



March 2022

# **EUROPEAN SOCIAL CHARTER (REVISED)**

European Committee of Social Rights

Conclusions 2021

**UKRAINE**

*This text may be subject to editorial revision.*

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts decisions.

Information on the Charter, statements of interpretation, and general questions from the Committee, is contained in the General Introduction to all Conclusions.

The following chapter concerns Ukraine, which ratified the Revised European Social Charter on 21 December 2006. The deadline for submitting the 13<sup>th</sup> report was 31 December 2020 and Ukraine submitted it on 27 August 2021.

The Committee recalls that Ukraine was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to all findings of non-conformity or deferral in its previous conclusions (Conclusions 2017).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2017) found the situation to be in conformity, there was no examination of the situation in 2020.

Comments on the 13<sup>th</sup> report by the Confederation of Free Trade Unions of Ukraine were registered on 1 July 2021.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group II "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3);
- the right to protection of health (Article 11);
- the right to social security (Article 12);
- the right to social and medical assistance (Article 13);
- the right to benefit from social welfare services (Article 14);
- the right of elderly persons to social protection (Article 23);
- the right to protection against poverty and social exclusion (Article 30).

Ukraine has accepted all provisions from the above-mentioned group except Articles 12§1, 12§2 and 13.

The reference period was from 1 January 2016 to 31 December 2019.

The conclusions relating to Ukraine concern 13 situations and are as follows:

- 1 conclusion of conformity: Article 14§2;
- 8 conclusions of non-conformity: Articles 3§1, 3§2, 3§3, 3§4, 11§1, 11§2, 23 and 30.

In respect of the other 4 situations related to Articles 11§3, 12§3, 12§4 and 14§1, the Committee needs further information in order to examine the situation.

The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Ukraine under the Revised Charter.

The next report from Ukraine will deal with the following provisions of the thematic group III "Labour Rights":

- the right to just conditions of work (Article 2);
- the right to a fair remuneration (Article 4);
- the right to organise (Article 5);
- the right to bargain collectively (Article 6);
- the right to information and consultation (Article 21);

- the right to take part in the determination and improvement of the working conditions and working environment (Article 22);
- the right to dignity at work (Article 26);
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28);
- the right to information and consultation in collective redundancy procedures (Article 29).

The deadline for submitting that report was 31 December 2021.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 1 - Safety and health regulations*

The Committee takes note of the information contained in the report submitted by Ukraine.

The Committee notes that for the purposes of this report, States were asked to reply to the specific targeted questions put to them in relation to Article 3§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity or deferrals (see appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the remit of the thematic group “Health, social security and social protection”).

The Committee deferred its previous conclusion pending receipt of the requested information (Conclusions 2017). The assessment of the Committee will therefore only concern the information provided by the Government in response to the deferral and to the targeted questions.

The Committee wishes to point out that it will take note of the reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e., after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

#### **General objective of the policy**

The Committee has previously noted that there was a legislative framework which allows a comprehensive approach to occupational health and safety (Conclusions 2013).

In its targeted question, the Committee asked about policy formulation processes and practical arrangements made to identify new or emerging situations that represent a challenge to the right to safe and healthy working conditions, the results of such processes as well as intended future developments.

In reply to the Committee’s question, the report explains that the drafting and adoption of new regulatory acts on occupational safety, and the revision and repeal of existing acts are carried out by the central executive authority responsible for determining state policy on occupational safety, with the involvement of the trade unions and the Social Insurance Fund of Ukraine, and in coordination with the state authorities which supervise occupational safety. The report also details the regulatory acts on occupational safety that were approved during the 2016–2019 period to increase the level of worker safety and to adapt national legislation to European standards. The Committee takes note of the information provided and asks that the next report provide updated information on the results of those regulatory acts and of intended future developments.

In its previous conclusion, the Committee reiterated its request that the report provide information on the activities implemented and the results obtained by the National Programme on the Improvement of Occupational Safety and Health and the Working Environment 2014–2018 (National Programme) (Conclusions 2017).

In reply to the Committee’s question, the report informs that, notwithstanding the fact that during the 2015–2018 period, no funding was provided for tasks and measures to implement the National Programme, the Government of Ukraine ensures the implementation of measures to improve the requirements of the legislation on labour relations, occupational and industrial safety on a regular basis. The report quotes the Order of the Cabinet of Ministers of Ukraine No. 989-r/2018 on the approval of the Concept for reforming occupational safety management system in Ukraine and the approval of the Action Plan for its implementation (Order No. 989-r), whose key task is to create the conditions for the implementation of the Council Directive 89/391/EEC on the introduction of measures to

encourage improvements in the safety and health of workers at work. The report also states that the Action Plan envisages the preparation of a draft Law on amendments to certain legislative acts of Ukraine on the implementation of a Risk-Oriented Approach in Occupational Safety and Health, as well as the development and / or amendment of several regulatory acts on labour and occupational safety, and the development of methods, tools, and measures to apply a risk-oriented approach to reforming the occupational safety management system.

The Committee takes note of the information provided and finds that the situation is not in conformity with Article 3§1 of the Charter in this respect in Ukraine, as no funds were provided to implement the National Programme. It asks the next report to provide information on the activities implemented and the results achieved by the Action Plan approved to implement Order No.989-r. It also requests that the next report provide information on the formulation and/or the amendment of the regulatory acts on labour and occupational safety, and on the development and application of methods, tools, and measures to apply a risk-oriented approach in reforming the occupational safety management system.

In its previous conclusion, the Committee also reiterated its request that the next report provide information on how previously listed initiatives in the injury-prone sectors, other than coal mining, have helped to create a culture of prevention in respect of occupational health and safety in practice (Conclusions 2017).

In reply to the request for information on how previously listed initiatives in the injury-prone sectors, other than coal mining, have helped to create a culture of prevention in respect of occupational health and safety in practice the report, states that in Ukraine a draft law on Safety and Health of Workers at the Workplace (draft law) was developed. The report adds that, according to the draft law, the national occupational health and safety management system will be based on the principles of preventing industrial risks and encouraging employers to create safe and healthy working conditions to ensure the effective implementation of workers' right to safe work in all industries.

The Committee takes note of the information provided in the report and finds that there is nothing to establish that the situation is in conformity with Article 3§1 of the Charter in this respect, as the report does not provide any information on how injury-prone sectors other than coal mining have helped to create a culture of prevention in respect of occupational health and safety in practice. It therefore requests that the next report provide information on the activities implemented and the results achieved by the draft law referred to in the report.

In its previous conclusion, the Committee reiterated its request that the next report provide information on the activities carried out in terms of research, knowledge and communication relating to psychosocial risks (Conclusions 2017).

In reply to the request for information on the activities carried out by Ukraine in terms of research, knowledge and communication relating to psychosocial risks, the report mentions that Paragraph 12 of the Action Plan to ensure the implementation of the European Social Charter (Revised) for 2015–2019, approved by the Order of the Cabinet of Ministers of Ukraine No. 450-r/2015 on approval of the Action Plan to ensure the implementation of the European Social Charter (Revised) for 2015–2019 provides for the introduction of systems for preventing accidents and occupational diseases at the workplace taking into account the risk-oriented approach (identifying, assessing, and minimising causes of risks and possible consequences for the lives and health of workers). The report adds that the draft law provides for the introduction of a system of minimum requirements for safety and health of workers, as well as the recurrent assessment by the employer of risks that may arise in a particular workplace, and the development and implementation of measures to minimise or eliminate them, based on the European example.

The Committee notes that the information submitted does not refer specifically to psychosocial risks. Therefore, it finds that there is nothing to establish that the situation is in

conformity with Article 3§1 of the Charter in this respect, as the report does not provide any specific information on the activities carried out in terms of research, knowledge and communication relating to psychosocial risks. The Committee therefore asks the next report to provide information on the activities carried out by Ukraine in terms of research, knowledge and communication relating to psychosocial risks.

### ***Organisation of occupational risk prevention***

In the previous conclusion, no specific question regarding the organisation of occupational risk prevention was put to Ukraine (Conclusions 2017).

### ***Improvement of occupational safety and health***

In its previous conclusion, the Committee reiterated all the specific questions that were already posed in Conclusions 2013 concerning the improvement of occupational safety and health (resources allocated to the institutions and bodies mentioned and materials – recommendations, guides, good practice, advice) aimed at undertakings in the private sector (Conclusions 2017). The Committee also considered that if the requested information was not provided, there would be nothing to establish that the situation in Ukraine is in conformity with Article 3§1 of the Charter in this respect.

The report does not provide any of the information requested. Therefore, the Committee considers that there is nothing to establish that the situation in Ukraine is in conformity with Article 3§1 of the Charter in this respect.

### ***Consultation with employers' and workers' organisations***

In its previous conclusion, the Committee asked for information on consultation with the competent occupational health and safety bodies within enterprises, in particular enterprises where there are no workers' representatives (Conclusions 2017). The Committee also considered that if the requested information was not provided, there would be nothing to establish that the situation in Ukraine is in conformity with Article 3§1 of the Charter in this respect.

