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

3rd National Report on the implementation of  
the Revised European Social Charter

submitted by

**THE GOVERNMENT OF UKRAINE**

(Articles 7, 8, 16, 17, 27 and 31  
for the period 01/01/2007 – 31/12/2009)

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Report registered by the Secretariat on 10 June 2011

**CYCLE 2011**



# **REVISED EUROPEAN SOCIAL CHARTER**

## **REPLY TO SUPPLEMENTARY QUESTIONS**

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

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**THE GOVERNMENT OF UKRAINE**

(Articles 7, 8, 16, 17, 27, 31  
for the period 2007- 2009)

## Concerning the Article 7§2

The Decree of Ministry of Health No.46, of March 31 1994 is attached (Ukrainian language).

## Concerning the Article 8

In accordance with Article 179 of the Labour Code of Ukraine, on the basis of a medical certificate women are granted a paid leave in connection with pregnancy and childbirth of 70 calendar days before childbirth and of 56 (in case of giving birth to two or more children and in case of complications at childbirth – 70) calendar days after childbirth, starting on the day of childbirth.

Duration of leave for pregnancy and childbirth is calculated as a sum and totals at 126 calendar days (140 calendar days in case of giving birth to two or more children and in case of complications at childbirth). It is given to women as a block regardless of the number of days used before childbirth.

According to Article 3 of the Labour Code of Ukraine, labour legislation regulates labour relations of employees of all types of enterprises, institutions, organizations, regardless of the forms of ownership, types of activities and business area, as well as persons employed by other persons in accordance with a labour agreement.

## Concerning the Article 8§2

The Article 184 of the Labour Code of Ukraine prohibits the dismissal of pregnant women, women who have children under age of three (or, in special circumstances supported by medical evidence, under the age six), and single mothers who have disabled children or children under the age 14. This rule does not apply in the event of complete liquidation of enterprises, institution, organization, or if a women was on a fixed-term employment agreement or contract that expired. However, in these two cases, an employer is obliged to find alternative employment. Their average salary is preserved for the time of job search but no more than for 3 months upon expiration of employment agreement.

In the case of violation of this provision by the owner or body authorized by him their activities may be appealed to the court.

The Article 55 of the Constitution of Ukraine stipulates that everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers.

The Article 124 of the Constitutions of Ukraine stipulates that justice in Ukraine is administered exclusively by the courts. The delegation of the functions of the courts, and also the appropriation of these functions by other bodies or officials, shall not be permitted. Judicial proceedings are performed by the Constitutional Court of Ukraine and courts of general jurisdiction.

## Concerning the Article 8§3

The Article 176 of the Labour Code of Ukraine prohibits the employment of pregnant women and women with children under three years old in night work, work requiring overtime, weekend work, and on business trips.

According to Article 174 of the Labour Code of Ukraine, women shall not be employed in hard works, in works with unhealthy or hazardous working conditions as well as in underground works with the exception of certain underground works (non-physical works or sanitary and general services).

## Concerning the Article 27§1

b) On request of a man raising a child under 14 years without a mother and deciding to work part-time employer is obliged to introduce part-time employment.

According to Article 56 of the Labour Code of Ukraine upon agreement between employee and the owner or body authorized by him part-time employment may be agreed upon if a man nursing a sick family member.

According to Article 11§3 of the Law of Ukraine “On mandatory state pension insurance” the individuals in receipt of a child care benefit for a child under 3 years are subject to the mandatory state pension insurance.

c) Please see 3<sup>rd</sup> National Report on the implementation of European Social Charter (revised) submitted by the Government of Ukraine: Article 16, Section “Childcare opportunities”

Preschool institutions (day nurseries, kindergartens, day nursery-kindergartens etc.)

	Total institutions, thsd.	In which enrollment number, thsd.	Total children, thsd.	Coverage of children by institutions, percentage of total children of specified age
1990	24,5	2277	2428	57
1991	24,4	2243	2268	55
1992	23,8	2216	2063	51
1993	23,2	2189	1918	49
1994	22,3	2101	1736	47
1995	21,4	2014	1536	44
1996	20,2	1856	1342	41
1997	18,4	1770	1172	38
1998	17,6	1638	1103	38
1999	17,2	1216	1055	39
2000	16,3	1117	983	40
2001	15,7	1077	968	41
2002	15,3	1060	973	48
2003	15,0	1053	977	49
2004	14,9	1040	996	50
2005	15,1	1056	1032	51

2006	15,1	1063	1081	53
2007	15,3	1084	1137	54
2008	15,4	1110	1195	54
2009	15,5	1121	1214	53
2010	15,6 <sup>1</sup>	1136 <sup>2</sup>	1273	56

<sup>1</sup> Of which 0,9 thousands of non- functioning institutions.

<sup>2</sup> Enrollment numbers not available during a year or longer on any reason are not included.

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According to Article 26 “Vacations without pay by agreement” of the Law of Ukraine “On Vacations” an employee may be granted leave without pay for family reasons and other reasons for a period determined by agreement between the employee and the owner or body authorized by him, but not more than 15 days a year.

