



European  
Social  
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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

7 December 2021

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

**UKRAINE**

*Document prepared by the Secretariat*

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## I. SUMMARY

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions - the Committee of Ministers in December 2002 decided that "states having ratified the revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned" (Decision of the Committee of Ministers of 11 December 2002).

Following this decision, the European Committee of Social Rights examines - in a meeting or by written procedure - the actual legal situation and the situation in practice in the countries concerned from the point of view of the degree of conformity of the situation with non-accepted provisions. This review is done for the first time five years after the ratification of the revised European Social Charter, and every five years thereafter, to assess the situation on an ongoing basis and to encourage States to accept new provisions. Indeed, experience has shown that States tend to overlook that the selective acceptance of the provisions of the Charter should be only a temporary phenomenon and not a rule.

Ukraine ratified the Charter on 21 December 2006. It accepted 76 of its 98 paragraphs. The following provisions are not yet accepted: Articles 2§3, 4§1, 12§§1 and 2, 13§§1-4, 19§§1-12, 25 and 31§3.

Ukraine has not accepted the system of collective complaints.

The procedure provided for by Article 22 of the 1961 Charter was applied for the first and second time in the context of a meeting between the members of the European Committee of Social Rights and the Secretariat and representatives of the Government of Ukraine in Kyiv on 29 - 30 September 2011 and 23 March 2016 respectively. The Committee considered that there were no significant obstacles in law and in practice to the acceptance by Ukraine of the following provisions of the Charter: Articles 2§3, 12§§2 and 3, 13§§2 and 3, 19§§1-3, 19§§5-10 and 19§12.

Following the second meeting, Ukraine accepted two additional provisions: Article 12§§3 and 4.

In order to apply the procedure for the third time in 2021, the Ukrainian authorities were invited to provide written information on the non-accepted provisions of the Charter.

Having examined the written information received from the Government of Ukraine on 19 May 2021, the European Committee of Social Rights considers that there are no major obstacles to the acceptance by Ukraine of Article 2§3 of the Charter.

The Committee considers that the current legal situation and practice in Ukraine are an obstacle to the acceptance of Articles 4§1, 12§1, 13§1, 19§4, 19§11 and 25 of the Charter. It encourages the Ukrainian authorities to continue their work to find ways of improving the situation in order to meet the requirements of these provisions.

The Committee needs information, or more detailed information, to reach a firm opinion on the level of conformity of the situation with the requirements of the Charter as regards Articles 12§2, 13§2, 13§3, 13§4, 19§1, 19§2, 19§3, 19§5, 19§6, 19§7, 19§8, 19§9, 19§10, 19§12 and 31§3. It therefore invites the Ukrainian authorities to take into account its conclusions and decisions when drafting the next report on the non-accepted provisions, so that the information provided is as complete as possible.

The Committee invites Ukraine to consider accepting additional provisions of the Charter as soon as possible so as to consolidate the paramount role of the Charter in guaranteeing and promoting social rights.

The Committee also encourages Ukraine to consider ratifying the Additional Protocol providing for a system of collective complaints. In this respect, the Committee refers to the Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter (Appendix 2).

The European Committee of Social Rights remains at the disposal of the authorities of Ukraine for continued dialogue on the non-accepted provisions.

The next examination of the provisions not accepted by Ukraine will take place in 2026.

## **II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS**

### ***Article 2 § 3 – The right to just conditions of work: Annual holiday with pay***

#### **Situation in Ukraine**

Article 45 of the Ukrainian Constitution states that every worker has the right to rest. This right is ensured by the granting of two days' weekly rest, as well as paid annual leave, a reduced working day for certain professions and industries, and a reduction in working hours at night.

The Law of Ukraine "On Leave" (No. 505/96-VR of 15 November 1996, as amended) establishes public guarantees of the right to leave, defines the conditions, duration and procedure for granting it to workers in order to restore their working capacity and improve their health, as well as to enable them to bring up their children, satisfy their own vital needs and interests and achieve full personal development. In accordance with Article 6 of this Law, the basic annual leave granted to workers must be at least 24 calendar days per working year, starting from the date of conclusion of the employment contract.

#### **Opinion of the Committee**

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

Annual leave may not be replaced by financial compensation and employees must not have the option of giving up their annual leave<sup>1</sup>.

At least two weeks uninterrupted annual holidays must be used during the year the holidays were due. Annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement<sup>2</sup>.

Workers who suffer from illness or injury during their annual leave are entitled to take the days lost at another time so that they receive the four week annual holiday provided for under this paragraph, possibly under the condition of producing a medical certificate<sup>3</sup>.

In view of these requirements, the Committee reiterates its opinion that there are no major obstacles for Ukraine to accept Article 2§3 of the Charter.

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<sup>1</sup> Conclusions I (1969), Ireland

<sup>2</sup> Conclusions 2007, Statement of interpretation on Article 2§3

<sup>3</sup> Conclusions XII-2 (1992), Statement of Interpretation on Article 2§3

## **Article 4 § 1 – Right to a fair remuneration: Decent remuneration**

### **Situation in Ukraine**

The right of workers to remuneration is guaranteed by the Constitution and regulated by the Labour Code of Ukraine, the Law of Ukraine "On Remuneration" (No. 144/95-VR of 20 April 1995, as amended) and other laws and regulations.

