued; 3 submissions concerning the bringing to disciplinary liability were made; 9 financial sanctions

				were imposed
Article 128 “Limitation of the Amount of the Deduction from Wage” of the CLL				
Measures taken to influence over employers	111 Orders issued to eliminate the detected violence; 66 Protocols on administrative offenses were issued; 48 submissions concerning the bringing to disciplinary liability were made	111 Orders issued to eliminate the detected violence; 66 Protocols on administrative offenses were issued; 48 submissions concerning the bringing to disciplinary liability were made	111 Orders issued to eliminate the detected violence; 66 Protocols on administrative offenses were issued; 48 submissions concerning the bringing to disciplinary liability were made	48 Orders issued to eliminate the detected violence; 27 Protocols on administrative offenses were issued; 11 submissions concerning the bringing to disciplinary liability were made; 20 financial sanctions were imposed

Article 5 – The right to organize

I. General legal framework

- Law of Ukraine "On Public Associations" No. 4572-VI of 22 March 2012
- Law of Ukraine "On Judiciary and Status of Judges" No. 1402-III of 2 June 2016
- Decree of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Reviewing Complaint in the Field of State Registration" No.1128 of 2 June 2016

In the reference period the Law of Ukraine "On Judiciary and Status of Judges" was adopted on 2 June 2016 No. 1402-VIII (hereafter – Law No.1402-VIII).

Q.1 *The Committee noted that Law of Ukraine "On Public Associations" came into force on 1 January 2013 outside the reference period. The Committee asks to submit all relevant information for the reference period 2013-2016.*

Answer. On 22 March 2012, Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Public Associations" which enter into force on 1 January 2013 (hereafter – Law No. 4572-VI).

The Law No. 4572-VI provide for the guarantee of the right to organize: nobody may be forced to join any public association. A person's affiliation or non-affiliation with a public association may not be a valid ground for bodies of state power, other government bodies, bodies of power in the Autonomous Republic of Crimea, local self-government bodies to limit his/her rights and freedoms or grant him/her any benefits or advantages.

Everyone shall have the right voluntarily to terminate his/her membership (participation) in a public association at any time in the manner provided for by the Status.

A public association intending to operate on the basis of the legal entity status shall be subject to registration in accordance with the procedure determined by the Law of Ukraine "On the State Registration of Legal Entities and Natural Persons – Entrepreneurs and Public Associations" within 60 days as from the date of the constituent meeting. If documents are not submitted for the purpose of registering the public association within 60 days from its establishment, such public association shall be considered as one that was not established.

On 19 December 2013, the Cabinet of Ministers of Ukraine adopted the Decree "On Approval of the Procedure for Registration of the Public Associations" No. 1212.

Forms of documents which are required for registration according to the Law No. 4572-VI were approved by the Order of the Ministry of Justice of Ukraine No. 1842/5 of 14 December 2012.

To realize its purpose (goals), a public association has the right to freely disseminate information about its activity, promote its purpose (goals); obtain

public information; take part in the drafting of normative legal documents which are of great important for state and public life; hold peaceful gatherings.

A public association with the legal entity status has the right to be a participant in civil-law relations; to conduct entrepreneurial activity; to establish mass media for the realization of its statutory purpose (goals); to take part in the work of consultative, advisory and other supplementary bodies established by bodies of state power, the bodies of power of the Autonomous Republic of Crimea, and local self-government bodies for consultations with public associations.

II. Measures taken to implement the legal framework Answers to the additional questions of the European Committee of Social Rights

Forming trade unions and employers' organizations

Q.2 *The Committee asks whether judges have the right to join professional associations in order to be able to defend and protect their interests.*

Answer. According to Article 56 of the Law No.1402-VIII judges may create public associations and participate in them for the purpose of protection their rights and interests and improving their professional level. A judge may be a member of national and international associations and other organizations aimed at protecting interests of judges, strengthening the authority of the judiciary in the society and development judicial professions and science.

Q.3 *The Committee notes that the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) requested the Government of Ukraine to take measures to ensure the right of judges to establish organizations of their own choosing to further and defend the interests of their members (Observation (CEACR) – adopted 2010, published at the 100th ILC session in 2011, on Convention No. 87 of 1948 of Freedom of Association and Protection of the Right to Organize – Ukraine (ratification 1956)). The Government indicates in the report that by Decree of the President No. 328/2012 dated 17 May 2012, a special body, namely the Constitutional Assembly, has been established with a specific mandate to prepare draft amendments to the Constitution. The Ministry of Social Policy addressed the Constitutional Assembly with a request to consider this issue when preparing the relevant amendments of the Constitution. The Committee would like to receive information on any developments on this matter.*

Answer. Please see answer in previous Report (Article 5, Answer 7, pages 41-42) which contains a reference to the Decision of the Constitutional Court of Ukraine No. 11-rp/2000 of 18 October 2000.

According to Article 1 of the Law of Ukraine "On Trade Unions, their Rights and Guarantees for their Activities" No. 1045-XIV of 15 September 1999 (hereafter – Law of Ukraine No.1045-XIV) the trade union is a voluntary non-profitable public organization, which unites the citizens connected by common

interests by the nature of their professional (labour) activity (training).

Trade Union as a legal entity is a subject of civil law. However, it has some specific peculiarities compared to other legal entity. According to para.4 Article 91 of Civil Code of Ukraine (hereafter – CC of Ukraine) the legal entity's legal capacity shall occur from the moment of its creation and shall terminate from the day of entering the record on its termination to the Uniform State Register.

Para. 4 of Article 87 of the CC of Ukraine states that the legal entity shall be considered as created as from the date of its state registration.

Legal entity shall acquire civil rights and obligations and exercise them through the bodies acting in accordance with the constituent documents and the law. Therefore, the civil legal capacity and legal capacity shall acquire as from the date of state registration.

Article 16 of the Law of Ukraine No. 1045-XIV establishes that the trade union shall acquires rights of the legal entity from the moment of the approval of the Status and not from the moment of the state registration of the trade union as a legal entity as it provided in the CC of Ukraine.

Taking into account Law No. 1045-XIV, it can be concluded that the trade union also acquires civil legal capacity from the moment of approval of the statute, and not from the moment of state registration. The reason for such a statement is that, in accordance with Article 16 of Law No. 1045-XIV, the legalizing authority cannot refuse to legalize a trade union, trade union association.

Thus, if the legalizing body may not refuse to legalize the trade union that means that in any way the trade union shall be legalized as a legal entity.

Therefore, the moment of registration in this case is not the legal fact that indicates at the moment of the acquisition of civil capacity by the union. Such a legal fact in accordance with the Law No. 1045-XIV should be considered the moment of approval of the Status which involves the acquisition by the union of the right of legal entity.

According to the Law of Ukraine "On the State Registration of Legal Entities and Natural Persons – Entrepreneurs and Public Associations" in the new version, which came into force on 1 January 2016 (hereinafter – Law of Ukraine No. 755-IV), public organization are, in particular, trade unions, their association, trade union organizations, stipulated by the Status of the trade union and their association, employers' organizations, their associations.

According to the abovementioned Law of Ukraine the state registration of legal entities, the public associations which do not have the status of the legal entity and natural persons - entrepreneurs is the official recognition by the certificate the state of the fact of creation or termination of the legal entity, public association which has no status of the legal entity, the certificate of the fact of availability of the corresponding status of public association, trade union, their association, organization of employers, their associations and their symbolic, changes of data which contain in the Uniform State Register.

Article 3 of the Law No. 755-IV provides for that the Law can establish some peculiarities for state registration of public associations. Such peculiarities are established by Article 16 of the Law of Ukraine No. 1045-XIV.

Thus, according to Article 16 of the Law of Ukraine No. 1045-XIV, the trade unions shall be legalized through notification of compliance with the declared status.

Q.4 *The Committee asks if appeals against the authorities' refusals to register a trade union or an employers' organization have occurred in practice, and requests information on such cases.*

Answer. 1. According to Article 16 of the Law of Ukraine No. 1045-XIV, the legalizing authority cannot refuse to legalize a trade union, trade unions association.

2. The Procedure for Consideration of Complaints in the Sphere of State Registration was adopted by the Resolution of the Cabinet of Ministers of Ukraine No. 1128 of 25 December 2015 (hereinafter - the Procedure). The Procedure determines a method for consideration of complaints in accordance with the Law of Ukraine No. 755-IV about the decision, action or inaction of the state legalizing authority. In order to ensure that complaints are handled by the Ministry of Justice and its territorial authorities, standing commissions are established on issues of consideration of complaints in the sphere of state registration. The Order and the Composition of this standing commissions are approved by the Ministry of Justice or the relevant territorial authority. Complaints handling procedure should be carry out in a timely manner as established by the Law of Ukraine "On Citizens' Appeal".