### Concerning the Article 27§3

According to Article 40 of the Labour Code of Ukraine it is not allowed to dismiss an employee by the initiative of the owner or body authorized by him within the period of his or her temporary disability (except the dismissal under paragraph 5 of this Article – absence from work during more than 4 months running as a result of temporary disability, except maternity leave, if the legislation does not provide a longer term for the working post reservation in case of some disease.

The post is reserved for employees who lost their working ability as a result of injury at work or professional disease, till recuperation of their working ability or their disability is confirmed and also within of his or her period of leave. This rule does not apply in case of complete liquidation of the enterprise, institution or organization.

According to Article 235 “Reinstatement and change in the formulation of reasons for dismissal” of the Labour Code of Ukraine” in the case of unlawful dismissal of the employee or of unlawful transfer to other work, he/she should be reinstated at the previous work by the body authorized to consider labour dispute.

In deciding upon the reistatement the body authorized to consider labour dispute takes a decision at the same time that a employer will have to pay an employee his or her average wage for the period of forced absence or a difference in his or her wages for a lower-paid job period, but not more than for one year

If the case for reinstatement has been pending for more than one year through no fault of the employee, the body authorized to consider labour dispute takes a decision on payment to the employee of average wages for all the time of the forced absence from work.

In case if formulation of reasons for dismissal is found as incorrect or inconsistent with the law, when it does not entail the reinstatement of the employee, the body authorized to consider labour dispute shall change formulation and determine the reasons for dismissal in strict compliance with the wording of current legislation and with reference to the relevant article (paragraph) of the law in decision.

If the incorrect formulation of the reasons for dismissal in the employment record book prevented the employment of the employee, the body authorized to consider labour dispute at the same time decides on the payment of his/her average wages for the period of the forced absence in the manner and conditions specified above.

In case of delay in the delivery of employment record book on fault of the owner or body authorized by him the employer's obligation to pay to the employee his or her average wage for the whole period of forced absence.

The decision taken by the body authorized to consider labour dispute on reinstatement of the employee unlawfully dismissed or transferred to other work, shall be executed immediately.

## APPENDIX

### SECRETARIAT GENERAL

DIRECTORATE GENERAL OF HUMAN RIGHTS  
AND LEGAL AFFAIRS

DIRECTORATE OF MONITORING

DEPARTMENT OF THE EUROPEAN SOCIAL CHARTER  
*THE HEAD OF DEPARTMENT*  
*EXECUTIVE SECRETARY OF THE EUROPEAN COMMITTEE*  
*OF SOCIAL RIGHTS*

ESC 66  
NCH / JW



Ms Natalia Popova,  
Deputy Head of the International Relations  
Department  
Ministry of Labour and Social Policy of  
Ukraine  
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Ukraine

Strasbourg, 5 April 2011

Dear Ms. Popova,

The European Committee of Social Rights is currently examining the third report from Ukraine on the Revised European Social Charter and has instructed me to forward to you the enclosed questions concerning Articles 7§2, 8 and 27.

The Committee would be grateful if you could reply to these questions before 3 June 2011 in order to allow the information to be taken into account in Conclusions 2011.

Yours sincerely,



Régis Brillat

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5 April 2011

Question in respect of the report of Ukraine

**Article 7§2**

The report states that a list of hard and hazardous forms of work was approved by Decree of Ministry of Health No. 46, of 31 March 1994. The Committee asks for a copy of the list.

**Article 8**

Does the same legal framework, regarding all matters covered by Article 8 of the Revised Charter, apply to women employed in both the private and public sectors? If not, please provide information on the way women employed in the public sector are protected in respect of the different paragraphs of Article 8.

- Article 8§2: In those cases where dismissal is permitted, is the notification of dismissal or any procedure linked to it suspended until the end of maternity leave?  
Is there any possibility of appealing to a court in case of illegal dismissal and of obtaining compensation?

- Article 8§3: What specific activities are prohibited for pregnant women, women who have recently given birth, and women who breastfeed their child?  
Is there a right to reinstatement to the employee's post once special protection is no longer required?

**Article 27**

Article 27§1.a: Are there any placement, counselling, or vocational training programmes for workers with family responsibilities to enable such workers to become and remain integrated in the labour force?

Article 27§1.b: When a man is raising a child or nursing a sick family member is he entitled to work part-time?  
To what extent are periods of leave due to family responsibilities taken into account for determining the right to pension and for calculating the amount of pension?

Article 27§1.c: Please provide the number of places in kindergartens and other childcare institutions broken down by age bracket and the number of rejected applications.

Does legislation or practice provide for arrangements entitling workers to time off from work, on grounds of urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable?

Article 27§3: Does Article 184 of the Labour Code apply to the protection against dismissal of both men and women workers on the grounds of applying for, or taking, childcare leave?

Can courts or other competent bodies order reinstatement of an employee unlawfully dismissed on account of family responsibilities, or in cases when the employee prefers not to continue or re-enter employment, order compensation?