The Ukrainian authorities reaffirm the legal framework as described in the first report on the non-accepted provisions.

As regards the actual level of the minimum wage, the Ukrainian authorities have not provided any updated information.

### **Opinion of the Committee**

Article 4§1 guarantees the right to a fair remuneration such as to ensure a decent standard of living. It applies to all workers, including to civil servants and contractual staff in the state, regional and local public sectors<sup>4</sup>, to branches or jobs not covered by collective agreement, to atypical jobs (assisted employment<sup>5</sup>) and to special regimes or statuses (minimum wage for migrant workers)<sup>6</sup>.

The concept of “decent standard of living” goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities<sup>7</sup>.

To be considered fair within the meaning of Article 4§1, the minimum wage paid in the labour market must not fall below 60% of the net average national wage. The assessment is based on net amounts, i.e. after deduction of taxes and social security contributions. Where net figures are difficult to establish, it is for the State Party concerned to provide estimates of this amount<sup>8</sup>.

If the lowest wage in a given State Party does not satisfy the 60% threshold, but does not fall very far below (in practice between 50% and 60%), the Government in question will be invited to provide detailed evidence that the lowest wage is sufficient to give the worker a decent living standard even if it is below the established threshold. In particular, consideration will be given to the costs of having health care, education, transport, etc.

In view of the information provided by the Ukrainian authorities, the Committee reiterates its opinion that the current situation constitutes an obstacle to the acceptance of Article 4§1 of the Charter.

The Committee encourages the Ukrainian authorities to continue their efforts to meet the requirements of Article 4§1 of the Charter.

## **Article 12 § 1 – Right to social security: Existence of a social security system**

### **Situation in Ukraine**

The social security system includes social insurance of workers and budget allocations of different levels. The most common organisational and legal form of social security in Ukraine is social insurance, which is a system of legal relations concerning the provision of financial support and

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<sup>4</sup> Conclusions XX-3 (2014), Greece

<sup>5</sup> Conclusions 2014, France

<sup>6</sup> Conclusions 2014, Andorra

<sup>7</sup> Conclusions 2010, Statement of Interpretation on Article 4§1

<sup>8</sup> Conclusions XVI-2 (2003), Denmark

social services to insured persons (and members of their families), in the amount and manner prescribed by law, from funds constituted by employers and insured persons who make insurance payments.

### **Opinion of the Committee**

The Committee recalls that Article 12§1 guarantees the right to social security to workers and their dependents including the self-employed. States Parties must ensure this right through the existence of a social security system established by law and functioning in practice.

A social security system exists within the meaning of Article 12§1 when it complies with the following criteria<sup>9</sup>:

- number of risks covered (medical care, sickness benefit, unemployment benefit, old age benefit, employment injury benefit, family benefit and maternity benefit).
- personal scope: the system should cover a significant percentage of the active population as regards income-replacement benefits, such as sickness, maternity and unemployment benefits, pensions, and work accidents or occupational diseases benefits.
- funding: the social security system must be collectively financed, which means funded by contributions of employers and employees and/or by the state budget. When the system is financed by taxation, its coverage in terms of persons protected must be based on the principle of non-discrimination, without prejudice to eligibility requirements.

To comply with Article 12§1, a social security system must guarantee the adequacy of the benefits provided.

Since no information is provided in the written information received from the Government of Ukraine on the level of minimum benefit rates in the different branches, as was the case with the previous submission, the Committee reiterates its opinion that the current situation constitutes an obstacle to the acceptance of Article 12§1 of the Charter.

### ***Article 12 § 2 – Right to social security: Maintenance of a social security system at a satisfactory level at least equal to that required for ratification of the European Code of Social Security***

#### **Situation in Ukraine**

No information is available on the condition of the social security system in Ukraine.

### **Opinion of the Committee**

Under Article 12§2, the right to social security implies to maintain the social security system at a satisfactory level, at least equal to that necessary for the ratification of the European Code of Social Security.

The Committee notes that Ukraine has ratified the ILO Convention No 102 on 6 June 2016 and accepted the entire set of protections established by all nine social security branches, i.e. medical care, sickness, unemployment, old-age, employment injury, maintenance of children, maternity, invalidity and survivorship. It also notes that Ukraine signed the European Code of Social Security on 10 November 2016.

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<sup>9</sup> Conclusions XVI-1 (2002), Statement of Interpretation on Article 12

The Committee recalls that when a State Party has not ratified the Code, the Committee may make its own assessment of conformity with Article 12§2. Findings under Article 12§1 are also taken into account. The non-ratification of the Code is therefore not in itself an obstacle to acceptance of Article 12§2 of the Charter.