According to the Federation of Trade Unions of Ukraine, there were no complaints from member organizations of trade unions of Ukraine about refusal to legalize a trade union.

Q.5 *The Committee asks if sanctions are provided for violation of legislation on employers' organizations.*

Answer. Article 35 of the Law of Ukraine "On Employers' Organizations, their Associations, Rights and Guarantees for their Activities" No. 5026-VI of 22 June provides for liability for violation of the law on employers' organizations.

Persons who hinder employers from exercising their right to form organization of employers, associations of employers' organizations, as well as officials and other persons guilty of violating the law on employers' organizations that, by their actions or inactivity, impede the lawful activity of employers' organizations and their association are responsible in accordance with the law.

Actions that create obstacles to the legitimate activities of employers' organizations and their associations include, among other things, violations of law in the field of state registration of legal entities, their symbols (in cases stipulated by law), public associations that do not have the status of a legal entity, and individuals - entrepreneurs.

In particular, Article 35 of the Law of Ukraine No. 755-IV establishes liability in the sphere of state registration.

Article 170 of the Criminal Code of Ukraine provides that wilful preclusion of legal activities of trade unions, political parties, and public association or their organs, - shall be punishable by correctional work for a term up to two years, or imprisonment for a term up to three years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

It should be noted that organization of employers is non-profit public organization which unites employers; association of employers' is non-profit public organization which unites employers' organizations and their associations.

Q.6 *The Committee noted that employers' organizations have to pay registration fees amounting to between 2.5 and 10 times the non-taxable minimum personal income (Conclusions 2010). The Committee recalls that if fees are charged for the registration or establishment of an organization, they must be reasonable and designed only to cover strictly necessary administrative costs.*

Answer. According to Article 36 "Registration Fees" of the Law of Ukraine No. 755-IV, the registration fees for symbolic of an employers' organization, association of employers' organization is amounted 0,06 of subsistence level for persons able to work.

Freedom to join or not to join a trade union

Q.7 *The Committee considers that the situation is not in conformity with the Charter on this point as it has not been established that domestic law provides effective sanctions and remedies in case of discrimination and reprisals based on trade union membership and activities and it has not been established that domestic law provides for compensation that is adequate and proportionate to the harm suffered by the victim. It noted in its previous conclusion (Conclusions 2010) that Article 36 of the Constitution also states that no one may be forced to join any trade union or be restricted in his or her rights for not belonging to one, and asked for further information on any specific legislation or regulations in this area and on the situation in practice.*

Answer. 1. The Law of Ukraine No. 1045-XIV prohibits discrimination based on trade union membership.

Section III of the Law of Ukraine "On Principles of Prevention and Combating of Discrimination in Ukraine" provides for liability for violation of law on preventing and combating of discrimination.

A person who believes that there was a discrimination against him\her, has the right to submit a complaint to the state authorities, authorities of the Autonomous Republic of Crimea, local self-government authorities and their officials, the Ukrainian Parliament Commissioner for Human Rights and/or to the court according to the procedure provided by law. The exercise of this right cannot be the basis for prejudice, and may not cause any negative consequences for the person who took advantage of such right, and other persons. The person has the

right to compensation for material damage and moral damage caused to him\her as a result of discrimination. The procedure for compensation for material damage and moral damage is determined by the CC of Ukraine and other laws. Persons guilty of violation of the requirements of the law on preventing and combating discrimination shall bear civil, administrative and criminal responsibility

According to Article 16 of the CC of Ukraine, everyone has the right to apply to the court for the protection of his/her private non-property or property rights and interests. Civil rights and interests remedies may include, inter alia, indemnification for moral (non-material) damages.

According to Article 23 of the CC of Ukraine, moral damage shall be compensated by money, other property or otherwise.

The amount of moral damage indemnification shall be specified by the court in dependence of the infringement nature, physical and moral suffering extent, degradation of a sufferer's capabilities or depriving him/her of the possibility to realize them, degree of guilt of the person inflicting moral damage if this guilt is a ground for the indemnification as well as having regard to other circumstances of material significance. In determining the amount of compensation shall be taken into account the requirements of reasonableness and fairness.

Moral damage shall be indemnified regardless of the property damage, which is subject to the indemnification, and is not connected with the amount of this indemnification. Moral damage shall be indemnified on a nonrecurring basis unless otherwise established by the agreement or the law.

2. Concerning the specific law or regulations providing for that no one may be forced to join any trade union or be restricted in his/her rights for not belonging to one.

Answer. These issues are regulated by the Laws of Ukraine No. 4572 and No. 5026-VI. In 2015 the Law of Ukraine No. 5026-VI was supplemented by the norms according to which a member of the organization of employers or an association of organizations of employers has the right at any time to terminate its membership in the organization of employers or association of employers' organizations by submitting an application to the relevant statutory bodies.

Membership in the organization of employers or association of employers' organizations shall be terminated from the day such an application is filed and no additional decisions are required. From the same day, the exercise of any elective position of the member of organization of employers or association of organization of employers shall be terminated.

Trade union activities

Q.8 *The Committee notes that allegations have been made of interference by the authorities with trade union internal affairs (ITUC Survey of violations of trade union rights)). In its previous conclusion (Conclusions 2010), the Committee asked for the Government's comments on the allegations of interference with trade unions internal*

affairs. The report does not provide any information in this regard. Therefore, the Committee reiterates its question.

Answer. On 23 August 2016, the new General Agreement between All Ukrainian associations of employers, All Ukrainian associations of trade unions for the period 2016 – 2017 was signed. The General Agreement provides for that exchange of information about facts on non-compliance with ILO Conventions, other international agreements to which Ukraine is Party, and national legislation on ensuring their rights and guarantees for activities of trade unions, organizations of employers and their association will be held in order to eliminate them.

The Ministry of Social Policy annually monitors the violations of trade union rights carried out by the Federation of Trade Unions of Ukraine in accordance with ILO Recommendation in association with central and local executive bodies in order to take measures aimed at eliminating violations. In case of any violations,

Taking into account the results of inspections, if violations were confirmed, the relevant measures shall be undertaken, explanatory work is carried out on application of the legislation on trade union rights and guarantees for activities.

During the reference period the Ministry of Social Policy considered 22 requests received from the International Labor Organization, the Secretary-General of the International Confederation of Trade Unions.

Representativeness

Q.9 *The Committee noted that the assessment of compliance with the criteria for representativeness of the trade unions and their associations, as well as of the employers' organisations and their associations shall be carried out by the National Mediation and Conciliation Service. The Committee recalls that criteria used to determine representativeness must be reasonable, clear, predetermined, objective, prescribed by law and open to judicial review.*

Answer. As the 6th Report stated, the Procedure of assessment of compliance with the criteria for representativeness and confirmation of the representativeness of trade unions and employers' organizations parties after the approval by the parties of social dialogue at the national level was approved by the Order of the National Mediation and Conciliation Service (hereafter – NMCS) on 21 July 2011 No. 73.

The final provisions of this Procedure provide for that the confirmation of representativeness of the subjects of trade unions party and the employers' party shall be carried out once every five years.

From the date of the decision, the subject of the trade union party or of employers' party shall be considered representative and does not require additional recognition from other parties to the social dialogue.

Decision of the NMCS branch may be appealed to the Head of the NMCS, who, if there are grounds, must consider the application within 15 days and make a decision on the merits.

Subject of the trade union party or the employers' party may appeal against the decision of the Head of the NMCS to a court.

NMCS and its branch, based on results of the assessment of conformity with the criteria of representativeness and its confirmation, shall maintain a register of such organizations (associations). The register shall be published on the official website of the NMCS and in the NMCS Bulletin.

Q.10 *The Committee reiterates that "all classes of employees and workers, including public servants, subject to the exceptions mentioned below, are fully entitled to the right to organize in accordance with the Charter." Apart from the restrictions permissible in respect of police officers and members of the armed forces. A restriction must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society for the achievement of that aim. In the case under consideration here, this means that there must be a reasonable relationship of proportionality between the restrictions imposed on freedom to organize and the legitimate aim of protecting the rights and freedoms of others. The Committee accordingly wishes to know whether the right to form and join a trade union is also guaranteed to domestic workers, pensioners, the unemployed and, more generally, to any persons who exercise rights resulting from work.*

Answer. Article 36 of the Constitution of Ukraine provides that citizens have the right to take part in trade unions with the purpose of protecting their labour and socio-economic rights and interests. Trade unions are public organisations that unite citizens bound by common interests that accord with the nature of their professional activity. Trade unions are formed without prior permission on the basis of the free choice of their members. All trade unions have equal rights.

