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# EUROPEAN SOCIAL CHARTER

6th 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 01/01/2009 – 31/12/2012)

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## CYCLE 2014

# REVISED EUROPEAN SOCIAL CHARTER

6th National Report on the implementation of the European Social Charter (revised)

submitted by

THE GOVERNMENT OF UKRAINE
(Articles 2, 4, 5, 6, 21, 22, 26, 28, 29
for the period 2009- 2012)

# REVISED EUROPEAN SOCIAL CHARTER

6th National Report on the implementation of the European Social Charter (revised)

for the reference period

2009- 2012

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

In accordance with Article C of the Revised European Social Charter and article 23 of the European Social Charter, copies of this report have been communicated to the Joint Representative Body of All Trade Union Associations at National Level and the Joint Representative Body of the Employers at National Level

All Ukrainian legal acts are available on the Internet at: www.rada.gov.ua.

**Acronyms used in the Report**

- **CLL** - **Code of Labour Laws of Ukraine**
- **TURGA** - **Law of Ukraine "On Trade Unions, Rights and Guarantees of their Activity"**
- **PA** - **Law of Ukraine "On Public Associations"**
- **SDU** - **Law of Ukraine "On Social Dialogue in Ukraine"**
- **PCSLD** - **Law of Ukraine " On the Procedure for Settlement of Collective Labour Disputes (Conflicts)"**

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## Article 2 – All workers have the right to just conditions of work

### Article 2§1

### General legal framework

The national legislation has not changed during the reporting period. The list of relevant legislative acts referred to in previous report by thematic group "Labour rights" is actual.

According to the draft Resolution of the Cabinet of Ministers of Ukraine "On approval of the program for implementation of the Association Agreement between Ukraine and the European Union" it is envisaged that the regulations aimed for the implementation of the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time should be developed, approved and implemented.

### Measures for application of legal regulations. Responses to the additional questions of the European Committee of Social Rights

*1. The Committee asks if there are exceptions to the working time limits mentioned in the Labour Code for certain workers or occupations, for example, managers, junior hospital doctors, transport employees or seafarers. If the answer is affirmative, the next report should indicate the list of such workers and the regulations applicable to them.*

Response: The Second Report of the Government of Ukraine stated that the legislation establishes reduced working hours for certain categories of employees (doctors, teachers and other).

With regard to reduced working hours of medical personnel, according to the Order of the Ministry of Health of Ukraine No. 319 of 25 May 2006 On approving norms of working hours for employees of health institutions, registered with the Ministry of Justice under No. 696/12570 of 9 June 2006, the working hours of doctors and specialists with basic and incomplete higher medical education (nursing staff), medical registrars, disinfectors of healthcare facilities are 38.5 hours per week and for doctors engaged exclusively in the provision of outpatient care - 33 hours per week.

The working week of medical personnel that work in hazardous conditions is 36 hours per week according to the List of productions, shops and occupations and positions in hazardous conditions, the work in which entitles to reduced working week approved by the Resolution of the Cabinet of Ministers of Ukraine No.163 of 21 February 2001.

The reduced working hours of teachers is determined by the Laws of Ukraine "On Education", "On Preschool Education", "On Extracurricular Education", "On General Secondary Education", the Order of the Ministry of Education of Ukraine No. 102 of 15 April 1993 "On approval of the Instruction on the procedure for calculating the salary of education personnel", the Order of the Ministry of Labour and Social Policy No.144 of 12 February 2007 "On establishment of duration of work and teaching load for certain categories of employees of facilities and institutions of social protection of population", registered with the Ministry of Justice No. 152/13419 of 20 February 2007.

The working hours of drivers are regulated by the Instruction on the working hours and rest time of drivers of wheeled vehicles approved by the Order of the Ministry of Transport and Communication "On Approval of the Instruction on working hours and rest time of drivers of wheeled vehicles" No. 340 of 07 June 2010, registered with the Ministry of Justice under No. 811/18106 on 14 September 2010.

In addition, it should be noted that paragraph six of Article 69 of the Commercial Code of Ukraine stipulates that enterprises individually provide additional leaves for their employees, as well as reduced working hours and other benefits, and are also entitled to provide incentives for employees of other enterprises, institutions and organizations that provide services to them.

The legislation of Ukraine defines adequate working hours for employees as 40 hours per week. This norm must be applied in an appropriate working schedule.

As regards the cumulative record of working hours, which was discussed in the previous Report, the adequate working hours should be observed cumulatively for the corresponding record period (month, quarter, six months, year).

*2. The Committee asks what is the reference period over which average weekly working time is calculated either in the law or set out in collective agreements.*

Response: The national legislation does not envisage the calculation of average length of the workweek.

In the cumulative record of working hours the daily or weekly working hours, established according to the shift schedule, may fluctuate during the record period, but the total number of working hours for the record period should be equal to the working hours' norm in the record period, which is determined on the basis of 40-hour work week.

## Statistics

In accordance with the Regulation on the State Labour Inspectorate of Ukraine approved by the Decree of the President of Ukraine No. 386/2011 of 06 April 2011, the State Labour Inspectorate of Ukraine (Derzhpratsi) performs state supervision (control) in the sphere of labour in Ukraine.

| | **Number of detected violations (units) by year** | | | |
|---|---|---|---|---|
| | **2009** | **2010** | **2011** | **2012** |
| Article 50 "Normal working hours" of the Code of Labour Laws of Ukraine | 2872 | 2916 | 2853 | 2015 |
| Measures taken to influence employers | 1507 orders were issued to eliminate the detected violations; 436 protocols on administrative offenses were issued | 1558 orders were issued to eliminate the detected violations; 478 protocols on administrative offenses were issued | 1440 orders were issued to eliminate the detected violations; 437 protocols on administrative offenses were issued | 1029 orders were issued to eliminate the detected violations; 310 protocols on administrative offenses were issued |
| Article 54 "Working hours at Night" of the Code of Labour Laws of Ukraine | 718 | 165 | 713 | 504 |
| Measures taken to influence employers | 569 orders were issued to eliminate the detected violations; 130 protocols on administrative offenses were issued | 196 orders were issued to eliminate the detected violations; 80 protocols on administrative offenses were issued | 591 orders were issued to eliminate the detected violations; 124 protocols on administrative offenses were issued | 398 orders were issued to eliminate the detected violations; 101 protocols on administrative offenses were issued |

**Article 2§2**

## General legal framework

The national legislation  has not changed during the reporting period. The list of relevant legislative acts referred to in previous report by thematic group "Labour rights" is actual.

## Measures for application of legal regulations.
## Responses to the additional questions
## of the European Committee of Social Rights

*1. The Committee asks whether the base salary for the work carried out on a public holiday is maintained, in addition to the increased pay rate.*

Response:Yes, the basic salary is retained: employees with a monthly salary for work on a holiday, which is their non-work day at the end of the month receive a base salary (additional payments, increases, bonuses ets) and the single hourly rate in addition to salary for each hour worked on a holiday, if the work was carried within the monthly norm and double the hourly salary rate in additional to salary for each hour worked on a holiday, if the work was carried over monthly norm.

## Statistics

| | **Number of detected violations (units) by year** | | | |
|---|---|---|---|---|
| | **2009** | **2010** | **2011** | **2012** |
| Article 107 “Remuneration of labour on holidays and  day-off” of the Code of Labour Laws of Ukraine | 4308 | 4375 | 4280 | 3024 |
| Measures taken to influence employers | 2278 orders were issued to eliminate the detected violations; 340 protocols on administrative offenses were issued | 2340 orders were issued to eliminate the detected violations; 256 protocols on administrative offenses were issued | 2160 orders were issued to eliminate the detected violations; 190 protocols on administrative offenses were issued | 296 orders were issued to eliminate the detected violations; 421 protocols on administrative offenses were issued |

**Article 2§4**

## General legal framework

The national legislation has not changed during the reporting period. The list of relevant legislative acts referred to in previous report by thematic group "Labour rights" is actual.

## Statistics

| | **Number of detected violations (units) by year** | | | |
|---|---|---|---|---|
| | **2009** | **2010** | **2011** | **2012** |
| Article 51 “Reduced working hours” of the Code of Labour Laws of Ukraine | 206 | 80 | 48 | 52 |
| Measures taken to influence employers | 200 orders were issued to eliminate the detected violations; 68 protocols on administrative offenses were issued | 76 orders were issued to eliminate the detected violations; 38 protocols on administrative offenses were issued | 36 orders were issued to eliminate the detected violations; 15 protocols on administrative offenses were issued | 48 orders were issued to eliminate the detected violations; 18 protocols on administrative offenses were issued |

**Article 2§5**

## General legal framework

The national legislation has not changed during the reporting period. The list of relevant legislative acts referred to in previous report by thematic group "Labour rights" is actual.

## Measures for application of legal regulations. Responses to the additional questions of the European Committee of Social Rights

*1. The Committee asks for additional information in the next report on exceptions to the rules on weekly rest periods.*

Response: The Second Report of the Government of Ukraine presents a comprehensive list of exceptional cases where the engagement of individual employees and officers to work on non-work days is allowed.

## Statistics

| | **Number of detected violations (units) by year** | | | |
|---|---|---|---|---|
| | **2009** | **2010** | **2011** | **2012** |
| Article 67 "Days-off" of the Code of Labour Laws of Ukraine | 2154 | 2187 | 2140 | 1512 |
| Measures taken to influence employers | 1296 orders were issued to eliminate the detected violations; 443 protocols on administrative offenses were issued | 897 orders were issued to eliminate the detected violations; 598 protocols on administrative offenses were issued | 1289 orders were issued to eliminate the detected violations; 367 protocols on administrative offenses were issued | 894 orders were issued to eliminate the detected violations; 100 protocols on administrative offenses were issued |

**Article 2§6**

## General legal framework

The national legislation has not changed during the reporting period. The list of relevant legislative acts referred to in previous report by thematic group "Labour rights" is actual.

According to the draft Resolution of the Cabinet of Ministers of Ukraine “On approval of the program for implementation of the Association Agreement between Ukraine and the European Union” it is envisaged that the regulations aimed for the implementation of the Council Directive 91/533 of 14 October 1991 on an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship should be developed, approved and implemented.

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## Measures for application of legal regulations. Responses to the additional questions of the European Committee of Social Rights

*1. The Committee asks for confirmation in the next report that all the aforementioned aspects of the employment contract or relationship are covered by the contract or another written document.*

Response: According to Article 24 of the Code of Labour Laws of Ukraine (hereinafter referred to as the CLL) employment contracts are generally concluded in writing.

Observance of the written form is mandatory:

1) in case of organized recruitment of employees;

2) in case of conclusion of employment contracts for work in areas with special natural geographical and geological conditions and conditions posing increased health risks;

3) upon conclusion of contracts;

4) in cases when an employee insists on conclusion of an employment contract in writing;

5) in case of conclusion of an employment contract with a minor;

6) in case of conclusion of an employment contract with an individual;

7) in other cases stipulated by the legislation of Ukraine.

In case of concluding a contract or employment contract entered into in accordance with the labour legislation of Ukraine in writing, it shall include all aspects of the employment contract relating to the parties of labour relations, place of work, profession or position to which the employee is assigned, working conditions, salary, duration of leave and duration of employment.

In other cases, conclusion of an employment contract is formalized by an order or instruction of the employer upon hiring the employee.

An integral part of the order on hiring an employee is a place of employment, profession or position to which the employee is assigned, working conditions, salary and duration of employment. With regard to annual leave, its duration in this case is defined in the collective agreement or in a separate order of the employer, in case if a collective agreement is not concluded.

It should be noted that paragraph one of Article 41 of the draft Labour Code of Ukraine, which is under consideration by the Verkhovna Rada of Ukraine stipulates that the employer must comply with the written form of the employment contract in order to ensure its effective operation and clear definition of obligations of the parties, prevention of labour disputes.

*2. 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.*

Response: Other written sources, which contain information on basic aspects of labour relations in case if the employee does not have a contract in writing, include job descriptions of employees, internal labour regulations, collective agreement.

**Statistics**

| | **Number of detected violations (units) by year** | | | |
|---|---|---|---|---|
| | **2009** | **2010** | **2011** | **2012** |
| Article 29 "Obligation of owner or authorized by him/her body to instruct employee and allocate workplace thereto" of the Code of Labour Laws of Ukraine | 2386 | 2451 | 2244 | 1866 |
| Measures taken to influence employers | 2278 orders were issued to eliminate the detected violations; 759 protocols on administrative offenses were issued | 2340 orders were issued to eliminate the detected violations; 781 protocols on administrative offenses were issued | 2160 orders were issued to eliminate the detected violations; 720 protocols on administrative offenses were issued | 1296 orders were issued to eliminate the detected violations; 432 protocols on administrative offenses were issued |

**Article 2§7**

**General legal framework**

Pursuant to Article 169 Mandatory medical examinations of employees of certain categories of the CLL it is envisaged that the owner or an authorized body shall at its own expense arrange for the preliminary (during recruitment) and periodic (during employment) medical examinations of employees engaged in heavy work, work under harmful or dangerous conditions, or those where there is a need for professional selection as well as annual mandatory medical examination of persons under 21 years of age.

The list of professions where employees are subject to medical examination, timeframe and procedure of the examination are set by the central executive body responsible for the development of the state policy in healthcare sector, in consultation with the central executive body responsible for the development of the state policy in the sphere of labour safety.

In addition, according to Article 17 "Mandatory medical examinations of employees of certain categories" of the Law of Ukraine "On Labour Protection" it is stipulated that the employer shall at its own expense arrange for financing and conducting of the preliminary (during recruitment) and periodic (during employment) medical examinations of employees engaged in heavy work, work under harmful or dangerous conditions, or those where there is a need for professional selection as well as annual mandatory medical examination of persons under 21 years of age. According to the results of periodic medical examinations, if necessary, the employer shall ensure the appropriate health measures. Medical examinations are conducted by the respective healthcare facilities whose employees are responsible under the law for ensuring the compliance of medical reports with an actual health status of an employee. The procedure of medical examination is determined by the central executive body responsible for the development of the state policy in healthcare sector.

The employer shall have the right, under a procedure prescribed by law, to bring an employee that refuses to undergo the mandatory medical examination to disciplinary action, and is obliged to suspend such employee from work without retaining a salary.

The employer must provide at its own expense an extraordinary medical examination of employees:

at the request of an employee, if that latter considers that the deterioration of his health is associated with working conditions;

on its own initiative, if the health status of an employee does not allow the latter to carry out work duties.

During undergoing medical examination the employees shall retain their jobs (positions) and average salary.

The Order of the Ministry of Health No. 246 of 21 May 2007 approved the Procedure of medical examination of employees of certain categories (registered

with the Ministry of Justice under No. 846/14113 of July 23 2007. According to this Order the Procedure applies for: employees engaged in heavy work, work under harmful or dangerous conditions, or those where there is a need for professional selection as well as annual mandatory medical examination of persons under 21 years of age at enterprises, institutions, organizations irrespective of the form of ownership, type of economic activity, their branches and other subdivisions; individuals - entrepreneurs that, in accordance with the legislation, use hired labour; the self-employed; state sanitary and epidemiological service facilities; health care facilities, military, medical and relevant committees of ministries and other central executive bodies that carry out medical examinations of employees, specialized health care facilities, which have the right to diagnose occupational diseases, departments and courses on occupational diseases in higher educational establishments of III-IV levels of accreditation; working bodies of the executive managerial board of the Social Insurance Fund against industrial accidents and occupational diseases of Ukraine.

The mandatory preliminary (during recruitment) and periodic (during employment) medical examinations are conducted for employees engaged in heavy work, work under harmful or dangerous conditions, or those where there is a need for professional selection as well as annual mandatory medical examination of persons under 21 years of age.

Preliminary medical examination is conducted during recruitment in order to:

determine the health status of an employee and register the initial objective health indicators as well as the possibility to perform, without compromising the health status, professional duties under the influence of specific harmful and dangerous factors of the working environment and work flow;

detect occupational diseases (poisoning) caused earlier when working at previous enterprises and prevent production-related and occupational diseases (poisoning).

Periodic medical examinations are conducted in order to:

- timely detect early symptoms of acute and chronic occupational diseases (poisoning), general and production-related diseases of employees;
- provide for dynamic supervision over employees' health in the conditions of influence of specific harmful and dangerous factors of production and the work flow;
- address the possibility for an employee to continue working in the conditions of influence of specific harmful and dangerous factors of production and the work flow;
- develop individual and group health and rehabilitation measures for employees that are at risk according to the results of medical examination;
- implement appropriate health measures.

In order to study non conformity conclusions of the European Committee of Social Rights the Order of the Ministry of Social Policy of Ukraine No.235 of 23 April 2013 approved an Expert Advisory Council with the participation of relevant ministries, social partners, NGOs and researchers. It will develop proposals in

order to bring the national situation into conformity with the Charter, in particular by studying the possibility of joining the ILO Convention No.171 on Night Work (1990) and Recommendation No.178 on Night Work.

According to the draft Resolution of the Cabinet of Ministers of Ukraine "On approval of the program for implementation of the Association Agreement between Ukraine and the European Union" it is envisaged that the regulations aimed for the implementation of the Council Directive 89/391/EC of 12 June 1989 on the introduction of measures to encourage improvements in the safely and health of workers at work should be developed, approved and implemented.

**Measures for application of legal regulations.**
**Responses to the additional questions**
**of the European Committee of Social Rights**

*1. The Committee asks whether it is possible for night workers to be transferred to day work.*

Response: During shift work, which includes night work, employees shall change shifts evenly in the manner prescribed by internal labour regulations. The transition from one shift to another, in general, shall be performed in each workweek in hours specified in the shift schedule. That is, under the shift schedule the employees shall work in both night and day shifts.

The shift schedules (work schedules) shall be approved by the employer in consultation with the trade union of the enterprise.

*2. The Committee also asks whether there is regular consultation with workers' 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.*

Response: National legislation does not envisage definition of a separate category of employees as those that work at night.

## Article 4 – The right to a fair remuneration

**Article 4§2**

### General legal framework

The national legislation has not changed during the reporting period. The list of relevant legislative acts referred to in previous report by thematic group "Labour rights" is actual.

### Measures for application of legal regulations. Responses to the additional questions of the European Committee of Social Rights

*1. The Committee asks if the right to increased remuneration for overtime work is also guaranteed in collective agreements.*

Response: In accordance with the current legislation, upon conclusion of collective agreements the legal provisions should be considered. Therefore, upon conclusion of collective agreements the provision on the higher rate of pay for overtime work is included.

*2. The Committee asks if the statutory provisions on payment of overtime apply to all types of work. The next report should indicate if there are any exceptions, namely as regards senior state officials or senior managers.*

Response: The mandatory provisions on remuneration for overtime shall apply to all employees except those working under irregular working hours: civil servants, including high-ranking officials.