The report does not provide any of the information requested. Therefore, the Committee considers that there is nothing to establish that the situation in Ukraine is in conformity with Article 3§1 of the Charter in this respect.

### ***COVID-19***

In its targeted question, the Committee asked about the protection of frontline workers, instructions and training, the quantity and the adequacy of personal protective equipment provided to workers, and the effectiveness of these measures within the context of the Covid-19 pandemic.

The report contains information on the protection of medical professionals and the measures taken in the penitentiary, pre-trial detention facilities and health care facilities of the State Criminal Executive Service (SCES).

On the protection of medical professionals, the report details the amount of personal protective equipment (PPE) that the State-Owned Enterprise, Medical Procurements, purchased at the request of the Ministry of Health of Ukraine (MoH). The report states that supplies for frontline doctors were also provided at the expense of local authorities and voluntary (charitable) organisations. The report also mentions that deaths of certain categories of medical professionals in the context of the Covid-19 crisis were investigated after the drafting of several resolutions of the Cabinet of Ministers of Ukraine in this respect. In the same vein, the report mentions that funds were allocated in 2020 from the Anti Covid-19 Fund to be used for insurance payments to medical professionals of public and municipal

health care facilities and members of their families in the event that these professionals had died or were recognised as having a Covid-19 related disability within one calendar year of contracting Covid-19.

The report states that vaccination against Covid-19 in Ukraine started on 24 February 2021 and, as of 15 April 2021, both medical professionals providing care to patients with Covid-19 and those working in healthcare facilities not providing care to patients with Covid-19 had been vaccinated. The report adds that there was no single programme of psychological support for medical staff suffering from pandemic-related burnout, so such activities were mainly implemented on the initiative of volunteer organisations. It also states that the MoH of Ukraine has launched the Covid-19 psychological support channel on Telegram. The report mentions that a relevant web resource was created on the website of the Centre for Public Health of Ukraine's MoH (<https://covid19.phc.org.ua/profilaktika/>) containing information on infection prevention and control measures when providing medical care to a patient identified as having Covid-19; on the rational use of PPE during the Covid-19 pandemic; on the calculation of the required amount (stock) of PPE to be provided to medical professionals during an outbreak of coronavirus disease (Covid-19); on recommendations for cleaning and disinfecting surfaces in health care facilities in the context of providing medical care to patients with coronavirus disease (Covid-19).

On the measures taken in prison, pre-trial detention facilities and SCES health care facilities, the report details the orders issued by the Ministry of Justice of Ukraine (MoJ) on taking preventive and anti-pandemic measures against the spread of Covid-19, such as providing daily temperature screening and visual inspections of staff before their shift and, if necessary, during it; providing SCES staff with personal protective equipment; creating special work process conditions in the event of the first signs of respiratory disease symptoms in SCES staff; and ensuring that prison system healthcare facilities are ready to accept coronavirus patients. The report states that PPE for the respiratory system and skin, disinfectants, alcohol antiseptics for hands, shielded ultraviolet bactericidal irradiators, oxygen concentrators, steam sterilisers, water distilling units, rapid antigen tests for SARS-CoV-2 and PCR sampling kits were provided to implement these measures. The report also details the procedures established regarding the organisation of parcel acceptance in the SCES's penitentiary and pre-trial detention facilities during the emergency period.

The report notes that changes were made to the roadmap for mass vaccination in response to the Covid-19 pandemic in Ukraine in 2021–2022 to include the medical staff of SCES healthcare centre and the SCES staff in the list of priority groups for vaccination against coronavirus (Covid-19). It also states that an interdepartmental communication headquarters for Covid-19 vaccination, which includes an SCES healthcare centre expert was established to implement the Covid-19 vaccination campaign, to coordinate information on the benefits of vaccination, prevent misinformation and to clearly explain the steps of vaccination.

In line with its Statement on Covid-19 and social rights (March 2021), the Committee recalls that in the context of the Covid-19 crisis, and with a view to mitigating the adverse impact of the crisis and accelerating the post-pandemic social and economic recovery, each State Party must assess whether its existing legal and policy frameworks are adequate to ensure a Charter-compliant response to the challenges presented by Covid-19. Where those frameworks are not adequate, the State must amend them including through the adoption of any additional measures that are required to ensure that the State is able to comply with its Charter obligations in the face of the social rights risks posed by the Covid-19 crisis. In the same vein, the Committee recalls that the Covid-19 crisis does not obviate the requirements set out by its long-standing jurisprudence regarding the implementation of the Charter and the obligation of the States Parties to take measures that allow them to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.

The Committee points out that, in order to secure the rights set out in Article 3, a response to Covid-19 in terms of national law and practice should involve the immediate introduction of health and safety measures at the workplace such as adequate physical distancing, the use of personal protective equipment, strengthened hygiene and disinfection measures, as well as stricter medical supervision, where appropriate. In this respect, due account should be taken of the fact that certain categories of workers, such as frontline health care workers, social workers, teachers, transport and delivery workers, garbage collection workers, and agro-food processing workers are exposed to heightened risks. States Parties must ensure that their national policies on occupational safety and health, and their health and safety regulations, reflect and address the hazardous agents and the particular psychosocial risks faced by different groups of workers in the Covid-19 context. The Committee also stresses that the situation requires a thorough review of occupational risk prevention at national policy level, as well as at company level, in close consultation with the social partners, as stipulated by Article 3§1 of the Charter. The national legal framework may require amendment, and risk assessments at company level must be adapted to the new circumstances.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 3§1 of the Charter on the grounds that:

- there are no funds provided to implement the National Programme on the Improvement of Occupational Safety and Health and the Working Environment 2014–2018 (National Programme).
- it has not been established that initiatives in the injury-prone sectors other than coal mining have helped to create a culture of prevention in respect of occupational health and safety in practice.
- it has not been established that Ukraine has carried out activities in terms of research, knowledge and communication relating to psychosocial risks.
- it has not been established that there have been resources allocated or materials developed for the improvement of occupational safety and health aimed at undertakings in the private sector.
- it has not been established that consultation with the competent occupational health and safety bodies within enterprises, in particular enterprises where there are no workers' representatives is being carried out.



### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 2 - Safety and health regulations*

The Committee takes note of the information contained in the report submitted by Ukraine.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 3§2 of the Charter as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

The Committee notes that it previously found the situation in Ukraine not to be in conformity with Article 3§2 of the Charter on the ground that the coverage of occupational hazards by specific occupational health and safety legislation and regulations is insufficient (Conclusions 2017). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity and to the targeted question.

#### ***Content of the regulations on health and safety at work***

In its previous conclusion, the Committee noted that there was no information in the report about whether regulations concerning health and safety at work covered work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships. The Committee found that the legislation and regulations in force did not meet the general obligation under Article 3§2 of the Charter, which requires that most of the risks listed in the general introduction to Conclusions XIV-2 be specifically covered, in line with the level set by international reference standards (Conclusions 2017).

In response, the report states that the regulatory acts on occupational safety are revised at least once every ten years. The report lists various regulations implementing the relevant EU legislation on minimum safety and health requirements at temporary or mobile construction sites, on work with display screen equipment, on the use of work equipment by workers at work.

The report also states that the Law on Ensuring Equal Rights and Opportunities for Women and Men (No. 52/2005) provides a remedy against sexual harassment and that a person can file a complaint to the Ukrainian Parliament Commissioner for Human Rights. Also, a person exposed to sexual harassment has a right to reimbursement of pecuniary and non-pecuniary damage. Under the same Law, the employer is obliged to take measures to prevent sexual harassment, but the specific measures are not specified in the Law. There is also a criminal liability for coercion into sexual intercourse with a person on whom another person is financially or professionally dependent.

The Committee notes that the representative of the Government informed the Governmental Committee that the State Labour Service drafted a Plan on National system for the prevention of occupational risks to ensure the effective exercise of the right of all workers to safe and healthy working conditions. The Plan is a framework document that establishes the context, vision, principles, objectives and main directions of the occupational safety and health activities in Ukraine based on a risk-based approach to ensure the implementation of the European standards, as well as the Charter.

The Committee notes that no information is provided in the report about said Plan. No information is provided on whether other risks listed in the general introduction to Conclusions XIV-2 are specifically covered and the Committee considers that the situation in Ukraine is not in conformity with Article 3§2 of the Charter on the ground that the coverage

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

In its targeted question on Article 3§2, the Committee asked for information on regulations adopted to improve health and safety in evolving new situations such as in the digital and platform economy by, for example, strictly limiting and regulating electronic monitoring of workers, by recognising a right to disconnect, right to be unavailable outside agreed working and standby time, mandatory digital disconnection from the work environment during rest periods. It also requested information on regulations adopted in response to emerging occupational risks.

The report provides no information requested. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with Article 3§2 of the Charter on this point.