Peculiarities of legal regulation, principles of creation, rights and guarantees for activities of trade unions are determined by the Law of Ukraine No. 1045-XIV.

Pursuant to Article 6 and 7 citizens of Ukraine have the right, on the basis of free expression of will and without any permission to form trade unions, join them and withdraw from them in accordance with the procedure established by their statuses, as well as to take part in the activity of trade unions.

Members of trade unions can be persons who work in an enterprise, institution or organization, regardless of the forms of ownership and types of management, for a natural person who is using hired labour, self-employed persons, as well as persons studying at an educational institution.

The Status can provide for membership in trade union of persons engaged in creative activity, members of farms, individuals - entrepreneurs, as well as persons studying in vocational or higher educational institutions, persons who have been released from work or service in connection with retirement or who are temporarily out of work.

Q.11 *The Committee asks to provide information what measures are undertaken in order to grant the right of nationals of other Parties to the Charter to form trade unions.*

Answer. Article 6 of the Law of Ukraine No. 1045—XIV provides for that foreign citizens and stateless persons may not form trade unions, but they can be members of trade unions, if it is provided for in their statuses.

Moreover, Ukraine ratified the European Convention on the Legal Status

of Migrant Workers by the Law of Ukraine No. 755-V of 16 March 2007 with **Reservation contained in the instrument of ratification deposited on 2 July 2007 -** Ukraine recognizes the migrant workers' right to organize for the protection of their economic and social interests except political parties and trade unions.

However, nationals of other Parties to the Charter, may be founder of public organizations for the purpose of exercising and protecting rights and freedoms and satisfying public interests, in particular economic, social, cultural, environmental, and other interests.

Article 7 of the Law of Ukraine No. 4572-VI stipulates that the founders of a public organization may be citizens of Ukraine, foreigners and persons without citizenship who are staying in Ukraine on lawful grounds and have attained 18 years of age or, in the case of a youth and children's public organization, 14 years of age. A public organization is a public association the founders and members (participants) of which are natural persons.

Article 6 – The right to bargain collectively
Paragraph 1

I. General legal framework

The relevant legal framework has not changed during the reference period.

II. Measures taken to implement the legal framework
Answers to the additional questions of the European Committee of Social Rights

Joint consultation

Q.1 *The Committee notes that report indicates that employers' organisations (and their associations) and trade unions (and their associations) shall also arrange consultations on a bipartite basis. The Committee requests to be provided with such examples of bipartite consultations from practice. It asks if bipartite consultations are taking part in the private sector as well as in the public sector.*

Answer. Consultations on a bipartite basis take place between the parties to social dialogue at all levels in both the private and public sectors.

On 18 October 2016, the Prime Minister of Ukraine met with trade union activists on prices/tariffs in the housing and utilities sector.

The Government has issued a number of directives to ensure continued cooperation with sectoral trade unions and employers' organizations on sectoral issues with the purpose to find mutually agreed solutions to address them.

According to the information received from relevant ministries, the meetings are held on an ongoing basis.

During the reference period, consultations took place with representatives of trade unions on fuel and energy complex, coal sector reform and other urgent issues as well as meetings took place with representatives of budget trade unions.

Consultations on a bipartite basis were held within the framework of settlement of collective labour disputes (conflicts) at the national level.

Furthermore, collective agreements including on bipartite basis are concluded in accordance with national law. Within the framework of collective bargaining the representatives of subjects parties hold consultations regarding labour relations issues and socio-economic interests of workers and employers.

As of the end 2016, 94 sectoral agreements were concluded and operated in Ukraine. Most of these agreements were concluded on a bipartite basis, while mainly in the public sector of the economy. According to data of the State Statistic Service of Ukraine, 64158 collective agreements concluded on bipartite basis at enterprises, institutions and organisations were registered.

Article 6 – The right to bargain collectively
Paragraph 2

I. General legal framework

- Regulation of the Cabinet of Ministers of Ukraine "On Action Plan for Implementation of General Agreement on the Regulations of Basic Principles and Norms of Implementation of Socio-Economic Policy and Labour Relations in Ukraine" No.1044 of 28 December 2016

II. Measures taken to implement the legal framework
Answers to the additional questions of the European Committee of Social Rights

Negotiation procedures

Q.1 *The Committee wishes to be informed on any developments with regard to this new draft of the Labour Code.*

Answer. On 11 April 2017, the Committee of the Verkhovna Rada on Social Policy, Employment and Pension Security supported the draft Labour Code prepared for the second reading and recommended that Verkhovna Rada adopt it in the second reading and on the whole.

Q.2 *The Committee wishes to be informed on the procedures governing the possible extension of collective agreements.*

Answer. Legislation does not contain any special procedures for the extension the scope of collective agreements.

At the same time, cooperation between social dialogue parties at the national level continues with the aim of modernize the legislation on collective and contractual regulation of labor and socio-economic relations of workers and employers.

The tripartite working group established in accordance with the decision of the Presidium of the National Tripartite Social and Economic Council of 31 May 2016, has prepared a new version of the draft law on collective agreements and treaties, that, among a number of other innovations, contains provisions on the possibility of extending the provisions of the sectoral (inter-sectoral) agreement to all subjects of sector, as well as the possibility of joining other parties to a party of collective agreement/treaty.

Q.3 *The Committee invites the Government to provide examples of such collective agreements concluded within the public sector.*

Answer. The list of current sectoral (inter-sectoral) and territorial agreements

registered with the Ministry of Social Policy, together with scanned copies of their texts, are available on the official website of the Ministry of Social Policy of Ukraine at the link: https://www.msp.gov.ua/news/10205.html.

Article 6 – The right to bargain collectively
Paragraph 3

I. General legal framework

The relevant legal framework has not changed during the reference period.

II. Measures taken to implement the legal framework
Answers to the additional questions of the European Committee of Social Rights

Q.1 *The Committee asks if conciliation and arbitration procedures/machinery are provided for the public service, in particular if civil servants can make use of the conciliation and arbitration procedures described above or if other proceedings are available to them for the settlement of collective labour disputes.*

Answer. Ukrainian law does not contain any provision on the prohibition or special application of procedures/ machinery for conciliation and arbitration for civil servants.

Article 24 of the Law of Ukraine "On the Procedure for Settlement of Collective Labor Disputes (Conflicts)" states for that strikes by workers, with the exception of technical and service staff, of bodies of the state prosecutor's office, of the judiciary, of the Armed Forces of Ukraine, of bodies of state power, of security and of law and order are prohibited.

Employees who are prohibited from participating in a strike, Article 25 of the abovementioned Law provides for the right to resolve collective labor disputes in court.

In order to exercise this right, it is necessary to use the conciliation stages of solving collective labor disputes, in particular, the conciliation commission, labor arbitration and request for assistance from the National Mediation and Conciliation Service (hereafter – NMCS).

Where settlement of collective labor dispute or conflict through these conciliation procedures has not been reached, it is necessary to refer to the NMCS. The Head of the NMCS shall make a decision on the preparation of an application on the resolution of a collective labor dispute to the relevant court.

Then, NMCS must prepare an application to the court within 10 days of the date that the decision was made by the Head of the NMCS.

Article 6 – The right to bargain collectively
Paragraph 4

I. General legal framework

During the reference period the Code of Civil Protection of Ukraine No. 5403-VI of 2 October 2012 came into force (hereafter – the CCP of Ukraine). Therefore, the Law of Ukraine "On Emergency Rescue Services" was recognized as invalid.

II. Measures taken to implement the legal framework
Answers to the additional questions of the European Committee of Social Rights

Entitlement to call a collective action

Q.1 *The Committee notes from an Observation concerning Ukraine, that the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation (ILO-CEACR) requested that the Government take the necessary measures to amend Article 19 of the Law on the Procedure for Settlement of Collective Labour Disputes, which provides that a decision to call a strike has to be supported by a majority of the workers or two-thirds of the delegates of a conference. In that context, the Government indicated that the draft Labour Code would lower this requirement so as to set it at the majority of workers (delegates) present at the meeting (conference). The ILO-CEACR noted that the draft Labour Code would also provide that an employer is to be invited to the conference, which would constitute a serious impediment to the exercise of the right to strike. The Committee requests further information on the status of the draft Labour Code and in particular it wishes to receive the Government's comments on the information obtained from the abovementioned source.*

Answer. Please see answer on the status of the draft Labour Code to paragraph 2 of Article 6. Moreover, it should be noted that draft Labour Law does not contain any provisions on invitation of the employer to the conference.