**Statistics**

| | **Number of detected violations (units) by year** | | | |
|---|---|---|---|---|
| | **2009** | **2010** | **2011** | **2012** |
| Article 106 "Remuneration for overtime work " of the Code of Labour Laws of Ukraine | 1436 | 1458 | 1426 | 1007 |
| Measures taken to influence employers | 1296 orders were issued to eliminate the detected violations; 443 protocols on administrative offenses were issued | 879 orders were issued to eliminate the detected violations; 443 protocols on administrative offenses were issued | 897 orders were issued to eliminate the detected violations; 298 protocols on administrative offenses were issued | 978 orders were issued to eliminate the detected violations; 129 protocols on administrative offenses were issued |

| | | | | |
|---|---|---|---|---|

**Article 4§3**

**General legal framework**

- Constitution of Ukraine No.254k/96 of 28 June 1996
- Code of Labour Laws of Ukraine No. 322-VIII of 10 December 1971
- Law of Ukraine on Ensuring Equal Rights for Women and Men No 2866-IV of 8 September 2005;
- Law of Ukraine on Labour Remuneration No.108/95 of 24 March 1995
- ILO Convention No. 100 on Equal Remuneration, 1951 (ratified on 10 August 1956)

**Measures for application of legal regulations.**

According to Article 24 of the Constitution of Ukraine the equality of rights of men and women is ensured by providing women with opportunities equal with men in civic, political and cultural activity, in education and professional training, **in labour and pay.**

Article 2-1 of the CLL guarantees the equality of employment rights of all citizens irrespective of their descent, social and property status, race and ethnicity, **gender**, language, political opinions, religious beliefs, occupation, place of residence and other circumstances.

Under Section IV Ensuring equal rights and opportunities for women and men in social and economic activity of Article 17 "Ensuring equal rights and opportunities for women and men in labour and pay" of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" it is stipulated that the employer shall, in particular, ensure equal pay for women and men given the same qualification and working conditions.

According to Article 8 of the Law of Ukraine "On Labour Remuneration", the state shall regulate the remuneration of labour of employees of enterprises of all forms of ownership, particularly by establishment by the legislation of the minimum wage, conditions and salaries of employees of institutions and organizations that are funded from the budget.

The Cabinet of Ministers of Ukraine approved by its Resolution the salaries that are differentiated depending on the complexity of work, organizational and legal level of positions, the functions of the unit, which employs a particular employee and some other working conditions. The terms of remuneration of labour of employees of institutions and organizations that are funded from the budget are established irrespective of descent, social and property status, race and ethnicity, gender.

According to Article 18 of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" in case of collective agreement-based regulation of social and labour relations, the general agreement, regional and sectoral agreements, collective agreements should include provisions that ensure

equal rights and opportunities for women and men, specifying the timeframes of implementation of the relevant provisions.

In this regard, collective agreements (contracts) should envisage, inter alia, the elimination of inequalities, if any, in pay for women and men both in different sectors of the economy and in one sector based on a general social norm of remuneration of labour in the budget and other sectors, as well as based on professional training (re-training) of personnel.

The self-supported enterprises in accordance with Article 15 of the Law of Ukraine "On Labour Remuneration" define in the collective agreements the forms and systems of pay, labour standards, rates, tariffs, salaries, conditions of assignment and size of salary increments, bonuses, allowances, incentives and other promotional, compensation and guarantee payments in compliance with norms and guarantees provided by legislation, the general and sectoral (regional) agreements.

Equal pay is ensured through the establishment in sectoral agreements of salary rates by occupation depending on skill level. There is no gender difference in these salary rates. The pay level, thus, does not depend on whether a man or woman performs the necessary production functions. This ensures the observation of the principle of equal pay for work of equal value.

According to the data of the State Statistics Service of Ukraine the pay is higher for men than for women.

However, the gap in salary rates of men and women in 2012 slightly decreased compared to 2011.

In 2011, the average monthly salary of women was 2272 UAH, and men - 3035 UAH. The excess of salary of men over women's salary over this period was 33,6 %.

The salary of women in 2012 was 2661 UAH, and men - 3429 UAH. The excess of salary of men over women's salary over this period was 28,9%.

This is due to the fact that a higher percentage of men works in management positions with higher salary, is involved in work with severe, harmful, especially severe and particularly harmful conditions of work and night work.

However, the legislation of Ukraine, in view of physiological factors and the need in the additional time off, envisages the social protection of women, enabling women to combine work and motherhood, including provision of paid leave and other benefits for pregnant women and mothers.

This concerns, in particular, the establishment for women with children under fourteen years of age or disabled children of reduced working hours (Article 51 of the CLL), part-time work for pregnant women and women with children under fourteen years of age or disabled children (Article 56 of the CLL), limited involvement of women with children aged three to fourteen years of age or disabled children in overtime work and business travel (Article 177 of the CLL), transfer to lighter work of pregnant women and women with children under three years of age (Article 177 of the CLL), establishment of limits for the night work of women (Article 175 of the CLL) and other benefits and guarantees provided by the current legislation of Ukraine.

In addition, the Resolution of the Cabinet of Ministers No.717 of 26 September 2013 approved the State Program on Ensuring Equal Rights and Opportunities for Women and Men for the period until 2016. The Program aims at gender mainstreaming in all spheres of social activity, in particular the implementation of measures to reduce the gender gap in salaries of women and men.

The Order of the Ministry of Social Policy of Ukraine No. 235 of 23 April 2013 approved an Expert Advisory Council with the participation of relevant ministries, social partners, NGOs and researchers. It is envisaged to study the Council Directive 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions as modified by Directive 2002/73.

**Article 4§4**

## General legal framework

The national legislation has not changed during the reporting period. The list of relevant legislative acts referred to in previous report by thematic group "Labour rights" is actual.

## Measures for application of legal regulations. Responses to the additional questions of the European Committee of Social Rights

### Reasonable period of notice

### Indefinite contracts

During the reporting period there were no changes in the practical application of the general legal framework.

It should be noted that the draft Labour Code of Ukraine envisages that the employer must notify the employee in writing about the dismissal due to staff reduction not later than two months in advance. By consent of the parties of the employment contract the two-month period of notification may be reduced to one month. In this case, for the non-worked until the end of a two-month notification period time the employer should pay the compensation to the employee in the amount of the average monthly salary.

During the notification period the employee at his request may be granted the off-duty time for self-employment with pay, but not more than one day a week by consent of the parties.

However, the redundancy payment is envisaged in the amount based on the continuity of employment with the employer (up to five years – in the amount of the average wage; up to ten years - in the amount of two-month average wage; more than ten years - in the amount of three-month average wage).

### Immediate dismissal and cessation of employment other than through dismissal

*1. The Committee asks that the next report provide information on immediate dismissal and other cases of cessation of employment, for example due to the death of the employer, bankruptcy or invalidity.*

<u>Response:</u> The employment contract may be terminated only on grounds specified in the Law.

According to Article 40 "Termination of employment contract by the owner or an authorized body" of the CLL the permanent as well as fixed-term employment contracts may be terminated before the expiry by the owner or an authorized body only in case of:

1) change in the production and labour organization, including the liquidation, reorganization, bankruptcy or conversion of enterprises, institutions, organizations, downsizing or staff reduction;

2) detection of nonconformity of the employee to the position or work performed due to the lack of training or health status, which hinder the continuation of this work, as well as in case of refusal to grant access to state secret or cancellation of access to state secret, if the performance of employee’s duties requires access to state secret;

3) systematic failure of the employee, without valid reasons, to perform the duties assigned by an employment contract or internal labour regulations, if the employee was previously subject to disciplinary or civil penalties;

4) absence (including the absence from work for more than three hours during the working day) without reasonable excuse;

5) failure to attend work for more than four consecutive months due to temporary incapacity, excluding pregnancy and parental leave, if the legislation does not stipulate a longer term of retention of job (position) for certain diseases. For employees that lost work capacity due to an employment injury or occupational disease, the job (position) is retained until the restoration of work capacity or diagnosis of disability;

6) reinstatement of the employee that previously performed this work;

7) coming to work under the influence of alcohol, drugs or toxic substances;

8) committing in the workplace the theft (including petty theft) of the property of the owner, established by a court order that entered into force or a resolution of the body authorized to impose an administrative penalty or apply measures of social influence.

Dismissal on grounds specified in paragraphs 1, 2 and 6 of this Article is permitted if it is impossible to transfer the employee, subject to his consent, to another job.

It is prohibited to dismiss an employee on the initiative of the owner or his authorized body during employee’s temporary incapacitation (except for dismissal under paragraph 5 of this Article), as well as during the employee’s leave. This rule does not apply in the event of complete liquidation of the enterprise, institution, organization.

Article 41 “Additional grounds for termination of the employment contract by the owner or his authorized body with certain categories of employees under certain circumstances” of the CLL implies that in addition to the grounds provided

for in Article 40 of this Code, the employment contract may be terminated on the initiative of the owner or his authorized body in case of:

1) single gross breach of work duties by the manager of the enterprise, institution, organization of all forms of ownership (branch, representative office, division and other separate unit), his deputies, chief accountant of the enterprise, institution, organization, his deputies, as well as revenue and duties officers, which were conferred a special rank, and officials of central executive bodies engaged in implementing the state policy in the sphere of state financial control and price control;

1-1) wrongful acts of the manager of the enterprise, institution, organization resulting in late payment of salary or payment in the amount lower than the established by law minimum wage;

2) wrongful acts of the employee that directly serves the cash, commodity or cultural valuables, if these acts give rise to the loss of trust in him by the owner or his authorized body;

3) commitment by an employee that performs educational functions of immoral deed that contradicts the continuation of this work;

4) being, contrary to the provisions of the Law of Ukraine “On Prevention and Combating Corruption”, under the direct supervision of a nearly related person;

Termination of an employment contract on grounds provided for in paragraphs 1 (except the case of liquidation of the enterprise, institution, organization), 2-5, 7, Article 40 and paragraphs 2 and 3 of Article 41 of the CLL may be exercised only with the prior consent of the elected body (trade union representative), primary trade union of which the employee is a member.

In cases stipulated by labour legislation, an elected body of the primary trade union of which the employee is a member shall consider within fifteen days a justified written application of the owner or his authorized body on the termination of the employment contract with the employee.

The owner or his authorized body shall have the right to terminate the employment contract not later than in one month after receiving the consent of the elected body of the primary trade union (trade union representative).

Article 42 “Preferential right to retain job at dismissal of employees in connection with changes in production and labour organization” of the CLL envisages that in case of downsizing or staff reduction in connection with changes in production and labour organization, the preferential right to retain the job shall be ensured for employees with higher qualification and better performance.

In case of equal performance and qualification, the advantage in retaining the job shall be provided to:

1) the married - if there are two or more dependents;

2) individuals that do not have other employees with independent earnings in the family;

3) employees with long continuous employment with the enterprise, institution, organization;

4) employees that study in higher and secondary specialized educational institutions on the job;

5) combatants, war invalids and persons covered by the Law of Ukraine “On the Status of War Veterans, Guarantees of their Social Protection;

6) authors of inventions, utility models, industrial designs and proposals for technical improvements;

7) employees that suffered from industrial injury or occupational disease at this enterprise, institution, organization;

8) persons deported from Ukraine, within five years after the return for permanent residence in Ukraine;

9) employees - former conscripts and persons that served an alternative (non-military) service - for two years from the date of their dismissal from service.

The advantage in retaining the job may be provided for other employees, if it is stipulated by the legislation of Ukraine.

The draft Labour Code of Ukraine provides:

**Article 93. Termination of fixed-term employment contract in connection with expiration**

1. The fixed-term employment contract is subject to termination in connection with the expiry of its validity, including in connection with the expiry of performance of a specific task, of which the employer shall inform the employee in three days before the date of termination.

**Article 95. Termination of employment contract on the initiative of the employee**

1. The employee shall have the right to terminate the employment contract at any time on its own initiative, having informed the employer within two weeks by submitting a written application subject to mandatory registration.

The employee shall have the right to terminate the employment contract at its own initiative before the end of probationary period by submitting a relevant written application three days before the determined by him date of dismissal.

**Article 96. The right of an employee to determine the date of dismissal in the event of termination of the employment contract on its own initiative**

1. If there are valid reasons for termination of the employment contract the employee shall have the right to determine, at its discretion, the date of dismissal. This date can be any working day from the day after the submission by the employee of the application for termination of the employment contract before the expiry of notification period defined by paragraph one of Article 95 of this Code.

**Article 100. The order of dismissal in connection with staff reduction**

1. On the dismissal in connection with staff reduction the employer should notify the employee in writing not later than two months in advance, and the employer - small business entity, not later than one month in advance. By consent of the parties of the employment contract the two-month period of notification may be reduced to one month. In this case, for the non-worked until the end of a two-month notification period time the employer should pay the compensation to the employee in the amount of the average monthly salary.

An employee may be dismissed from the job not later than during four months after the notification.

During the notification period the employee at his request may be granted the off-duty time for self-employment with pay, but not more than one day a week by consent of the parties.

**Article 105. Termination of the employment contract by the employer on the basis of the detected nonconformity of the employee to the position or job**

1. Employment contract may be terminated by the employer on the basis of the detected nonconformity of the employee to the position or job subject to notification of an employee not later than in one month, if the nonconformity is the result of:

1) the health status of the employee confirmed by the relevant medical report;

2) lack of qualification of the employee confirmed by the results of the appraisal, other evidence;

3) loss by the employee of the right to drive vehicles or other permits required to perform the work under the employment contract.

**Article 110. Termination of employment in connection with conscription or employee's entering the military service, referral to alternative (non-military) service**

1. The employer should dismiss the employee in connection with conscription or entry of military service, or referral to alternative (non-military) service after receiving the employee's application and the document confirming these circumstances. Dismissal of the employee shall be performed not later than the day after the submission of the application, if it does not state other date.

**Article 52. Secondary employment**

1. Secondary employment is the performance by an employee of other paid work in his non-work time under the employment contract.

5. The termination of employment relations with an employee that is engaged in secondary employment with the payment of severance pay is performed on grounds provided by this Code and laws, and in the case of:

1) hiring an employee for which this job shall be the primary employment;

2) limitation of secondary employment in connection with the special conditions and terms of employment.

The employer must notify the employee of the dismissal based on the specified grounds not later than two weeks in advance.

**Article 111. Termination of employment contract in connection with entry into force of the court decision, which eliminates the possibility of continuing the employment, and in the event of cancellation of the decision on reinstatement**

1. The employment contract is subject to termination on a mandatory basis in connection with entry into force of the court decision, the implementation of which precludes the continuation of worker's employment.

2. The employer should terminate the employment contract in the event of the entry into force of the court decision, which eliminates the possibility of continuing the employment on the day of receipt of the relevant court decision.

3. The employer may terminate the employment contract in the event of the entry into force of a decision of the court of appeal or cassation instance, which cancels the court decision on reinstatement within one month of the date of its receipt.

**Article 115. Termination of employment relations in case of violating the rules of recruitment**

The employment relations shall be terminated in the case of recruitment of an employee that in accordance with legislation had no right to perform the work, if such violation can not be remedied.

The termination of employment relations with an employee that was recruited contrary to a court decision on the prohibition to occupy certain positions or engage in certain activities shall occur not later than the day following the day of service to the employer of the relevant court decision or requirement of a state authority.

In case of bankruptcy or insolvency of the employer the notification of employees about the dismissal shall be provided not later than two months in advance.

According to Article 22 of the Law of Ukraine "On Trade Unions, Rights and Guarantees of their Activity" (hereinafter referred to as TURGA) in case if the employer intends to dismiss employees for reasons of economic, technological, structural or similar nature, or in connection with the liquidation, reorganization, change of ownership of the enterprise, institution or organization, it should in advance, not later than three months prior to the planned dismissal provide to the primary trade unions the information on these measures, including the information on the causes of dismissal, the number and categories of employees that may be affected, the timing of dismissal and arrange consultation with trade unions on

measures to prevent or minimize the dismissal, or to mitigate the adverse effects of any dismissal.

Article 49 Special guarantee for certain categories of employees that lost their jobs in connection with changes in the production and labour organization of the Law of Ukraine "On Employment", which came into force on 1 January 2013, envisages, inter alia, the possibility of early retirement for those who had not more than 1,5 years left before pension entitlement (subject to the availability of the required pensionable service, registration with the employment service and the lack of suitable jobs).

Article 113 of the draft Labour Code provides that the employment relations shall be terminated in the event of the death of the employer - the individual or the entry into force of the court decision on the recognition of individual missing or declaration to be deceased.

The draft Labour Code provides that in the event of termination of the employment contract by the employer the latter shall send a request to the elected body of the primary trade union (trade union representative), acting at the enterprise for dismissal of an employee who is a member of the respective trade union. To request shall be accompanied by the draft order (instruction) on the dismissal and documents proving the grounds for dismissal.

The employer's request shall be reviewed in the presence of the employee (his representative) and the person authorized by the employer. The review of the request in the absence of the employee (his representative) shall be permitted in case of dismissal of the employee on the initiative of the trade union or in case of availability of its written consent. If the employee or his representative did not attend the meeting, the review of the employer's request shall be deferred until the next meeting. In case of repeated absence of the employee (his representative), the employer's request shall be reviewed in the absence of the employee (his representative). In reviewing the request an elected body of the primary trade union (trade union representative) shall check the compliance of the employer's proposal to terminate the employment contract with labour legislation and procedure for termination of the employment contract.

The elected body of the primary trade union (trade union representative) shall review the employer's request and make a decision within 14 calendar days of the date of receipt of the request. The decision of the elected body of the primary trade union (trade union representative) should be formalized in writing and transferred to the employer not later than the day after its adoption. In case of refusal of the elected body of the primary trade union (trade union representative) to approve the dismissal of the employee, the decision should state the reasons for such refusal.

In case if the employer does not receive the decision of the elected body of the primary trade union (trade union representative) on the specified date or receipt of an unmotivated refusal to approve the dismissal, the employer shall have the right to dismiss the employee without the consent of the elected body of the primary trade union (trade union representative).

The employer shall have the right to dismiss the employee within one month after receiving the decision of the elected body of the primary trade union (trade union representative) on the approval of dismissal of the employee.

In case of dismissal of the employee contrary to proposals of the elected body of the primary trade union (trade union representative), that body (representative) and the employee may apply to court for reinstatement of the employee.

**Employees leave of absence to seek new work**

*2. The Committee also wishes to know whether workers are entitled to absent themselves from work during their notice period to look for fresh employment.*

Response: Collective agreement envisages provisions on granting the employee during the notification period of the off-duty time for self-employment with pay.

Article 100 of the draft Labour Code of Ukraine provides that during the notification period the employee, at his request, may be granted the off-duty time for self-employment with pay, but not more than one day a week by consent of the parties.

**Probationary period and part-time employees**

In accordance with paragraph 1 of Article 26 of the CLL upon conclusion of the employment contract, by consent of the parties, the probation may be envisaged with the aim to verify the employee's adequacy for the job. According to Article 27 of the CLL the probationary period upon recruitment, unless otherwise provided by the legislation of Ukraine, shall not exceed three months, and in some cases - six months. The probationary period upon recruitment of workers may not exceed one month.

That is, upon probation the employee is considered recruited but with the condition that the concluded with him employment contract shall be terminated in case of failure to perform the probation.

In accordance with paragraph 2 of Article 28 CLL, in case if during the probationary period the inadequacy of the employee for the job for which he was recruited was established, the owner or his authorized body within this period may terminate the employment contract. The period of notification for such dismissal is not envisaged by legislation.

## Statistics

| | Number of detected violations (units) by year | | | |
|---|---|---|---|---|
| | **2009** | **2010** | **2011** | **2012** |
| Article 49-2 “Procedure of Dismissal of Employees” of the Code of Labour Laws of Ukraine | 201 | 158 | 151 | 109 |
| Measures taken to influence employers | 169 orders were issued to eliminate the detected violations; 74 protocols on administrative offenses were issued | 112 orders were issued to eliminate the detected violations; 62 protocols on administrative offenses were issued | 108 orders were issued to eliminate the detected violations; 60 protocols on administrative offenses were issued | 97 orders were issued to eliminate the detected violations; 54 protocols on administrative offenses were issued |

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**Article 4§5**

**General legal framework**

The national legislation has not changed during the reporting period. The list of relevant legislative acts referred to in previous report by thematic group "Labour rights" is actual.