The Covid-19 pandemic has changed the way many people work, and many workers now telework or work remotely. Teleworking or remote working may lead to excessive working hours.

The Committee considers that, consistent with States Parties' obligations in terms of Article 3§2, in order to protect the physical and mental health of persons teleworking or working remotely and to ensure the right of every worker to a safe and healthy working environment, it is necessary to enable fully the right of workers to refuse to perform work outside their normal working hours (other than work considered to be overtime and fully recognised accordingly) or while on holiday or on other forms of leave (sometimes referred to as the "right to disconnect").

States Parties should ensure there is a legal right not to be penalised or discriminated against for refusing to undertake work outside normal working hours. States must also ensure that there is a legal right to protection from victimisation for complaining when an employer expressly or implicitly requires work to be carried out outside working hours. States Parties must ensure that employers have a duty to put in place arrangements to limit or discourage unaccounted for out-of-hours work, especially for categories of workers who may feel pressed to overperform (e.g. those during probationary periods or for those on temporary or precarious contracts).

Being connected outside normal working hours also increases the risk of electronic monitoring of workers during such periods, which is facilitated by technical devices and software. This can further blur the boundaries between work and private life and may have implications for the physical and mental health of workers.

Therefore, the Committee considers that States Parties must take measures to limit and regulate the electronic monitoring of workers.

### ***Establishment, alteration and upkeep of workplaces***

The Committee previously reiterated its previous requests for comprehensive information on any regulatory acts to implement the provisions of Act No. 2694-II. It also asked whether employers were under the duty to assess exposure to occupational risks beyond highly hazardous works and highly hazardous machines, mechanisms and equipment. It considered that if the requested information was not provided in the next report, there would be nothing to establish that the situation in Ukraine is in conformity with Article 3§2 of the Charter in this respect (Conclusions 2017).

The report provides no information with regard to regulatory acts adopted to implement the provisions of Act No. 2694-II. The report states that it is the employer's obligation to take all necessary steps to ensure the safe use of industrial equipment of workers.

In view of the lack of information in the report, the Committee concludes that the situation is not in conformity with the Charter on the ground that it has not been established that the

levels of prevention and protection required by the legislation and regulations in relation to the establishment, alteration and upkeep of workplaces are in line with the level set by international reference standards.

### ***Protection against hazardous substances and agents***

The Committee previously asked the next report to provide information on the specific provisions relating to the protection of risks of exposure to benzene. It also asked the next report to provide information on the application of the rules and regulations concerning asbestos in practice, as well as on the activities implemented and results obtained by the National Programme regarding the protection of workers against asbestos. The Committee also asked whether the authorities considered drawing up an inventory of all contaminated buildings and materials. It also asked to indicate measures ensuring that in all workplaces where workers are exposed to asbestos, employers take all appropriate measures to prevent, or control, the release of asbestos dust in the air, and that employers comply with the prescribed exposure limits. Further, the Committee asked whether workers were protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007) and considered that if this information was not provided in the next report, there would be nothing to establish that the situation in Ukraine is in conformity with this aspect of Article 3§2 of the Charter (Conclusions 2017).

With regard to benzene, the report indicates that the use of any chemical and biological product is only allowed upon the availability of a certificate confirming its state registration. During the reporting period, the central executive authority implementing the State policy on sanitary and epidemiological well-being of the population worked on the approval of health requirements for chemical and biological substances in the air of the working area.

With regard to asbestos, the Committee notes that the representative of the Government informed the Governmental Committee that in March 2017 the State Sanitary Norms and Rules on safety and health of workers against harmful effects of asbestos and materials asbestos-containing products were approved by the Order of the Ministry of Health of Ukraine, and they establish the requirements for the prevention of risks associated with the exposure of workers to asbestos at their workplace.

The report states that Ukraine has an obligation to harmonise its national legislation with the EU regulations in accordance with the Association Agreement between the EU and Ukraine.

The Committee notes that no information on whether the authorities have considered drawing up an inventory of all contaminated buildings and materials is provided.

The Committee notes that the report provides no information on the measures on ensuring that employers take all appropriate measures to prevent, or control, the release of asbestos dust in the air in workplaces where the workers are exposed to asbestos. Also, no information is provided on whether employers comply with the prescribed exposure limits. The Committee repeats this request of information.

As regards ionising radiation, the report states that the relevant information was not provided by the authorities. The Committee concludes that it has not been established that the level of protection against ionising radiation is adequate.

### ***Personal scope of the regulations***

#### ***Temporary workers***

The Committee previously reiterated all the specific questions concerning the personal scope of legislation and regulations with regard to workers in atypical employment (whether agency or temporary workers or employees on fixed-term contracts in other sectors of the economy involving exposure to high risks, or at any workplaces, have access to medical

surveillance and are represented at work; how these types of workers receive training and information in occupational health and safety matters) (Conclusions 2013). The Committee considered that if the requested information was not provided in the next report, there would be nothing to establish that the situation in Ukraine is in conformity with Article 3§2 of the Charter (Conclusions 2017).

No information requested is provided. The Committee therefore concludes that it has not been established that temporary workers, interim workers and workers on fixed-term contracts enjoy the same standard of protection as workers on contracts with indefinite duration.

### ***Other types of workers***

The Committee previously reiterated its requests on how information and training on occupational health and safety, and medical surveillance is made available to self-employed, home and domestic workers in practice, and on existing arrangements for the representation of these types of workers at work. The Committee considered that if the requested information was not provided in the next report, there would be nothing to establish that the situation in Ukraine is in conformity with Article 3§2 of the Charter (Conclusions 2017).

The report states that the list of training centres conducting occupational safety training is published on the website of the State Labour Service. The report also states that as of 2019, the categories of self-employed, home and domestic workers are not separated.

The Committee notes that no information requested on self-employed, home and domestic workers is provided and concludes that it has not been established that these workers are covered by occupational health and safety regulations.

### ***Consultation with employers' and workers' organisations***

The Committee previously reiterated its request for information on consultation with the competent occupational health and safety bodies within enterprises, in particular enterprises where there are no workers' representatives. The Committee considered that if the requested information was not provided in the next report, there would be nothing to establish that the situation in Ukraine is in conformity with Article 3§2 of the Charter (Conclusions 2017).

The report provides no information requested. The Committee therefore concludes that the situation is not in conformity with the Charter as it has not been established that consultation with employers' and workers' organisations is ensured.

### ***Conclusion***

The Committee concludes that the situation in Ukraine is not in conformity with Article 3§2 of the Charter on the grounds that:

- the coverage of occupational hazards by specific occupational health and safety legislation and regulations is insufficient;
- it has not been established that levels of prevention and protection required in relation to the establishment, alteration and upkeep of workplaces are in line with the international reference standards;
- it has not been established that the levels of protection against ionising radiation are adequate;
- it has not been established that temporary workers, interim workers and workers on fixed-term contracts enjoy the same standard of protection as workers on contracts with indefinite duration;
- it has not been established that self-employed, home and domestic workers are covered by occupational health and safety regulations;
- it has not been established that consultation with employers' and workers' organisations is ensured.

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

The Committee takes note of the information contained in the report submitted by Ukraine.

The Committee recalls that for the purposes of the present report States were asked to reply to targeted questions for Article 3§3 of the Charter as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion, the Committee concluded that the situation in Ukraine was not in conformity with Article 3§3 of the Charter (Conclusions 2017).

Assessment of the Committee will therefore concern the information provided by the Government in response to the non-conformity conclusion and to the targeted questions .

***Accidents at work and occupational diseases***

The Committee previously examined the situation regarding accidents at work and occupational diseases (Conclusions 2017). It considered that the figures presented in this respect reflect a steady downward trend compared to the previous reference period and raised a number of questions concerning – steps taken to reduce the high level of fatal accidents and diseases and to counter potential underreporting in practice. – legal definition of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases) – the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases – the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged.

The targetted questions concerned: – statistical data on prevalence of work-related death, injury and disability as well as on epidemiological studies conducted to assess the long(er)-term health impact of new high-risk jobs and also as regards the victims of harassment at work and poor management. – the organisation of the Labour Inspectorate, and the trends in resources allocated to labour inspection services, including human resources; number of health and safety inspection visits by the Labour Inspectorate and the proportion of workers and companies covered by the inspections as well as the number of breaches to health and safety regulations and the nature and type of sanctions. – whether inspectors are entitled to inspect all workplaces, including residential premises, in all economic sectors.

