



## – Ukraine and the European Social Charter –

### Signatures, ratifications and accepted provisions

Ukraine ratified the Revised European Social Charter on 21/12/2006, accepting 76 of the 98 paragraphs of the Charter.

It has not accepted the system of collective complaints.

### Charter in domestic law

Automatic incorporation into domestic law.

### Table of accepted provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22
23	24	25	26.1	26.2	27.1	27.2	27.3	28	29	30	31.1
31.2	31.3										

Grey = Accepted provisions

### Reports on non-accepted provisions

The European Committee of Social Rights ("the Committee") examines the situation of non-accepted provisions of the Revised Charter every 5 years after the ratification. It adopted [reports concerning Ukraine](#) in 2012 and in 2017. The Committee considers that there are no significant obstacles to the acceptance of Articles 2§3, 12§2, 12§3, 13§2, 13§3, 19§§1-3, 19§§5-10 and 19§12.

Further information on the reports on non-accepted provisions is available on the [relevant webpage](#).

## Monitoring the implementation of the European Social Charter <sup>1</sup>

### I. Reporting system <sup>2</sup>

#### Reports submitted by Ukraine

Between 2008 and 2019, Ukraine has submitted 10 reports on the application of the Revised Charter.

The [10<sup>th</sup> report](#), submitted on 20/07/2018 covers the accepted provisions of the Revised Social Charter relating to thematic group 3 "Labour rights" (Articles 2, 4, 5, 6, 21, 22, 26, 28, 29).

Conclusions with respect to these provisions have been published in March 2019.

The 11<sup>th</sup> report, which was to be submitted by 31/10/2018, should concern the accepted provisions relating to Thematic group 4 "Children, families, migrants", namely:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

Conclusions with respect to these provisions will be published in January 2020.

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<sup>1</sup> The Committee monitors compliance with the Charter under two procedures, the reporting system and the collective complaints procedure, according to Rule 2 of the Committee's rules: « 1. The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure ».

Further information on the [procedures](#) may be found on the [HUDOC database](#) and in the [Digest of the case law of the Committee](#).

<sup>2</sup> Following a [decision taken by the Committee of Ministers in 2006](#), the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Following a [decision taken by the Committee of Ministers in April 2014](#), States having accepted the collective complaints procedure are required, in alternation with the abovementioned report, to provide a simplified report on the measures taken to implement the decisions of the Committee adopted in collective complaints concerning their country. The alternation of reports is rotated periodically to ensure coverage of the four thematic groups.

Detailed information on the Reporting System is available on the [relevant webpage](#). The reports submitted by States Parties may be consulted in the [relevant section](#).

## Situations of non-conformity<sup>3</sup>

### Thematic Group 1 « Employment, training and equal opportunities » - Conclusions 2016

► *Article 151 - Right to work - Policy of full employment*

It has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation

► *Article 152 - Right to work - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

-It has not been established that the prohibition of discrimination in employment is effectively implemented in practice;

-Legislation does not provide for a shift in the burden of proof in discrimination cases.

► *Article 153 - Right to work - Free placement services*

It has not been established that public employment services operate in an efficient manner.

► *Article 154 - Right to work – Vocational guidance, training and rehabilitation.*

It has not been established that the right to vocational guidance within the labour market is guaranteed.

► *Article 9 - Right to vocational guidance*

It has not been established that the right to vocational guidance within the labour market is guaranteed.

► *Article 1051 - Right to vocational training -technical and vocational training - Access to higher technical and university education*

It has not been established that the system of secondary and higher vocational education operates in an efficient manner.

► *Article 1052 - Right to vocational training- Apprenticeship*

It has not been established that there is an effective system of apprenticeship.

► *Article 1054 - Right to vocational training - Long term unemployed persons*

It has not been established that special measures for the retraining and reintegration of the long-term unemployed have been effectively provided or promoted.

► *Article 1055 - Right to vocational training -Full use of facilities available*

It has not been established that there is a system of financial assistance for vocational education and training

► *Article 1551 - Right of persons with disabilities to independence, social integration and participation in the life of the community -Vocational training for persons with disabilities*

The right of persons with disabilities to mainstream education is not effectively guaranteed.

► *Article 1552 -Right of persons with disabilities to independence, social integration and participation in the life of the community- Employment of persons with disabilities*

-It has not been established that the reasonable accommodation obligation is effectively respected;

-Mainstreaming in employment is not effectively guaranteed in respect of persons with disabilities.

► *Article 1553 - Right of persons with disabilities to independence, social integration and participation in the life of the community- Integration and participation of persons with disabilities in the life of the community*

It has not been established that the anti-discrimination legislation covers the fields of housing, transport and communications.