Specific restrictions to the right to strike and procedural requirements

Q.2 *The Committee recalls that the restrictions on the right to strike for employees working in the emergency and rescue services, at nuclear facilities, in underground undertakings, at electric power engineering enterprises as well as for employees working in the transport sector do not comply with the conditions established by Article G of the Charter.*

Answer. Article 115 of the CCP of Ukraine stipulates that persons of ordinary and commanding staff of the civil protection service, staff of professional rescue services shall not be allowed to organize or take part in strikes. Article 4 of the CCP of Ukraine defines that civil protection is a function of the state aimed at protecting the civilian persons, territories, the environment and property from

emergency situations by preventing such situations, eliminating their consequences and providing assistance to victims in peacetime and in a special period.

For example, Article 29 of the Mining Law of Ukraine stipulates that state paramilitary emergency rescue services (formation) shall be established for emergency and urgent measures at the enterprises of coal and mining industries for saving people, putting out a fire, elimination of the consequences of explosions, the sudden emission of coal and gas, rock bursts and other work requiring using means of respiratory protection and special equipment, as well as control and supervision over the implementation by the owner (head) of the mining enterprise of preventive measures to prevent accidents on mining enterprises. This category of staff is prohibited to carry out strikes.

Article 22 of the Law of Ukraine “On Electricity Market” No. 2019-VI of 13 April 2017 stipulates that strikes at electric power plants are prohibited where they can lead to a breach of the constancy of the united power system of Ukraine.

Information provided in the 2nd Report on strike at nuclear installations remains the same. Personnel of nuclear installations and facilities designed to handle radioactive waste has no right to strike.

Restriction of the right to strike for the aforementioned categories of employees is caused by the fact that stopping them from work poses a threat to life, health, environment or prevents the prevention of natural disasters, accidents, catastrophes, epidemics and epizootics or elimination of their consequences.

In relation to the right to strike in transport, it should be noted that in accordance with Article 18 of the Law of Ukraine “On Transport”, the termination of work (strike) at transport enterprises may be in the event of non-compliance by the administration of the conditions of tariff agreements, except in cases involving transportation passengers, servicing continuously as well as when a strike poses a threat to human life and health. That is, the Article does not stipulate a ban on strikes in general, on the contrary, there is a confirmation of the right of employees to strike "in case of non-compliance by the administration of the company with the conditions of tariff agreements."

On 13 July 2017, the Verkhovna Rada of Ukraine registered the draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine concerning Guaranteeing the Realization of the Constitutional Human Right to Strike” No. 4639-d which was submitted by People's Deputies of Ukraine Y. Dubnevich, V. Korchik, I. Didenko and others. The bill proposes to amend Article 18 of the Law of Ukraine “On Transport” in order to implement the judgment of the European Court of Human Rights in the case of “Veniamin Tymoshenko and others v. Ukraine” to bring the above mentioned Law into conformity with the Constitution of Ukraine and the Law of Ukraine “On the Procedure for Resolving Collective Labor Disputes (Conflicts)”.

Q.3 *The Committee recalls that public officials enjoy the right to strike under Article 6§4 of the Charter. Therefore, prohibiting all public officials from exercising the right to strike is not in conformity with Article 6§4.*

<u>Answer.</u> The National Civil Service Agency of Ukraine is currently considering the possibility of ratification of the ILO Convention No. 151 on the Protection of the Right to Organize and the Procedure for Determining the Conditions of Work in the Civil Service.

Q.4 *As to the procedural requirements, the report reiterates that according to the Law on the Procedure for Settlement of Collective Labour Disputes, a strike should be used as a measure of last resort, after all other possibilities of settling a collective labour dispute (such as conciliation and arbitration procedures described in the Conclusion on Article 6§3) have been exhausted. The Committee has previously asked for information on any other procedural requirements that must be fulfilled before a strike takes place and referred to the case of Trofimchuk v. Ukraine in the European Court of Human Rights (Judgment of 28 October 2010). The report does not provide the requested information. Therefore, the Committee repeats its question.*

<u>Answer.</u> The Law of Ukraine "On the Procedure for Settlement of Collective Labor Disputes (Conflicts)" provides for the procedure for exercising the right to strike. Consideration of a collective labor dispute (conflict) is carried out by a conciliation commission or arbitration court depending on the issues of labor dispute. If necessary, the conciliation commission engages an independent mediator to assist it. An independent mediator is a person appointed jointly by the parties, who facilitates the establishment of interaction between the parties and conduct of negotiations and participates in the work of the conciliation commission with the aim to achieve mutually acceptable solution. The parties to a collective labor dispute (conflict), the conciliation commission and the labor arbitration must use all possibilities not prohibited by law for settlement of a collective labor dispute (conflict)

If the conciliatory bodies cannot settle the differences between the parties, the causes of the differences and the grounds for the parties positions are submitted in writing to the attention of each of the parties to the collective labor dispute (conflict). In this case, the employees or the body authorized by them or the trade union have the right to apply all methods permitted by legislation to achieve fulfilment of the demands advanced.

The Parties to a collective labor dispute (conflict), after observing the conciliation procedure provided by this Law, shall have the right to turn for assistance in settling this dispute (conflict) to the National Mediation and Conciliation Service, which shall consider all the documents and send its recommendations to the parties within ten days.

A strike may be commenced if conciliation procedures have not brought about settlement of a collective labour dispute or if an employer or a person authorized by him, the organization of employers, association of employer's organizations refuses to accept the conciliation procedure or does not fulfil the agreement reached in the course of settling the collective labour dispute.

A decision on declaring a strike at an enterprise shall be taken at the proposal of a body of a trade union or other organization of employees, authorized in accordance with Article 3 of this Law to represent the interests of hired workers, by a vote of the general assembly of the employees and shall be considered adopted if a majority of the employees or two thirds of the delegates at the conference vote in its favour.

The decision to declare a strike is made by a protocol. No one may be compelled to participate or not participate in the strike.

The body or person leading a strike must warn the employer or the representative authorised by him in writing not later than seven days, or in the event of a decision to strike at a continuous production plant not later than fifteen days, before the start of the strike.

The employer or representative authorised by him, employers' organisation, employers' association must warn at the earliest possible date the suppliers and consumers, transport organizations, as well as other establishments, institutions and organizations concerned of the employees' decision to declare a strike.

The location during a strike of participating workers shall be determined by the body or person leading the strike by agreement with the employer.

In the event of gatherings, meetings or picketing held outside the of an enterprise, the body or person leading the strike must advise the local executive authority or the body of local self-government of the event planned no later than three days in advance.

Q.5 *The Committee recalls that the requirement to notify the duration of the strike to the employer prior to strike action is contrary to the Article 6§4 of the Charter, even for essential public services. The Committee asks if the law or the practice requires that the above mentioned prior notice addressed to the employer must contain an indication of the planned duration of the strike (in the view also of paragraph 46 of the Judgment of ECtHR of 28 October 2010 in the case of Trofimchuk v. Ukraine).*

Answer. The Law does not provide requirement to notify the duration of a strike to the employer prior strike. The duration of the strike is not limited by Law.

Consequences of a strike

Q.6 *The Committee recalls that a strike should not be considered a violation of the contractual obligations of the striking employees. It should be accompanied by a prohibition of dismissal. The Committee asks if the domestic courts have dealt with cases where employees have been dismissed based on their participation in a strike and if so, what were the outcomes.*

Answer. The previous report stated that according to Article 27 of the Law of Ukraine "On the Procedure for Settlement of Collective Labor Disputes (Conflicts)" the participation of employees in a strike, except for strikes declared illegal by the court, shall not be considered a violation of labour discipline and cannot be the grounds for disciplinary action.

Article 21 – The right to information and consultation

I. General legal framework

The relevant legal framework has not changed during the reference period.