The report indicates that the analysis of fatal accidents in 2019 shows that the largest number of these accidents occurred due to organisational reasons (310 fatal accidents for organisational reasons in 2019; 303 in 2018; 279 in 2017 and 283 in 2016). Moreover, 57 workers died in 2019, according to the report, due to technical reasons (58 in 2018, 52 in 2017, 61 in 2016). The report also states that in 2019, the number of workers who lost their lives as a result of accidents caused by psychophysiological reasons was 55 (48 in 2018, 35 in 2017 and 56 in 2016). According to the report, among the events that led to fatal accidents in the reporting period are road accidents and collision of vehicles, the fall of the victim, falls, collapses of objects, material, rocks etc., the operation of moving, flying, and rotating objects and parts, electric shocks, harmful and toxic substances and explosion. Workers of such occupations as transport workers, managers, construction workers, agricultural workers, metalworkers, electricians and miners were the most fatally injured at work. The total number of fatal accidents was, according to the report, 400 in 2016, 366 in 2017, 409 in 2018 422 in 2019. The Committee finds that there is a slightly increasing trend concerning

fatal accidents at work, although the number of total labour force in Ukraine, according to World Bank data is decreasing (20,764,636 in 2016 to 20,207,728 in 2019). The report does not provide data on incidence rates of fatal accidents at work.

According to ILOSTAT data, there is an increase in the number of fatal accidents at work: from 357 in 2016 and 275 in 2018 to 410 in 2019, and in the standardised incidence rates of such accidents (4.5 in 2016, 3.8 in 2017, 3.6 in 2018 and 5.5 in 2019). These figures are much higher than the average rates in the EU-27 during the reference period (1.77 in 2018, 1.79 in 2017 and 1.84 in 2016).

The Committee asks that the next report provide more detailed information about the reasons of fatal accidents at work and in particular, clarification concerning the categories (of causes of fatal accidents at work) such as “organisational reasons”, “technical reasons” and “psychophysiological reasons”, as well as the incidence rates of such accidents.

The report also states that in 2019, 18 workers lost their lives as result of suicide (20 cases in 2016, 28 cases in 2017, 18 cases in 2018), and underlines that not all these suicide cases were related to workplace problems. The Committee asks that the next report provide more detailed information on the causes of workers’ suicides and on measures taken or envisaged to prevent them and to ensure the mental wellbeing of workers.

The Committee takes note of the information and figures presented in the report concerning deaths “related to drug use and mortality among drug users”. It also notes that the death toll caused by the use of psychoactive substances has tripled in the last five years. It also notes that the guidelines on “drug prevention in the Armed Forces of Ukraine” were published by the Ministry of Defense, Ministry of Health and National Academy of Medical Sciences. The Committee requests that the next report provide information on preventive and curative measures taken against the use of psychoactive substances in particular by servicemen in the Ukrainian Army.

The report does not provide information on the number of non-fatal accidents at work, nor on the standardised incidence rates of such accidents during the reference period.

According to ILOSTAT data, during the same period, the numbers of non-fatal accidents at work are as follows: 4,072 in 2016, 4,109 in 2017, 3,765 in 2018 and 3,984 in 2019. The standardised incidence rates for such accidents were 51.8 in 2016, 53.5 in 2017, 49.1 in 2018 and 53.5 in 2019. In 2018, the standardised incidence rate for non-fatal accidents in the EU-27 was 1,768.93 – incapacity for work for 4 days or more. The Committee asks that the next report provide for explanation on the apparently very low incidence rate for accidents at work. It also requests information on obligations to report accidents at work and on any measures taken to counter potential under-reporting in practice.

The Committee concludes that the situation in Ukraine is not in conformity with Article 3§3 on the ground that measures taken to reduce the number of fatal accidents at work are not sufficient.

As to occupational diseases, the report explains that according to the resolution of the Board of the Social Insurance Fund against Industrial Accidents and Occupational Diseases of Ukraine No. 18 of 9 June 2010 “On approval of the Regulation on the organisation of treatment, medical rehabilitation and provision of victims of industrial accidents and occupational diseases with medicines and medical devices”, an occupational disease is defined as a disease caused as a result of workplace activity of the insured person and related exclusively or mainly to the exposure to harmful substances and certain types of work and other factors related to work. The list of occupational diseases was approved by the Resolution of the Cabinet of Ministers of Ukraine No. 1662 of 8 November 2000 “On approval of the list of occupational diseases”.

According to the report, the number of occupational diseases significantly increased from 1603 cases in 2016 and 1879 in 2018 to 2410 cases in 2019. The report also indicates that

the number of conclusions about the establishment of a causal link between the death of the victim and occupational disease was 21 in 2016, 14 in 2017 and 21 in 2019. Those figures do not include occupational diseases that have occurred at enterprises located in settlements where public authorities temporarily do not exercise or do not fully exercise their powers according to the Order of the Cabinet of Ministers of 7 November 2014. The Committee also takes note of the increase, indicated in the report, of the number of occupational disease cases in a number of oblasts: in Dnipropetrovsk oblast, for instance, the number of occupational diseases increased by 204 cases between 2018 and 2019. The number of occupational diseases in Dnipropetrovsk oblast, Lviv oblast and Donetsk oblast represent 76.1% of the total number of workers with occupational diseases in Ukraine.

The main causes of occupational diseases in 2019 include the malfunctioning of working tools – 22.3% of the total number; imperfection of the technological process – 20.9%; failure to use of personal protective equipment – 10.6%; inefficiency of protective equipment and mechanisms – 7.3%; inefficiency of personal protective equipment. Among occupational diseases, respiratory diseases were the most common at 41.1% of the total number of diagnoses in Ukraine followed by diseases of the musculoskeletal system .

Most occupational diseases occurred in the mining industry and quarrying – 84.6% of the total number. This is followed by machinery and equipment production – 4.1%; metallurgical production, production of finished metal products, except machinery and equipment – 3.3%; production of coke and refined products – 2.3%; other types of processing industry, repair and installation of machinery and equipment – 1.8%; construction – 1.3%.

The report does not provide information on the incidence rates of reported occupational diseases during the reference period. Nor does it provide information on measures to counter insufficiency in the declaration and recognition of cases of occupational diseases. The Committee reiterates its previous request in these respects. In addition, the Committee also reiterates its request for information on measures to prevent the most frequent occupational diseases during the reference period. It requests that the information in this respect concerns particularly the measures taken in Dnipropetrovsk oblast, Lviv oblast and Donetsk oblast where the number of cases of occupational diseases, according to the report, represents 76.1% of the total number of workers with occupational diseases in Ukraine. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that occupational diseases are monitored effectively.

### ***Activities of the Labour Inspectorate***

The Committee previously examined the activities of the Labour Inspectorate (Conclusions 2017). It considered that in the reference period, labour inspection structures were not sufficiently developed in practice to establish that there is an efficient labour inspection, and that in absolute terms, the number of fines imposed, and the amounts involved remained too low to have a dissuasive effect. It concluded that the situation in Ukraine was not in conformity with Article 3§3 of the Charter on the ground that the labour inspection system, insofar as it concerns occupational health and safety, was inefficient. It requested information/explanation concerning the reason why the numbers of workplace inspections which are stated in the report and those published by ILOSTAT are different and on measures to focus labour inspection on small and medium-sized enterprises. The targeted question with regard to accidents at work concerned the organisation of the Labour Inspectorate, and the trends in resources allocated to labour inspection services, including human resources; number of health and safety inspection visits by the Labour Inspectorate and the proportion of workers and companies covered by the inspections as well as the number of breaches to health and safety regulations and the nature and type of sanctions; whether inspectors are entitled to inspect all workplaces, including residential premises, in all economic sectors.

In reply, the report indicates that the total number of employees of the State Labour Service is 3,636 full-time units: 158 are employees of the central office, 3,478 are employees of territorial authorities of the State Labour Service. The majority of employees (about 80%) are labour inspectors who are directly involved in the implementation of state oversight measures. The system of the State Labour Service includes 23 territorial authorities exercising the powers of the State Labour Service at the local level (region, district, city).

The report provides figures concerning the number of inspections conducted by the Labour Inspectorate and violations of occupational safety legislation and the amount of fines imposed. Accordingly, officials of the State Labour Service territorial authorities conducted, in 2019, 23,478 inspections of business entities (20,593 in 2018, 21,585 in 2017 and 7,525 in 2016), and 351,908 violations of occupational safety legislation were revealed (357,502 in 2018, 338,553 in 2017 and 307,949 in 2016). In 2019, 16,154 employees were held administratively liable for violating the legislative requirements (17,197 in 2018; 17,229 in 2017 and 15,423 in 2016). The amount of fines imposed in 2019 amounted to UAH 6,084,660 (approximately, 194,448 €) (UAH 6,324,140 in 2018, 5,827,180 in 2017 and 5,048,180 in 2016).

The Committee notes that according to ILOSTAT data, the number of labour inspectors in Ukraine was 504 in 2017 and 528 in 2018. According to the same source, the number of labour inspections conducted by the Labour Inspectorate was 21,991 in 2019, 24,372 in 2018 and 19,971 in 2017. The number of inspectors per 10,000 employees remained stable during the reference period: 0.3 between 2016-2018. The annual number of labour inspection visits per inspector was 25 in 2017 and 22 in 2018. The Committee reiterates its request for explanation as to the reason why the number of inspectors and the number of labour inspection visits which are stated in the report and those published by ILOSTAT are different.