► *Article 1852 - Right to engage in a gainful occupation in the territory of other States Parties - Simplifying existing formalities and reducing dues and taxes*

It is not established that Ukraine has simplified existing formalities and reduced chancery dues and other charges payable by foreign workers or their employers

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<sup>3</sup> Further information on the situations of non-conformity is available on the [HUDOC database](#).

► *Article 18§3 - Right to engage in a gainful occupation in the territory of other States Parties - Liberalising regulations*

Loss of employment leads to the cancellation of the residence permit.

► *Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex*

-The legislation does not provide for a shift in the burden of proof in sex discrimination cases;

-It has not been established that the right to equal treatment in employment without discrimination on grounds of sex is guaranteed in practice.

**Thematic Group 2 « Health, social security and social protection » - Conclusions 2017**

► *Article 3§2 - Right to safe and healthy working conditions - Safety and health regulations*

The coverage of occupational hazards by specific occupational health and safety legislation and regulations is insufficient

► *Article 3§3 - Right to safe and healthy working conditions - Enforcement of safety and health regulations*

The labour inspection system, insofar as it concerns occupational health and safety, is inefficient.

► *Article 3§4 - Right to safe and healthy working conditions - Occupational health services*

There is no strategy to develop occupational health services for all workers.

► *Article 11§1 - Right to protection of health - Removal of the causes of ill-health*

- The measures taken to reduce infant and maternal mortality have been insufficient;
- Insufficient measures have been taken to effectively guarantee the right of access to health care.

► *Article 11§2 - Right to protection of health - Advisory and educational facilities*

Prevention through screening is not used as a contribution to improving the health of the population.

► *Article 11§3 - Right to protection of health - Prevention of diseases and accidents*

Efficient immunisation and epidemiological monitoring programmes are not in place.

► *Article 23 - Right of the elderly to social protection*

The level of the minimum pension is manifestly inadequate.

► *Article 30 – Right to be protected against poverty and social exclusion*

There is no adequate overall and coordinated approach to combating poverty and social exclusion.

**Thematic Group 3 « Labour rights » - Conclusions 2018**

► *Article 2§5 - Right to just conditions of work – Weekly rest period*

Workers may give up their right to compensatory time off in exchange for a financial compensation.

► *Article 2§7 - Right to just conditions of work - Night work*

- Possibilities of transfer to daytime work are not sufficiently provided for;
- Laws and regulations do not provide for continuous consultation with workers' representatives on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work;
- There is no provision in the legislation for compulsory medical examinations prior to employment on night work and regularly thereafter.

► *Article 4§3 - Right to a fair remuneration - Non-discrimination between women and men with respect to remuneration*

There is no shift in the burden of proof in gender discrimination cases.

► *Article 4§4 - Right to a fair remuneration - Reasonable notice of termination of employment*

Notice periods are not reasonable in the following circumstances:

- dismissal as a result of changes in the organisation of production or labour or a reduction in staff numbers; dismissal for unfitness for medical reasons, lack of qualifications or the reinstatement of the previous post holder, for workers with more than seven years of service;
- termination of employment or dismissal on all other grounds, beyond five years of service.

► *Article 455 - Right to a fair remuneration - Limits to deduction from wages*

- Following all authorised deductions, the wages of workers with the lowest pay are not sufficient to enable them to provide for themselves or their dependants;
- Guarantees in place to prevent workers from waiving their right to limited deductions of wages are insufficient.

► *Article 5- Right to organise*

Right of nationals of other Contracting Parties to the Charter to form trade unions is restricted.

► *Article 654 - Right to bargain collectively - Collective action*

- Civil servants are denied the right to strike,
- The restrictions on the right to strike for employees working in the emergency and rescue facilities, nuclear facilities and in the transport sector go beyond the limits permitted by Article G of the Charter.

► *Article 2651- Right to dignity in the workplace - Sexual harassment*

It has not been established that there is appropriate and effective redress (compensation and reinstatement) in cases of sexual harassment.

► *Article 2652- Right to dignity in the workplace – Moral harassment*

- It has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work;
- It has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of moral (psychological) harassment.

► *Article 28- Right of workers' representatives to protection in the undertaking and facilities to be accorded to them*

- Workers' representatives other than trade union members are not granted sufficient protection against dismissal;
- It has not been established that workers' representatives are effectively protected against prejudicial acts other than dismissal.

#### **Thematic Group 4 « Children, families, migrants » - Conclusions 2015**

► *Article 751 - Right of children and young persons to protection - Prohibition of employment under the age of 15*

The definition of light work is not sufficiently precise.