**Measures for application of legal regulations.**
**Responses to the additional questions**
**of the European Committee of Social Rights**

With regard to the non-conformity conclusion of the European Committee of Social Rights with the Charter on the ground that deductions from wages (70%) are not reasonable and may deprive workers and their dependents of their very means of subsistence, it should be noted that the conditions and the order of execution of court and other bodies' (officials) decisions, that in accordance with the Law are subject to enforcement in the event of failure to execute them on a voluntary basis, are defined by the Law of Ukraine "On Enforcement Proceedings".

According to para. 4 of Article 70 of this Law the total amount of all deductions from each salary payment shall not exceed fifty percent of the salary to be paid to the employee, including in case of deduction based on several executive documents. This restriction does not apply to deductions from the salary if the debtor is serving the sentence in the form of correctional labour and recovery of maintenance for minor children. In such cases, the amount of deductions from the salary shall not exceed seventy percent.

Under Article 23 of the Constitution of Ukraine every person shall have the right to free development of his personality, provided that the rights and freedoms of other persons are not thus violated, and shall have duties to society, in which free and comprehensive development of his personality shall be guaranteed.

That is, every person shall have the duties to other persons, the society and the state to which he belongs. In turn, the state shall adopt legislation that guarantees effective remedies for any person whose rights have been violated.

In this regard, upon establishment of restrictions set out in Article 70 of the Law of Ukraine "On Enforcement Proceedings" the state shall provide:

- the constitutional principle of mandatory execution of court decisions (Article 124 of the Constitution of Ukraine);
- the duty of parents to sustain their children until they are of full age (Article 51 of the Constitution of Ukraine, Article 180 of the Family Code of Ukraine);
- the principles of justice and inevitability of enforcement and punishment (Article 5 of the Code of Criminal Procedure of Ukraine).

Thus, upon establishment of restrictions set out in Article 70 of the Law of Ukraine "On Enforcement Proceedings" the state ensures the duty of parents to sustain their children until they are of full age and the principle of inevitability of enforcement and punishment.

## Statistics

| | Number of detected violations (units) by year | | | |
|---|---|---|---|---|
| | **2009** | **2010** | **2011** | **2012** |
| Article 127 "Restriction of deductions from wages" of the Code of Labour Laws of Ukraine | 122 | 137 | 146 | 146 |
| Measures taken to influence employers | 109 orders were issued to eliminate the detected violations; 79 protocols on administrative offenses were issued | 129 orders were issued to eliminate the detected violations; 89 protocols on administrative offenses were issued | 134 orders were issued to eliminate the detected violations; 72 protocols on administrative offenses were issued | 134 orders were issued to eliminate the detected violations; 72 protocols on administrative offenses were issued |
| Article 128 "Restriction of the size of deductions from wages" of the Code of Labour Laws of Ukraine | 47 | 41 | 48 | 37 |
| Measures taken to influence employers | 36 orders were issued to eliminate the detected violations; 15 protocols on administrative offenses were issued | 22 orders were issued to eliminate the detected violations; 7 protocols on administrative offenses were issued | 23 orders were issued to eliminate the detected violations; 7 protocols on administrative offenses were issued | 17 orders were issued to eliminate the detected violations; 5 protocols on administrative offenses were issued |
| Article 129 "Will lock deductions from the severance pay, compensatory and other payments" of the Code of Labour Laws of Ukraine | 14 | 19 | 15 | 25 |
| Measures taken to influence employers | 13 orders were issued to eliminate the detected violations; 10 protocols on administrative offenses were issued | 17 orders were issued to eliminate the detected violations; 12 protocols on administrative offenses were issued | 14 orders were issued to eliminate the detected violations; 10 protocols on administrative offenses were issued | 22 orders were issued to eliminate the detected violations; 13 protocols on administrative offenses were issued |

## Article 5 - The right to organise

## General legal framework

Over the reporting period from 2009 to 2012 a number of regulations to ensure the right to organize was adopted.

- On 23 December 2010 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Social Dialogue in Ukraine" (No. 2862-VI) (hereinafter referred to as SDU).

This Law defines the basic principles, levels and parties of social dialogue; the criteria for representativeness of trade unions, their organizations, associations, employers' organizations and their associations; the forms and bodies of social dialogue; the establishment, composition, tasks, functions and powers of the National Tripartite Social and Economic Council; the establishment, composition, functions and powers of the sectoral (intersectoral) tripartite or bilateral Social and Economic Council and territorial tripartite Social and Economic Council.

- On 22 March 2012 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Public Associations" (No. 4572-VI) (hereinafter referred to as PA), which came into effect on 1 January 2013.

This Law provides for guarantees of freedom of association, namely: no one can be coerced into joining any public association. Membership or non-membership in the public association can not be a ground for restricting the rights and freedoms or for provision by state authorities, other public bodies, authorities of the Autonomous Republic of Crimea, local governments of any benefits and advantages.

Everyone shall have the right to freely at any time, in the manner prescribed by the charter, terminate the membership (participation) in a public association.

The requirement to provide information about the membership (participation) of the person in a public association, if such requirement is not related to the exercise of person's rights to represent the public association, or a member (participant) of the public association, is not permitted, except in cases stipulated by law (Article 5 of the PA).

Public associations are formed and operate based on the principles of:

- *voluntary involvement* (individual's right to free participation or non-participation in public association, including its establishment, joining such association or termination of membership (participation) in it);

- *self-governance* (the right of members (participants) of the public association to independently manage the activity of the public association in accordance with its purpose (goals), identify activities, and non-interference of state authorities, other public bodies, authorities of the Autonomous Republic of Crimea, local governments in the activity of public associations, except in cases stipulated by law);

- *free choice of location of activity* (the right of public associations to independently determine the location of their activity, except in cases stipulated by law);

- *equality before the law* (public associations are equal in their rights and obligations under the law based on the legal form, type and/or status of such association);

- *absence of property interest of their members (participants)* (members (participants) of a public association are not entitled to a share of property of the public association and are not liable for its obligations. The revenues or property (assets) of the public association are not subject for distribution among its members (participants) and may not be used for the benefit of any individual member (participant) of the public association, its officials (other than their labour remuneration and deductions for social measures);

- *transparency, openness and publicity* (the right of all members (participants) of the public association to have free access to information about its activity, including on the decisions made by the public association and measures taken, as well as the obligation of the public association to ensure such access. (Publicity means that public associations shall inform the public about their purpose (goals) and activity), (Article 3 of the PA).

The establishment and activity of public associations, the purpose (goals) or actions of which are aimed at the liquidation of Ukraine's independence, the change of constitutional order by force, violation of the sovereignty and territorial integrity of the state, undermining of its security, illegal seizure of state power, the propaganda of war, violence, incitement of ethnic, racial, religious strife, encroachment on human rights and freedoms, the health of the population are prohibited (Article 4 of the PA).

According to Article 12 of the PA the registration of a public association is carried out at its location.

Prior to January 1, 2013 the functions related to the legalization of public associations with national and international status were referred to the authority of the State Registration Service of Ukraine, regional organizations – to the Main Departments of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, regions, Kyiv and Sevastopol, local organizations within the villages, settlements and cities – to the executive bodies of village, settlement and city councils.

At present, according to the PA these functions are carried out by registration bodies at the location of a public association, i.e. the registration services of the rayon, district, city (cities of regional significance), city district, inter-district Departments of Justice.

As of 1 January 2013 the information on 31,909 public associations, registered (legalized) by the executive bodies of village, settlement and city councils was submitted to the registration services of territorial bodies of the Ministry of Justice of Ukraine.

Gradually, over two years as of the entry into force of the PA, the registration files of the national, international and local public associations shall be transferred to the registration services of the rayon, district, city (cities of regional significance), city district, inter-district Departments of Justice.

According to paragraph two of the Article 1 of the PA as far as its organizational and legal form is concerned, a public association is established as a public organization or a public union.

The specifics of regulation of social relations in the sphere of establishment, registration, activity and termination of certain types of public associations may be determined by other laws.

According to Article 12 of the PA, public association, which intends to carry out the activity as a legal entity shall be subject to registration in the order established by the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs", taking into account the specifics set out by this Law.

In the absence of grounds for refusal of registration of a public association envisaged by the stated Article of the PA, the public association shall be granted a certificate of registration as per standard form established by the Cabinet of Ministers of Ukraine.

Article 20 of the PA stipulates the procedure for accreditation of a separate subdivision of a foreign non-governmental organization, under which a separate subdivision of a foreign non-governmental organization shall be accredited in Ukraine without granting a status of a legal entity. Upon accreditation of a separate subdivision of a foreign NGO, it is granted a certificate of accreditation as per standard form approved by the Cabinet of Ministers of Ukraine.

In order to ensure the implementation of these provisions of the Law, the Cabinet of Ministers of Ukraine on December 26, 2012 adopted the Resolution No. 1193 On approval of the standard form of certificates of registration of a public association as a public organization or public union and the accreditation of a separate subdivision of a foreign NGO.

Article 18 of the PA stipulates that public association with the status of a legal entity can have its own symbols (emblem, other identification mark, flag), approved in accordance with its charter and shall be subject to registration in the order established by the Cabinet of Ministers of Ukraine.

Pursuant to Article 18 of the PA, the Cabinet of Ministers of Ukraine on 19 December 2012 adopted the Resolution No. 1209 "On the registration of symbols of public associations", which stipulates that youth and children's public associations shall be exempt from payment for registration of symbols.

The fee for registration of symbols of a public association, as well as for the issuance for the public association of the duplicate certificate of registration of symbols in connection with its loss, the replacement of certificate of registration of symbols in connection with damage shall be transferred to the state budget.

In accordance with the approved by the specified Resolution of the Cabinet of Minister of Ukraine "Order of registration of symbols, the registration of symbols of registered public associations" shall be performed by the State Registration Service of Ukraine (Ukrderzhreyestr).

For registration of symbols of a public association the application should be submitted to Ukrderzhreyestr together with documents, the list of which is defined by the abovementioned Order.

The application for registration of symbols of a public association should be considered by Ukrderzhreyestr within seven working days as of receipt of documents; based on the results of consideration the Ukrderzhreyestr shall adopt one of the following decisions: on the registration of symbols; on refusal to register the symbols; on leaving without consideration the application for registration of symbols.

In case the Ukrderzhreyestr decides to register the symbols, the copy of such decision with a cover letter shall be issued (sent by registered mail with return receipt) for the public association. The cover letter shall indicate the payment details for the registration of symbols of the public association.

The Order provides that the document on payment for the registration of symbols should be submitted by the public association within three months as of the date of receipt of a copy of the decision of Ukrderzhreyestr on the registration of symbols of the public association.

According to Article 17 of the PA in order to take account of public associations and ensure the universal access to information about public associations, the competent registration authority shall maintain the Register of public associations. The procedure for maintaining the Register of public associations is established by the Cabinet of Ministers of Ukraine.

On 19 December 2013 the Cabinet of Ministers of Ukraine adopted the Resolution No.1212 “On approval of the procedure for maintaining the Register of public associations and exchange of data between the Register of public associations and the Unified State Register of legal entities and individuals – entrepreneurs”, according to which the Register of public associations is established based on information contained in the Register of public associations of the Unified Register of community associations.

The Register of public associations shall also include information about public associations registered (legalized) by the executive bodies of village, settlement and city councils, to the extent provided by the executive bodies.

The basic information contained in the Register of public associations shall be open for the free of charge access at the official website of the competent registration authority.

The Register of public associations shall ensure the automatic transfer to the Unified State Register of legal entities and individuals - entrepreneurs of information necessary to verify the data related to the status of the legal entity.

The introduction of this procedure is a step towards avoiding the double entry of information on registered public associations that creates favorable conditions for acceleration of the procedure of acquiring the status of a legal entity and actions related to the status of a legal entity.

In order to ensure the implementation of the PA, the Ministry of Justice of Ukraine issued an Order on 14 December 2012 No. 1842 “On approval of forms of documents the provision (sending) of which is determined by the Law of Ukraine “On Public Associations”, which approved the application for registration of a public association, the application for the notification on the establishment of a public association, the confirmation of the national status of

a public association, the application for accreditation of a separate subdivision of a foreign non-governmental organization and the application for the closure of the separate subdivision of a public association.

The public association may be prohibited by a court based on the claim of the authorized registration body in case of detection of signs of violation by the public association of provisions of Articles 36, 37 of the Constitution of Ukraine, Article 4 of the PA. The prohibition of the public association shall result in the termination of its activity in accordance with the procedure established by this Law, and its exclusion from the Register of public associations.

The case of the prohibition of a public association shall be considered in the manner prescribed by the Code of Administrative Proceedings of Ukraine (Article 28 of the PA).

The Law envisages the liability for violating the legislation on public associations. Thus, officials of the state bodies, authorities of the Autonomous Republic of Crimea, local governments, citizens, foreigners and stateless persons shall be responsible for violating the legislation on public associations in the manner prescribed by law.

Public associations, separate subdivisions of foreign non-governmental organizations shall be hold liable for violation of the legislation under this Law and other laws of Ukraine (Article 31 of the PA).

- On 22 June 2012 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Employers' Organizations, their Associations, Rights and Guarantees concerning their Activities (No. 5026-VI) (hereinafter referred to as Law No. 5026) .

The Law No. 5026 specifies that employers' organizations and their associations are established and operate based on the principles of freedom of association (Article 6 of the Law No. 5026).

Employers shall have the right to associate in organizations of employers, freely join these organizations and withdraw from them, participate in their activities on conditions and in the order specified in their charters.

The employers' organizations and their associations may establish associations of employers' organizations, join and withdraw from such associations, participate in their activities on conditions and in the order specified in charters of associations of employers' organizations (Article 2 of the Law No. 5026).

Employers' organizations and their associations shall independently organize their activities, arrange meetings, conferences, conventions, meetings of bodies established by them, carry out other activities that do not contradict the law.

It is prohibited to interfere with the charter activities of employers' organizations and their associations by the state bodies, authorities of the Autonomous Republic of Crimea and local governments, trade unions, their organizations and associations, political parties and other public associations (Article 7 of the Law No. 5026).

Employers' organizations and their associations shall have the right to perform international activities. The international activities of employers' organizations, their associations in accordance with their charters shall be performed by establishing or joining the international organizations of employers, their associations, direct international contacts and relations, conclusion of respective agreements, as well as in other forms that do not contradict the legislation of Ukraine, the norms and principles of international law (Article 36 of the Law No. 5026).

The Law defines the termination of employers' organizations and their associations. Employers' organizations, their associations that violate the provisions of the Constitution of Ukraine and the legislation of Ukraine, may be compulsorily discharged only by court order.

It is not allowed to terminate employers' organizations, their associations by the decision of any other bodies.

The decision on the compulsorily discharge of associations of employers' organizations does not entail the discharge of employers' organizations, their associations that are part of this association (Article 17 of the Law No. 5026).

Chapter VIII of the Law No. 5026 stipulates the liability for violation of legislation on employers' organizations. Those hindering the exercise by he employers of the right to association in the employers' organizations, associations of employers' organizations, as well as officials and other persons guilty of violating the legislation on employers' organizations, the actions or inactivity of which hinder the legitimate activities of employers' organizations, their associations shall be hold liable under the law.

## Measures for application of legal regulations. Responses to the additional questions of the European Committee of Social Rights

### Forming trade unions and employer associations

*1. Restrictions on membership of trade unions are established exclusively by the Constitution and the laws of Ukraine. The Committee asks for more specific information on restrictions existing in domestic law.*

Response: In addition to information that was submitted in the Second Report, the following should be noted:

Article 127 of the Constitution of Ukraine stipulates that professional judges may not belong to political parties or trade unions, or take part in any political activity, hold a representative mandate, hold any other paid offices, perform other remunerated work except for research, teaching, or creative activities.

However, in accordance with Article 130 of the Constitution of Ukraine the judicial self-governance shall operate to resolve issues of the internal affairs of courts.

Judicial self-governance is one of the guarantees of ensuring the independence of the courts and the judges. The activity of judicial self-governance should promote the establishment of proper organizational and other conditions for the

functioning of courts and judges, assert the independence of the court, ensure the protection of judges from interference in their activity, and enhance the level of personnel management within the court system.

Internal affairs of courts include organizational support for courts and judges, social protection of judges and their families, as well as other issues that are not directly related to the administration of justice.

The objectives of judicial self-governance include addressing of issues regarding: the provision of organizational unity of the functioning of the judicial power; strengthening the independence of courts, judges, protection against interference in their activity; participation in determining the personnel, financial, logistical and other needs of courts and monitoring the compliance with established standards of meeting these needs; addressing the issues regarding the appointment of judges to administrative positions in courts in the order prescribed by Law "On the Judicial System and Status of Judges".

Organizational forms of judicial self-governance include the meetings of judges, the councils of judges, judicial conferences, the Congress of Judges of Ukraine (Articles 113, 114 of the Law of Ukraine "On the Judicial System and Status of Judges").

The ILO Committee of Experts on the Application of Conventions and Recommendations recommended to the Government of Ukraine to take measures to ensure the right of judges to establish organizations at their discretion in order to protect the rights and interests of their members.

Given that the Decree of the President of Ukraine of 17 May 2012 No. 328/2012 established the Constitutional Assembly - a subsidiary body under the President of Ukraine responsible for preparation of draft laws to amend the Constitution, the Ministry of Social Policy appealed to the Constitutional Assembly with the request to consider this issue in the preparation of the relevant amendments.

According to Article 15 of the Law of Ukraine "On the State Criminal Execution Service of Ukraine" persons in the rank and file and commanding officers as well as employees of the Criminal Execution Service may be the members of civil society organizations, the charter provisions of which do not conflict with the principles of activity of the State Criminal Execution Service of Ukraine, and may participate in their work in their off-duty time.

*For the reference: in Ukraine the Trade Union of employees of the Armed Forces of Ukraine and the Trade Union of Certified Police Officers of Ukraine are registered and operating.*

*2. The Committee asks for more information on legalisation requirements, such as documents to be produced, under domestic law.*

Response: According to Article 16 of the TURGA for the Legalization of Trade unions, trade unions associations their founders or leaders of the elected bodies should submit an application and attach to it the charter (regulations), Minutes of the congress, conference, constituent or general meeting of members of the union

with the decision on its approval, information on the elected bodies, the presence of trade union organizations in the respective administrative-territorial units, information on the founders of associations. The belonging to a trade union should be stated by the organizations acting under the charter of this trade union in the notification to the legalizing body at their location, with reference to the certificate of legalization of trade union, under which they were included in the register of public associations.

*3. The Committee asks whether refusals are subject to appeal before domestic courts.*

Response: The procedure of legalization of trade unions, their associations is defined in the Article 16 of the TURGA.

According to the paragraph five of the stated Article the legalizing authority cannot refuse the legalization of the trade union, trade unions association.

Under paragraph six of Article 16 of the TURGA, in case of non-compliance of the submitted documents of the trade union, association of trade unions with the referred status, the legalizing body shall propose the trade union, association of trade unions to provide additional documentation necessary for verification of the status.

*4. Trade unions are exempt from paying any registration fees. By contrast, employers' organisations have to pay registration fees amounting to between 2.5 and 10 times the non-taxable minimum personal income. The Committee recalls that registration fees must be reasonable and designed only to cover strictly necessary administrative costs and asks whether this is the case with regard to employers' organisation's fees.*

Response: From 24 May 2001 in Ukraine the Law of Ukraine "On Employers' Organizations" was in force.