As no information was provided with regard to the functioning of the social security system in Ukraine at a satisfactory level, the Committee does not have sufficient data to assess the situation in the country in terms of the requirements of Article 12§2 of the Charter. Therefore, it invites the Ukrainian authorities to take into account its case law in this respect before drafting their next report on the non-accepted provisions<sup>10</sup>.

***Article 13 § 1 – Right to social and medical assistance: Adequate assistance for every person in need***

**Situation in Ukraine**

Low-income families receive assistance in accordance with the Law of Ukraine "On State Social Assistance to Low-income Families" and the Procedure for Granting and Paying State Social Assistance to Low-income Families, approved by Decree No. 250 of 24 February 2003 of the Cabinet of Ministers of Ukraine (as amended).

State social assistance to low-income families is a monthly cash grant, the amount of which depends on the average monthly total family income. The average monthly total family income is determined in accordance with the Procedure for calculating the total family (household) income for all types of state social assistance, approved by Decree No. 632 of the Cabinet of Ministers of Ukraine of 22 July 2020. The amount of state social assistance should be equal to the difference between a minimum family's subsistence level and its average total monthly income. The subsistence minimum level is set based on the actual capabilities of the expenditure part of the State Budget of Ukraine and approved simultaneously with the adoption of the Law on the State Budget of Ukraine for the respective year.

On 1 February 2021, 208.4 thousand families were receiving state social assistance.

**Opinion of the Committee**

The Committee recalls that, under Article 13§1, States must provide adequate medical and social assistance to all persons in need, both to their own nationals and to nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation on Articles 13§1 and 13§4<sup>11</sup> regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also protected by Article 13§1.

The entitlement to the right to social assistance arises when the person is unable to obtain resources "either by his own efforts or from other sources, in particular by benefits under a social security scheme"<sup>12</sup>. Article 13§1 clearly establishes that this right to social assistance takes the form of an individual right of access to social assistance in circumstances where the basic condition of eligibility is satisfied, which occurs when no other means of reaching a minimum income level consistent with human dignity are available to that person.

Article 13§1 requires that anyone without sufficient resources must be able to receive free medical assistance.

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<sup>10</sup> See: <https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80> p.139

<sup>11</sup> Conclusions 2013, Statement of Interpretation on Article 13§1 and 13§4

<sup>12</sup> Finnish Society for Social Rights v. Finland, Complaint No 88/2012, decision on the merits of 9 September 2014, §111

In its previous assessments, the Committee considered that the situation in Ukraine constituted an obstacle to the acceptance of Article 13§1 of the Charter. In view of the information provided, it reiterates this opinion.

***Article 13 § 2 – Right to social and medical assistance: Non-discrimination in the exercise of social and political rights***

**Situation in Ukraine**

Persons receiving state social assistance for low-income families do not suffer any diminution of their political or social rights for that reason.

**Opinion of the Committee**

The Committee recalls that under Article 13§2, persons receiving assistance must not suffer as a result any diminution of their political or social rights.

Provisions enshrining the principle of equality and prohibiting discrimination should be interpreted in practice in such a way as to prevent the use of material living conditions, social status or any other personal circumstances (for example, state of health) as justification for restriction with regard to civic or social rights<sup>13</sup>.

The social rights concerned must at least include those embodied in the Charter, starting with the right to assistance itself.

The political rights concerned go beyond those embodied in the European Convention on Human Rights<sup>14</sup>. They include, for example, access to civil service posts and the right to vote.

Beneficiaries of social or medical assistance must enjoy an effective protection against discriminatory measures, particularly with regard to their access to employment and public services<sup>15</sup>.

In view of the information provided by the Ukrainian authorities, the Committee does not have sufficient data to assess the situation in the country in terms of the requirements of Article 13§2 of the Charter. Therefore, it invites the Ukrainian authorities to take into account its case law in this respect before drafting their next report on the non-accepted provisions<sup>16</sup>.

***Article 13 § 3 – Right to social and medical assistance: Prevention, abolition or alleviation of need***

**Situation in Ukraine**

The main organisational and legal principles of providing social services aimed at preventing difficult life circumstances, overcoming or mitigating their negative consequences for individuals/families in difficult situations are determined by the Law of Ukraine No. 2671 "On Social Services" of 17 January 2019 (hereinafter Law No. 2671).

Basic social services, which include home care, day care, provision of supported housing, social adaptation, counselling, social assistance, representation, mediation, social prevention, in-kind assistance and information, shall be provided by the state administrations of the cities of Kyiv and Sevastopol, the state administrations of the districts, cities of Kyiv and Sevastopol, the executive

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<sup>13</sup> Conclusions 2002, Slovenia

<sup>14</sup> Conclusions XVIII-1 (2006), Malta

<sup>15</sup> Conclusions XVI-2 (2004), Hungary

<sup>16</sup> See <https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80>, pp. 149-150



bodies of the municipal councils of cities equivalent to districts, as well as the executive bodies of village, settlement, city and consolidated territorial communities created in accordance with the law and the long-term plan for the formation of community territories and recognised by the Cabinet of Ministers of Ukraine as capable of independent existence in the manner prescribed by the law (Articles 1 and 16 of Law No. 2671).