II. Measures taken to implement the legal framework
Answers to the additional questions of the European Committee of Social Rights

Q.1 *The Committee has asked for information on the situation in Ukraine and whether there is a minimum number of employees to which this provision applies. The report indicates that there is not a minimum threshold for undertakings in relation to the right to information and consultation. The Committee understands that all undertakings are considered (no matter of the number of employees) when calculating the number of employees who benefit from the right to information and consultation and asks the Government to confirm this understanding.*

Answer. The Law grants the right to information and consultation to the employees regardless of the number of employees at the enterprise.

Q.2 *The Committee asks what categories of workers (for example full -time workers, part-time workers, temporary workers, trainees) are taken into account when calculating the number of employees who enjoy the right to information and consultation.*

Answer**.** The Law grants the right to information and consultations to all categories of workers without exceptions. This issue is regulated by the Code of Labour Laws of Ukraine as well as and by the laws of Ukraine "On Information", "On Access to Public Information", "On Trade Unions, their Rights and Guarantees for their Activities", "On Social Dialogue" provisions of what were provided in the previous reports.

Q.3 *The Committee asks what proportion of the total number of private and public sector employees benefit in practice from the right of trade unions or elected representatives to receive such information and be consulted.*

Answer**.** According to the data of the State Statistics Service of Ukraine, in 2016 the average number of full-time employees was 7,868.1 people , while the distribution of their organizational and legal forms of management was as follows:
state enterprises - 3.3%;
joint-stock companies - 12,4%;
limited liability companies - 24.2%;
branches (other separate units) - 11.6%;
private enterprises - 3.5%;
public authorities - 7.9%;
bodies of local self-government - 5.7%;

state organization (institution, institution) - 9.2%;
communal organization (institution, institution) - 13.5%;
other organizational forms of management - 4,8%.

In accordance with the Law, all employees are entitled to information and consultation. The exercise of this right is ensured through the activities of their representatives, in particular trade unions, their organizations and associations.

Q.4 *The Committee has previously noted that as a general rule, trade union representatives may ask employers for any information relating to working conditions and employees' pay, work or other legitimate interests, the enterprise's economic development and the application of collective agreements. The employers are required to answer within a week in connection with working conditions, pay, employees' legitimate interests and the enterprise's economic development, and five days in connection with the application of collective agreements.*
The Committee asks how employers' obligations in this regard are put into effect, and in particular whether they are required to reply in writing. The Committee also asks if the employer has the obligation to regularly inform the employees in the absence of the prior request of the trade union representatives in this sense.

Answer. In practice, the information to be submitted to trade unions, their association shall be provided both in response to a request (within the statutory time limits) and in accordance with common arrangements (in certain fixed terms and terms without prior request).

Information shall be provided in the form according to the request. In accordance with Article 1 of the Law of Ukraine "On Information", information is any information and / or data that may be stored on material medium or displayed in electronic format.

According to Article 40 of the Law of Ukraine "On Trade Unions, their Rights and Guarantees for their Activities" members of elected bodies of trade unions, associations of trade unions, as well as authorized representatives of these bodies have the right, inter alia:

to demand and receive from the employer, another official the relevant documents, information and explanations concerning conditions of work, implementation of collective agreements and agreements, observance of labor legislation and social and economic rights of employees;

to address directly to the employer and officials on issues of trade union's interests orally or in writing.

The administrators of public information, referred to in Article 13 of the Law of Ukraine "On Access to Public Information" (listed in the previous report), are obliged to provide information upon request submitted orally, written or other form (by mail, fax, telephone, e-mail) as chosen by the requester.

Exchange of information and consultations are defined as forms of social dialogue in accordance with the Law of Ukraine "On Social Dialogue in Ukraine". Information about the procedure for exchange of information and consultation was

provided in the previous report.

Collective agreements and treaties may contain certain arrangements between their parties on the procedure and terms for providing information. Such agreements cannot violate the rules of law. Regular communication without prior request for information takes place in the course of implementation of collective agreements and treaties.

In accordance with Article 15 of the Law of Ukraine "On Collective Agreements and Treaties", in the case of exercising control over the implementation of a collective agreement, the parties are obliged to provide all necessary information available for this purpose. Signatory parties to the collective agreement, treaty shall present report on their implementation within the terms provided by the collective agreement on an annual basis.

In particular, the parties to the Collective Agreement which was signed on 23 August 2017 at the national level (General Agreement on the Regulation of Basic Principles and Standards for the Implementation of Socio-Economic Policy and Labor Relations in Ukraine) agreed to exchange of information, documents and materials, statistical data on issues defined by this Agreement free of charge in order to fulfill the obligations assumed and to exercise mutual control.

Action plan for the implementation of the General Agreement which was approved by the Decree of the Cabinet of Ministers of Ukraine No. 1044-r of 28 December 2016 provides for preparation by the executive authorities of information on the progress of its implementation twice a year (as of January 1 and July 1). The Ministry of Social Policy shall submit summary of information to the Cabinet Ministers of Ukraine for further informing other Parties, including the trade union. There are similar arrangements in collective agreements and treaties at all levels of social dialogue.

Remedies

Q.5 *The Committee recalls that the right to information and consultation must be effectively guaranteed. In particular, workers must have legal remedies when these rights are not respected. There must also be sanctions for employers which fail to fulfil their obligations under this Article.*
The Committee requests that the next report contain detailed information on the administrative and/or judicial procedures available to employees, or their representatives, who consider that their right to information and consultation within the undertaking has not been respected. In this framework, the Committee wishes to be informed whether the employees, or their representatives, are entitled to damages. The next report should also contain updated information on decisions taken by competent judicial bodies with respect to the implementation of the right to information and consultation.

Answer. The right to information and consultation is provided by the Law of Ukraine. Taking into account the above mentioned, the failure to comply with the relevant legislation establishes liability, which implies the application of certain sanctions.

Please see answer to question 6 to this Article.

The relevant rights of trade unions, which are representatives of employees, are established by the Law of Ukraine "On Trade Unions, their Rights and Guarantees of Activities".

Trade unions, their organizations and associations conduct collective bargaining, conclude collective agreements, general, sectoral (intersectoral), territorial agreements on behalf of employees in the manner prescribed by law.

Trade unions, their associations exercise control over the implementation of collective agreements, treaties. In the case of violation by the employers, their associations, executive authorities, local self-government bodies the terms of a collective agreement, trade union's agreements, their associations are entitled to send them a submission on the elimination of these violations, which is considered in a weekly period. In case of refusal to eliminate these violations or failure to reach an agreement within the specified term, trade unions have the right to appeal against unlawful actions or inactivity of officials to a local court (Article 20).

Trade unions exercise public control over protection of wages, labor legislation and labour protection (safety and health), creation of safe and healthy working conditions, proper working and sanitary conditions, provision of workers with overalls, special footwear and other means of individual and collective protection. In the event of a threat to the life or health of workers, trade unions have the right to demand from the employer the immediate cessation of work at workplaces, production sites, workshops and other structural subdivisions or in the enterprise as a whole for the period necessary to eliminate the threat to the life or health of workers.

Trade unions have the right to carry out an independent examination of working conditions, as well as of industrial facilities, which are being designed, built or operated, in accordance with legislation on labor protection, to take part in the investigation of the causes of accidents and occupational diseases at work and to make their conclusions about them.

In order to carry out these functions, trade unions, their associations may create legal aid services and appropriate inspections, commissions, approve provisions about them. The authorized representatives of trade unions have the right to submit to employers, executive authorities and local self-government bodies a submission on the elimination of violations of labor legislation, which are mandatory for consideration, and receive within one month the reasoned answers.

In case of lack of reasoned answer within this period, the actions or inactivity of officials may be appealed to a local court (Article 21).

Employers, their associations are obliged, within a week to provide at the request of trade unions, their associations the information available at their disposal on working conditions and protection of wages of employees as well as on socio-economic development of enterprises, institutions, organizations and on implementation of collective agreements ant treaties.

In case of delays in payroll payments, the employer must at the request of the elected trade union bodies, give permission to obtain information from the banking institutions on the availability of funds in the accounts of the enterprise, institution, organization or to obtain such information in banking institutions and to provide it

to the trade union body. When employer refuses to provide such information or permission to receive information, his/ actions or inaction may be appealed to the local court (Article 45).

Q.6 *The previous report indicated that articles 41, 412 and 413 of the Code on Administrative Offences envisage the responsibility for breach of labour legislation and occupational safety legislation, breach or non-fulfillment of collective agreements, failure to provide information for collective bargaining and monitoring the implementation of collective agreements. The Committee requests more detailed and specific information on these penalties, in particular on whether they can be imposed on employers who fail to fulfill their obligation regarding the implementation of the right to information and consultation within the undertaking.*
The Committee requests that the next report contain information on the administrative body responsible for monitoring the respect of the right of workers to be informed and consulted within the undertaking. In particular, it wishes to know what are the powers and operational means of this body, as well as receive updated information on its decisions.