The report does not provide information on the budgetary resources allocated to the labour inspection services, nor on the proportion of workers and companies covered by the inspections. The Committee reiterates therefore its request for information in these respects. It also asks that the next report provide detailed and updated information on different administrative measures that labour inspectors are entitled to take (including suspension or interruption of activities), the number of such measures actually taken, and the number and outcome of cases referred to the prosecution authorities with a view to initiating criminal proceedings; and figures for each year of the reference period. It considers that if the next report does not provide the requested information, there will be nothing to establish that the activities of the Labour Inspectorate are effective in practice.

The Committee also takes note of the information provided in the report that in order to bring labour inspectors to a higher level of competence, the State Institution National Scientific and Research Institute of Industrial Safety and Occupational Safety and Health with the assistance of the International Labour Organisation Project “Strengthening the labour inspection system and social dialogue mechanisms” and the State Labour Service have developed a distance learning course for labour inspectors in 2018.

In reply to the targeted question on whether inspectors are entitled to inspect all workplaces, including residential premises, in all economic sectors, the report indicates that the information from the relevant central executive authorities is missing. The Committee reiterates its request for information in this respect and considers that if the next report does not provide the requested information, there will be nothing to establish that the activities of the Labour Inspectorate are effective in practice.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 3§3 of the Charter on the grounds that:



- measures taken to reduce the number of fatal accidents at work are not sufficient;
- it has not established that the activities of the Labour Inspectorate are effective.

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 4 - Occupational health services*

The Committee takes note of the information contained in the report submitted by Ukraine.

The Committee recalls that for the purposes of the present report States were asked to reply to targeted questions as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”). However, no targeted questions were posed in respect of Article 3§4 of the Charter.

The Committee previously examined Ukraine’s framework on occupational health services and found that the situation in Ukraine was not in conformity with Article 3§4 of the Charter on the ground that there is no strategy to institute access to occupational health services for all workers in all sectors of the economy (Conclusions 2017). The Committee will therefore restrict its consideration to the Government’s replies to the previous conclusion of non-conformity.

In the previous conclusions, the Committee reiterated its previous request for detailed clarification on whether occupational health services were available for all workers in all branches and sectors of the economy, public as well as private, and if not, whether there was a national strategy for bringing about such access (Conclusions 2017). It also reiterated its request for information on whether health services were limited to medical examinations or include for example information, advice, and counselling in occupational health matters and whether workers participated in organisation and/or management of health services.

In reply, the current report indicates that the information from the relevant central executive authorities is missing.

In the absence of any information in respect of the questions raised under Article 3§4 of the Charter, the Committee reiterates its conclusion of non-conformity on the ground that there is no strategy to institute access to occupational health services for all workers in all sectors of the economy.

It reiterates its request for information on whether occupational health services are available for all workers in all branches and sectors of the economy, public as well as private, and if not, on whether there is a national strategy for bringing about such access; whether health services are limited to medical examinations or include for example information, advice, and counselling in occupational health matters and whether workers participated in organisation and/or management of health services; the content and organisation of occupational health services in enterprises with less than 50 workers; the objectives and consequences of the reorganisation of the State Labour Services as far as occupational health services are concerned.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 3§4 of the Charter on the ground that there is no strategy to develop occupational health services for all workers.

## **Article 11 - Right to protection of health**

### *Paragraph 1 - Removal of the causes of ill-health*

The Committee takes note of the information contained in the report submitted by Ukraine.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 11§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion, the Committee concluded that the situation in Ukraine was not in conformity with Article 11§1 of the Charter on the grounds that the measures taken to reduce infant and maternal mortality rates had been insufficient and because insufficient measures had been taken to effectively guarantee the right of access to healthcare (Conclusions 2017). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity and to the targeted questions.

The Committee wishes to point out that it will take note of the reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

### ***Measures to ensure the highest possible standard of health***

The Committee notes that in its previous conclusion it considered that the situation in Ukraine was not in conformity with the Charter because the prevailing high infant and maternal mortality rates, examined with the low life expectancy rate, showed that the situation in Ukraine was below the average in other European countries, and pointed to weaknesses in the health system. The Committee found that insufficient efforts and progress had been made in respect of such indicators (Conclusions 2017).

The report provides information on the maternal and infant mortality. Maternal mortality rate per 100,000 live births was 14.9 in 2019, an increase compared to 12.6 in 2016. The report provides no information on infant mortality but the World Bank data shows that the infant mortality rate per 1,000 live births decreased from 8.1 in 2015 to 7.2 in 2019.

The report further states that over the last decade a steady decline in maternal mortality has been seen because of the joint efforts of the organisers and the practitioners aimed at creating and implementing regulatory and programme documents on the service activities, improving the level of medical care for women, introducing new organisational approaches and technologies.

The Committee takes note of the measures taken to reduce maternal mortality. It notes, however, that no information about the statistics on infant mortality and the measures taken to minimise them has been provided. The Committee asks to be kept informed on the implementation of such measures, their effect on reducing the maternal and infant mortality rate, updated data regarding the trends of the mortality rates and on any developments in this field. However, the Committee notes that the maternal and infant mortality rate remains high (well above the average in the European Union (maternal mortality rate per 100,000 live births was 6 in 2017 in the EU and infant mortality rate per 1,000 live births was 3.4 in 2019). In view of the high rates of maternal and infant mortality, as well as the still low life expectancy, the Committee reiterates its conclusion of non-conformity on this point.

In its targeted question for this cycle, the Committee asked for overall and disaggregated statistical data on life expectancy across the country and different population groups (urban; rural; distinct ethnic groups and minorities; longer term homeless or unemployed; etc.) identifying anomalous situation (e.g. particular areas in the community; specific professions or jobs; proximity to active or decommissioned industrial or highly contaminated sites or mines; etc.) and on prevalence of particular diseases among relevant groups (e.g. cancer) or blood borne infectious diseases (e.g. new cases HIV or Hepatitis C among people suffering from substance use disorders or who are held in prison; etc.).

In reply to the Committee's targeted question on statistical data on life expectancy across the country and different population groups, the report provides detailed statistical information on the average life expectancy in Ukraine in urban and rural areas but does not differentiate between men and women. The Committee notes from the World Bank data that in 2019 life expectancy at birth was 71.8 years on average (for example, the EU-27 average of 81.3 in 2019), 77 years for women (76.3 in 2015) and 67 years for men (66.4 in 2015). The death rate in Ukraine decreased slightly from 14.9 deaths per 1,000 inhabitants in 2015 to 14.7 deaths per 1,000 inhabitants in 2019).

The Committee notes that there is a substantial gender gap, with women expected to live about 10 years longer than men. The report states that main cause of death remain circulatory diseases, tumours, external causes and digestive diseases. The Committee asks the next report to provide information on measures taken to reduce the gender gap.

The report further states that the incidence of HIV in the facilities of the State Criminal Executive Service of Ukraine increased from 6.5 per cent in 2017 to 7 per cent in 2019. Diagnosis and treatment for hepatitis C only started in 2019 and the incidence was 36.7 per cent.

The report does not provide information on life expectancy across different population groups, thus the Committee reiterates this request for information.

### ***Access to healthcare***

In its previous conclusion, the Committee found the situation not to be in conformity with the Charter because insufficient measures had been taken to effectively guarantee the right of access to healthcare (Conclusions 2017).

The report states that medical reform in Ukraine started in 2017 when the Law on State financial guarantees for the provision of medical services and medicines (No. 6327) was adopted, according to which the State guarantees the full payment for necessary medical services and medicines related to the provision of emergency medical care, primary, secondary, tertiary, palliative care, medical rehabilitation, medical care for children under 16, as well as support during pregnancy and childbirth. However, because of the underfunding of the medical sector, imbalance of financial resources a lot of hospitals were threatened with closure, staff reduction or critical underfunding.

The report also states that the average amount of informal payment is 20.3 Ukrainian Hryvni (UAH) (€0.64) per service and UAH 126.1 (€3.96) per patient per year. The average amount of informal payment for primary care services is UAH 13.6 (€0.43) per service and UAH 55.9 (€1.76) per patient per year. The more often patients make informal payments, the larger the amount of each payment is. The most common reason for making informal payments is to feel the better attitude of medical professionals towards patients and the low level of salaries of medical professionals that force them to take such payments from patients. Most medical professionals believe that the systematic problem of informal payments can only be solved by raising their salaries. The report further states that certain steps have been taken to eradicate the informal payments in healthcare, however, the steps have not been identified. The Committee thus asks the next report to provide information about specific measures taken to eradicate informal payments in the public healthcare system. In the absence of sufficient information, the Committee maintains its conclusion of non-conformity on this point.

The report further states that in October 2019 the Verkhovna Rada of Ukraine approved the Government Activities Programme and in the healthcare sector three strategic goals have been identified for 2019-2024: people suffer less from diseases; people who are sick recover faster; people live longer. Since 1 April 2019 the Affordable Medicines Reimbursement Programme was transferred to the Department of the National Health Service of Ukraine and it is possible to receive medicines free of charge or a small surcharge under this programme by electronic prescription. More than 1.78 million patients receive affordable medicines. Thanks to the new primary funding model, medical facilities started receiving more funds and were able to increase the salaries of doctors and nurses, as well as purchase the necessary tools and medical equipment that improved the conditions of medical care of patients.

