



01/06/2010

RAP/RCh/Ukr/II(2010)Add

**REVISED EUROPEAN SOCIAL CHARTER**  
**REPLY TO SUPPLEMENTARY QUESTIONS**

2<sup>nd</sup> National Report on the implementation of  
the European Social Charter (revised)

submitted by

**THE GOVERNMENT OF UKRAINE**

(Articles 2 and 4§5  
for the period 01/01/2005 – 31/12/2008)

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Report registered by the Secretariat on 30 May 2010

**CYCLE 2010**

Questions and reply in respect of the 2<sup>nd</sup> report of Ukraine

## Article 2 - The right to just conditions of work

### Article 2 § 2

The Committee points out that, under Article 2§2, work performed on public holidays imposes a constraint on employees and should be paid at a higher rate than normal. Accordingly, work carried out on public holiday must be paid at least double the usual rate (i.e. 100% more than the standard wage) (Conclusions 2007, Slovenia). The Committee asks whether the day off in lieu is awarded to the pay at double the usual rate.

- According to Article 107 of the Labour Code of Ukraine the work on holidays and day-off is paid at double the usual rate. The day off in lieu is counted as day off. If an employee is engaged in work on this day off, the work may be compensated, given mutual consent of the parties, by provision of another day of rest or in monetary form at a double the usual rate.

### Article 2 § 4

Under section 7 of the Occupational Safety Act, persons exposed to residual risks may be granted compensatory measures such as reductions in working hours, additional paid leave, salary increases or other forms of compensations described in the relevant legislation. The Committee asks to which sectors or occupations these measures apply.

- The workers' right engaged in works with hazardous working conditions to old age pension at preferential terms is determined according to the list of facilities, works, professions, positions and parameters approved by the Resolution of the Cabinet of Ministers of Ukraine on Approval of the List of Facilities, Works, Professions, Positions and Parameters, where Employers are Entitled to Old Age Pension at Preferential Terms No 36 of 16.01.2003.

These lists include coal industry, metallurgy, pharmaceutical production, chemical production, production of equipment for radio, television and communications, production of non-metal mineral items, pulp-and-paper industry, transport services, oil and gas production, textile industry, food industry, tobacco industry, healthcare, construction, works with radioactive substances and radioactive sources, nuclear and atomic industry etc.

- The workers' right engaged in works with hazardous working conditions to additional annual leave is determined according to the list of facilities, works, professions and positions approved by the Resolution of the Cabinet of Ministers of Ukraine on Approval of the List of Facilities, Works, Workshops, Professions and Positions, where Employers are Entitled to Additional Annual Leaves for Work in Hazardous and Heavy Working Conditions and for Special Works No 1290 of 17.01.1997.

These lists include coal industry, metallurgy, production of pipes, lead production, magnesium production, titan manufacturing, hydrometallurgy, chemical production, production of equipment for radio, television and communications, production of non-metal mineral items, pulp-and-paper industry, oil and gas production, works with radioactive substances and radioactive sources, aviation and military production etc.

- The workers' right engaged in works with hazardous working conditions to shorter work week is determined according to the list of facilities, workshops, works, professions and positions approved by the Resolution of the Cabinet of Ministers of Ukraine on Approval of the List of Facilities, Workshops, Works, Professions and Positions, where Employers are Entitled to Shorter Work Week No 163 of 21.02.2001.

These lists include coal industry, lead production, magnesium production, titan manufacturing, production of equipment for radio, television and communications, production of non-metal mineral items, oil and gas production, enrichment of asbestos, steel and coke production, manufacturing mercury, aviation and military production, production of optomechanical parts etc.

#### Article 2 § 5

The Committee points out that weekly rest periods may not be replaced by financial compensation and that employees may not forfeit their rest. Although the rest period must be weekly, it may be deferred until the following week provided that no-one is made to work more than twelve days in succession before being granted a two-day rest period. The Committee asks for additional information on exceptions to the rules on weekly rest periods.

According to Article 70 of Labour the Code of Ukraine the duration of a weekly uninterrupted rest must be at least forty-two hours.

However, this provision as an exception to the rule does not apply to work under summarized accounting time, where day-offs are granted on different days of the week by turns to each group of employees according to a shift schedule approved by the owner or a body authorised thereby by agreement with the elected body of primary trade union (trade union representative) of an enterprise, institution or organisation.

Schedules of works under summarized accounting of working time should be provided for the weekly day of rest.

In a monthly or other accounting periods that exceed the month the number of day offs under the schedules of work should not be less than the number of completed weeks of this accounting period.

#### Article 2 § 6

Article 2§6 guarantees the right of workers to written information upon commencement of their employment. Information that must be included in employment contracts also includes the length of paid leave, the standard daily and weekly working hours and information on any collective agreements governing the employee's conditions of work.

The Committee asks for confirmation that all aspects of the employment contract or relationship are covered by the contract or another written document.

The Committee asks whether, where employees do not have a written contract, there are other written sources containing information on the essential aspects of the employment relationship.

According to Article 29 of Labour Code of Ukraine prior to commencement of work under a concluded employment agreement, the owner or a body authorised thereby is required:

1) to explain the worker his rights and duties, and inform him against receipt, on working conditions and on existence at the worker's workplace of hazardous and harmful production factors not yet eliminated, possible consequences of their impact for health, and on the worker's right to benefits and compensations for working under such conditions in accordance with legislation and pursuant to a collective agreement;

2) to familiarise the worker with internal work order rules and a collective agreement;

3) to specify a workplace for the worker, and provide him with means necessary to work;

4) at hiring and periodically in the process of working, secure briefings and trainings on occupational safety, on provision of first medical aid to victims of accidents, and on rules of conduct in case of a production accident.