► *Article 753 - Right of children and young persons to protection – Prohibition of employment of children subject to compulsory education*

- The definition of light work is not sufficiently precise;
- The duration of working time for children aged 16-18 who are still subject to compulsory education is excessive and therefore cannot be qualified as light work.

► *Article 755 - Right of children and young persons to protection – Fair Remuneration*

Young workers' wages are not fair.

► *Article 7510 - Right of children and young persons to protection - Special protection against physical and moral dangers*

- Child prostitution is only criminalised until the age of 16;
- Child pornography is not criminalised until the age of 18.
- Simple possession of child pornography is not a criminal offence.
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► *Article 851 - Right of employed women to protection of maternity- Maternity leave*

It has not been established that there are in law and in practice adequate safeguards to protect employees from undue pressure to take less than six weeks postnatal leave (Conclusions 2017 and 2015).

► *Article 8§5 - Right of employed women to protection of maternity-- Prohibition of dangerous, unhealthy or arduous work*

In case of reassignment to a different post, Ukrainian law does not guarantee the employees' right to return to their initial employment at the end of their maternity/nursing period (Conclusions 2017).

► *Article 16 - Right of the family to social, legal and economic protection*

- There is no adequate legislation on domestic violence against women (Conclusions 2017);
- It has not been established that equal treatment of nationals of other States Parties and stateless persons with regard to family benefits is guaranteed (Conclusions 2017 and 2015).

► *Article 31§1 - Right to housing - Adequate housing*

- The right to adequate housing is not guaranteed (Conclusions 2015);
- It has not been established that the supervision of housing standards is adequate (Conclusions 2017 and 2015);
- It has not been established that measures are taken by public authorities to improve the substandard housing conditions of Roma (Conclusions 2017 and 2015).

► *Article 31§2 - Right to housing - Reduction of homelessness*

- The legal protection for persons threatened by eviction is not adequate (Conclusions 2015).
- It has not been established that the right to shelter is guaranteed (Conclusions 2017 and 2015).

**The Committee has been unable to assess compliance with the following provisions and has invited the Ukrainian Government to provide more information in the next report:**

**Thematic Group 1 « Employment, training and equal opportunities »**

- ▶ Article 10§3 - Conclusions 2016
- ▶ Article 18§4 - Conclusions 2016

**Thematic Group 2 « Health, social security and social protection »**

- ▶ Article 3§1 - Conclusions 2017
- ▶ Article 14§1 - Conclusions 2017

**Thematic Group 3 « Labour rights »**

- ▶ Article 2§4 - Conclusions 2018
- ▶ Article 2§6 - Conclusions 2018

**Thematic Group 4 « Children, families, migrants »**

- ▶ Article 17§1 - Conclusions 2015
- ▶ Article 27§2 - Conclusions 2015

## **II. Examples of progress achieved in the implementation of rights under the Charter** ***(non-exhaustive list)***

### **Thematic Group 1 « Employment, training and equal opportunities »**

- ▶ Law No. 5207-VI on Principles of Prevention and Combating Discrimination in Ukraine which was enacted on 6 September 2012 forbids direct and indirect discrimination, based, among other things, on disability and applies in particular to the field of education, public services and relations between employers and employees.
- ▶ By its Decision No. 872 of 15 August 2011, the Cabinet of Ministers approved the rules governing the organisation of inclusive education in secondary schools.
- ▶ Law No. 1324 of 5 June 2014 on amendments to some of the laws on inclusive education was enacted to ensure continuity and consistency in the integration of children with special needs into general education.

### **Thematic Group 2 « Health, social security and social protection »**

- ▶ As a result of measures taken in 2008-2009, the average size of pensions increased by 64.5% compared to 2007.
- ▶ A reform of subsidies was implemented in 2014-2015 aiming at simplifying procedures and strengthening social protection.

### **Thematic Group 3 « Labour rights »**

- ▶ A publication-manual for employers "Adherence to the principle of equal treatment and non-discrimination in the work place in the public and private sectors of Ukraine" was developed and distributed. This manual contains in particular a section on "Sexual harassment" and covers a range of issues related to employer's policies and norms of conduct, as well as recommendations on how to act and respond to possible complaints, etc.
- ▶ The Law on Employment of Population, as amended, imposes on the employer an obligation to consult trade unions and to take measures to prevent collective redundancy or minimize the dismissals and / or their negative consequences. In this respect, the employer is required to submit information to the competent territorial bodies, two months in advance, about a planned 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 (Article 50).

### **Thematic Group 4 « Children, families, migrants »**

- ▶ The Law of 15 March 2012 on amendments to the Family Code has amended Article 22 of the Family Code and set the equal minimum legal age of marriage at 18 for both genders.
- ▶ The Law on Professional Development of Employees of 21 January 2012, which provides rules for organising employees' professional training, was adopted.