In its targeted question, the Committee asked for information about sexual and reproductive healthcare services for women and girls (including access to abortion) and statistical information about early (underage or minor) motherhood.

The report provides information about the number of abortions carried out between 2016 and 2019 and it appears that the number of abortions decreased from 96,242 in 2016 to 74,606 in 2019.

The Committee asks for information on the costs of abortion and whether they are reimbursed by the State in total or in part.

The Committee also asks whether girls and women have access to modern contraception. It also asks for information on the proportion of the cost of contraceptives that is not covered by the State (in cases where the cost is not fully reimbursed by the State).

The Committee notes from the report that the percentage of young mothers aged between 10 and 14 remained 0.1 per cent in 2016 and in 2019 and the percentage of young mothers aged between 15 and 17 decreased slightly from 1.2 per cent in 2016 to 1.1 per cent in 2019.

The Committee asks the next report to contain information on the public health expenditure as a share of GDP.

The report states that the legislation of Ukraine does not require mandatory sterilisation for legal recognition of transgender sex.

The Committee refers to its general question as regards the right to protection of health of transgender persons in the general introduction. The Committee recalls that respect for physical and psychological integrity is an integral part of the right to the protection of health guaranteed by Article 11. Article 11 imposes a range of positive and negative obligations, including the obligation of the state to refrain from interfering directly or indirectly with the enjoyment of the right to health. Any kind of unnecessary medical treatment can be considered as contrary to Article 11, if accessing another right is contingent upon undergoing that treatment (*Transgender Europe and ILGA Europe v. Czech Republic*, Complaint No. 117/2015, decision on the merits of 15 May 2018, §§74, 79, 80).

The Committee recalls that state recognition of a person's gender identity is itself a right recognised by international human rights law, including in the jurisprudence of the European Court of Human Rights, and is important to guaranteeing the full enjoyment of all human rights. It also recalls that any medical treatment without free informed consent (subject to strict exceptions) cannot be compatible with physical integrity or with the right to protection of health. Guaranteeing free consent is fundamental to the enjoyment of the right to health, and is integral to autonomy and human dignity and the obligation to protect the right to health (*Transgender Europe and ILGA Europe v. Czech Republic*, op. cit., §§78 and 82).

The Committee invites states to provide information on the access of transgender persons to gender reassignment treatment (both in terms of availability and accessibility). It asks whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other medical requirements which could impair their health

or physical and psychological integrity. The Committee also invites states to provide information on measures taken to ensure that access to healthcare in general, including sexual and reproductive healthcare, is provided without discrimination on the basis of gender identity.

As a targeted question, the Committee asked for information on measures to ensure informed consent to health-related interventions or treatment (under Article 11§2). In reply, the report states that the provision of informed consent for medical intervention or treatment is guaranteed at the level of the Fundamentals of the legislation on healthcare of Ukraine, Articles 43 and 44, and the Order of the Minister of Health of Ukraine. Besides, cases when such consent is not required are, for example, when it is necessary to save a person's life in an emergency situation.

### ***Covid-19***

In the context of the Covid-19 crisis, the Committee asked the States Parties to evaluate the adequacy of measures taken to limit the spread of virus in the population, as well as the measures taken to treat the ill (under Article 11§3).

For the purposes of Article 11§1, the Committee considers information focused on measures taken to treat the ill (sufficient number of hospital beds, including intensive care units and equipment, and rapid deployment of sufficient numbers of medical personnel).

The report states that medical professionals and other persons involved in elimination and localisation of Covid-19 were additionally paid, academic staff of a higher education institutions have been involved to provide medical care to patients with Covid-19 on a contractual basis. As of 17 March 2021, a total of 72,163 beds with oxygen supply have been allocated.

The Committee recalls that during a pandemic, States Parties must take all necessary measures to treat those who fall ill, including ensuring the availability of a sufficient number of hospital beds, intensive care units and equipment. All possible measures must be taken to ensure that an adequate number of healthcare professionals are deployed (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

The Committee recalls that access to healthcare must be ensured to everyone without discrimination. This implies that healthcare in a pandemic must be effective and affordable to everyone, and States must ensure that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status are adequately protected by the healthcare measures put in place. Moreover, States must take specific, targeted measures to ensure enjoyment of the right to protection of health of those whose work (whether formal or informal) places them at particular risk of infection (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

During a pandemic, States must take all possible measures as referred to above in the shortest possible time, with the maximum use of financial, technical and human resources, and by all appropriate means both national and international in character, including international assistance and cooperation (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 11§1 of the Charter on the grounds that:

- the measures taken to reduce infant and maternal mortality rates have been insufficient;
- insufficient measures have been taken to effectively guarantee the right of access to healthcare.

## **Article 11 - Right to protection of health**

### *Paragraph 2 - Advisory and educational facilities*

The Committee takes note of the information contained in the report submitted by Ukraine.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

In its previous conclusion, the Committee considered that the situation in Ukraine was not in conformity with Article 11§2 of the Charter on the ground that prevention through screening was not used as a contribution to improving the health of the population (Conclusions 2017).

### ***Education and awareness raising***

In its targeted questions, the Committee asked for information about health education (including sexual and reproductive health education) and related prevention strategies (including through empowerment that can serve as a factor in addressing self-harm conducts, eating disorders, and alcohol and drug use) in the community, on a lifelong or ongoing basis, and in schools.

In reply, the report states that relevant work is carried out at local, regional, and national levels. It refers to the “Family and Reproductive Health Weeks” and the “Reproductive and Sexual Health of the Population of Donetsk Oblast for the Period 2018-2022” as regional examples of health education on issues such as the declaration of family values; the provision of medical and social support to young families; health protection of socially vulnerable groups in the population; promoting, shaping and encouraging a healthy lifestyle, responsible parenthood and safe motherhood; raising awareness of the population on issues of responsible attitudes to personal health care and sexual behaviour; conducting educational activities on health care, promoting family planning, strengthening the reproductive health of the population, maternity protection, and cancer prevention. The report mentions again that the YFCs (Youth-Friendly Clinics) conduct similar activities. Moreover, the website of the state institution Centre for Public Health of the Ministry of Health of Ukraine regularly posts informational materials on this topic.

In its previous conclusion, the Committee asked that the next report confirm whether Youth-Friendly Clinics (YFCs) provide health education in schools (Conclusions 2017). In reply, the report states that the purpose of creating YFCs encompasses the prevention of risky behaviour, the preservation of physical and mental health (prevention of PAS use, mental disorders, suicides, STIs, HIV, unwanted pregnancies, etc.). The report further states that individual counselling covers 81% of clients, half of whom have received counselling on HIV prevention that is facilitated by the introduction of voluntary counselling and testing for HIV (VCT) in the YFCs. According to the report, the number of YFC clients in need of general mental health counselling increased to 9.6%; 81% of clients have been covered by individual forms of preventive work. The Committee considers that the report does not provide the information required and, therefore, reiterates its request. It points out that, should the requested information not be provided in the next report, nothing will enable the Committee to establish that the situation in Ukraine is in conformity with Article 11§2 of the Charter in this respect.

In its previous conclusion, the Committee also asked whether providing health education at school is a statutory obligation, how it is included in school curricula (as a separate subject or integrated into other subjects), and the content of health education (Conclusions 2017). The report does not provide the necessary information. Therefore, the Committee reiterates

its request. It considers that, should the required information not be provided in the next report, nothing will enable the Committee to establish that the situation in Ukraine is in conformity with Article 11§2 of the Charter in this respect.

In its previous conclusion, the Committee also asked for information on whether and how sexual and reproductive education is provided in schools in Ukraine (Conclusions 2017). In reply, the report indicates that counselling on reproductive health (contraception and sexual relationships in adolescence) is the second focus of the YFCs. The Committee considers that the report does not provide the information required and therefore, reiterates its request. It considers that, should the required information not be provided in the next report, nothing will enable the Committee to establish that the situation in Ukraine is in conformity with Article 11§2 of the Charter in this respect.

In its targeted questions, the Committee also asked for information about awareness and education with respect to sexual orientation and gender identity (SOGI) and to gender-based violence. The report does not contain the information requested. Therefore, the Committee reiterates its request. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Ukraine is in conformity with Article 11§2 of the Charter in this respect.

### ***Counselling and screening***

In its previous conclusion, the Committee noted that there were no screening programmes available to the population at large, and therefore, considered that the situation in Ukraine was not in conformity with Article 11§2 of the Charter on the ground that prevention through screening was not used as a contribution to the health of the population (Conclusions 2017).