However, on 22 June 2012 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Employers' Organizations, their Associations, the Rights and Guarantees concerning their Activity" (hereinafter - the Law), one of the initiators of which was the deputy of the Verkhovna Rada of Ukraine of VI convocation Shevchuk O.B., who is a member of the governing body of the Confederation of Employers of Ukraine.

The Law was developed by representatives of employers' organizations and their associations and adopted by the Verkhovna Rada of Ukraine in the proposed version.

Thus, Article 2 of the Law provides that employers' organization, association shall submit at the place of state registration to the relevant authority, in particular, the document certifying the payment of the fee for state registration of employers' organization, association. The size and procedure for collecting the fee for state registration are established by the Cabinet of Ministers of Ukraine.

*5. The Committee also recalls that requirements as to minimum numbers of members comply with Article 5 if the number is reasonable and presents no obstacle to the founding of organisations. It asks that the next report indicate expressly whether such requirements exist or not in Ukraine.*

Response: The Law "On Trade Unions, Rights and guarantees of their Activity" does not envisage any requirements with regard to the minimum number of members of the trade union.

*6. The Committee stresses that domestic law must guarantee a right of appeal to courts to ensure that all the aforementioned rights are upheld, and therefore asks that next report indicates whether such a right is guaranteed in domestic law.*

Response: According to Article 55 of the Constitution of Ukraine Human and citizen rights and freedoms shall be protected by court "Everyone shall be guaranteed the right to challenge in court the decisions, actions, or inactivity of State power, local self-government bodies, officials and officers".

Everyone shall have the right to appeal for the protection of his rights to the Verkhovna Rada of Ukraine Commissioner for Human Rights (Ombudsman).

After exhausting all domestic legal instruments, everyone shall have the right to appeal for the protection of his rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations of which Ukraine is a member or participant.

Everyone shall have the right to protect his rights and freedoms from violations and illegal encroachments by any means other than prohibited by law".

According to Article 47 of the Law of Ukraine "On the Judicial System and Status of Judges "1. Everyone shall be guaranteed the protection of his rights, freedoms and legitimate interests by an independent and impartial court, established under the Law.

2. In order to ensure a fair and impartial consideration of cases within a reasonable timeframe prescribed by law, in Ukraine there are courts of first instance, courts of appeal, courts of cassation instance and the Supreme Court of Ukraine.

3. Everyone shall have the right to participate in the consideration of his case in the procedure prescribed by law in the court of any instance".

The jurisdiction of courts with regard to consideration of cases is defined by the procedural law, depending on the type of legal relations and subject matter of the dispute.

Thus, any decision, action or inaction of the authorities can be appealed against in the administrative courts (Article 2 of the Code of Administrative Proceedings of Ukraine).

*7. The Committee further notes from another source allegations that the current registration system is in practice complex and cumbersome. It recalls that initial formalities such as declaration and registration must be simple and easy to apply. The report indicates that the Parliamentary Committee on Social Policy and*

*Labour is currently examining draft laws which tackle notably registration, making it impossible for the competent authorities to refuse registration. According to the report, the Ministry of Justice's review of the legislation in force is ongoing with a view to bringing it in conformity with ILO Convention No. 87. This process has included consultations with trade unions. Considering the seriousness of the above-mentioned allegations, the Committee asks that the next report provide detailed information on concrete steps that have been taken, notably as part of the ongoing reform.*

Response: The ILO Committee of Experts on the Application of Conventions and Recommendations also recommended that the Government of Ukraine (ILO letter of 06.01.2012) to amend Article 87 of the Civil Code, according to which the trade unions acquire the rights of the legal entity upon their registration, so as to eliminate the contradiction to Article 16 of the TURGA, according to which the trade union acquires the rights of the legal entity upon approval of its charter, stating that the legislature confirms the status of trade unions and no longer has the discretionary power to reject the legalization of the trade union.

In order to implement the stated recommendation, the Ministry of Social Policy appealed to the Ministry of Justice with the proposal to consider the possibility to eliminate the contradiction between Article 87 of the Civil Code of Ukraine and Article 16 of the TURGA.

According to the Ministry of Justice, pursuant to paragraph four of Article 87 of the Civil Code of Ukraine the legal entity is considered established as of the date of its state registration.

According to Article 16 of the TURGA the trade unions, their associations are legalized by notification of the compliance with the declared status. The legalizing body cannot refuse to legalize the trade union, association of trade unions.

In the case of non-compliance of the submitted documents of the trade unions, association of trade unions with the declared status, the legalizing body shall propose the trade union, association of trade unions to provide additional documentation necessary for verification of the status.

The trade union, association of trade unions acquires the rights of the legal entity upon the approval of the charter (Regulation). The status of a legal entity shall also be acquired by trade union organizations that operate under its charter.

Thus, the establishment of trade unions is not put in dependence on other registration actions, in particular their registration as legal entities.

The above is consistent with the Decision of the Constitutional Court of Ukraine of 18 October 2000 No. 11-rp/2000 in the case of the constitutional petition of people’s deputies of Ukraine and the Verkhovna Rada of Ukraine Commissioner for Human Rights for compliance with the Constitution of Ukraine (constitutionality) of Articles 8, 11, 16 of the TURGA (the case about the freedom of establishment of trade unions).

The decision declared inconsistent with the Constitution, the establishment of registration (with the acquiring of the status of the legal entity) as the only way of

legalization of trade unions, as it interferes with the exercise of the right to form trade unions based on the free choice of their members (Article 36 of the Constitution of Ukraine).

*8. The Committee asks for more details on sanctions foreseen by law against those who hamper the right to join or not to join trade unions.*

Response: Section V of the TURGA determines the liability for violation of legislation on trade unions. Individuals that interfere with the exercise of the right of citizens to organize in trade unions, and officials and other individuals guilty of violating the legislation on trade unions, whose actions or inaction hinder the legitimate activities of trade unions, their associations, shall bear disciplinary, administrative or criminal responsibility according to law (Article 46 of the Law).

Under Article 33 of the TURGA the trade union bodies shall have the right to request the termination of the employment agreement (contract) with the head of an enterprise, institution or organization if it violates this Law, labour legislation, legislation on collective agreements.

The requirement of trade union bodies to terminate the employment agreement (contract) is mandatory for consideration and implementation. In case of disagreement with it, the head in respect of which the decision was made, or body or individual, on which depends the dismissal of the head, may within two weeks appeal against the decision of the trade union body in a local court. In this case, the fulfillment of the requirement to terminate the employment contract shall be suspended until the adoption of the court's decision.

Article 170 of the Criminal Code of Ukraine provides for liability for interference with legitimate activities of trade unions, political parties, public associations.

Intentional interference with legitimate activities of trade unions, political parties, public associations or their bodies shall be punishable by correctional labour for a term of up to two years or imprisonment for up to three years with deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years.

The order of disciplinary proceedings, the types of disciplinary action are regulated by Articles 147 - 149 of the CLL.

*9. 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. The Committee nonetheless asks for further information on any specific legislation or regulations in this area and on the situation in practice.*

Response: Please see the above mentioned with regard to the Law of Ukraine "On Public Associations" of 22 March 2012 No. 4572-VI.

**Trade union activities**

*10. As regards trade unions activities, the Committee riterates that independence of labour organisations takes various forms: (a) Trade unions are entitled to choose their own members and representatives; (b) Excessive limits on the reasons for which a trade union may take disciplinary action against a member constitute an unwarranted interference in the autonomy of trade unions inherent in Article 5; (c) Trade union officials must have access to the workplace and union members must be able to hold meetings at work in so far as employers' interests and company requirements permit. The Committee asks that the next report provide information on this point.*

Response: The guarantees concerning the trade union rights are defined by Section IV of the TURGA. In particular, members of the elected bodies of trade unions, associations of trade unions, as well as authorized representatives of these bodies shall have the right to:

- free access and inspection of workplaces of trade unions at the enterprise, institution, organization, where the members of the trade unions work;
- request and receive from the employer, other official the documents, information and explanations relating to working conditions, implementation of collective agreements, compliance with labour legislation and social and economic rights of workers;
- directly contact, orally or in writing, the employer, officials on trade union issues;
- check the operation of retail, public catering, healthcare facilities, child care centers, dormitories, transport enterprises, domestic services enterprises that belong to the given enterprise, institution, organization, or serving them;
- publish own information in the premises and on the territory of the enterprise, institution or organization in the places available to employees;
- check the payments of wages and state social insurance, the use of funds for social and cultural activities and housing construction.

To provide the technical inspection of sector trade unions, which exercises control over the observance of conditions of labour safety of employees, the right to terminate work at the enterprises in case of gross violations of occupational health and safety rules.

In addition, employees of enterprises, institutions and organizations, elected to the elected trade union bodies shall enjoy the same opportunities to exercise their powers.

The changes the provisions of the employment contract, remuneration of labour, disciplinary action against employees that are members of the elected trade union bodies is permitted only with the prior consent of the elected body, in which they are members.

The dismissal of members of the elected trade union body of the enterprise, institution or organization (including structural divisions), its managers, trade union representative (where there is no elected body of the trade unions), in

addition to maintenance of the general order, shall be permitted upon the prior consent of the elected body, in which they are members, as well as the higher elected body of this trade union (association of trade unions).

Dismissal by the employer of employees elected to the trade union bodies of the enterprise, institution, organization, shall not be permitted within one year after the end of the term for which it was elected, except in cases of complete liquidation of the enterprise, institution or organization, detected inadequacy of the employee to the position or work performed as a result of health status that prevents the continuation of this work, or commitment by the employee of action for which the legislation envisages the possibility of dismissal from work or service. This guarantee shall not be provided to employees in the event of early termination of the authority in these bodies in connection with the improper performance of their duties or at their will, except when this is due to health status.

The employees dismissed from their jobs because of their membership in the elected trade union bodies, after the expiry of their authority shall be provided with previous job (position) or by consent of the employee with another equivalent job (position).

Members of the elected trade union bodies, not dismissed from their duties shall be granted, under the conditions stipulated by collective agreement, the non-work time with retaining of the average salary for participation in consultations and negotiations, performance of other duties in the interests of the labour collective, as well as during their participation in the work of elected trade union bodies, but not less than two hours per week.

At the time of trade union training the employees, elected to the elected trade union bodies of the enterprise, institution, organization shall be provided with additional leave of up to 6 calendar days with retaining of the average salary at the expense of the employer.

The employees, elected to the elected trade union bodies at the enterprise, institution or organization shall retain the social benefits and incentives set for other employees in the workplace in accordance with the law. At the expense of the enterprise these employees may be provided with additional privileges, if this is envisaged by the collective agreement.

The legislation defines the employer’s obligation to facilitate the creation of proper conditions for trade unions operating at the enterprise, institution or organization.

In particular, the provision for the elected trade union body and arrangement of meetings of employees of premises with all the necessary equipment, means of communication, heating, lighting, cleaning, transport, security shall be ensured by the employer in the manner prescribed by the collective agreement (contract).

The employer undertakes to facilitate the creation of proper conditions for trade union organizations operating at the enterprise, institution or organization.

In case of submission by employees that are trade union members of relevant written statements, the employer shall monthly and free of charge deduct from the salary and transfer to the account of trade union the membership fees of the employees according to the concluded collective agreement or a separate

agreement in the timeframe set by this agreement. The employer may not delay the transfer of these funds.

The disputes relating to the failure of the employer to perform these duties shall be considered in court.

Employers are required to deduct the funds for primary trade unions to finance the cultural, physical training and health improvement measures in the amount prescribed by the collective agreement, but not less than 0.3 percent of the payroll, with allocation of these amounts to gross expenditure and in the public sector - through the provisions of additional budget allocations.

**Representativeness**

*11. The Committee asks whether any form of representativeness exists and, if so, that the next report provide information on this point.*

Response: The Law of Ukraine "On Social Dialogue in Ukraine" (hereinafter referred to as SDU) defines the general criteria of representativeness, the criteria of representativeness at the levels of social dialogue, assessment of compliance with these criteria and its verification.

The general criteria of the representativeness for trade union and employers' party include:

- legalization (registration) of these organizations (associations) and their status;
- for trade unions, their organizations and associations - the total number of their members, for employers' organizations and their associations - the total number of employees working at enterprises - members of the respective employers' organizations;
- sectoral and territorial distribution (Article 5 of the SDU).

At the national level to participate in collective bargaining on the conclusion of the general agreement, to delegate the representatives to the National Tripartite Social and Economic Council, to the bodies of management of funds of mandatory state social insurance and other tripartite parties of the social dialogue, to participate in international events the representative are trade union association and employers' organizations associations, which:

- are national associations of trade unions, numbering not less than one hundred and fifty thousand members;
- are national associations of employers' organizations, at the enterprises of which there are at least two hundred thousand employees;
- incorporate trade unions, their organizations and associations and employers' organizations associations in the majority of the administrative-territorial units of Ukraine established by paragraph two of Article 133 of the Constitution of Ukraine, as well as at least three national trade unions and at least three national associations of employers' organizations.

For example, currently the status of representative at the national level have been confirmed by the following national associations of trade unions: the Federation of Trade Unions of Ukraine, Federation of Transport Workers' Trade

Union of Ukraine, Confederation of Free Trade Unions of Ukraine, Association of Ukrainian Trade Unions “Ednist”.

At the sectoral level to participate in collective bargaining on conclusion of sectoral (inter-sectoral) agreements and to delegate the representatives to the social dialogue bodies at the appropriate level the representative are trade unions and their associations, employers’ organizations and their associations, which:

- are legalized (registered) in accordance with the law;
- are the All-Ukrainian trade unions numbering at least three percent of employees engaged in the relevant sector;
- the All-Ukrainian associations of employers’ organizations established by the sector at the enterprises of which at least five percent of employees are engaged in the relevant type (types) of economic activity.

At the territorial level to participate in collective bargaining on conclusion of territorial agreements and to delegate the representatives to the social dialogue bodies the representative are trade unions and their associations and employers’ organizations and their associations, which:

- are legalized (registered) in accordance with the law;
- are regional, local trade unions, their organizations and associations established on a territorial basis, the members of which are not less than two percent of the employed population in the respective administrative-territorial unit;
- are employers’ organizations and their associations operating in the territory of the respective administrative-territorial unit, the enterprises of which employ at least five per cent of the employed population in the respective administrative-territorial unit.

At the local level to participate in collective bargaining on conclusion of collective agreements under the law the representative are:

- employees’ party, which includes primary trade unions, and in their absence - freely elected representatives (representative) of employees;
- the employer’s party, which includes the employer and/or authorized representatives of the employer.

In addition, the SDU stipulates that trade unions and their associations, employers’ organizations and their associations that do not qualify for representativeness, by the decision of their elected bodies can grant authority to representative organizations and associations of the proper level to represent their interests or to submit proposals to the relevant social dialogue bodies. These proposals are subject to mandatory consideration by the parties during the development of coherent position and decision-making (Article 5 of the SDU).

The assessment of compliance with the criteria for representativeness of the trade unions and their associations, employers’ organizations and their associations shall be carried out:

- at the national and sectoral levels – by the National Mediation and Conciliation Service;
- at the territorial level – by the relevant branches of the National Mediation and Conciliation Service.

The confirmation of representativeness of trade unions and employers' party shall be conducted every five years by the National Mediation and Conciliation Service and its branches, respectively. The trade unions, their organizations and associations, employers' organizations and their associations, including the newly-established ones, shall have the right to address the National Mediation and Conciliation Service and its relevant branches in order to assess the eligibility for representativeness criteria in the presence of the factual basis, but not more than once a year.

The National Mediation and Conciliation Service and its branches based on the results of assessment of the eligibility for representativeness criteria and confirmation of the representativeness shall maintain a register of these organizations (associations).

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 National Mediation and Conciliation service on 21 July 2011 No. 73.

Also it should be noted that the criteria of representativeness defined by the Law of Ukraine "On Social Dialogue in Ukraine" do not represent a direct or indirect barrier to establishment of trade unions.

*12. The Committee underlines that Article 5 applies both to the public and to the private sector. Under Article 19§4b of the Charter, states party must secure for nationals of other parties treatment not less favourable than that of their own nationals in respect of membership of trade unions and enjoyment of the benefits of collective bargaining. The Committee asks information in the next report on this point. As to members of the armed forces and the police, the report states that they are entitled to belong to a trade union.*

Response: According to Article 6 of the TURGA foreign citizens and stateless persons can not form trade unions but may join the trade unions, if it is provided for in their charters.

Trade union members may be the individuals that work at the enterprise, institution or organization irrespective of the form ownership and type of business activity, at an individual that uses hired labour, the self-employed, those who study at the educational establishments (Article 7 of the TURGA).

*For the reference:*

*In Ukraine there is a Ukrainian trade union of those working abroad; All-Ukrainian trade union of migrant workers in Ukraine and abroad; All-Ukrainian independent trade union of the tourism industry and service sector of workers in Ukraine and worldwide.*

It should also be noted that foreign nationals on the equal basis with citizens of Ukraine can enjoy the benefits of collective agreements.

Article 9 of the Law of Ukraine "On Collective Agreements and Agreements" and Article 18 of the CLL stipulate that the provisions of the collective agreement apply to all employees of the enterprise, institution, organization irrespective of whether they are trade union members, and shall be binding both for the employer and the employees of the enterprise, institutions, organization.

**Article 6 – The right of workers to bargain collectively**

**Article 6§1**

**General legal framework**

On 23 December 2010 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Social Dialogue in Ukraine" (No. 2862-VI) (hereinafter referred to as SDU).

**Measures for application of legal regulations.**
**Responses to the additional questions**
**of the European Committee of Social Rights**

**Levels of joint consultation**

*1. The Committee asks for information on the composition and functioning of the NTSEC and in what way public authorities encourage the consultations or participate in them.*

Response: In connection with the adoption of the Law of Ukraine "On Social Dialogue in Ukraine" on 23 December 2010, the Decree of President of Ukraine of 2 April 2011 No. 347 established the National Tripartite Social and Economic Council (hereinafter referred to as the National Council) as a permanent body established by the President of Ukraine for social dialogue.

The main tasks of the National Council are as follows:

- development of a consolidated position of parties of the social dialogue on the strategy of economic and social development of Ukraine and ways of addressing existing challenges in this sphere;

- preparation and provision of agreed recommendations and proposals to the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine on the development and implementation of the state economic and social policy, regulation of labour, economic and social relations.

The National Council, in accordance with its assigned tasks, performs advisory, consultancy and coordinating functions by developing a common position and provision of recommendations and proposals of the parties of the social dialogue on:

- formulation and implementation of the state economic and social policy, regulation of labour, economic and social relations;

- draft laws and other regulations on issues of social and economic policy and labour relations, state programs of economic and social development, other state target programs;

- state social standards and pay level;

- key economic and social indicators of the draft State Budget of Ukraine for the respective year;

- ratification by Ukraine of ILO conventions, interstate agreements and EU regulations on matters relating to the rights of workers and employers; creation of a

favorable environment for the development of social dialogue, effective operation of economic entities, trade unions, employers' organizations and their interaction with other institutions of civil society;

- implementation of international and domestic experience of social dialogue;

- other matters that the parties consider important for ensuring constitutional rights and guarantees of citizens, social cohesion, social and economic development of the state.

The National Council is composed of an equal number of authorized representatives of the parties of social dialogue at the national level and unites 60 members that perform their duties on a voluntary basis:

- 20 members - trade unions, delegated by representative national trade union associations;

- 20 members – employers, delegated by representative national associations of employers;

- 20 members – executive authorities, appointed by the Cabinet of Ministers of Ukraine *(the composition of the National Council is attached).*

*2. The Committee requests the next report to provide further information on the possibilities of joint consultation at national, regional and sectoral level as far as Article 6§1 is concerned.*

Response: The Law of Ukraine „On Social Dialogue in Ukraine" states that social dialogue is carried out at the national, sectoral, territorial and local (enterprise, institution, organization) levels on the tripartite or bilateral basis.