According to the latest data received from the regions, in 2020 Ukraine had 645 territorial social assistance centres, 205 social assistance centres, 90 structural social assistance subdivisions of the executive body of the consolidated territorial authority and 562 social service centres. In addition, as of 1 January 2021, Ukraine had 33 shelters established and operating in 18 oblasts and the city of Kyiv, 304 mobile teams for social and psychological assistance to victims and 10 day centres for social and psychological assistance to victims.

Since January 2020, the Government Hotline 15-47 for victims of human trafficking, domestic violence, gender-based violence and violence against children has been operating as the first ever facility of this kind at the Government Contact Centre - State Enterprise. As of 1 January 2021, the 15-47 helpline has received 29,344 calls.

In addition, on 24 February 2021, the Cabinet approved at its meeting the State Programme for preventing and combating domestic and gender-based violence until 2025.

### **Opinion of the Committee**

Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed to persons without adequate resources or at risk of becoming so<sup>17</sup>.

The social services referred to in Article 13§3 must play a role of prevention, support and treatment. The aim is to provide advice and assistance so that the persons concerned are fully aware of their entitlement to social and medical assistance and how to exercise them<sup>18</sup>.

In order to comply with the Charter, the main relevant social welfare services must ensure their users an equal and effective access, through the way they operate and are organised, including their geographical distribution; the number, qualifications and duties of the staff employed, including voluntary staff; funding provided for those services and the adequacy of the material and staff resources on the one hand and the number of users on the other hand<sup>19</sup>.

Nationals of Contracting Parties working regularly or residing legally within the territory of another Contracting Party must have access to advice and personal help offered by social services on the same conditions as nationals<sup>20</sup>.

The Committee needs more information in order to assess the situation in Ukraine with regard to the requirements of Article 13§3 of the Charter. In particular, it reiterates its question as to whether there are any possibilities of appeal in the event of refusal of access to services.

### ***Article 13 § 4 – Right to social and medical assistance: Specific emergency assistance for non-residents***

#### **Situation in Ukraine**

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<sup>17</sup> Conclusions 2013, Bosnia and Herzegovina.

<sup>18</sup> Conclusions XIII-4 (1996), Statement of Interpretation on Article 13

<sup>19</sup> Ibidem

<sup>20</sup> Ibidem

Only low-income families permanently residing in Ukraine are entitled to state social assistance in accordance with Article 3 of the Law of Ukraine "On State Social Assistance to Low-Income Families" (No. 208-IV of 24 October 2002, as amended).

Law No. 2671 applies to Ukrainian citizens, foreigners and stateless persons who legally reside or stay in the territory of Ukraine, including persons covered by the Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection" (No. 5076-VI of 5 July 2012, as amended), and who belong to vulnerable groups and/or are in difficult life circumstances.

### **Opinion of the Committee**

The Committee recalls that the beneficiaries of this right to emergency social and medical assistance are foreign nationals who are lawfully present in a particular country but do not have resident status<sup>21 22</sup>.

States Parties are required to provide non-resident foreigners without resources with emergency social and medical assistance (accommodation, food, emergency care and clothing) to cope with an urgent and serious state of need. They are not required to apply the guaranteed income arrangements under their social protection systems<sup>23</sup>.

Migrant minors in an irregular situation in a country are entitled to receive health care extending beyond urgent medical assistance and including primary and secondary care, as well as psychological assistance<sup>24</sup>.

Emergency social assistance should be supported by a right to appeal to an independent body. This right must also be effective in practice<sup>25 26</sup>.

In the light of these requirements and having examined the report provided by the Ukrainian authorities, the Committee considers that the lack of information concerning emergency social and medical assistance available specifically to non-resident nationals of States Parties prevents it from assessing the situation in Ukraine.

### ***Article 19§1 - Right of migrant workers and their families to protection and assistance - Assistance and information on migration***

#### **Situation in Ukraine**

Ukrainian legislation on the status of foreigners and stateless persons staying in the territory of Ukraine does not provide for the concept of "migrant workers and members of their families." Instead, Article 4.4 of the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" (No. 4652-VI of 13 April 2012, as amended) provides that foreigners and stateless persons who have arrived legally in Ukraine for the purpose of employment and have received temporary residence permits are considered to be legally staying in the territory of Ukraine for the duration of their employment in Ukraine.