It should be noted in the context of the abovementioned question that according to the Article 41 "Form of the labour contract" of a new draft of the Labour Code that is being considered in the Parliament:

1. The labour contract is executed, as a rule, in writing in two copies, having equal legal force. Changes to the labour contract are executed in the same way. One copy is handed over to the employee and the other is kept for the employer. Violation of this rule should not affect existing labour relationships.

2. The labour contract is signed by its parties and affixed by employer's seal, except for the case when the employer is not required by the law to have a seal.

If the employee cannot sign the labour contract with his/her own hand as a result of physical defect, the contract is signed by the other person, specified by the employee in the presence of the employee and person, authorized by the employer to hire employees, and this should be mentioned in the contract.

3. The labour contract can be concluded with the written consent of the employee by issue of a normative act of the employer. The labour contract is considered concluded even when the employee was actually admitted to work without entering into the labour contract according to employer's order or with his/her permission.

Written labour contract may be signed at any time upon accrual of labour relationships.

According to Article 67 "Obligation of the employer to give information to the employee, to define a workplace and to issue an order on his/her acceptance for employment" of this draft:

1. Before the beginning of work, the employer is bound under the concluded labour contract:

1) to explain to the employee his/her rights and duties and to inform on receipt about working conditions, presence at a workplace, where he will work, dangerous and harmful production factors, which are not removed yet, and possible consequences of their affect upon health, his/her rights to privileges and compensation for work in such conditions in accordance with the legislation and collective agreement;

2) to acquaint the employee with the rules of internal labour order, collective agreement and job description;

3) to define a workplace for the employee, to provide him with tools necessary for work;

4) to carry out training (studies, examination of skills) on labour protection and fire safety.

2. The employer is obliged to issue an order (direction) on acceptance for employment of the employee and acquaint the employee with it within the term of seven days from the day of beginning of work on receipt, and upon his/her request - to give a copy of the order (direction).

## Article 2 § 7

The Committee asks whether a medical checkup is carried out before an employee is assigned to night work and whether it is possible for night workers to be transferred to day work.. It also asks whether is regular consultation with worker's representatives on the use of night work, the conditions in which it is

performed and measures taken to reconcile workers' needs and the special nature of night work.

According to Article 169 "Obligatory medical examination of employees of certain categories" of the Labour Code obligatory medical examination provided for employees engaged:

- in works with hazardous working conditions;
- in works, where there is a necessity of professional selection for respective kinds of works;

as well as employees at the age under twenty-one.

These categories of employees may work at night according to the schedule which is approved by an employer.

Ukrainian legislation does not provide for obligatory medical examinations for employees who perform night work

#### **Article 4 - The right to a fair remuneration**

Article 4§5 requires that deductions from wages do not deprive the worker of his or her very means of subsistence. The Committee asks whether the 50% and 70% thresholds apply to workers earning the minimum wage and what the amount of the national net minimum wage is.

The Committee asks additional information on other types of deductions made, including trade union contributions, fines and advances on pay and what limits apply in such cases.

Under article 4§5, national law should contain safeguards to prevent employees from waiving their rights to limited deductions from wages. The Committee asks what are the safeguards that prevent workers from waiving their rights to limited deductions from wages.

Deductions from salary can be made only in cases stipulated by the legislation.

According to Article 127 of the Labour Code the deductions from salary of employees to cover their debts to the legal entity, where they are working, can be made in accordance with the order of the employer in the following cases:

- to return an advance payment given on account of salary, to return amounts paid superfluously owing to calculation error or actions at fault of the employee; to pay-off unspent and not returned in good time advanced payment, given for a leave or a transfer into other territory, for economic needs, if the employee does not dispute a will reasons and sizes of deduction.

In these cases, the employer has the right to issue an order no latter then one month from expiration of term, determined to return the advanced payment.

At every payment of wage, total amount of all deductions may not exceed 20% or, in cases specially provided for by Ukrainian legislation, 50% of the wage due to the worker.

This rule does not apply to deductions of wage in case of correctional labour and in case of recovery of alimony for minor children.

In such cases, amount of deductions from wage must not be greater than 70%.

The minimum wage in reference period (2008) was 605 UAH.

The minimum wage is the amount calculated by an enterprise for payment to the worker, from which the relevant taxes and fees are deducted according to the legislation.

The trade union membership fees are deducted from a salary. In most cases a monthly fee for membership of the union is 1%.

SECRETARIAT GENERAL

DIRECTORATE GENERAL OF HUMAN RIGHTS  
AND LEGAL AFFAIRS

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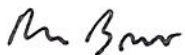
Strasbourg, 30 March 2010

Dear Mrs. Popova,

The European Committee of Social Rights is currently examining the second Ukrainian report on the European Social Charter and has instructed me to forward to you the enclosed questions concerning Articles 2 (§§2,4,5,6,7) and Article 4§5.

The Committee would be grateful if you could reply to this question before 28 May 2010 in order to allow the information to be taken into account in Conclusions 2010.

Yours sincerely,



Régis Brillat



30 March 2010

Questions in respect of the 2<sup>nd</sup> report of Ukraine

Article 2§2

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## Article 2§7

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