The social dialogue is established between the parties of social dialogue of the relevant level in the form of:

- information exchange;
- consultation;
- coordination;
- collective bargaining on conclusion of collective agreements.

The exchange of information is carried out in order to determine the position, achieve agreement, find compromise and make joint decisions on economic and social policy issues.

The procedure for exchange of information is determined by the parties. Neither party may refuse to provide information, except when such information in accordance with the law refers to classified information.

The consultations are held at the suggestion of the party of the social dialogue in order to identify and approximate positions of the parties in making their decisions within their competence.

The initiating party shall send to other parties a written proposal specifying the subject of consultations and the dates. Parties that received such a proposal shall take part in the consultation, jointly agree on its order and timeframe and determine the participants of the consultation.

The coordination procedures shall be carried out in order to take account of the parties' positions, develop compromise agreed decisions when drafting the regulations.

The procedure of coordination shall be defined by bodies of social dialogue of the appropriate level, unless otherwise provided by legislation or collective agreements.

The failure to reach a compromise between the parties as a result of the coordination procedure can not be a ground for interference with the work of social dialogue bodies.

Collective bargaining is arranged with the aim to conclude collective agreements.

Based on the results of collective bargaining the collective agreements are concluded:

- at the national level - the general agreement;
- at the sectoral level - sectoral (inter-sectoral) agreements;
- at the territorial level - territorial agreements;
- at the local level - collective agreements.

At the sectoral level, there are sectoral (inter-sectoral) bilateral or tripartite Social and Economic Councils the tasks of which include the development of proposals and recommendations taking into account the interests of parties of the social dialogue of the sector (sectors) on:

the regulation of economic, social and labour relations of parties of the social dialogue;

the remuneration of labour of employees, ensuring decent working conditions and regulation of social and economic issues, productive employment and labour safety in production;

the creation of an enabling legal and economic environment for the efficient operation of enterprises;

other matters that the parties consider important and the addressing of which significantly affects the development of the sector (sectors) and socio-economic status of employees.

The Sectoral (inter-sectoral) Council, pursuant to assigned tasks, shall arrange consultation of the parties of social dialogue on matters within its competence, in particular, contribute to collective bargaining, conclusion and implementation of sectoral (inter-sectoral) agreements and collective agreements at sector enterprises.

In order to ensure the social dialogue at the territorial level the regional Tripartite Social and Economic Councils shall be established, the tasks of which shall include:

- arrangement of consultation of parties of the social dialogue on developing a consolidated position on the development of economic and social spheres, labour capacity, strategy of regional development taking account of the interests of hired employees, employers and the state;
- preparation of recommendations for local executive authorities or local governments on: remuneration of labour, ensuring decent working conditions at

enterprises, institutions and organizations located in the region; creation of favorable environment for the efficient operation of enterprises, trade unions and employers' organizations in the region.

Today in Ukraine there are the social dialogue bodies established on the basis of new representative grounds: the National Tripartite Social and Economic Council, Ukrainian Coordinating Committee for the Promotion of the Employment, at the stage of establishment - new boards of the Pension Fund of Ukraine, of the Fund of Compulsory State Social Insurance for Unemployment, boards and supervisory councils of the Funds of Social Insurance against Accidents at Work and Occupational Diseases and of Social Insuarance for Temporary Disability, and 27 regional boards of branches of the Fund of Social Insurance for Temporary Disability.

The consultation between the social partners is held regularly at all levels. This opens up the possibility to ensure a more effective impact on addressing the economic, social, labour and other socially significant issues.

In order to ensure the social dialogue on the regulation of social and labour relations at the state level, the Regulation of the Cabinet of Ministers of Ukraine, approved by the Decree of the Cabinet of Ministers of Ukraine No. 950 of 18 July 2007, provides:

- the main developer during the preparation of the draft Act of the Cabinet of Ministers on matters relating to social and labour sphere, in a mandatory manner shall send it to an authorized representative of the national trade unions, their associations and the authorized representative of the national associations of employers' organizations (clause 7 of para. 33).

- the meetings of the Cabinet of Ministers of Ukraine devoted to consideration of issues relating to social and labour sphere can be participated by the authorized representative of the national trade unions, their associations and the authorized representative of the national associations of employers' organizations (clause 4 of para.18).

The procedure for the social dialogue in drafting laws and other regulations shall be determined by the parties of the current General Agreement on regulation of the basic principles and norms of implementation of social and economic policy and labour relations in Ukraine for 2010 - 2012 in Appendix 4.

Employers' organizations, their associations, trade unions, their organizations and associations shall also arrange consultations, including on a bilateral basis.

**Matters for joint consultation**

*3. The Committee requests the next report to provide information on joint consultation between employees and employers also outside the negotiation of collective agreements, on all the matters of mutual interest mentioned above. The Committee also asks the next report to clarify whether issues of interpretation of collective agreements are dealt within the framework of joint consultation or within other specific mechanisms.*

Response: The interpretation of provisions of collective agreements, if necessary, shall be performed by the parties of respective collective agreements based on joint consultation. The procedure for such consultation shall be determined by the parties of collective agreements. At present, there has been no need to develop a separate mechanism for addressing this issue.

With regard to consultation between workers and employers (and beyond the collective bargaining) in respect of matters of mutual interest (productivity, efficiency, occupational safety and health, working conditions, vocational training, economic problems and social issues (social insurance, social welfare etc.), the information is provided in the answer to question 2 of the Committee to para.1 of Article 6.

**Public sector**

*4. The Committee highlights that consultation should take place also in the public sector, including the civil service It therefore also wishes to know whether there are specific consultative bodies in the public sector and if so what their structure is and how they operate.*

Response: In the public sector there are separate consultations with employee representatives at the national and sectoral levels. For example:

- consultative meetings of the Government with representatives of the trade unions from the public sector in May 2011 devoted to the increase in remuneration of labour of public sector employees and the consequently adopted Resolution of the Cabinet of Ministers of Ukraine No. 524 on 11 May 2011 ‘On increase of the level of remuneration of labour of public sector employees”. The consultations facilitated reaching a compromise between the parties of the social dialogue and trade union refusal to arrange a nationwide protest campaign;

- the consultation of the representatives of ministries and public sector trade unions in March 2013 on the salary rate of the first tariff category of the Unified tariff system, and the consequently adopted Resolution of the Cabinet of Ministers of Ukraine No. 197 of 27 March 2013 “On increase of the level of remuneration of labour of employees of institutions, establishments and organizations of certain areas of the public sector”. This Resolution envisages the provision on the quarterly review by the ministries with participation of public sector trade unions of results of implementation of the consolidated budget for the previous quarter and submission of proposals regarding the increase of salary rates in the public sector, reduction of the gap between the salary (tariff rate) of the employee of the

first tariff category of the Unified tariff system and the minimum wage given the availability of resources of the consolidated budget.

The consultation with the public sector trade unions takes place in the framework of negotiations on the conclusion of the general agreement for a new term.

The public sector trade unions are members of the National Council, authorized representatives of trade unions for collective bargaining on the conclusion of sectoral agreements, boards, community councils established at the central and local executive bodies etc.

**Article 6§2**

**General legal framework**

The national legislation has not changed during the reporting period. The list of relevant legislative acts referred to in previous report by thematic group "Labour rights" is actual.

**Measures for application of legal regulations.**
**Responses to the additional questions**
**of the European Committee of Social Rights**

*1. The Committee asks the next report to clarify who are the "work collectives". It further asks for clarification of the various options foreseen by Article 4 of the said law in the event that in the enterprise or at the State, sectoral or territorial level, there are several actors entitled to bargain.*

Response:

*Regarding the work (labour) collective*

Article 252-1 of the CLL stipulates that the labour collective of the enterprise includes all individuals that by their work participate in its activity on the basis of an employment agreement (contract) and other forms of employment relations of the employee with the enterprise. The authority of the labour collective is determined by legislation.

According to Article 1 of the TURGA the trade union is a voluntary non-profit civil society organization that unites people bound by common interests within their professional (labour) activity (training);

primary trade union is a voluntary association of trade union members that generally work at one enterprise, institution, organization, irrespective of the form ownership and type of activity or at the individual that uses hired labour, or are self-employed or study in one educational establishment;

trade union organizations are organizational units of the trade union defined by the trade union charter, acting within the powers granted by the charter and this Law; trade union body is a body established under the charter (statute) of the trade

union, association of trade unions, through which the trade union exercises its authority.

*With regard to trade unions' activities at the enterprise, national, sectoral, territorial levels in accordance with Article 4 of the Law of Ukraine "On collective agreements and Agreements"*

The right to participate in bargaining and conclude collective agreements is ensured for the parties of social dialogue, the composition of which is determined in accordance with the legislation on social dialogue.

Under Article 4 of the SDU the social dialogue parties include:

- at the national level - the trade union party, which includes national associations of trade unions; the employers' party, which includes national associations of employers' organizations; executive authorities party, which includes the Cabinet of Ministers of Ukraine;
- at the sectoral level - the trade union party, which includes national trade unions and their associations that operate within a specific type or several types of economic activity; the employers' party, which includes national associations of employers' organizations that operate within a specific type or several types of economic activity; executive authorities party, which includes the respective central executive authorities;
- at the territorial level - the trade union party, which includes the trade unions and their associations of the respective level that operate on the territory of the relevant administrative-territorial unit; the employers' party, which includes employers' organizations and their associations that operate on the territory of the relevant administrative-territorial unit; executive authorities party, which includes local authorities that operate on the territory of the relevant administrative-territorial unit. On the territory of the relevant administrative-territorial unit the social dialogue party can be local government bodies within the authority defined by legislation;
- at the local level - the employees' party, which includes primary trade unions, and in their absence - freely chosen for participation in collective bargaining representatives (representative) of employees; the employer's party, which includes the employer and/or authorized representatives of the employer.

In order to participate in collective bargaining on conclusion of collective agreements, tripartite or bilateral bodies and international events - the composition of trade unions and employers' parties is determined by the criteria of representativeness.

According to Article 4 of the Law of Ukraine "On Collective Agreements and Agreements" in case of there are several trade unions or their associations or other authorized by labour collectives representation bodies at the enterprise, they should form a joint representative body for bargaining and conclusion of a collective agreement.

If no agreement is reached on the collective agreement in the joint representative body, the general meeting (conference) of the labour collective shall

adopt the most appropriate draft of the collective agreement and delegate the trade union or other authorized by the labour collective body that developed the draft, to carry out the relevant bargaining and conclude the approved by the general meeting (conference) collective agreement with the employer on behalf of the labour collective.

If no agreement is reached in the joint representative body the agreement shall be considered concluded if signed by representatives of trade unions or their associations, which include the majority of employees of the state, sector, territory.

If at national, sectoral, territorial levels there are several representative, in accordance with the legislation of Ukraine on social dialogue, actors of the trade unions as well as employers' party for bargaining and conclusion of agreements of the respective level, they should form a joint representative body.

The conclusion of agreement on establishment of a joint representative body of trade unions and employers' party of the respective level can be initiated by any representative, in accordance with the legislation of Ukraine on the social dialogue, actor of trade unions and employers' party.

Trade unions and their associations, employers' organizations and their associations that do not qualify for representation, by the decision of their elected bodies can grant authority to representative organizations and associations of the respective level to represent their interests during collective bargaining and conclusion of agreements of the respective level.

The joint representative body of trade unions, employers' party may participate in bargaining and conclude collective agreements of the respective level on behalf of its members, which are representative in accordance with the legislation of Ukraine on social dialogue.

*2. The Committee wants to receive further information on how representativeness of a single trade union or in the event several trade unions are represented together, a group of trade unions, is determined. It wishes in particular to know what are the applicable rules and which trade union prevails if several trade unions submit a request to bargain collectively but do not act jointly.*

Response: In accordance with the SDU the criteria of representativeness for trade unions and their associations at the national, sectoral and territorial levels were defined.

Information:

- on the definition of representativeness of a separate trade union is presented in the answers to the Article 5 (section Representativeness);

- concerning the formation of the joint representative body at the different levels of social dialogue is presented in the preceding paragraph.

Thus, in accordance with Article 37 of the TURGA, if at the enterprise, institution or organization there are several primary trade unions, the representation of collective interests of employees of the enterprise, institution or organization with regard to conclusion of collective agreement shall be performed by the joint

representative body established by these primary trade unions at the initiative of any of them. In this case, each trade union should decide on its specific obligations under the collective agreement and the responsibility for failure to fulfill them. The representative body is formed on the basis of proportional representation. The primary trade union organization that refused to participate in the representative body shall lose its right to represent the interests of employees in signing the collective agreement.

The number of members of representative trade unions, their organizations, associations for collective bargaining on conclusion of agreements on behalf of employees at the national, sectoral and territorial levels is determined in proportion to the number of the united trade union members the interests of which they represent under the authority granted to them by trade unions, their organizations and associations that do not qualify for representativeness (Article 20 of the TURGA).

In order to regulate the production, labour and socio-economic relations and coordinate the interests of employees and employers in Ukraine as of October 2013 the 94 sector and 27 regional (territorial) agreements were concluded, including 7 and 27 agreements, respectively, concluded with participation of employers' organizations associations.

*3. The Committee notes from ILO that on 20 May 2008, the Supreme Council of Ukraine adopted in the first reading, the draft Labour Code submitted by the People's Deputies and that the Confederation of Free Trade Unions of Ukraine, in a communication dated 4 June 2008, alleged that such draft, would have a negative impact on trade union activities. The Committee asks that the next report provide all relevant information on the legislative framework* in the light of the *explanations given below and questions raised.*

Response: *With regard to the draft Labour Code of Ukraine*

The draft Labour Code of Ukraine (reg. No. 1108 of 4 December 2007) which was adopted by the Parliament on May 20, 2008 in the first reading, was not included in the agenda of the eleventh session of the Verkhovna Rada of VI convocation, and is considered withdrawn.

On 22 April 2013 with the Verkhovna Rada of Ukraine a draft Labour Code of Ukraine (reg. No. 2902 of 22 April 2013) was registered, which was submitted by the peoples' deputies of Ukraine.

**Conclusion of collective agreements**

*4. The Committee asks the next report to provide updated information on collective agreements concluded in the private and public sector at enterprise, sectoral and national level and on the number of employers and employees covered by these agreements.*

*The Committee also asks the next report to provide information on the procedures governing the possible extension of collective agreements. In this regard, as the ILO Committee of Freedom of Association,[7] the Committee holds that the extension of collective agreements should take place subject to tripartite analysis of the consequences it would have on the sector to which it is applied.*

Response: The number of collective agreements concluded in 2012 increased significantly compared to 2009. The table presents the data of the State Statistics Service on the general situation with conclusion of collective agreements within 2009 - 2012.

| Year | Number of collective agreements concluded in Ukraine | Number of employees covered by collective agreements in Ukraine (thousand people) | Number of employees covered by collective agreements in Ukraine as a percentage of the number of employees |
|---|---|---|---|
| 2009 | 94 964 | 9 038,3 | 83,9 |
| 2010 | 105 014 | 8 967,6 | 81,6 |
| 2011 | 98 514 | 8 766,5 | 81,6 |
| 2012 | 101 712 | 8 730,0 | 81,4 |

*With regard to expanding the scope of collective agreements*

On 29 March 2011 in Kyiv a tripartite scientific conference on Collective agreements as an effective guarantee of competitiveness and social progress was held, which was attended by government officials, national trade unions, employers' organizations associations and researchers.

The Conference participants discussed the improvement of the mechanism of collective contractual relations and determined the positions of parties of the social dialogue.

In particular, the Conference participants called all the employers and their organizations, trade unions to do everything in their power to expand the scope of collective agreements and suggested executive authorities to facilitate this expansion.

The issue of expanding the scope of collective agreements shall be considered at the meeting of the tripartite working group on preparation of proposals for

enhancing the role of collective agreement-based regulation of labour relations and the expansion of the scope of sectoral agreements, established under the Action Plan for 2013 to implement the priorities of the National Council.

**Public sector**

*5. The Committee requests the next report to clarify whether the abovementioned rules on collective bargaining procedures also apply to the public sector or what other regulations allow a participation of employees in the public sector in the determination of their working conditions. In this regard, the Committee points out that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them.*

Response: The party of the social dialogue are executive authorities, namely: the Cabinet of Ministers of Ukraine (at the national level), the central authorities (at the sectoral level), local executive authorities, as well as local authorities (at the territorial level), that participate in collective bargaining on conclusion of collective agreements at the respective level.

A collective agreement is concluded at the enterprises, institutions, organizations irrespective of the form of ownership and business that use hired labour and have the right of the legal entity (Article 2 of the Law of Ukraine “On Collective Agreements and Agreements”).

Thus, the provisions of legislation regulating the conclusion of collective agreements also apply to the public sector.

The legislation of Ukraine does not contain provisions on the prohibition or special application of collective agreement-based regulation concerning the civil servants. The conclusion of collective agreements concerning this category of employees is performed to the extent not contrary to the Law of Ukraine “On Civil Service”, other regulations that define the general principles of activity and the status of civil servants working in the government bodies and their establishment.

**Article 6§3**

## General legal framework

The national legislation has not changed during the reporting period. The list of relevant legislative acts referred to in previous report by thematic group "Labour rights" is actual.

## Measures for application of legal regulations. Responses to the additional questions of the European Committee of Social Rights

### Conciliation and arbitration

*1. The Committee recalls that any form of compulsory recourse to arbitration is a violation of this provision, whether domestic law allows one of the parties to defer the dispute to arbitration without the consent of the other party or allows the Government or any other authority to defer the dispute to arbitration without the consent of one party or both. However it notes that in the case of Ukraine although one party may refer a conflict to the labour arbitration court, the decision of the court is only binding on the parties if they agree in advance that it will be so. The Committee is inclined to take the view that arbitration in such conditions cannot be considered as being compulsory, however it wishes to receive further information on how the system works in practice, in particular if available examples of cases taken arbitration and the outcomes.*

*The Committee asks for information on conciliation, mediation and arbitration facilities for the public sector.*

Response: The National Mediation and Conciliation Service in accordance with the Regulation on the National Mediation and Conciliation Service, approved by the Decree of the President of Ukraine No. 1258/98 on 17 November 1998, as amended - is a permanent state body established with the aim to facilitate the settlement of collective labour disputes (conflicts) and their prevention.

The main legislative act that defines the legal and organizational principles of operation of the system of measures for settlement of collective labour disputes (conflicts) is the Law of Ukraine "On the Procedure for Settlement of Collective Labour Disputes (conflicts)" of 3 March 1998 No. 137/98 (hereinafter referred to as PSCLD), which aims to achieve the interaction of the parties of social and labour relations in the settlement of collective labour disputes (conflicts) arising between them.

During the reporting period, The National Mediation and Conciliation Service (hereinafter referred to as the NMCS) registered 326 collective labour disputes (including, in at the enterprises of the public sector - 89), namely: 2009 – 76 (18); 2010 – 64 (14); 2011 – 84 (23); 2012 – 102 (34).

The dynamics of the total number of claims submitted by hired employees in the collective labour disputes (conflicts), the satisfaction of which was facilitated by the NMCS during 2009-2012 is presented in Appendix.

It should be noted that according to the PSCLD the collective labour dispute (conflict) is the dispute that arose between the parties of social and labour relations with regard to establishment of new or modification of existing socio-economic conditions of labour and production activity; conclusion or amendment of a collective agreement; execution of a collective agreement or individual provisions thereof; non-compliance with the provisions of labour legislation.