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<sup>21</sup> Conclusions XIV-1 (1998), Statement of Interpretation on Article 13§4

<sup>22</sup> Conclusions VII (1981), Statement of Interpretation on Article 13§4

<sup>23</sup> Conclusions XIII-4 (1996), Statement of Interpretation on Article 13

<sup>24</sup> *Défense des enfants international v. Belgium (DEI)*, complaint No. 69/2011, decision on the merits of 23 October 2012, §128

<sup>25</sup> *Conference of European Churches (CEC) v. the Netherlands* Complaint No. 90/2013, decision on the merits of 1 July 2014, §106

<sup>26</sup> *European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands*, decision on the merits of 2 July 2014, §187

The services required by Art. 19§1 shall be provided to foreigners by their host party. Clause 20 of Article 1.1 of the Law "On the Legal Status of Foreigners and Stateless Persons" provides the following definition of the host party: the host party is a duly registered Ukrainian enterprise, institution or organisation, a representative office (branch) of a foreign enterprise, institution or organisation, a representative office of an international organisation, as well as a natural person (a Ukrainian citizen, foreigner or stateless person) who permanently resides or temporarily stays in the territory of Ukraine for the purpose of study, internship, employment or other legal reasons, and who invites or receives foreigners and stateless persons. Whether these workers are guaranteed treatment no less favourable than that of their own nationals depends largely on the host party (the employer), which may be subject to controls and administrative measures by the State.

### **Opinion of the Committee**

The Committee recalls that Article 19§1 guarantees the right to free information and assistance to nationals wishing to emigrate and to nationals of other States Parties who wish to immigrate<sup>27</sup>. Information should be reliable and objective and cover issues such as formalities to be completed and the living and working conditions they may expect in the country of destination<sup>28</sup>.

Another obligation under this provision is that States Parties must take measures to prevent misleading propaganda relating to immigration and emigration. To be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia as well as women trafficking.

States Parties must also take measures to raise awareness amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants.

In view of the information provided by the Ukrainian authorities, the Committee does not have sufficient data to assess the situation in the country in terms of the requirements of Article 19§1 of the Charter. Therefore, it invites the Ukrainian authorities to take into account its case law in this respect before drafting their next report on the non-accepted provisions<sup>29</sup>.

### ***Article 19§2 - Right of migrant workers and their families to protection and assistance - Departure, journey and reception of migrant workers and their families***

#### **Situation in Ukraine**

No information is provided by the Ukrainian authorities on special measures taken for migrant workers to facilitate their departure, journey and reception.

### **Opinion of the Committee**

The Committee recalls that Article 19§2 obliges States Parties to adopt special measures for the benefit of migrant workers, beyond those which are provided for nationals, to facilitate their departure, journey and reception<sup>30</sup>. Reception must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures<sup>31</sup>.

Given the lack of information, the Committee cannot comment on the possibility of Ukraine accepting Article 19§2 of the Charter.

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<sup>27</sup> Conclusions I (1969), Statement of Interpretation on Article 19§1

<sup>28</sup> Conclusions III (1973), Cyprus

<sup>29</sup> <https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80>, p. 179

<sup>30</sup> Conclusions III (1973), Cyprus

<sup>31</sup> Conclusions IV (1975), Statement of interpretation on Article 19§2

***Article 19§3 - Right of migrant workers and their families to protection and assistance - Co-operation between social services of emigration and immigration States***

**Situation in Ukraine**

The Ukrainian authorities do not provide any information on co-operation between the social services of the emigration and immigration states.

**Opinion of the Committee**

The scope of this provision extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin<sup>32</sup>. If there are few migratory movements in the country, the establishment of practical co-operation according to need may be sufficient.

In the absence of information, the Committee cannot comment on whether Ukraine is in a position to accept Article 19§3 of the Charter.

***Article 19§4 - Right of migrant workers and their families to protection and assistance - Equality regarding employment, right to organise and accommodation***

**Situation in Ukraine**

The provisions of the Law of Ukraine "On Employment" (No. 406-VII of 4 July 2013, as amended) determine the basic principles of employment of foreigners and stateless persons in Ukraine and the requirements for employment of certain categories of migrants. No further information is provided by the Ukrainian authorities on this point.

**Opinion of the Committee**

Article 19§4 of the Charter guarantees non-discrimination of migrant workers with respect to: (a) remuneration and other employment and working conditions, (b) trade union membership and the enjoyment of benefits of collective bargaining, and (c) accommodation. States Parties must prove the absence of discrimination, direct or indirect, in terms of law and practice.

In its previous opinion, the Committee considered that the situation in Ukraine was not fully in conformity with Article 19§4. In the absence of further information, the Committee reiterates its opinion that the situation in Ukraine constitutes an obstacle to the acceptance of Article 19§4 of the Charter.

***Article 19§5 - Right of migrant workers and their families to protection and assistance - Equality regarding taxes and contributions***

**Situation in Ukraine**

No information is provided by the Ukrainian authorities on the measures taken to ensure the right of migrant workers to equal treatment with regard to taxes and contributions.

**Opinion of the Committee**

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<sup>32</sup> Conclusions XIV-1 (1998), Belgium

The Committee recalls that Article 19§5 recognises the right of migrant workers to equal treatment in law and in practice in respect of the payment of employment taxes, dues or contributions<sup>33 34</sup>.

In the absence of information, the Committee cannot comment on whether Ukraine is in a position to accept Article 19§5 of the Charter.

### ***Article 19§6 - Right of migrant workers and their families to protection and assistance - Family reunion***

#### **Situation in Ukraine**

In 2011, the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" became the first act to provide a definition of the concept of family reunion, formulated as follows: entry and temporary or permanent residence in Ukraine of family members of a foreigner or stateless person who resides legally in Ukraine and who can prove by relevant documents that he/she has sufficient means to support his/her family members in Ukraine for the purpose of living together as a family, regardless of when the family relationship arose - before or after the arrival of a foreigner or stateless person in Ukraine.