Answer. Article 41 of the Code of Ukraine on Administrative Offenses (hereinafter – CuoAO of Ukraine) provides for sanctions for violating the requirements of labor legislation and labor protection.

Violations of the established terms of payment of pensions, scholarships, wages, their payment in full, the term for providing by officials of enterprises, institutions, organizations irrespective of the form of ownership and natural persons - entrepreneurs to employees, including the former employees, at their request, documents regarding their work activity at this enterprise, institution, organization or natural persons - entrepreneurs, necessary for assignment of pension (work experience, wages, etc.), defined by the Law of Ukraine "On Appeals of Citizens", or providing these documents containing false information, violation of the term of the certification of workplaces on working conditions and the procedure for its conducting, as well as other violations of labor legislation –

entail the imposition of fine on officials of enterprises, institutions and organizations irrespective of the form of ownership and natural persons - entrepreneurs from thirty to one hundred tax-free minimum incomes of citizens.

Repeated violation during the year stipulated by part one of this article for which the person has already been subject to administrative punishment or the same acts committed against a minor, a pregnant woman, a single father, mother or a person who replaces them and carries a child under the age of 14 or disabled child, -

entails the imposition of fine on officials of enterprises, institutions and organizations irrespective of the form of ownership and natural persons - entrepreneurs from one hundred to three hundred non-taxable minimum incomes of citizens.

The actual admission of an employee to work without an employment agreement (contract), admission to work of a foreigner or stateless person and persons in respect of whom a decision was made to issue documents for resolving the issue of granting refugee status, under the terms of an employment agreement

(contract) without permission to use work of a foreigner or stateless person -

entails imposing a fine on officials of enterprises, institutions and organizations irrespective of the form of ownership, natural persons - entrepreneurs who use hired labor, from five hundred to one thousand non-taxable minimum incomes of citizens.

Repeated violation during the year stipulated by part three of this article for which a person has already been subject to administrative penalty –

entails the imposition of a fine on officials of enterprises, institutions and organizations irrespective of the form of ownership, natural persons - entrepreneurs who use hired labor, from one thousand to two thousand non-taxable minimum incomes of citizens.

Violation of the requirements of legislative and other normative acts on labor protection, in addition to the violation, stipulated by part six of this article, -

entails imposing a fine on employees from four to ten tax-free minimum incomes of citizens and on officials of enterprises, institutions, organizations irrespective of the forms of ownership and natural persons – entrepreneurs, from twenty to forty non-taxable minimum incomes of citizens.

Violation of the established procedure for notification (providing of information) to the central executive authority, which implements state policy in the field of labor protection, on an industrial accident –

entails a fine imposed on officials of enterprises, institutions, organizations irrespective of the form of ownership, natural individuals - entrepreneurs, who use hired labor, and natural persons who do not have entrepreneurial status and use hired labor, from twenty to fifty non-taxable minimum incomes of citizens.

Violation of statutory guarantees and benefits to employees involved in the fulfillment of their obligations under the laws of Ukraine "On Military Duty and Military Service", "On Alternative (Non-Military) Service", "On Mobilization Training and Mobilization" –

entails a fine imposed on officials of enterprises, institutions and organizations irrespective of the form of ownership and natural persons - entrepreneurs who use hired labor, from fifty to one hundred tax-free minimum incomes of citizens.

Article 41-2 of the CuoAO of Ukraine establishes liability in case of violation or non-execution of a collective agreement, treaty.

Violations or non-fulfillment of obligations regarding a collective agreement, treaty by persons representing owners or authorized by them bodies or trade unions or other authorized labor collective bodies, or representatives of labor collectives entails the imposition of a fine of fifty to one hundred non-taxable minimum incomes of citizens.

Article 41-3 of the CUoAO of Ukraine provides for sanctions in the case of failure to provide information for collective bargaining and control over the implementation of collective agreements and agreements.

Failure to submit by persons representing the owners or their authorized bodies or trade unions or other authorized labor collectives, representatives of labor collectives of information necessary for collective bargaining and control over the implementation of collective agreement, treaty imposes a fine from one to five non-

taxable minimum incomes of citizens.

In accordance with Article 221 of the CuoAO of Ukraine, cases concerning relevant administrative offenses are heard by district, district city or city court judges.

In accordance with Article 255 of the CUoAO in cases on these administrative offenses, protocols of violations may be draw up by the authorized officials of the central executive authority, who implement state policy in the field of supervision over observance of labor legislation.

III. Statistics

	Number of detected violations			
	2013	**2014**	**2015**	**2016**
Article 41 of the CUoAO	7610	11984	1139	9863
Article 41-2 of the CUoAO	86	49	3	37
Article 41-3 of the CUoAO	61	34	36	26

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

I. General legal framework

The relevant legal framework has not changed during the reference period.

II. Measures taken to implement the legal framework
Answers to the additional questions of the European Committee of Social Rights

Working conditions, work organisation and working environment
Organisation of social and socio-cultural services and facilities

Q.1 *The Committee asks how the employees take part in the determination and improvement of working conditions and working environment if there are no trade union representatives or elected representatives whatsoever in the undertaking*

Q.2 *The Committee asked how employees are involved in the organisation of social and socio-cultural services and, more specifically, how decisions are taken and who should have access to such facilities and services.*

Answer. In accordance with the eighth part of Article 153 of the Labor Laws Code of Ukraine (hereinafter - the LLC of Ukraine), labor collectives discuss and approve comprehensive plans for improving conditions, labor protection and sanitary measures and control the implementation of these plans. Chapter XVI-A of the LLC of Ukraine defines the legal basis for the existence of a labor collective.

According to Article 252-1 of the LLC of Ukraine, the labor collective of an enterprise forms all citizens who by their labor take part in its activity on the basis of an employment contract (contract, agreement), as well as other forms regulating the labor relations of an employee with an enterprise.

According to Article 245 of the LLC of Ukraine, employees have the right to participate in the management of enterprises, institutions, organizations through general meetings (conferences), labor councils, trade unions operating in labor collectives, other bodies authorized by the labor collective for representation, make proposals for improving the work of the enterprise, institution, organization, as well as issues of socio-cultural and consumer services.

The owner or an authorized body is obliged to create conditions that would ensure participation of employees in the management of enterprises, institutions and organizations.

The servants of enterprises, institutions, organizations are obliged to consider the critical remarks and proposals of employees within the established time period and inform them about the measures taken.

In accordance with Article 69 “On Social Activities of the Enterprise” of the

Commercial Code of Ukraine the issue of improving working conditions, life and health, guarantees of compulsory health insurance of employees of the enterprise and their families, as well as other issues of social development are solved by a labor collective with the participation of the owner or the authorized person the body in accordance with the law, the constituent documents of the enterprise, the collective agreement.

In accordance with Article 2 of the Law of Ukraine "On Collective Agreements and Collective Agreements" a collective agreement is concluded at enterprises, institutions and organizations (hereinafter - enterprises) irrespective of the forms of ownership and management, which use hired labor and have the right of a legal entity.

Also, Article 65 of the Commercial Code of Ukraine provides that decisions on socio-economic issues related to the activities of an enterprise are made and accepted by its governing bodies with the participation of the labor collective and its authorized bodies.

Part one of Article 16 of the Law of Ukraine "On Occupational Safety" stipulates that at the enterprise in order to ensure proportional participation of employees in solving any issues of safety, occupational health and a working environment may be created by the Commission on Occupational Safety, by the decision of the labor collective.

According to the first part of Article 25 of the Law of Ukraine "On Occupational Safety", employees can be encouraged for active participation and initiative in the implementation of measures to improve the level of safety and improve working conditions. Types of incentives are defined by a collective agreement, an agreement.

Q.3 *The Committee asks more specifically whether employees or employees' representatives may challenge any violation of the workers' right to take part in the determination and improvement of working conditions and working environment before competent courts or administrative bodies (for example the Labour Inspectorate), what are the competent courts or administrative bodies in this respect, which is the procedure and what are the remedies available.*

Answer. Violations by the owner or his authorized body of the right of employees to participate in the management of enterprises, institutions, organizations through general meetings (conferences), councils of labor collectives, trade unions operating in labor collectives, other bodies authorized by the labor collective for representation may be grounds for application of an employee to court.