The current legislation establishes the following sequence of consideration of the collective labour dispute (conflict):

By a ***Conciliation commission*** – on issues related to establishment of new or modification of existing socio-economic conditions of labour and production activity, conclusion or amendment of a collective agreement.

Thus, the Conciliation commission is a body that is formed on the initiative of one of the parties in order to develop a solution that can satisfy the parties of the collective labour dispute (conflict), and consists of representatives of the parties.

The decision of the Conciliation commission is issued in a protocol, is binding on the parties and executed in the manner and timeframe established by the decision.

After adoption of the decision on the settlement of a collective labour dispute the Conciliation commission terminates its activity.

Within the settlement of collective labour disputes (conflicts), with the support of the NMCS and its branches in 2010 – 100, 2011 – 142, 2012 - 145 meetings of the conciliation commission were held.

The ***Labour arbitration*** considers the implementation of a collective agreement or certain provisions thereof, and non-compliance with provisions of labour legislation. The labour arbitration is formed on the initiative of one of the parties or an independent mediator.

Collective labour dispute (conflict) is considered by the labour arbitration with mandatory participation of representatives of the parties, and if necessary – of representatives of other interested bodies and organizations.

The decision of labour arbitration on settlement of the collective labour dispute (conflict) is binding if the parties have previously agreed hereof.

Also, the consideration of the collective labour dispute (conflict) is carried out by the labour arbitration if the decision was not adopted in the timeframe established by legislation, namely: consideration by the industrial conciliation commission within five days, sectoral and territorial conciliation commissions - within ten days, conciliation commission at the national level - within fifteen days as of the date of the formation of commissions. By consent of the parties these timeframes can be extended.

Within the framework of settlement of collective labour disputes (conflicts) with the support of NMCS and its branches in 2010 – 57, 2011 – 82, 2012 - 44 labour arbitration meetings were held.

It should be noted that, in accordance with paragraph 4.1 of Section 4 of the Regulation on the procedure of registration by the National Mediation and Conciliation Service of claims of hired employees, trade unions and collective labour disputes (conflicts), approved by the Order of NMCS of 10.07.2007 # 47, if the written information submitted by the parties of the collective labour dispute (conflict), the relevant government authorities states about the consideration of other case in constitutional, civil, commercial, criminal or administrative proceeding, making it impossible to currently carry out the registration or subsequent consideration and settlement of submitted by employees, trade unions claims and collective labour disputes (conflicts) – the NMCS shall suspend the registration and consideration of the collective labour dispute until the solution of the case in court.

**Practice of conciliation procedures:**

There is good practice of facilitation of improvement of labour relations and mediation in the settlement of collective labour disputes at enterprises of international corporations and enterprises with foreign investment. Thus, in 2012 four collective labour disputes were registered and settled, which arose at the private joint-stock company Lactalis Mykolaiv (Lactalis Group, France, one of the largest producers of cheese and whole milk products in Europe. Since 1996 has been producing and selling dairy products under brands President, Bilosvit, Lactoniya, Dolce, Fanny, Immun+). The claim of the hired employees concerned salary increase by 25 percent.

With the support of NMCS in the Mykolaiv region with regard to this collective labour dispute the 2 meetings of the Conciliation commission and 5 meetings of labour arbitration were held.

On 10 October 2012 the final labour arbitration meeting was held for the settlement of these collective labour disputes. The labour arbitration concluded that the submitted and registered claims of hired employees of subdivisions of PJSC Lactalis Mykolaiv are partially substantiated and subject to partial satisfaction. The employer, as of January 2013, should gradually increase the salaries of employees of PJSC Lactalis Mykolaiv by one percent per month by May 2013 inclusive, taking as a basis the salaries of employees as of December 2012, and in 2012 to increases the salaries of employees starting from October 2012 by the provision of additional monthly bonuses based on the results of economic activity in the amount not less than five percent of the salary.

The parties of the collective labour dispute were recommended to conclude a new collective agreement, in which through the negotiation process, to resolve the issue of remuneration of labour, setting out the form, system, rate of the salary and other employment benefits. It was recommended to stipulate in the collective agreement the provision on the establishment of the tariff rate for employees of the I tariff category with the fixed increased coefficient of the minimum wage established under the respective regulations of Ukraine and to develop the position-based ratio of salaries of engineering staff.

According to the Agreement on the establishment of labour arbitration of 27 August 2012 the decision of labour arbitration is binding on the parties of a collective labour dispute. The parties of a collective labour dispute officially confirmed their intention to strictly abide by the decision of labour arbitration and fulfilled the undertaken obligations.

As of 01.06.2013 the labour arbitration decision was implemented in full.

**The opportunities for conciliation, mediation and arbitration for the public sector**

Article 1 of the PSCLD defines the scope of the Law, and in fact the range of subjects covered thereof.

On the one hand, it is the hired employees and organizations established by them in accordance with legislation to represent and protect their interests, and on the other hand - employers, employers' organizations and their associations.

The Law defines the hired employee as an individual that works under a an employment contract at an enterprise, institution and organizations, their associations or individuals that use hired labour.

Employers are legal entities (enterprises, institutions, organizations) or individuals, which within labour relations use the labour of individuals.

Article 63 of the Commercial Code of Ukraine defines the types and organizational forms of enterprises that can operate in Ukraine according to several criteria.

Thus, <u>depending on the form of ownership</u> as provided by law, in Ukraine the enterprises of the following type can operate:

- private enterprise that operates on the basis of private property of citizens or a business entity (legal entity);
- enterprise that operate on the basis of collective property (collective ownership enterprise);
- utility company that operates on the basis of municipal property of the territorial community;
- <u>state-owned enterprise that operates on the basis of state property;</u>
- enterprise established on the basis of mixed form of ownership (based on the merging of property of various forms of ownership).

Thus, according to the current legislation of Ukraine, the scope of the PSCLD applies to the state-owned enterprises.

**<u>EXAMPLE 1:</u>**

Under the Order of the NMCS No. 113-r of 12.06.2012 the collective labour dispute was registered between the hired employees of the public joint-stock company "Electrometallurgy plant Dniprospetsstal" named after A.M. Kuzmin, Zaporizhya *(founder of the JSC is the State represented by the Ministry of Industry of Ukraine)* and the acting Chairman of the Board of the public joint-stock company "Electrometallurgy plant Dniprospetsstal" named after A.M. Kuzmin (registration No. 044-12/08-V, the average number of hired employees is 6960, the

6271 of which participated in the collective labour dispute). Under the same Order of NMCS the claims of hired employees were registered as follows:

"1. To carry out the re-tariffication as of 1 July 2012 taking into account the requirements of paragraph 3.6 of the Sectoral agreement of the mining and metallurgical complex of Ukraine for 2011-2012 on ensuring the annual increase in the average wage by 18 %.

2. To re-establish in full as of 1 February 2012 the provision on remuneration of labour and payment of bonuses to employees of the structural units of the public joint-stock company Dniprospetsstal with all Appendices of the collective agreement for 2011-2012.

3. To conduct the recalculation and payment of bonuses in accordance with the adopted Appendices to the Regulation on remuneration of labor and payment of bonuses to employees of the structural units of of the public joint-stock company Dniprospetsstal to the Collective Agreement for 2011 - 2012 for February, March, April 2012, with cancellation of the application of the unreasonably adjusted amounts of bonuses in the units and the enterprise for the stated period".

With the support of the NMCS branch in Zaporizhya region, the 4 meetings of the labour arbitration devoted to this collective labour dispute were held.

At the third meeting of the labour arbitration on 10 July 2012 it was decided to satisfy the claim No.1 of hired employees.

Under the Order of the NMCS No. 136-r of 18 July 2012 the claim No. 1 of the hired employees has been removed from registration due to satisfaction.

At the fourth meeting of the labour arbitration on 17 July 2012, upon consideration of claim No. 2, the labour arbitration found that the effect of the Regulation was not suspended, and only in the Appendices to the Regulation by each unit for February, March and April 2012 the amounts of bonuses were adjusted. The cancellation of these amounts of bonuses is specified in the claim #3. In view of the above, the labour arbitration decided to terminate the consideration of claim No. 2 of hired employees. In view of achievement by the parties of the collective labour dispute of the consensus in relation to fulfillment of the claim No. 3, the labour arbitration decided to satisfy this claim.

Under the Order of the NMCS No. 140-r of 24 July 2012 the collective labour dispute has been removed from registration.

**EXAMPLE 2:**

Under the Order of the NMCS No. 100-r of 19 April 2011 the collective labour dispute was registered between the hired employees of a separated subdivision Pervomaysk coal mine of the *state enterprise* Pervomayskvugillya of Zolote city of Pervomaysk city of Luhansk region and the Director General of the state enterprise Pervomayskvugillya of Pervomaysk city of Luhansk region (registration No. 035-11/12-V, the average number of employees is 1223, the 763 of which participated in the collective labour dispute). Under the same Order of NMCS the claims of hired employees were registered as follows:

"1. To fulfill paragraph 8.28. of the collective agreement of the state enterprise Pervomayskvugillya and provide household fuel to mine workers in accordance with the Sectoral agreement based on standards defined by the Regulation of the Ministry of Coal Industry of the USSR of 11.05.1976.

2. To fulfill paragraph 7.6. of the collective agreement of the state enterprise Pervomayskvugillya and timely carry out the certification of workplaces based on working conditions".

On 6 May 2011 and 17 May 2011 with the support of the NMCS branch in Luhansk region, the labour arbitration was carried out, which considered the abovementioned collective labour dispute and decided on its substance.

In particular, the labour arbitration decided:

1. To satisfy the first claim of the hired employees.

2. To consider the second claim of hired employees satisfied, because pursuant to the explanation provided by the representatives of the collective labour dispute (conflict), the certification of workplaces by working conditions had been completed, moreover, the fact of certification of workplaces by working conditions at a separated subdivision Pervomaysk coal mine of the state enterprise Pervomayskvugillya as required by applicable regulations is confirmed by the explanations provided by the representative of the division of state examination of working conditions, migration and employment of population of the Department of Labour and Employment of the Main Department of Labour and Social Protection of Population of the Luhansk Regional State Administration, which has been involved by the NMCS branch in the Lugansk region as an expert during the first meeting of the labour arbitration.

In connection with the relevant decision of the labour arbitration, the second claim of the hired employees was removed from registration by the National Mediation and Conciliation Service by the Order of NMCS No. 128-r of 24 May 2011. In order to monitor the enforcement of the labour arbitration decision, specialists of the NMCS branch in Lugansk region held numerous coordination meetings and provided clarification to the parties of the collective labour dispute. As a result of the above meetings, the parties agreed to set the timeframe of the next progress review with regard to fulfillment of requirements of hired employees - by 01.02.2012, also the representatives of the body authorized to represent the hired employees of the separated subdivision Pervomaysk coal mine noted that in case of non-fulfillment of hired employees' requirements by the administration of the SE Pervomayskvugillya, the labour collective reserves the right to stage a strike under the current legislation.

On 28 February 2012, during the conciliation meeting, the authorized body of the labour collective confirmed the partial satisfaction of all claims included in the dispute. And, given the positive trend of gradual satisfaction of claims and actions of the new manager of the enterprise with regard to the challenges facing the mine, a representative body decided to terminate the dispute.

Under the Order of the NMCS of 2 March 2012 No. 044-r, the collective labour dispute has been removed from registration.

**Article 6§4**

## General legal framework

The national legislation has not changed during the reporting period. The list of relevant legislative acts referred to in previous report by thematic group "Labour rights" is actual.

## Measures for application of legal regulations. Responses to the additional questions of the European Committee of Social Rights

**Collective action**

*1. The Committee requests information on who has the right to call a strike, in particular it wishes to know whether this is reserved to a trade union. In this context it recalls that the decision to call a strike may be reserved to a trade union provided that forming a trade union is not subject to excessive formalities and that once a strike has been called, any employee concerned, irrespective of whether he is a member of the trade union having called the strike or not, has the right to participate in the strike.*

Response: According to Article 19 of the PSCLD the decision to stage a strike at the enterprise shall be adopted on the proposal of the elected body of the primary trade union (trade union representative) or other organization of hired employees authorized in accordance with Article 3 of the PSCLD to represent the interests of hired employees, the general meeting (conference) of hired employees by voting and shall be considered adopted if it receives votes of the majority of hired employees or two-thirds of delegates of the conference. The decision to stage a strike shall be formalized in a protocol.

The recommendations on staging or non-staging of a sectoral or territorial strike are adopted at the sectoral or territorial level at the conference, meeting, plenary or other elected body of representatives of hired employees and/or trade unions and submitted to the respective labour collectives or trade unions.

The hired employees of sector enterprises or administrative - territorial units shall independently decide whether to stage or not to stage a strike at their enterprises.

The strike is considered sectoral or territorial if at the enterprises, which staged the strike, the number of employees is more than half the total number of employees of the respective sector or territory.

In Ukraine, within 2009-2012, according to the National Mediation and Conciliation Service the strikes and collective work stoppage took place respectively by year:

| **Year** | 2009 | 2010 | 2011 | 2012 |
|---|---|---|---|---|

| **Strikes and collective work stoppages** | 54 | 36 | 47 | 44 |
|---|---|---|---|---|

**Restrictions related to essential service/sectors**

*2. The Committee notes that there are restrictions on the right to strike for workers in the emergency and rescue services, workers at nuclear facilities, workers in underground undertakings as well as workers at electric power engineering enterprises. The Committee recalls that restricting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health. However, simply banning strikes even in essential sectors – particularly when they are extensively defined, is not deemed proportionate to the specific requirements of each sector, but providing for the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4.*

*Therefore the Committee asks for further information on the extent of the restrictions on the right to strike in these sectors, in particular as regards "underground undertakings".*

Response: In the previous Report it was stated that it is prohibited to stage strike and hunger-strikes in underground mines (Article 42 "Additional requirements for persons who are in the especially dangerous ground conditions", The Mining Law of Ukraine No. 1127-XIV of 6 October 1999).

**Restrictions relating to public servants**

*3. The report states that civil servants are prohibited from striking. The Committee recalls that public officials enjoy the right to strike under Article 6§4. Therefore prohibiting all public officials from exercising the right to strike is not in conformity with Article 6§4.*

*The right to strike of certain categories of public officials may be restricted; under Article G, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest, etc.*

Response: According to Article 44 of the Constitution of Ukraine, those who are employed shall have the right to strike in order to protect their economic and social interests. A procedure for exercising the right to strike shall be established by law taking into account the necessity to ensure national security, public health protection, and rights and freedoms of others. No one shall be forced to participate or not to participate in a strike. The prohibition of a strike shall be possible only on the basis of the law.

The procedure for exercising the right to strike is determined by the PSCLD taking into account the necessity to ensure national security, public health protection, and rights and freedoms of others.

Provisions of this Law set out the conditions for exercising the right to strike, the order of announcement and staging the strike, the cases in which the strike is prohibited, as well as the consequences of employees participation in the strike.

General cases in which it is prohibited to strike are set out in the first paragraph of Article 24 of the PSCLD, namely: the strike is prohibited provided that the termination of employees' work poses a threat to human life and health, the environment or hinders prevention of natural disasters, accidents, catastrophes, epidemics and epizootic or response to them. It is prohibited to strike for the employees (other than technical and maintenance personnel) of prosecutor's office, courts, armed forces of Ukraine, state authorities, security and law enforcement agencies.

The prohibition to strike for certain categories of employees during the performance of certain works, in certain places and occurrence of certain situations is envisaged by the Laws of Ukraine "On Civil Service", "On Service in Local Self-Government Bodies", "On Diplomatic Service" and other.

Article 1 of the Law of Ukraine ofn 16 December 1993 No. 3723-XII "On Civil Service" states that the civil service in Ukraine is a professional activity of persons that hold positions in the state bodies and their offices for the practical implementation of tasks and functions of the state and are paid from the public funds. These persons are public servants and have the respective service authority.

In accordance with paragraph 2 of Section 3 of the Concept of Civil Service Legislation Development approved by the Decree of the President of Ukraine of 20 February 2006 No.140, only the officials dealing with policy implementation, preparation of regulations, use of state budget funds, control and supervision over the implementation of legislation, issuance of administrative acts, protection of state secret or those performing other functions in the public administration sector shall have the status of civil servants.

In accordance with the second paragraph of Article 16 of the Law, civil servants can not take part in strikes and take other actions that interfere with normal functioning of the state body.

According to clause 2 of paragraph one of Article 1 of the Law of Ukraine "On Civil Service" on 17 November 2011 No. 4050-VI, which shall enter into force on 1 January 2014, a civil servant is a citizen of Ukraine that holds a civil service position in the state authority, state authority of the Autonomous Republic of Crimea or their offices, is paid from the state budget, except in cases determined by law, and has the authority established for this position that is directly linked to the implementation of tasks and exercise of the functions of the state authority or authority of the Autonomous Republic of Crimea.

In accordance with Article 13 "Requirements for the political impartiality of the civil servants" of the given Law of Ukraine, the civil servant shall impartially perform his duties irrespective of party affiliation and personal political beliefs. A

civil servant has no right to stage a strike and take part in it. A civil servant in the performance of official duties shall have no right to take any action that demonstrates his political views or evidence the special attitude towards certain political parties.

The main purpose of restrictions on the strike of civil servants envisaged by the legislation on the civil service is first of all the ensuring of the national security, the rights and interests of enterprises, institutions and organizations, the human and civil rights and freedoms. This does not impose restrictions on protection by civil servants as employees of their economic and social interests by other means provided for by the current legislation of Ukraine.

**Procedural requirements**

*4. The Committee notes that the Law on the Procedure of Settlement of Collective disputes requires the exhaustion of conciliation and mediation procedures before strike action (it refers to Article 6§3 in this respect). A strike is used as a measure of last resort. According to legislation even during a strike the parties must continue to seek a resolution of the dispute.*

*The Committee asks for information on any other procedural requirements that must be fullfilled before a strike takes place in this respect it refers to the case of Trofimchuk v. Ukraine jugment of the European Court of Human Rights of 28 October 2010*

Response: As mentioned above, according to the PSCLD the strike is a last resort measure (when all other possibilities have been exhausted) of settlement of the collective labour dispute (conflict). It should be noted that the collective labour dispute at the CTS Komunenergiya of Rivne of the Rivne region was not registered by the NMCS, therefore, there was no collective labour dispute.

**Consequences of a strike**

5. *The Committee seeks information on the consequences of a strike for individual workers. It recalls that under Article 6§4 a strike should not be considered a violation of the contractual obligations of the striking employees entailing a breach of their employment contract. It should be accompanied by a prohibition of dismissal. If however, in practice, strikers are fully reinstated when the strike has ended and their previously acquired entitlements (e.g. concerning pensions, holidays and seniority) are not affected, then formal termination of the employment contract does not violate Article 6§4.*

*Further any deduction from strikers' wages should correspond exactly to the duration of the strike. Workers participating in a strike, who are not members of the trade union having called the strike, are entitled to the same protection as trade union members. Therefore the Committee asks for further information on these issues.*

Response: According to Article 27 of the PSCLD 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 can not be the grounds for disciplinary action.

By decision of the hired employees or a trade union the strike fund may be formed of voluntary contributions and donations. The employees that did not participate in the strike, but because of it were unable to perform their duties, shall retain their salary in the amount not lower than the established by legislation and the collective agreement concluded at the given enterprise, the same as during the idle period through no fault of the employee. The record of these workers shall be the responsibility of the employer.