Article 4.15 of this law provides that foreigners and stateless persons who have come to Ukraine in the context of family reunification with persons staying in Ukraine for the purpose of employment and who have received a temporary residence permit are considered to be legally staying in the territory of Ukraine for the duration of the employment of the person to whom they have come.

#### **Opinion of the Committee**

The Committee recalls that Article 19§6 obliges States Parties to allow the families of migrants legally established in their territory to join them. The worker's children entitled to family reunion are those who are dependent and unmarried, and who fall under the legal age of majority in the receiving State.

In its conclusions and decisions, the Committee specified the conditions and restrictions of family reunion: refusal on health grounds, length of residence, housing condition, means requirement, language and/or integration tests, independent right to stay and effective remedy (mechanism of appeal or review)<sup>35</sup>.

In view of the information provided by the Ukrainian authorities, the Committee does not have sufficient data to assess the situation in the country in terms of the requirements of Article 19§6 of the Charter. Therefore, it invites the Ukrainian authorities to take into account its case law in this respect before drafting their next report on the non-accepted provisions<sup>36</sup>.

### ***Article 19§7 - Right of migrant workers and their families to protection and assistance - Equality regarding legal proceedings***

#### **Situation in Ukraine**

No information is provided by the Ukrainian authorities on the measures taken to ensure equal access for migrant workers to judicial proceedings.

#### **Opinion of the Committee**

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<sup>33</sup> Conclusions II (1971), Norway

<sup>34</sup> Conclusions XIX-4 (2011), Greece

<sup>35</sup> See <https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80>, pp. 183-185

<sup>36</sup> Ibidem

The Committee recalls that under Article 19§7 States Parties must ensure that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals<sup>37</sup>. This obligation applies to all legal proceedings concerning the rights guaranteed by Article 19 (i.e. pay, working conditions, housing, trade union rights, taxes)<sup>38</sup>.

More specifically, any migrant worker residing or working lawfully within the territory of a State Party who is involved in legal or administrative proceedings and does not have counsel of his or her own choosing should be advised that he/she may appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if he or she does not have sufficient means to pay the latter, as is the case for nationals or should be by virtue of the European Social Charter. Under the same conditions (involvement of a migrant worker in legal or administrative proceedings), whenever the interests of justice so require, a migrant worker must have the free assistance of an interpreter if he or she cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated. Such legal assistance should be extended to obligatory pre-trial proceedings<sup>39</sup>.

In the absence of information, the Committee cannot comment on whether Ukraine is in a position to accept Article 19§7 of the Charter.

### ***Article 19§8 - Right of migrant workers and their families to protection and assistance - Guarantees concerning deportation***

#### **Situation in Ukraine**

The legality of stay in Ukraine of foreigners and stateless persons who come to Ukraine to work and their family members is confirmed by a temporary residence permit. Clause 63 of the Procedure for Execution, Issuance, Exchange, Cancellation, Transmission, Withdrawal, Return to the State, Invalidation and Destruction of a Temporary Residence Permit, approved by the Decree of the Cabinet of Ministers of Ukraine No. 32 of 25 April 2018 (as amended), provides for situations when a temporary residence permit is cancelled by the territorial office or subdivision of the unit of the State Migration Service that issued it.

#### **Opinion of the Committee**

The Committee recalls that Article 19§8 obliges States Parties to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality<sup>40</sup>. Such expulsions can only be in conformity with the Charter if they are ordered by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Expulsion orders must be proportionate, taking into account all aspects of the non-nationals' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State.

National legislation should reflect the legal implications of Articles 18§1 and 19§8 of the Charter as well as the case-law of the European Court of Human Rights: foreign nationals who have been resident for a sufficient length of time in a state, either legally or with the tacit acceptance of their illegal status by the authorities in view of the host country's needs, should be covered by the rules protecting from deportation<sup>41</sup>.

In view of the information provided by the Ukrainian authorities, the Committee does not have sufficient data to comment on whether Ukraine could accept Article 19§8 of the Charter.

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<sup>37</sup> Conclusions I (1969), Italy, Norway, United-Kingdom

<sup>38</sup> Conclusions I (1969), Germany

<sup>39</sup> Conclusions 2011, Statement of Interpretation on Article 19§7

<sup>40</sup> Conclusions VI (1979), Cyprus

<sup>41</sup> Conclusions 2011, Statement of Interpretation on Article 19§8

***Article 19§9 - Right of migrant workers and their families to protection and assistance - Transfer of earnings and savings***

**Situation in Ukraine**

No information is provided by the Ukrainian authorities on the right of migrants to transfer earnings and savings.

**Opinion of the Committee**

The Committee recalls that Article 19§9 obliges States Parties not to place excessive restrictions on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country<sup>42</sup>. Migrants must be allowed to transfer money to their own country or any other country. The right to transfer earnings and savings includes the right to transfer movable property<sup>43</sup>.