According to part two of Article 124 of the Constitution of Ukraine, the jurisdiction of courts extends to any legal dispute and any criminal charge.

Part one of Article 129-1 of the Constitution of Ukraine stipulates that the court decides in the name of Ukraine. A judicial decision has a binding force.

II. Statistics
Number of inspections

2013	2014	2015	2016
8468	4831	1232	5802

Article 26 – The right to dignity at work
Paragraph 1

I. General legal framework

The relevant legal framework has not changed during the reference period.

II. Measures taken to implement the legal framework
Answers to the additional questions of the European Committee of Social Rights

Prevention

***Q.1** The Committee wishes to be kept informed on the preventive measures implemented with the aim of raising awareness of the problem of sexual harassment*

Answer. Within the framework of the implementation of the EU / ILO joint project "Equality of Women and Men in the World of Work", the publication-manual for employers "Adherence to the principle of equal treatment and non-discrimination in the work place in the public and private sectors of Ukraine" was developed and distributed. The manual, in particular, contains the section on "Sexual harassment" and covers a range of issues related to employer's policies and norms of conduct, as well as recommendations on how to act and respond to possible complaints, etc.

Liability of employers and remedies

According to Article 24 of the Law of Ukraine “On Ensuring Equal Rights and Opportunities of Women and Men” persons guilty of violating the requirements of legislation on ensuring equal rights and opportunities of women and men shall bear civil, administrative and criminal liability according to the law.

According to the information provided by the Secretariat of the Ukrainian Parliament Commissioner for Human Rights no appeals concerning sexual harassment in accordance with Article 22 of the Law of Ukraine “On Ensuring Equal Rights and Opportunities of Women and Men” were filed during the reference period.

Burden of proof

***Q. 2** The Committee asks to provide information on the rules applying to the burden of proof in cases concerning sexual harassment under civil, administrative and/or labour law.*

Answer. According to Article 77 of the Code of Administrative Procedure of Ukraine No. 2747-IV of 6 July 2005 in administrative cases concerning the unlawfulness of decisions, actions or inactions of the authority the burden of proof in regard to the legality of their actions or inactions is imposed on the respondent.

The court may not claim evidence from a claimant in administrative cases of the unlawfulness of decisions, actions or inactivity of the subject of authority, except evidence to support the circumstances in which, in the opinion of the claimant, there has been a violation of his/her rights, freedoms or interests. If a party to the case, without good cause does not provide evidence upon the request of the court in order to confirm the circumstances to which it refers, the court shall decide the case based on available evidence.

According to Article 81 of the Civil Procedure Code of Ukraine No. 1618-IV of 18 March 2004 each party must prove the circumstances which she refers to as the ground of their claims and objections, except as prescribed in this Code. In cases of discrimination, a claimant shall provide factual evidence that discrimination has taken place. In the case of the indication of such data, proof of their absence is imposed on respondent.

Redress

Q.3 *The Committee asks for examples of case law and awards of damages under civil, administrative or labour law in cases of sexual harassment in the workplaces.*

Answer. Article 15 of the Law of Ukraine "On the Prevention and Combating of Discrimination in Ukraine" provides for that the person has the right to compensation for material damage and moral damage caused to him\her as a result of discrimination. The procedure for compensation for material damage and moral damage is determined by the Civil Code of Ukraine and other laws. Article 16 stipulates that persons guilty of violation of the requirements of the law on preventing and combating discrimination shall bear civil, administrative and criminal responsibility.

No examples of case law are available about sexual harassment in the workplace resolved by a court.

Article 26 – The right to dignity at work
Paragraph 2

I. General legal framework

The relevant legal framework has not changed during the reference period.

In the context of paragraph 2 of Article 26 of the Charter it should be noted that the Law of Ukraine "On Principals of Prevention and Combating of Discrimination in Ukraine" defines that harassment is undesired for an individual or a group of persons behaviour, the purpose or consequence of which is the humiliation of their human dignity because of specific features or creation for such person or group of persons of tense, hostile, abusive or humiliating environment.

II. Measures taken to implement the legal framework
Answers to the additional questions of the European Committee of Social Rights

Prevention

It should be noted that the enterprises and institutions in public and private sectors have the rules to apply corporate Codes of Ethics, which, among other things, contain provisions on the threat prevention, sexual harassment, persecution or any other harassment during the performance of the functional duties by an employee.

Liability of employers and remedies

Please see answer to the question under Article 26 paragraph 1.

Burden of proof

Please see answer to the question under Article 26 paragraph 1.

Redress

Please see answer to the question under Article 26 paragraph 1.

No examples of case law are available about moral (psychological) harassment in the workplace resolved by a court.

Article 28 – The right of workers' representative to protection in the undertaking and facilities to be accorded to them

I. General legal framework

According to the Law of Ukraine "On Social Dialogue in Ukraine" No. 2862-VI of 23 December 2010 the representatives (representative) of workers who are freely elected for conducting collective bargaining are subjects of the party of workers involved in social dialogue at the local level, in particular, that carries out collective bargaining on the conclusion of collective agreements, in the absence of primary trade union organizations.

According to Article 12 of the Labour Laws Code of Labour of Ukraine (hereafter –LLC of Ukraine), a collective agreement shall be entered into between the owner or authorized by him/her body (person), on the one hand, and the primary trade union organization acting in accordance with its statutes, and in the absence thereof, by representatives freely elected at general meetings of employees or their authorized bodies, on the other hand.

II. Measures taken to implement the legal framework
Answers to the additional questions of the European Committee of Social Rights

Ukraine has ratified the ILO Convention No. 135 Convention concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking.

The national legislation recognizes that workers' representatives are trade unions.

According to Article 13 of the Law of Ukraine "On Trade Unions, their Rights and Guarantees for their Activity" the state recognizes trade unions as authorized representatives of workers and defenders of their labour, social and economic rights and interests, works jointly with trade unions in their implementation, promotes trade unions in establishing business partnerships with employers and their associations.

Article 28 of the Law of Ukraine "On Organization of Employers, their Associations, Rights and Guarantees for their Activities" stipulates that the organizations of employers, their associations shall recognize trade unions, their organizations, association as authorized representatives of workers and as defenders of their labour rights, social and economic rights and interests as well as promote their activities.

Guarantees for employees of enterprises, institutions, organizations elected to trade union bodies, including protection of the right not to be dismissed provided for in Article 252 of the LLC of Ukraine and Article 41 of the Law of Ukraine "On Trade Unions, their Rights and Guarantees for their Activity".

In relation to employers, trade unions represent the interests of employees in collective bargaining.

Trade unions conduct collective bargaining, conclude collective agreements on behalf of employees in accordance with the procedure established by law. In issues of collective interests of workers, trade unions represent and protect the interests of employees irrespective of their membership in trade unions (Articles 20, 19 of the Law of Ukraine "On Trade Unions, their Rights and Guarantees for their Activity”).

The Law of Ukraine “On Collective Agreements and Treaties” provide for that collective agreement shall be entered into between employer on the one hand and one or more trade unions, and in the absence of such bodies – representatives of employee elected and authorized by labour collectives on the other.

In accordance with Article 12 of the Law of Ukraine “On Collective Agreements and Treaties”, employees' representatives are provided with guarantees and compensations for the period of collective bargaining. Namely, those who participate in the collective bargaining as representatives of the parties, as well as specialists invited to participate in the work of commissions, for the period of negotiations and preparation of the draft shall be exempted from the main work with the preservation of average earnings and the inclusion of this time to work experience. All costs associated with participation in negotiations and preparation of the draft shall be compensated in the manner prescribed by labor legislation, collective agreement, treaty.

The Law of Ukraine “On the Procedure for Settlement of Collective Labor Disputes (Conflicts)” provides guarantees to members of conciliation commissions and labor arbitrage (as bodies consisting of representatives of the parties to the dispute, in particular the parties of employees). Article 14 of this Law provides that members of conciliation commissions and labor arbitration for the time of work in conciliation bodies established in accordance with this Law shall be guaranteed the preservation of the place of work (position) and average earnings, as well as the guarantees provided for in the LLC of Ukraine for elected trade union workers, members of the councils (boards) of enterprises and councils of labor collectives.

Article 119 of the LLC of Ukraine stipulates that at the time of fulfillment of public or civil duties, if according to current legislation of Ukraine these duties may be carried out during working hours, employees are guaranteed the preservation of the place of work (position) and average earnings.

Due to the fact that the trade unions are recognized as representatives of employees, the law provides for guarantees, including the right not to be dismissed, for workers elected to trade union bodies.