The legislation of Ukraine does not envisage the restrictions on the right of employees to pensions in the case of participation of employees in a strike. All rights acquired by employees prior to strike (calculation of the length of service, salary, pensions etc.) shall be retained after the termination of the strike. The basic requirement for inclusion in the insurance period of the length of service is the calculation and payment of a single fee for mandatory state social insurance during the given period of employment. Similarly, the received salary is taken into account when calculating the pensions if a single social contribution was calculated and paid based on this salary.

The right to financial security and social services under the mandatory state social insurance arises from occurrence of an insured event during employment (including the probationary period and the day of dismissal). Thus, the strike that took place during the period of the permanent employment contract in this respect shall have no consequences for the insured person.

There is no information in the Department of Social Dialogue and Social Insurance at the Office of the Federation of Trade Unions on the violation of employees' rights with regard to the previously acquired by them rights in respect of pensions and insurance record in case of participation in a strike.

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 can not be the grounds for disciplinary action.

By decision of the hired employees or a trade union the strike fund may be formed of voluntary contributions and donations.

The employees that did not participate in the strike, but because of it were unable to perform their duties, shall retain their salary in the amount not lower than the established by legislation and the collective agreement concluded at the given enterprise, the same as during the idle period through no fault of the employee.

With regard to consequences of employees' participation in a strike, in accordance with Article 28 of the given Law, the organization of a strike that has been recognized illegal by the court or participation therein shall be a violation of labour discipline.

The time of the strike shall not be remunerated for employees that take part in it. The time of participation of the employee in a strike that has been recognized illegal by the court shall not be counted in the total and uninterrupted length of service.

## Article 21 – The right of workers to be informed and consulted within the undertaking

### General legal framework

On 13 January 2011 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Information" in new wording (No.2938)

### Measures for application of legal regulations. Responses to the additional questions of the European Committee of Social Rights

*1. The report also refers to draft legislation on the right to information, one of whose purposes is to define what information is confidential. The Committee asks for the next report to present these reforms and the outcome of their application.*

Response: The Law of Ukraine "On Information" in the wording of the Law of 13.01.2011 No. 2938 (hereinafter referred to as Law No. 2938) provides that everyone has the right to information, which envisages the possibility to freely access, use, distribute, store and protect the information necessary for the exercise of own rights, freedoms and legitimate interests.

The exercise of the right to information should not violate the civil, political, economic, social, spiritual, environmental and other rights, freedoms and legitimate interests of others, and the rights and interests of legal entities (Article 5 of the Law No.2938).

Under Article 7 of the Law No.2938 the state guarantees to all subjects of information relations equal rights and access to information.

Article 11 of the Law No. 2938 stipulates that everyone shall be provided with free access to information relating to the relevant person, except for the cases provided by law.

Article 20 of the Law No.2938 stipulates that by the order of access the information is divided into public information and information with restricted access.

Any information is publicly available, except for the information referred to by the law as the information with restricted access.

Article 21 of the Law No. 2938 stipulates that the information about an individual and the information the access to which is restricted by an individual or a legal entity other than government entities shall be considered confidential. Confidential information can be distributed at will (by consent) of the respective person in the manner established by this person in accordance with the envisaged conditions, and in other cases determined by law.

Relations associated with the legal regime of confidential information shall be governed by law.

The information with restricted access includes the following:

1) data on the state of environment, quality of food and household items;

2) data on accidents, disasters, natural hazards and other emergencies that have occurred or may occur and threaten the safety of people;

3) information on the health of the population, its standard of living, including nutrition, clothing, housing, medical care and social security, as well as socio-demographic indicators, law enforcement, education and culture of the population;

4) data on violations of human and civil rights;

5) information on illegal actions of state authorities, local governments, their officials and employees;

6) other information the access to which can not be restricted in accordance with the laws and international treaties of Ukraine, ratified by the Verkhovna Rada of Ukraine.

The adopted on 13 January 2011 Law of Ukraine "On Access to Public Information" defines the procedure and ensures that everyone has access to information in the possession of public authorities, other managers of public information set out in this Law, and information which is of the public interest.

However, paragraph seven of Article 6 of the given Law stipulates that the information and not the document is subject to restricted access. If the document contains information with restricted access, the information with unrestricted access is provided for familiarization.

According to Article 7 of the Law of Ukraine "On Access to Public Information", confidential information is the information the access to which is restricted by an individual or a legal entity other than government entities and which can be distributed in the order defined by them and at their will, subject to conditions established by them. The information referred to in the first and second paragraph of Article 13 of this Law can not be classified as confidential.

Managers of the information identified in paragraph one of Article 13 of this Law that possess confidential information may distribute it only by consent of the persons that have restricted the access to this information, and in the absence of such consent - only in the interests of national security, economic security and human rights.

According to Article 13 of the abovementioned Law, managers of information for the purposes of this Law shall be recognized as follows:

1) government entities - state authorities, other state bodies, local governments, authorities of the Autonomous Republic of Crimea and other entities engaged in the exercise of management functions in accordance with the legislation and the decisions of which are binding;

2) legal entities that are financed from the state and local budgets, the budget of the Autonomous Republic of Crimea – with regard to information about the use of budget funds;

3) individuals, in case if they are engaged in performing the delegated authority of government entities under the law or contract, including the provision of educational, healthcare, social or other public services - with regard to information related to the performance of their duties;

4) economic entities that occupy a dominant position in the market or are vested with special or exclusive rights or constitute natural monopolies – with regard to information about the conditions of supply of goods and services and their prices.

The Law of Ukraine "On Protection of Personal Data" of 1 June 2010 No.2297-VI regulates the legal relations connected with the protection and processing of personal data and is aimed to protect the fundamental rights and freedoms of citizens, including the right to privacy, with regard to processing of the personal data. The objects of protection are personal data. Personal data, except for depersonalized data, are the data with restricted access.

It should be noted that in November 2010, the General Agreement on regulation of the basic principles and rules of implementation of the socio-economic policy and labour relations in Ukraine for 2010-2012 was concluded.

The use of the form of social dialogue which is an information exchange is evidenced by the agreement of the parties within the General Agreement. In particular, the Parties agreed to:

- conduct continuous monitoring and regularly, but not less than once a quarter, share the information on the status of compliance with the legislation and provisions of this Agreement in the sphere of remuneration of labour and measures undertaken to address the detected violations;

- submit to the JRB of trade unions and JRB of employers, which are Parties to the Agreement the information on:

the actual size of the subsistence minimum per person per month and for persons belonging to the main social and demographic groups in Ukraine as a whole *(monthly)*;

the key indicators of living standards and poverty in Ukraine as a whole and by regions *(quarterly)*;

the status of development and approval of social standards and norms *(twice a year)*;

- provide free of charge upon request of trade unions, their associations the information about the fulfillment by state-owned property buyers of obligations undertaken under the respective sales contracts (fixed conditions of competition) in connection with ensuring employment, remuneration of labour and other matters of social and labour relations;

- exchange information on the projects and research programs that are implemented per request, including with the participation of foreign partners, international organizations related to the subject of this Agreement, in order to coordinate the work and share the results of such research.

A common form of social dialogue is the consultation of the Parties. A separate list of issues on which the parties shall arrange consultations is determined by the General Agreement for 2010-2012. The consultations refer to:

- main prognostic indicators of economic and social development of Ukraine;

- establishment by the Cabinet of Ministers of Ukraine of the size of the salary (tariff rate) of employees of the first tariff category of the Unified tariff

system and salaries of public sector employees the size of salaries of which are determined by special decisions of the Cabinet of Ministers of Ukraine, including the civil servants;

- size of insurance fee for all types of mandatory state social insurance;
- changes to the procedure and rules for granting subsidies to population for payment for utility services.

Also, within the General Agreement the parties agreed to:

- establish a permanent tripartite working group with participation of Parties to hold consultations at all stages of the budget process;
- aiming to prevent the negative social and economic consequences of privatization of strategic and city-forming enterprises to arrange consultations for their labour collectives with participation of the authorized representatives of trade unions and employers to discuss the need for privatization of such enterprises.

**Personal scope**

*2. Employees' right to information and consultation is mainly exercised through their enterprise-based trade union representatives. In the absence of trade union representatives, employees may elect persons to represent them. The Committee asks what are the rules and procedures governing the activities of trade union representatives in connection with Article 21 of the Revised Charter.*

Response: In addition to information provided in the previous Reports it is necessary to point out that under Article 40 “Guarantees concerning the activities of trade unions” of the TURGA, members of the elected trade union bodies, trade unions associations as well as the authorized representatives of these bodies shall have the right to:

1) free access and inspection of workplaces of trade unions;
2) request and receive from the employer, other official the documents, information and explanations relating to working conditions, implementation of collective agreements, compliance with labour legislation and social and economic rights of workers;

3) directly contact, orally or in writing, the employer, officials on trade union issues;

4) check the operation of retail, public catering, healthcare facilities, child care centers, dormitories, transport enterprises, domestic services enterprises that belong to the given enterprise, institution, organization, or serving them;

5) publish own information in the premises and on the territory of the enterprise, institution or organization in the places available to employees;

6) check the payments of wages and state social insurance, the use of funds for social and cultural activities and housing construction.

To provide the technical inspection of sector trade unions, which exercises control over the observance of conditions of labour safety of employees, referred to in Article 1 of the Law of Ukraine "On Raising the Prestige of Miners' Work", the right to terminate work at the enterprises in case of gross violations of occupational health and safety rules.

*3. The Committee considers that this provision must apply to all undertakings, public or private. States may exclude from its scope undertakings employing fewer than a certain number of employees, to be determined by national legislation or practice. It is not applicable to public servants (Conclusions XIII-3, Finland). The Committee asks what the situation is in Ukraine and whether there is a minimum number of employees to which this provision applies.*

*It also 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.*

Response: The minimum number of employees to which the Article 21 of the European Social Charter applies in terms of receiving information and consultation at the enterprise has not been determined.

According to Article 38 of the TURGA, the elected body of the primary trade union at the enterprise, institution, organization (irrespective of the form of ownership and type of business) shall have the following authority:

1) to conclude and control the execution of the collective agreement, report on its execution at the general meeting of the labour collective, address the relevant authorities with the request to bring to responsibility the officials for failure to comply with the provisions of the collective agreement;

2) together with the employer decide on the introduction, review and change of labour standards;

3) together with the employer decide on the remuneration of labour of employees, forms and systems of pay, rates, tariff nets, salaries, conditions of introduction and size of bonuses, additional payments, allowances, incentives and other incentive compensation payments;

4) together with the employer decide on working hours and rest periods, coordinate shift schedules and leaves, introduction of the summarized record of working hours, giving permission for overtime work, work on non-work days etc.;

5) together with the employer decide the issue of social development of the enterprise, improving working conditions, housing conditions, health care for employees;

6) to participate in addressing social and economic issues, definition and approval of the list and order of granting social benefits to employees;

7) to participate in the development of internal labour regulations of the enterprises, institution or organization;

8) to represent employees’ interests on their behalf in consideration of individual labour disputes and the collective labor disputes, facilitating their settlement;

9) to decide on the request from the employer to terminate the employment agreement (contract) with the head of the enterprise, institution or organization if the latter violates this Law, labour legislation, avoids involvement in bargaining on the conclusion or amendment of a collective agreement, fails to fulfill the obligations under the collective agreement, allows for other violations of the legislation on collective agreements;

10) to agree or refuse to terminate on the initiative of the employer the employment contract with an employee who is a member of the trade union at the enterprise, institution, organization, in cases provided by law;

11) to participate in the investigation of injuries, occupational diseases and accidents, in the commission on labour safety;

12) to exercise social control over the execution by an employer of labour legislation and legislation on labour safety, over provision at the enterprise, institution or organization of safe and harmless working conditions, hygiene, proper application of established conditions of remuneration of labour, require to eliminate the detected shortcomings;

13) to supervise the preparation and submission by the employer of documents required for assignment of pensions to employees and their families;

14) to oversees the provision to retirees and the disabled that before the retirement worked at the enterprise, institution or organization of the right to use, on an equal basis with the employees, of available healthcare services, housing, health resort vouchers and other social services and benefits under the charter of the enterprise or organization and collective agreement;

15) to represent the interests of the insured persons in the commission on social insurance, refer employees, under the conditions stipulated by the collective agreement, to health centers, prophylactic sanatoriums and health resorts, tourist, recreation facilities, examine the provision of healthcare services to employees and their families;

16) together with the employer, in accordance with the collective agreement, determine the amount of funds that shall be used for construction, reconstruction, maintenance of housing, provide for the record of citizens in need of better housing, distribute in the manner prescribed by the legislation the floor space in houses constructed at the expense or with participation of the enterprise, institution, organization, as well as the floor space provided to the employer in other buildings, control the provision of domestic services to employees;

17) to represent the interests of employees of the debtor enterprise during the bankruptcy proceedings.

The elected bodies of the trade union at the enterprise, institution or organization shall also have other rights envisaged by the legislation of Ukraine.

**Rules and procedure**

*4. The right to information and consultation must be effectively guaranteed. In particular, employees must have legal remedies when these rights are not respected..*

*The Committee consequently asks whether employees' representatives are empowered to appeal to the relevant courts in respect of alleged breaches of the rights covered by Article 21 of the Revised Charter and whether employees or their representatives are possibly entitled to claim damages.*

Response: According to Article 55 of the Constitution of Ukraine "Everyone shall be guaranteed the right to challenge in court the decisions, actions, or inactivity of State power, local self-government bodies, officials and officers. Everyone shall have the right to appeal for the protection of his rights to the Verkhovna Rada of Ukraine Commissioner for Human Rights (Ombudsman). After exhausting all domestic legal instruments, everyone shall have the right to appeal for the protection of his rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations of which Ukraine is a member or participant. Everyone shall have the right to protect his rights and freedoms from violations and illegal encroachments by any means other than prohibited by law".

**Supervision**

*5. The Committee recalls that there must also be sanctions for employers who fail to fulfil their obligations under this article and asks Committee asks what penalties may be imposed on employers.*

Response:The legal protection of employees, namely the responsibility of the owner for the failure to provide information is provided only upon the inclusion of these provisions in collective agreements.

In the case of exercising control of execution of collective agreements the parties are obliged to provide the necessary available information.

The signatories of collective agreements shall report annually, within the timeframe stipulated by the collective agreement, on the execution thereof. According to Article 19 of the Law of Ukraine "On Collective Agreements and Agreements" "Persons that represent the employer or trade unions or other bodies authorized by the labour collective and guilty of failure to provide the information necessary for collective bargaining and control over the execution of collective agreements shall be subject to disciplinary action or a fine in the amount of up to five minimum wages".

According to Article 20 of the stated Law of Ukraine the order and timeframe of the imposition of penalties, envisaged by this Law shall be regulated by the Code of Ukraine on Administrative Offences. The relevant cases shall be considered by the court upon application of one of the parties of the collective agreement, respective commissions or on the initiative of the Prosecutor.

In turn, Articles 41, $41^2$ and $41^3$ of the Code of Ukraine On Administrative Offences envisage the responsibility for breach of labor 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.

**Statistics**

| | **Number of detected violations (units) by year** | | | |
|---|---|---|---|---|
| | **2009** | **2010** | **2011** | **2012** |
| Measures taken to influence employers | 64 protocols on administrative offenses were issued | 31 protocols on administrative offenses were issued | 0 protocols on administrative offenses were issued | 7 protocols on administrative offenses were issued |

*6. The Committee noted that the Compliance Division of the Ministry of Labour and Social Policy monitors compliance with labour legislation, including employees' right to information and consultation, and carries out inspections in undertakings. In 2008, 52 breaches of the legislation were identified.*

*Most of these offences apparently concerned delays in the payment of wages. The Committee asks what penalties may be imposed on employers.*

Response:Part one of Article 175 of the Criminal Code of Ukraine establishes criminal responsibility for the groundless intentional failure to pay salary, scholarship, pension or any other statutory payments to citizens within a period over one month by the manager of an enterprise, institution or organization regardless of their type of ownership or by an entrepreneur, which shall be punishable by a fine of 500 to 1000 tax-free minimum incomes, or correctional labor for a term of up to two years, or imprisonment for a term of up to two years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years.

The same action committed due to misuse of funds earmarked for salaries, scholarships, pensions, or any other statutory payments shall be punishable by a fine of 1000 to 1500 tax-free minimum incomes, or restraint of liberty for a term of up to three years, or imprisonment for a term of up to five years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years (Part 2 of Article 175 of the Criminal Code of Ukraine).

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

## General legal framework

The national legislation has not changed during the reporting period. The list of relevant legislative acts referred to in previous report by thematic group "Labour rights" is actual.

## Measures for application of legal regulations. Responses to the additional questions of the European Committee of Social Rights

*1. Employees are entitled to appeal to the courts where their rights have been infringed. Employers who fail to fulfil their obligations in this respect must be liable to penalties. Committee asks for relevant information.*

Response: According to Article 55 of the Constitution of Ukraine human and citizen rights and freedoms shall be protected by court.

Everyone shall be guaranteed the right to challenge in court the decisions, actions, or inactivity of State power, local self-government bodies, officials and officers.

According to Article 3 of the Civil Procedure Code of Ukraine, every person shall have the right to file in the established order a claim in court in order to protect his violated, unrecognized or disputed human rights, freedoms or interests.

**Protection of health and safety**

*2. Under section 16, specialist committees may be established in undertakings with at least 50 employees. The Committee notes on the contrary that Section 15 of the same Act requires undertakings with at least 50 employees to establish specialist committees. It asks the next report to confirm whether this is an requirement or a simple possibility.*

Response: According to the Order of State Committee of Ukraine for Industrial Safety, Labour Protection and Mountain Supervision "On approval of the Standard regulation on the Commission on occupational safety and health at the enterprise" of 21 March 2007 *(registered with the Ministry of Justice of Ukraine No. 55 of 4 April 2007 under No. 311/13578)* the Commission shall be a permanent advisory body. The purpose of establishment of the Commission at the enterprise is to provide for the proportional participation of employees in addressing any issues relating to safety, occupational health and working environment. The decision on the feasibility of the establishment of the Commission, its quantitative and personal composition shall be adopted by the labour collective at a general meeting (conference) based on submission of the employer and the trade union. According

to Article 16 of the Law of Ukraine “On Labour Protection” the decision of the Commission shall be of advisory nature.

According to the Order of the State Committee of Ukraine on Labour Protection “On approval of standard regulation on labor protection service” No. 255 of 15 November 2004 *(registered with Ministry of Justice of Ukraine on 1 December 2004 under No. 1526/10125)* based on the Standard Regulation on Labour Protection Service taking into account the specifics of production and types of activity, number of employees, working conditions and other factors, the employer shall develop and approve the Regulation on the Labour Protection Service of the respective enterprise, define the structure of the Labour Protection Service, its size, main tasks, functions and rights of its employees in accordance with the legislation.

The Labour Protection Service shall be directly subordinate to the employer.

The Labour Protection Service shall be established at enterprises employing 50 and more persons.

At the enterprises with less than 50 employees, the functions of the Labour Protection Service can be performed based on secondary employment by the persons with appropriate qualification.

At the enterprises with less than 20 employees, the functions of the Labour Protection Service can be performed by involved external specialists on a contractual basis, with work experience of at least three years and which have been trained in occupational safety and health.

The liquidation of the Labour Protection Service is allowed only in case of liquidation of the enterprise or termination of use of the hired labor by an individual.