In the absence of information, the Committee cannot comment on whether Ukraine could accept Article 19§9 of the Charter.

***Article 19§10 - Right of migrant workers and their families to protection and assistance - Equal treatment for the self-employed***

**Situation in Ukraine**

No information is provided by the Ukrainian authorities on the right to equal treatment of self-employed migrant workers and their families.

**Opinion of the Committee**

The Committee recalls that Article 19§10 requires States to ensure that the rights provided for in paragraphs 1 to 9, 11 and 12 are extended to self-employed migrant workers and their families<sup>44</sup>. A finding of non-conformity under these paragraphs may lead to a finding of non-conformity under paragraph 10.

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

The Committee understood the information provided by the Ukrainian authorities in the previous examination of the situation in Ukraine as confirmation that self-employed migrant workers enjoy the same rights as independent Ukrainian citizens and, in particular, the rights provided for in all paragraphs of Article 19 of the Charter. However, no relevant legislation has been made available to support the authorities' statement.

Therefore, and taking into consideration that the written information submitted by Ukraine in 2021 is silent on this issue, the Committee reserves its opinion on the ability of Ukraine to accept Article 19§10 of the Charter, for lack of sufficient information.

***Article 19§11 - Right of migrant workers and their families to protection and assistance - Teaching language of host state***

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<sup>42</sup> Conclusions XIII-1 (1993), Greece

<sup>43</sup> Conclusions 2011, Statement of Interpretation on Article 19§9

<sup>44</sup> Conclusions I (1969), Norway

### **Situation in Ukraine**

No information is provided by the Ukrainian authorities on the measures taken to teach the Ukrainian language to migrants.

### **Opinion of the Committee**

The Committee recalls that under this provision, States Parties should promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of their families who are no longer of school age<sup>45</sup>. The teaching of the national language of the receiving state is the main means by which migrants and their families can integrate into the world of work and society at large. A requirement to pay substantial fees is not in conformity with the Charter. States Parties are required to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible<sup>46</sup>.

In its previous opinion, the Committee confirmed that in the absence of specific language teaching measures for migrant workers and their families, the situation in Ukraine did not appear to be in full compliance with Article 19§11.

In view of its position during the previous examination and taking into account the lack of information on this issue in the 2021 report, the Committee reiterates its opinion that the current legal situation and practice in Ukraine are an obstacle to the acceptance of Article 19§11 of the Charter. It invites the Ukrainian authorities to undertake work towards providing the appropriate legal framework and its implementation in practice to ensure that Ukrainian language teaching is provided to all migrant workers and their families.

### ***Article 19§12 - Right of migrant workers and their families to protection and assistance - Teaching mother tongue of migrant***

### **Situation in Ukraine**

No information is provided by the Ukrainian authorities on the measures taken to teach the mother tongue to migrants.

### **Opinion of the Committee**

The Committee recalls that under Article 19§12, States Parties undertake to promote and facilitate the teaching, in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory<sup>47 48</sup>.

In the previous evaluation, the Committee did not find any major legal obstacles to acceptance by Ukraine of Article 19§12 of the Charter. However, it observed that the implementation of the legislation in practice would require more detailed examination. As no information is provided by the Ukrainian authorities in this respect, the Committee reserves its opinion on the compatibility of the situation in Ukraine with Article 19§12.

### ***Article 25 - Right of workers to protection of their claims in the event of insolvency of the employer***

### **Situation in Ukraine**

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<sup>45</sup> Conclusions 2002, France

<sup>46</sup> Conclusions 2011, Norway

<sup>47</sup> Conclusions 2002, Italy

<sup>48</sup> Conclusions 2011, Armenia



In order to strengthen the protection of workers' rights to full and timely payment of wages and payment of wage arrears in case of employer's insolvency, the Ministry of Economic Development, Trade and Agriculture of Ukraine, with the participation of the State Labour Service, is currently drafting amendments to certain laws. The adoption of these legislative acts will help to ensure constitutional guarantees of the right of employees to receive the remuneration due to them and will be in line with Section III of the International Labour Organisation Convention No. 173 on the Protection of Workers' Claims (Employer's Insolvency).

### **Opinion of the Committee**

The Committee recalls that Article 25 of the Charter guarantees individuals the right to protection of their claims in the event of the insolvency of their employer. States Parties having accepted this provision benefit from a margin of discretion as to the form of protection of workers' claims and so Article 25 does not require the existence of a specific guarantee institution.

However, the protection afforded, whatever its form, must be adequate and effective, also in situations where the assets of an enterprise are insufficient to cover salaries owed to workers<sup>49</sup>. Guarantees must exist for workers that their claims will be satisfied in such cases<sup>50</sup>. The protection should also apply in situations where the employer's assets are recognised as insufficient to justify the opening of formal insolvency proceedings<sup>51</sup>.

States Parties may limit the protection of workers' claims to a prescribed amount which shall be of a socially acceptable level, namely not less than three months wage under a privilege system and eight weeks under a guarantee system. The workers' claims covered should also include holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred<sup>52</sup>.