The report does not provide any information on screening programmes available to the population at large, as it just refers to screening programmes for new-borns. The Committee recalls that where it has proved to be an effective means of prevention, screening must be used to the full (Conclusions XV-2 (2001), Belgium). In particular, there should be screening, preferably systematic, for all the diseases that constitute the principal causes of death (Conclusions 2005, Republic of Moldova). In light of the foregoing, the Committee reiterates its previous conclusion of non-conformity on the ground that screening policies are not systematically implemented in the country.

In its previous conclusion, the Committee also asked for updated and comprehensive information on the frequency and results of consultations and screenings of pregnant women throughout the country (Conclusions 2017). In reply, the report provides detailed data on coverage rates in different fields: the early observation of pregnant women up to the 12<sup>th</sup> week of pregnancy rose from 91.79% in 2016 to 96.75% in 2019; therapeutic examinations climbed from 92.87% in 2016 to 99.38 in 2019; examinations on alpha-protein increased from 53.8% in 2016 to 59.58% in 2019; the performance of ultrasound scans up to 22 weeks of pregnancy slightly dropped from 96.44% in 2016 to 96.05% in 2019. The Committee asks that the next report provide updated information both on the frequency of screenings and on their results.

### *Conclusion*

The Committee considers that the situation in Ukraine is not in conformity with Article 11§2 of the Charter on the ground that screening policies are not systematically implemented in the country.



## **Article 11 - Right to protection of health**

### *Paragraph 3 - Prevention of diseases and accidents*

The Committee takes note of the information contained in the report submitted by Ukraine.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government’s replies to the targeted questions, namely about healthcare services in prison; community-based mental health services; drug abuse prevention and harm reduction; healthy environment; immunisation and epidemiological monitoring; Covid-19; and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (namely, after 31 December 2019). In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

In its previous conclusion, the Committee concluded that the situation in Ukraine was not in conformity with Article 11§3 of the Charter on the ground that efficient immunisation and epidemiological monitoring programmes were not in place (Conclusions 2017).

### ***Healthcare services in places of detention***

In a targeted question, the Committee asked for a general overview of healthcare services in places of detention, in particular prisons (under whose responsibility they operate/which ministry they report to, staffing levels and other resources, practical arrangements, medical screening on arrival, access to specialist care, prevention of communicable diseases, mental health-care provision, conditions of care in community-based establishments when necessary, etc.).

The Committee notes that the information requested is not provided. Therefore, the Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with Article 11§3 of the Charter.

### ***Community-based mental health services***

In a targeted question, the Committee asked for information regarding the availability and extent of community-based mental health services and on the transition to community-based mental health from former large-scale institutions. The Committee also asked for statistical information on outreach measures in connection with the mental health assessment of vulnerable populations and on proactive measures adopted to ensure that persons in need of mental healthcare are not neglected.

The report provides information about certain awareness-raising activities aimed at challenging stigma around mental health, but without specifying the period during which these were implemented.

Consistent with the World Health Organisation (WHO) Comprehensive Mental Health Action Plan 2013-2030, and other relevant standards, the Committee considers that a human rights-compliant approach to mental health requires at a minimum the following elements: a) developing human rights-compliant mental health governance through, inter alia, mental

health legislation and strategies that are in line with the Convention on the Rights of Persons with Disabilities and other relevant instruments, best practice and evidence; b) providing mental health in primary care community-based settings, including by replacing long-stay psychiatric hospitals with community-based non-specialised health settings; and c) implementing strategies for promotion and prevention in mental health, including campaigns to reduce stigmatisation, discrimination and human rights violations.

The Committee notes that the information requested is not provided. Therefore, the Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with Article 11§3 of the Charter.

### ***Drug abuse prevention and harm reduction***

In a targeted question, the Committee asked for information about drug-related deaths and transmission of infectious diseases among people who use or inject psychoactive substances both in the community and in custodial settings. The Committee also asked for an overview of the national policy designed to respond to substance use and related disorders (dissuasion, education, and public health-based harm reduction approaches, including use or availability of WHO listed essential medicines for opioid agonist treatment) while ensuring that the “available, accessible, acceptable and sufficient quality” criteria (WHO’s 3AQ) are respected, subject always to the exigency of informed consent. This rules out, on the one hand, consent by constraint (such as in the case of acceptance of detox and other mandatory treatment in lieu of deprivation of liberty as punishment) and, on the other hand, consent based on insufficient, inaccurate or misleading information (i.e. not based on state of the art scientific evidence).

The report provides information about measures to prevent overdoses, including by authorising the use of naloxone, to monitor the prevalence and trends in drug use, and with regard to prevention activities during the reference period.

The Committee notes that in its latest concluding observations on Ukraine, the Committee for Economic, Social and Cultural Rights expressed concern at the criminalisation of possession of very small amounts of drugs, which prevents drug users from gaining access to the necessary treatment or harm reduction programmes for fear of criminalisation (CESCR, 2020). The CESCR further highlighted the high prevalence of HIV and Hepatitis C infection among those who inject drugs, at the restricted access of prisoners to opioid substitution therapy and harm reduction programmes, and at the persistent social stigmatization of drug users.

The Committee notes that the report provides limited information in response to the targeted question. Therefore, the Committee reiterates its request for information, namely with regard to the measures taken to reduce the prevalence of infectious diseases among people who use or inject psychoactive substances both in the community and in custodial settings, including through effective harm reduction approaches.

### ***Healthy environment***

In a targeted question, the Committee asked for information on the measures taken to prevent exposure to air, water or other forms of environmental pollution, including proximity to active or decommissioned (but not properly isolated or decontaminated) industrial sites with contaminant or toxic emissions, leakages or outflows, including slow releases or transfers to the neighbouring environment, nuclear sites, mines, as well as measures taken to address the health problems of the populations affected, and about measures taken to inform the public, including pupils and students, about general and local environmental problems.

The Committee notes that the information requested is not provided. Therefore, the Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with Article 11§3 of the Charter.

### ***Immunisation and epidemiological monitoring***

In its previous conclusion, the Committee concluded that the situation in Ukraine was not in conformity with Article 11§3 of the Charter on the ground that efficient immunisation and epidemiological monitoring programmes were not in place (Conclusions 2017). The Committee asked for information on the vaccination coverage rate for the vaccines included in the National Immunisation Programme. The Committee also asked whether Ukraine replaced the trivalent OPV (tOPV) vaccine with the bivalent OPV (bOPV) vaccine in line with WHO recommendations and whether the new vaccine was being used.

The report provides data indicating that immunisation coverage has improved significantly during the reference period, although it remains below WHO targets. The report further refers to the adoption of regulations in 2016, setting out the process of replacing the trivalent OPV (tOPV) vaccine with the bivalent OPV (bOPV) vaccine. The residual amount of trivalent vaccine was disposed of on 5 August 2016.

The Committee asks for information in the next report on the vaccination coverage trends for the vaccines included in the National Immunisation Programme during the reference period.

In a targeted question, the Committee asked States Parties to describe the measures taken to ensure that vaccine research is promoted, adequately funded and efficiently coordinated across public and private actors.

The report refers to regulations on vaccine research adopted in 2006, outside the reference period.

### ***Covid-19***

The Committee asked States Parties to evaluate the adequacy of measures taken to limit the spread of the Covid-19 virus in the population (testing and tracing, physical distancing and self-isolation, provision of surgical masks, disinfectant, etc.).

The report lists some of preventive measures taken to prevent the spread of Covid-19 in Ukraine, including by improving the capacity to conduct testing or setting up a contact tracing procedure.

The Committee recalls that States Parties must take measures to prevent and limit the spread of the virus, including testing and tracing, physical distancing and self-isolation, the provision of adequate masks and disinfectant, as well as the imposition of quarantine and 'lockdown' arrangements. All such measures must be designed and implemented having regard to the current state of scientific knowledge and in accordance with relevant human rights standards (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020). Furthermore, access to healthcare must be ensured to everyone without discrimination. This implies that healthcare in a pandemic must be effective and affordable to everyone, and that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status must be adequately protected by the healthcare measures put in place (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

### ***Conclusion***

Pending receipt of the information requested, the Committee defers its conclusion.

## **Article 12 - Right to social security**

### *Paragraph 3 - Development of the social security system*

The Committee takes note of the information contained in the report submitted by Ukraine.

The Committee recalls that Ukraine accepted Article 12§3 of the Charter in 2017; this means that this is the first time it will be examining the development of the Ukrainian social security system.

The Committee also recalls that States were asked to reply to two targeted questions for Article 12§3 (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”), namely:

- social security coverage, and its modalities, provided to persons employed by digital platforms or whose work is managed via such platforms; and
- any impact of the Covid-19 crisis on social security coverage, and any specific measures taken to compensate for or alleviate any possible negative impact.