**Organisation of social and socio-cultural services and facilities**

*3. The organisation of social and socio-cultural services and facilities is covered by collective agreements. Employers are required to finance such activities.*

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

Response: According to the recommendations of the Federation of Trade Unions of Ukraine on the implementation of the General Agreement on the regulation of the basic principles and norms in conclusion of collective agreements it is suggested to include the following provisions:

**Liabilities of the Parties:**

1. Promote the development of sports movement at the enterprise, institution, organization; engage in regular exercise and mass sports activities the employees and their families, including the persons united in the sports associations.

2. Annually implement measures aimed at holding the health campaign among children with attraction of additional funding. To provide for maximum coverage with health measures of children in need of special social attention and support according to the Law of Ukraine "On Rehabilitation and Recreation of Children".

Envisage the conduction of inspection of the work of rehabilitation and recreation institutions for children, provision of organizational and methodological assistance in the organization of children's health improvement.

3. Apply to the local/regional funds with requests for financial assistance, investment, interest-free loans etc., to children's health clinics companies - owners of such facilities.

4. Encourage involvement in the folk art classes of employees and their families, including at the cultural and educational institutions and club groups at the enterprises, organizations, institutions irrespective of the form of ownership.

5. Provide funding for the activity of youth sports schools and children's health improvement, involving the budget funds and funds of the Social Insurance Fund for Temporary Disability.

6. Budgetary institutions should annually envisage in the budget estimations the expenditures on holding cultural events, sports and recreation activities by trade unions of budgetary organizations, and key spending units should provide control over the execution of the order *(in accordance with Article 44 of the TURGA).*

7. To annually envisage in the expenditure estimates of the enterprise, institution or organization for the next year:

- funds for the rehabilitation of children in need of special social attention and support in accordance with the Law of Ukraine "On Rehabilitation and Recreation of Children";
- funds for implementation of programs of physical education and sport;
- funds for financial support of sports facilities of trade unions with a view to promote healthy lifestyles and restore physical capacity of employees.

**Liabilities of the owners:**

8. Perform deductions for primary trade union organizations of enterprises in accordance with Article 44 of the TURGA.

**Liabilities of trade unions:**

9. Take active part in the implementation cultural, arts and sports programs.

10. Support the implementation of the state policy on the promotion of healthy lifestyles among population. To annually participate in:

- the festival of amateur creativity and implement other cultural and artistic projects;
- the competition for the best employee of the cultural and educational institution and contest for the best cultural and educational institution among labour collectives and trade unions;
- the competition among the trade unions and labour collectives for the best organization of summer recreation and leisure of children;
- the physical training, sports events (national, sectoral and regional sports days, competitions, cross country races, tournaments etc.) among the employees, their families, students of children's sports schools and conduction of own sports mass activities at the enterprise, institution, organization.

**Enforcement**

*4. The Committee asks whether employees or employees' representatives are entitled to appeal to the relevant courts in respect of alleged breaches of their right to take part in the determination and improvement of working conditions. It also asks therefore what penalties employers are liable to if they fail to fulfil their obligations as regards the right of workers to take part in the determination and improvement of working conditions and the work environment.*

Response: In accordance with Article 124 of the Constitution of Ukraine the jurisdiction of the courts shall extend to all legal relations that arise in the State.

In accordance with Article 3 of the Civil Procedure Code of Ukraine, everyone is entitled in the manner prescribed by the Code to apply to the court for the protection of their violated, unrecognized or disputed rights, freedoms and legitimate interests.

In accordance with Article 15 of the Code, the courts view on civil process cases concerning the protection of violated, unrecognized or disputed rights, freedoms or interests arising from, in particular, labor relations.

According to Article 44 of the Law of Ukraine "On Labour Protection" for violation of the laws and other regulations on labor protection, impediment of

activity of officials of bodies of state supervision over occupational safety, as well as representatives of trade unions, their organizations and associations those guilty shall be brought to disciplinary, administrative, financial, criminal responsibility according to the law.

## Statistical information

| | **Number of detected violations (units) by year** | | | |
|---|---|---|---|---|
| | 2009 | 2010 | 2011 | 2012 |
| Article 250 “Deduction of funds by enterprises, institutions, organizations for primary trade union organization for cultural, physical training and health improvement activities” of the Labour Code Ukraine | 144 | 146 | 142 | 100 |

**Article 26 – The right to dignity at work**

**Article 26 § 1**

### General legal framework

The national legislation has not changed during the reporting period. The list of relevant legislative acts referred to in previous report by thematic group "Labour rights" is actual.

In accordance with Article 154 of the Criminal Code of Ukraine compulsion of a female or male to natural or unnatural sexual intercourse by a person on whom such female or male is financially or officially dependent, - shall be punishable by a fine of up to 50 tax-free minimum incomes, or arrest for a term of up to six months.

It should be noted that the Resolution of the Cabinet of Ministers No. 717 of 26 September 2013 approved the State Program for Equal Rights and Opportunities for Women and Men by 2016. The goal of the Program is to ensure gender mainstreaming in all spheres of social activity, including the development of the mechanism for exercising the right to protection from discrimination based on sex and taking necessary measures based on the consideration of cases of such discrimination.

According to the draft Resolution of the Cabinet of Ministers of Ukraine "On approval of the program for implementation of the Association Agreement between Ukraine and the European Union" it is envisaged that the regulations aimed for the implementation of the Directive 2003/88/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation should be developed, approved and implemented.

### Measures for application of legal regulations.<br>Responses to the additional questions<br>of the European Committee of Social Rights

From 2009 to 2011 as part of the Decent Work Agenda for Ukraine was implemented a joint project of technical cooperation of the International Labour Office and the European Union "Gender Equality in the World at Work". The purpose of the project included , among others, to build the institutional capacity of the social partners to promote and protect women's rights in the workplace. The project established a "hot line", which provides legal assistance to workers and employees who believe their employment rights have been violated. The project also supported the employers' organizations through a series of workshops on equal opportunity in the workplace, which also concerned the prevention of discrimination and sexual harassment in the workplace, as well as a series of seminars that provide economic justification for employers , including maintaining a healthy working environment and combating of sexual harassment.

**Sexual harassment**

*1. According to Section 17 of the Law of Ukraine on Securing Equal Rights and Opportunities for Women and Men No 2866-IV of 08.09.2005 a person may file a complaint with the Commissioner for Human Rights of the Verkhovna Rada of Ukraine as the authority whose function is to secure equal rights and opportunities for women or men in executive authorities and local governments, state law-enforcement bodies or courts. The Committee asks whether there exists a right of appeal against the decision of the Commissioner. Also it notes that the jurisdiction of this body is restricted and does not comprise all employing sectors.*

Response:1. According to the Secretariat of the Ukrainian Parliament Commissioner for Human Rights within 2009-2012 years there were no appeals to the Ukrainian Parliament Commissioner for Human Rights in relation to sexual harassment in the workplace.

With regard to the right to appeal against the decision of the Ombudsman, in accordance with Article 4 of the Law of Ukraine On the Ukrainian Parliament Commissioner for Human Rights, the Ombudsman is an official whose status is determined by the Constitution of Ukraine, this Law, the Law of Ukraine On Civil Service and other laws of Ukraine. The Ombudsman performs its activity independently of other state agencies and officials. Activity of the Ombudsman complements existing means of protection of constitutional human and citizens' rights and freedoms, does not negate them and does not entail the review of the competence of state bodies that ensure protection and restoration of violated rights and freedoms. In accordance with Article 55 of the Constitution of Ukraine 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. In accordance with Article 124 of the Constitution, justice in Ukraine shall be administered exclusively by the courts. Delegation of the functions of courts or appropriation of such functions by other bodies or officials shall be prohibited. The jurisdiction of the courts shall extend to all legal relations that arise in the State.

Based on these provisions of the Constitution of Ukraine, the norms of which in accordance with Article 8 of the Constitution are norms of direct effect, every citizen shall have the right to appeal to court.

**Burden of proof**

*2. The Committee has ruled that effective protection of employees requires a shift in the burden of proof. In particular, courts should be able to find in favour of the victim on the basis of sufficient prima facie evidence and the personal conviction of the judge or judges. The Committee asks what is the situation as regards burden of proof.*

Response: In accordance with Article 62 of the Constitution of Ukraine, no one is obliged to prove his or her innocence of committing a crime.

At the implementation of the stated provision of the Constitution, inter alia, the norms of the Criminal Procedure Code of Ukraine (hereinafter referred to as CPC) are aimed, under Articles 91 and 92 of the latter the burden of proving, in particular, the occurrence of criminal offense, degree of guilt of the accused in the commission of criminal offence, form of guilt, motive and purpose of the criminal offense, type and amount of damage caused by criminal offence, shall be placed upon investigator, public prosecutor and, in cases specified by the present Code, on the victim.

Prosecutor, chief of pre-trial investigation agency, investigator shall be required to examine comprehensively, fully and impartially the circumstances of criminal proceedings, find circumstances both of incriminating and exculpatory nature in respect of the suspect, the accused, as well as the circumstances mitigating and aggravating their punishment, make adequate legal evaluation thereof and ensure the adoption of lawful and impartial procedural decisions (Article 9 of the CPC).

Thus, in accordance with Article 94 of the CPC, investigator, public prosecutor, investigating judge, court based on the own moral certainty grounded in comprehensive, complete, and impartial examination of all circumstances in criminal proceedings being guided by law, evaluate any evidence from the point of view of adequacy, admissibility, and in respect of the aggregate of collected evidence, sufficiency and correlation, in order to take a proper procedural decision. No evidence shall have any predetermined probative value.

**Damages**

*3. The report explains that a person has the right to be compensated for financial loss and moral damage caused due to sexual harassment. Moral damage is compensated irrespective of financial loss and it is not related to the amount of the financial loss. The Committee asks whether the right to reinstatement of employees who have been unfairly dismissed for reasons related to sexual harassment is guaranteed. The Committee recalls that victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary*

*damage and act as a deterrent to the employer. The Committee asks that the next report provides information on the kinds and amount of compensation.*

Response: In accordance with Article 128 of the CPC the person to whom pecuniary and/or non-pecuniary damage has been caused by a criminal offence or another socially dangerous act shall have the right to enter a civil action against the suspect, accused or to a natural or legal person civilly liable by law for the damage caused by the acts of the suspect, accused or insane person who has committed a socially dangerous act.

A civil action in criminal proceedings shall be entertained by the court according to the rules established by the CPC. Where the procedural relations that have arisen from the civil action are not regulated by the CPC, the rules of the CPC shall apply, provided that these do not contravene the principles of criminal proceedings.

The person who does not enter a civil action in criminal proceedings, as well as the person whose civil action has been left undecided may enter same in civil proceedings.

**Article 26 § 2**

**General legal framework**

The Resolution of the Cabinet of Ministers of 26 September 2013 No.717 approved the State Program on Ensuring Equal Rights and Opportunities for Women and Men for the period until 2016. The Program aims at gender mainstreaming in all spheres of social activity, including establishing mechanism to realize the right to protect from gender discrimination and taking the necessary steps upon consideration of cases of such discrimination.

According to the draft Resolution of the Cabinet of Ministers of Ukraine "On approval of the program for implementation of the Association Agreement between Ukraine and the European Union" it is envisaged that the regulations aimed for the implementation of the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation should be developed, approved and implemented.

The Order of the Ministry of Social Policy of Ukraine of 23 April 2013 No. 235 approved an Expert Advisory Council with the participation of relevant ministries, social partners, NGOs and researchers. It is envisaged to study the Directive 2002/73/EC of the European Parliament and the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

It should be noted that with the support of the International Labour Organization and the German Agency for Technical Cooperation the project Implementation of HIV/AIDS Policies and Programs in the Workplace was implemented. Taking into account the ILO Recommendation of 2010 concerning HIV/AIDS and the World of Work, social partners initiated drafting of the National Strategy of Trilateral Cooperation in Response to HIV/AIDS in the world of work (hereinafter - the Strategy) and submission of the draft Strategy for the review of the National Tripartite Social and Economic Council (hereinafter - the National Council). The relevant draft Strategy was developed by a tripartite working group of experts delegated by the National Council.

On 20 February 2012 the National Council approved the National Strategy of Trilateral Cooperation in Response to HIV/AIDS in the world of work for 2012 - 2017, which with the participation of ILO and representatives of local tripartite social and economic councils was presented at a workshop in Kyiv on 29 November 2012.

Presidium of the National Council on 4 December 2012 approved the Recommendation on the implementation of the National Strategy of Trilateral Cooperation in Response to HIV/AIDS in the world of work for 2012 - 2017.

**Responses to the additional questions**
**of the European Committee of Social Rights**

## Burden of proof

*1. The Committee has ruled that effective protection of employees requires a shift in the burden of proof. In particular, courts should be able to find in favour of the victim on the basis of sufficient prima facie evidence and the personal conviction of the judge or judges. The Committee asks what is the situation as regards burden of proof.*

Response: Please see the above mentioned with regard to § 1.

## Damages

*2. The protection against moral harassment includes the right to obtain adequate compensation and the right and not to be retaliated against for upholding these rights. The Committee asks for relevant information.*

Response: Please see the above mentioned with regard to § 1.

**Article 28 – Right of worker representatives to protection in the undertaking and facilities to be afforded to them**

## General legal framework

The national legislation has not changed during the reporting period. The list of relevant legislative acts referred to in previous report by thematic group "Labour rights" is actual.

## Responses to the additional questions of the European Committee of Social Rights

**Protection of workers' representatives and facilities granted to workers' representatives**

*1. The Committee asks what protection is available to elected representatives not trade union representatives.*

Response: The article 3 of the Law of Ukraine "On Collective Agreements and Agreements" provides that the collective agreement concluded between the employer on the one hand and several union officials, and in the absence of such bodies - the workers' representatives, elected and authorized by the work collective on the other side.

The article 119 of the CLL provides that the duration of a state or public duties, if applicable legislation of Ukraine, these duties may be performed during working hours, employees are guaranteed the preservation of employment (position) and average earnings.

Law of Ukraine "On Collective Agreements and Agreements" provides that elected representatives of the employees are given guarantees and compensation for the period of negotiations. The persons involved in the negotiations as representatives of the parties and experts invited to attend the commission for a period of negotiation and drafting, are exempt from main work while maintaining average pay and including this time to work experience. The Law of Ukraine "On the Procedure for Settling Collective Labor Disputes (Conflicts)" provides guarantees independent intermediaries, members of the conciliation commission and labor arbitrations. Article 14 of the Law stipulates that independent intermediaries, members of labor conciliation commissions and labor arbitrations while working in the conciliation bodies established under this Law shall be guaranteed the preservation of employment (position) and average pay and are subject to the safeguards provided by the CLL for elected representatives, members of boards and councils of labor collectives.

## Statistical information

| | Number of detected violations (units) by year | | | |
|---|---|---|---|---|
| | 2009 | 2010 | 2011 | 2012 |
| Article 249 “The duty of the owner or the body authorized by him concerning creation of conditions for activity of trade unions” of the Code of Labour Laws of Ukraine | 430 | 437 | 428 | 302 |
| Article 250 “Guarantee for workers of the enterprises, establishments, the organizations selected {elected} to trade-union bodies” of the Code of Labour Laws of Ukraine | 144 | 146 | 142 | 100 |

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

**General legal framework**

- Law of Ukraine No. 305 of 5 July 2012 "On Employment of Population"
- Resolution of the Cabinet of Ministers of Ukraine No. 305 of 22 April 2013 "On the procedure for the formation of special commissions to take measures to prevent a sharp increase of unemployment during collective redundancy"

**Measures for application of legal regulations.**
**Responses to the additional questions**
**of the European Committee of Social Rights**

**Definitions and scope**

*1. The report states that the notion of collective redundancy covers situations (bases its explanation upon the situation) in which "an employer plans redundancy of workers for reasons of economic, technological, structural or similar nature or because of liquidation, reorganisation, or change in the form of ownership of an enterprise, institution or organisation". The Committee considers that the collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity The Committee asks whether the Ukrainian law provides for any exceptions for certain categories of workers or enterprises as to the procedures applied in the case of collective redundancies.*

<u>Response</u>: According to the Article 48 "Collective redundancy initiated by the employer" of the Law of Ukraine "On Employment of Population" which came into force on 1 January 2013, a collective redundancy initiated by the employer (except liquidation of the legal entity) shall be at one time or

1) within 1 month;

   - a collective redundancy of 10 or more employees at the enterprise, institution or organization with the total number of employees from 20 to 100;

   - a collective redundancy of 10% or more employees at the enterprise, institution or organization with the total number of employees from 101 to 300;

2) within a 3 month period: collective redundancy of 20% or more employees at the enterprise, institution or organization regardless of the total number of employees employed.

2. Indicators of collective redundancy, measures to prevent them and minimize the negative consequences are set by collective agreements or agreements 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 the participation of parties of social dialogue.

4. If the collective redundancy caused a sharp rise in unemployment in the region or in the relevant territory in three or more percentage points during the reporting period, the situation in the labor market is defined as crisis.

To take measures to prevent a sharp rise in unemployment during collective redundancy will be set up special commissions in the procedure prescribed by the Cabinet of Ministers of Ukraine.

**Prior information and consultation**

*2. The Committee noted that according to Article 49§2 of the Labour Code of Ukraine, workers shall be notified personally on their forthcoming redundancy no later than two months prior thereto. The Committee recalls that Article 29 provides for the employer's duty to consult with workers' representatives and the purpose of such consultation. The Committee has stated that "this obligation is not just an obligation to inform unilaterally, but implies that a process will be set in motion, i.e. that there will be sufficient dialogue between the employer and the workers' representatives on ways of avoiding redundancies or limiting their number and mitigating their effects, although it is not necessary that agreement be reached". As to the content of prior information, with a view to fostering dialogue, the Committee has ruled that all relevant documents must be supplied before consultation starts.*

Response: In accordance with Section IX "Social dialogue in the labor market" the Article 50 "Participation of employers in providing employment" of the Law of Ukraine "On Employment of Population" provides for employers obligations on time and in full in accordance with the procedure approved by the central executive body which carries out the state policy in the sphere of employment of population and labor migration, in consultation with the central executive authority which

carries out the state policy in the sphere of statistics, to submit information to the local offices of central executive body which carries out the state policy in the sphere of employment of population and labor migration, in paticular regarding planned collective redundancy due to changes in the organization of production and labor, including the liquidation, reorganization or conversion of enterprises, institution, organizations, downsizing of enterprises, institution, organizations regardless of ownership, economic activity two months before collective redundancy. The employer must conduct prior consultation with the primary trade union organization, which concluded a collective agreement, and to involve employees of other employers, including employees of entities that provide mediation services in employment.

The current General Agreement provides for the obligation of parties of social dialogue in the case of irreversibility of collective redundancy to develop commom measures to provide employment to those subject to collective redundancy. The trade unions are required to submit if necessary to relevant public authorities and employers proposals for postponement, suspension or cancellation of measures for collective redundancy that are mandatory for consideration.

**Statistical information**

| | **Number of detected violations (units) by year** | | | |
|---|---|---|---|---|
| | 2009 | 2010 | 2011 | 2012 |
| Article 43 “Cancellation of the employment contract under the initiative of the owner or the body authorized by him under the previous consent of elected body of the primary trade-union organization (the trade-union representative) ” of the Code of Labour Laws of Ukraine | 79 | 82 | 71 | 50 |
| Measures taken to influence employers | 69 orders were issued to eliminate the detected violations; 58 protocols on administrative offenses were issued | 75 orders were issued to eliminate the detected violations; 59 protocols on administrative offenses were issued | 65 orders were issued to eliminate the detected violations; 49 protocols on administrative offenses were issued | 45 orders were issued to eliminate the detected violations; 32 protocols on administrative offenses were issued |