In its previous report, the Committee gave a negative assessment of the situation in Ukraine regarding the acceptance of Article 25. In the light of the information provided in 2021 by the Ukrainian authorities, the Committee notes that legislative work has been undertaken to ensure compliance with the requirements of this provision and commends the authorities for this. However, as the situation remains unchanged at present, it reiterates its view that this situation constitutes an obstacle to Ukraine's acceptance of this provision.

### ***Article 31§3 - Right to housing - Affordable housing***

#### **Situation in Ukraine**

The Law of Ukraine "On Social Housing" (as amended by the Law of Ukraine No. 2546-VIII of 18 September 2018) (hereinafter the Law) determines the legal, organisational and social principles of public policy with regard to ensuring the constitutional right of vulnerable groups in Ukraine to housing.

According to Article 1 of the Law, social housing is housing of all forms of ownership (except social dormitories) of the social housing stock that is provided free of charge on the basis of a fixed-term rental contract to Ukrainian citizens in need of social assistance.

According to Article 28 of the Law, the social housing payment includes rent, maintenance costs of the residential building and the adjacent territory and utility bills. The relevant local self-government body determines the amount of the social housing payment for each tenant of this type of housing.

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<sup>49</sup> Conclusions 2003, France

<sup>50</sup> Conclusion 2012, Ireland

<sup>51</sup> Conclusions 2008, Slovenia

<sup>52</sup> Conclusions 2012, Slovakia

The housing payment made directly by the social housing tenant must not exceed 20% of the total income of the tenant and his/her family members living with him/her.

Article 10 of the Law establishes the criteria for citizens to be registered for social housing. Dwellings in the social housing stock are allocated to citizens by decision of the competent local self-government body.

The procedure for registering citizens for social housing, maintaining their registration and providing social housing is regulated by the Decree of the Cabinet of Ministers of Ukraine No. 682 of 23 July 2008 "On Certain Issues of Implementation of the Law of Ukraine on Social Housing », as amended by the Cabinet of Ministers of Ukraine Decree No. 776 of 2 September 2020.

In accordance with the Final Provisions of the Law, the Ministry of Community and Territorial Development of Ukraine developed a draft Law of Ukraine "On the Approval of the National Programme of Social Housing Development for 2015-2021", which provided for the creation of the social housing stock under local and state programmes, and submitted the draft law to the Cabinet in August 2014. The Decrees of the Cabinet of Ministers of Ukraine No. 65 of 1 March 2014 "On Saving Public Funds and Preventing Budget Losses" and No. 710 of 11 October 2016 "On Efficient Use of Public Funds" suspended the preparation of projects for new state programmes that require additional funding from the state budget.

### **Opinion of the Committee**

The Committee recalls that Article 31§3 guarantees persons with limited resources an adequate supply of affordable housing.

Housing is affordable if the household can afford to pay the initial costs (deposit, rent advance), the current rent and/or other housing-related costs (e.g. utilities, maintenance and management costs) over the long term while being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located<sup>53</sup>.

In order to establish that measures are taken to make the price of housing accessible to those without adequate resources, States Parties must demonstrate not the average affordability ratio required of all housing applicants, but rather that the affordability ratio of the poorest housing applicants is consistent with their level of income<sup>54</sup>.

All rights under Art. 31§3 must be guaranteed without discrimination, particularly with regard to Roma or Travellers<sup>55</sup>.

The information provided by the Ukrainian authorities does not allow the Committee to express its opinion on the extent to which the situation in the country is in conformity with Article 31§3 of the Charter.

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<sup>53</sup> Conclusions 2003, Sweden

<sup>54</sup> FEANTSA v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, § 72

<sup>55</sup> International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 149-155

APPENDIX I

— Ukraine and the European Social Charter —

<b>Signatures, ratifications and accepted provisions</b>												
Ukraine ratified the Revised European Social Charter on 21/12/2006, accepting 76 of the 98 paragraphs of the Charter.												
It has not accepted the system of collective complaints.												
<b>Charter in domestic law</b>												
Automatic incorporation into domestic law.												
<b>Table of accepted provisions</b>												
1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1	
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3	
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1	
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2	
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1	
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3	
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22	
23	24	25	26.1	26.2	27.1	27.2	27.3	28	29	30	31.1	
31.2	31.3							Grey = Accepted provisions				
<b>Reports on non-accepted provisions</b>												
The European Committee of Social Rights (“the Committee”) examines the situation of non-accepted provisions of the Revised Charter every 5 years after the ratification. It adopted <a href="#">reports concerning Ukraine</a> in 2012 and in 2017.												
Further information on the reports on non-accepted provisions is available on the <a href="#">relevant webpage</a> .												

## APPENDIX II

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

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

The Committee of Ministers of the Council of Europe,

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

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

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

Emphasizing that human rights must be enjoyed without discrimination;

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

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

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

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;
2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;
3. Recognizes the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;
4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;
5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;
6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;

7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.