As regards the protection against the dismissal of freely elected representatives for collective bargaining, they shall be covered by general rules laid down in the LLC of Ukraine.

It should also be noted that there is no information on the number of collective agreements entered into by employers with freely elected representatives of employees (not trade unions) available. There were no complaints received.

Facilities granted to workers' representatives

Guarantees for the activities of trade unions, as well as guarantees for employees of enterprises, institutions or organizations elected to trade union bodies are stipulated by the legislation.

In particular, Articles 41, 42 of the Law of Ukraine "On Trade Unions, Their Rights and Guarantees for their Activities" stipulate that members of elective trade union bodies not exempted from their professional duties shall be provided, under the conditions provided for in a collective agreement or treaty, time out of duty with the preservation of average wages to take part in consultations and negotiations, fulfillment of other public duties in the interests of the labor collective, as well as during participation in the activity of elected trade union bodies, but not less than two hours per week.

For the period of trade union training, employees elected to trade union bodies of enterprises, institutions, organizations, are provided with additional leave of up to 6 calendar days with the preservation of the average wage at the expense of the employer.

The employer shall create appropriate conditions for trade union activity operating in the enterprise, institution or organization and shall make available to elected trade union body the premises with all necessary equipment, communication, heating, lighting, cleaning, transport, security in accordance with collective agreement (treaty).

Article 18 of the Law of Ukraine "On Collective Agreements and Treaties" provides for liability for violation and non-fulfillment of the collective agreement (treaty).

When a complaint concerning violation of legislation is submitted, the Ministry of Social Policy shall take measures for their consideration, namely it entrusts the State Labor Inspectorate to investigate they in cooperation with trade union and, if confirmed, to take relevant measures.

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

I. General legal framework

- Law of Ukraine "On Employment of the Population" No. 5067-VI of 5 July 2012
- Decree of the Cabinet of Ministers of Ukraine "On Procedure for the Establishment of Special Commissions to Take Measures to Prevent a Sharp Increase of Unemployment during of the Collective Redundancy" No. 305 of 2 June 2016

According to Article 48 "Collective redundancy effected by an employer" of the Law of Ukraine "On Employment of Population" which came into force on 1 January 2013 (hereafter – Law of Ukraine No. 5067-VI), a collective redundancy effected by the employer (except liquidation of the legal entity) is a single dismissal action or dismissal

1) within one month of 10 or more employees in the enterprise, institution or organization employing more than 20 and less than 100 workers;
- of 10% or more employees in the enterprise, institution or organization employing at least 101 but less than 300 workers.

2) within a 3-month period of 20% or more employees in the enterprise, institution or organization regardless of the total number of employees.

2. Indicators of collective redundancy, measures to prevent it and minimize the negative consequences shall be determined by collective agreements or treaties concluded at national, sectoral and regional levels.

3. Developing a set of measures to provide employment of employees to be dismissed shall be carry out by the relevant executive authorities and local self-government with participation of parties of social dialogue.

4. When collective redundancy caused a sharp increase in unemployment in the region or in the relevant territory by 3 or more percentage points during the reporting period, the situation in the labor market shall be recognized as a crisis.

In order to take measures aimed at preventing a sharp increase in unemployment during collective redundancy, special commissions may be established in accordance with the procedure prescribed by the Cabinet of Ministers of Ukraine.

The Procedure for the establishment of special commissions to take measures to prevent a sharp increase of unemployment in the case of collective redundancy was approved by the Decree of Cabinet of Ministers of Ukraine No. 305

of 2 June 2016.

The main tasks of the commission are as follows:

- to develop the appropriate set of measures for the enterprise, which provides for collective redundancy aimed at reducing the number of employees to be dismissed;
- to develop proposals for amendments to the territorial and local employment programmes.

The commission has the right, inter alia, in accordance with the procedure established by law to receive from the central and local authorities, enterprises, institutions and organizations all information necessary for carrying out the tasks assigned to it.

The commission includes, in particular, representatives from relevant local authorities, territorial bodies of the State Employment Service, as well as territorial bodies of the Pension Fund of Ukraine and the State Labor Service. Moreover, the commission may include representatives of employers' organizations and their associations, trade unions and their associations, public organizations, enterprises, institutions and organizations regardless of the form of ownership, type of activity and management (by consent).

II. Measures taken to implement the legal framework Answers to the additional questions of the European Committee of Social Rights

Prior information and consultation

Q.1 The Committee asks to indicate whether the domestic law the right to information and consultation, including provision of relevant documents before and during the consultations. It also asks whether employers cooperate with public authorities responsible for the policy counteracting unemployment.

Answer. In accordance with Article 50 of Section IX "Social Dialogue in the Labor Market" of the Law of Ukraine No. 5067-VI, employers are required, inter alia:

- to take measures to prevent collective redundancy including through consultations with trade unions with the aim of developing appropriate measures aimed at mitigating their consequences and reducing of the number of employees to be dismissed;
- to submit information about the planned collective redundancy due to changes in the production organisation and labor, including liquidation, reorganization and restructuring of enterprises, institutions, organizations, reduction of the number or staff of employees of the enterprise, institution, organization irrespective of the form of ownership, type of business and management two months before redundancies. The information shall be submitted on time and in full to territorial bodies of central executive authority responsible for the implementation of the employment and labour migration policy in accordance with the procedure approved by this central executive authority in agreement with central executive

authority responsible for collection and dissemination of statistics;

- to hold preliminary consultations with the primary trade union organization with which a collective agreement has been concluded with the involvement of workers from other employers, in particular, workers of the business entities providing services in mediation in employment.

According to Article 22 of the Law of Ukraine “On Trade Unions, Their Rights and Guarantees for their Activities” in the case when an employer foreseen to dismiss employees due to economic, technological, structural, other similar reasons or due to liquidation, reorganization, changes of ownership of enterprises, institution, organisation, the employer is obligated three months before the planned dismissal to submit to the primary trade union organisations information about these measures including indication of reasons for planned dismissal, number and categories of employees to be dismissed, date of such dismissals. The employer is required to hold consultation with trade unions on measures to be taken to avoid dismissal or to minimize the number of employees or to mitigate negative consequences of dismissal.

According to Article 22 of the Law of Ukraine “On Employers’ Organizations, their Associations, Rights and Guarantees for their Activities” employers’ organisations and their associations, in accordance with the procedure established by law, take part in forming and implementation of state policy on employment, in particular they take part in joint consultations carried out by the relevant state executive authorities as well as local authorities on development of state and regional employment programmes.

It should be noted that draft of legal acts concerning forming and implementation of state policy in sphere of social and economic issues as well as labour relations shall be submitted to the Joint representative body of representative All-Ukrainian associations of trade union at national level and to the Joint representative body of employers party at national level for consideration according to General Agreement and Regulation of the Cabinet of Minister of Ukraine.

The explanatory note to the draft act includes paragraph on expected results of implementation as well as it should be indicated the existence or absence of influence on the labor market.

Preventive measures and sanctions

Q.1 The Committee asks what sanctions exist if the employer fails to notify the workers’ representatives about the planned redundancies. It also asks what preventive measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers’ representatives has not been fulfilled.

<u>Answer</u>. According to Article 27 of the Law of Ukraine “On Information” No. 2657-XIII of 2 October 1992 infringement of law relating to information shall entail disciplinary, civil, and administrative liabilities, as well as criminal prosecution in keeping with the laws of Ukraine

According to Article 46 of the Law of Ukraine "On Trade Unions, their Rights and Guarantees of Activity", officials and other persons who are guilty of violating the legislation on trade unions which, by their actions or inaction, impede the lawful activity of trade unions, their associations, carry disciplinary, administrative or criminal responsibility in accordance with the laws.

According to paragraph 15 of the Resolution of the Plenum of the Supreme Court of Ukraine dated November 6, 1992 "On the practice of consideration by the courts of labor disputes" the termination of an employment contract on the initiative of the owner or an authorized body of a person is allowed only with the prior consent of the trade union body.

Establishing that the dismissal of an employee was carried out by the owner or an authorized body without reference to the trade union body, the court suspends the proceedings, requests consent of the trade union body and, after obtaining it or refusal of the trade union body to give consent to the dismissal of the employee, considers the dispute substantively. The refusal of the trade union body in agreement with the release is the reason for the employee to resume work.

Moreover, the lack of timely and appropriate information and consultation with the trade union body about planned release can be a reason for the refusal of the trade union body in the consent to release the employee.