The Committee wishes to point out that it will take note of the reply to the second targeted question for information purposes only, as it relates to developments that occurred outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

### ***Development of the social security system***

The Committee recalls that Article 12§3 requires States to improve their social security system. A situation of progress may consequently be in conformity with Article 12§3 even if the requirements of Articles 12§1 and 12§2 have not been met or if these provisions have not been accepted. The expansion of schemes, protection against new risks or an increase in the level of benefits are all examples of improvement. A partly restrictive development in the social security system is not automatically in breach of Article 12§3. It should be assessed in the light of Article 31 of the 1961 Charter or Article G of the revised Charter. The assessment of the situation is based on the following criteria:

- the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, etc.);
- the extent of the changes (categories and numbers of people concerned, levels of allowances before and after alteration);
- the reasons given for the changes (aims pursued) and the social and economic policy context in which the changes arise;
- the necessity of the reform;
- the existence of social assistance measures for those who find themselves in a situation of need as a result of the changes made (this information can be submitted under Article 13);
- the results obtained by such changes.

The Committee notes that in its report, the Government gives detailed information on the development of social services (adoption of a number of regulations and, in January 2019, the new Law on Social Services, with a view to improving the functioning and the administration of social services and the quality of the services provided) and on the activities of the social services (for example the establishment of production workshops for homeless people) during the reference period.

However, the Government does not provide any information on the development of the social security system – whether with regard to the branches covered (sickness benefits, unemployment benefits, etc.), personal scope (the percentage of the population covered) or the level of benefits. Consequently, the Committee asks for information in the next report on

any changes made to the social security system during the reference period, specifying the effect of these changes on the personal scope and the minimum level of income replacement benefits. In the meantime, the Committee reserves its position on this point.

### ***Platform workers***

The Committee recalls that it has posed a targeted question to all States on social security cover for persons employed or whose work is managed by digital platforms. The emergence of these new forms of employment has had a negative impact on certain rights of these workers, as explained in the General Introduction. In matters of social security, compliance with Article 12§3 of the Charter requires that the existing social security systems be adapted to the specific situation and needs of the workers concerned, in order to guarantee that they enjoy the social benefits included within the scope of Article 12§1. The Committee is keenly aware that there are significant gaps in the social coverage of workers in new forms of employment such as platform workers. It considers that the States Parties are under an obligation to take all the necessary measures to address these shortcomings.

In particular States Parties must take steps to ensure that all workers in new forms of employment have an appropriate legal status (employee, self-employed or other category) and that this status is in line with the actual situation thus avoiding abuse (such as the use of “bogus” or “false” self-employed status to circumvent the applicable social security regulations) and conferring adequate social security rights as guaranteed by Article 12 of the Charter on the platform workers.

In its report, the Government gives detailed information on the activities of the State Employment Service (employment information and counselling services; vocational training; business start-up support, etc). However, the Government does not provide any information regarding the social security coverage of digital platform workers. The Committee therefore repeats its question. It asks for information in the next report on the number of digital platform workers (as a percentage of the total number of workers), their status (employees, self-employed and/or other category), the number/percentage of these workers by status and their social security protection (by status). In the meantime, the Committee reserves its position on this point.

### ***Covid-19***

In reply to the second targeted question, the Government describes measures taken to offset or mitigate the negative impact of the Covid-19 crisis. It refers in particular to two texts adopted in March and July 2020: Law No. 540-IX on amendments to certain legislative measures aimed at providing additional social and economic guarantees related to the spread of Covid-19 and Cabinet Resolution No. 641 on the establishment of quarantine and the introduction of enhanced anti-epidemic measures in Ukraine. Law No. 540-IX was intended, among other things, to increase the wages of workers providing home care services while Resolution No. 641 related to the regulations on the activities of the social services (i.e. identification, care and social assistance of persons living alone – among the elderly, persons with disabilities and persons in self-isolation) during the pandemic. The Government also states that an information platform (“Help Is Near”) was set up in April 2020 to identify the needs of elderly people, persons with disabilities, families with children and other socially vulnerable groups promptly and provide them with appropriate assistance. In addition, relevant information on changes in the social sphere have been published online on the official website of the Ministry of Social Policy.

### ***Conclusion***

Pending receipt of the information requested, the Committee defers its conclusion.

## **Article 12 - Right to social security**

### *Paragraph 4 - Social security of persons moving between States*

The Committee takes note of the information contained in the report submitted by Ukraine.

### ***Equality of treatment and retention of accrued benefits (Article 12§4)***

#### ***Right to equal treatment***

The Committee recalls that the guarantee of equal treatment within the meaning of Article 12§4 requires States Parties to remove all forms of discrimination against nationals of other States Parties from their social security legislation (Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4). Both direct and indirect discrimination should be eliminated. National legislation cannot reserve a social security benefit to nationals only or impose extra or more restrictive conditions on foreigners. Nor may national legislation stipulate eligibility criteria for social security benefits which, although they apply without reference to nationality, are harder for foreigners to comply with than nationals, and therefore affect them to a greater degree. However, pursuant to the Charter's Appendix legislation may require the completion of a period of residence for non-contributory benefits. In this respect, Article 12§4a requires that any such prescribed period of residence be reasonable. The Committee considers that the right to equal treatment covers both equal access to the social security system and equal conditions for entitlement to social security benefits. The Committee asks the next report to indicate whether equal treatment of nationals of States Parties is guaranteed as regards access to social security and entitlement to benefits.

As regards equal treatment in respect of family benefits, the Committee recalls that the purpose of child benefits is to compensate the costs of maintenance, care and education of children. Such costs primarily occur in the State where the child actually resides.

The Committee further recalls that child benefits are covered by different provisions of the Charter, and in particular by Article 12§1 and Article 16 of the Charter. Under Article 12§1 States Parties have an obligation to establish and maintain a social security system including a family benefits branch. Under Article 16 States Parties are required to ensure the economic protection of the family by appropriate means. The primary means should be child benefits provided as part of social security, available either universally or subject to a means-test. States Parties have a unilateral obligation to pay child benefits in respect of all children resident in their territory on an equal footing, whether they are nationals or have moved from another State Party.

The Committee is aware that States Parties that are also EU Member States, on the basis of the EU legislation on coordination of the social security system are obliged to apply coordination rules which to a large extent prescribe exportability of child benefits and family allowances. When the situation is covered by the Charter, and the EU legislation does not apply, the Committee has regard to its interpretation according to which the payment of child benefits to all residing children, as a starting point, is a unilateral obligation for all States Parties. The Committee decides no longer to examine the issue of exportability of child benefits under Article 12§4a.

Under Article 12§4a of the Charter the Committee will only examine whether child benefits are paid to children, having moved from another State Party, on an equal footing with nationals, thus ensuring equal treatment of all resident children. Under Article 16 the Committee will examine equal treatment of families as regards access to family benefits and whether the legislation imposes length of residence requirement on families for entitlement to child benefit. The Committee asks whether family benefit is paid to all children resident in Ukraine on an equal footing.

### ***Right to retain accrued rights***

The Committee recalls that old-age benefit, disability benefit, survivor's benefit and occupational accident or disease benefit acquired under the legislation of one State according to the eligibility criteria laid down under national legislation should be maintained (exported) irrespective of whether the beneficiary moves between the territories.

The Committee notes from the report that the issues of social security and in particular of pensions are regulated by international agreements. According to the report, there are two types of such agreements:

- agreements based on the territorial principle, according to which pensions are paid by the state where the recipient resides;
- agreements based on the proportionality principle, according to which each contracting party assigns and pays a pension for the relevant insurance period in its territory. Ukraine has concluded such agreements with Bulgaria, Estonia, Latvia, Lithuania, Spain, the Czech Republic, the Slovak Republic, Portugal, Poland, and Germany (not ratified).

The Committee asks whether export of disability, survivor's and occupational accident or disease benefits are guaranteed with all States Parties.

### ***Maintenance of accruing rights***

The Committee recalls that under Article 12§4b there should be no disadvantage in terms of accrual of rights for persons who move to another State for employment in instances in which they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. Implementation of the right to maintenance of accruing rights requires, where necessary, the accumulation of employment or insurance periods completed in another territory for the purposes of the opening, calculation and payment of benefits. In the case of long-term benefits, the pro-rata approach should also be employed. States may choose between the following means in order to ensure maintenance of accruing rights: bilateral or multilateral agreement or, unilateral, legislative or administrative measures. States that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights.

The Committee asks what is the legal basis for accumulation of insurance periods and whether maintenance of accruing rights are envisaged in international agreements concluded in this respect.

### ***Conclusion***

Pending receipt of the information requested, the Committee defers its conclusion.

## **Article 14 - Right to benefit from social welfare services**

### *Paragraph 1 - Promotion or provision of social services*

The Committee takes note of the information contained in the report submitted by Ukraine.

The Committee recalls that Article 14§1 guarantees the right to benefit from general social welfare services. It notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Health, social security and social protection") as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government's replies to the targeted questions, namely how and to what extent the operation of social services was maintained during the COVID-19 crisis and whether specific measures were taken in view of possible similar crises arising in the future. The Committee wishes to point out that it will take note of the information provided in reply to the question relating to COVID-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the COVID-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

The Committee has deferred its previous conclusions (Conclusions 2017) requesting information on the maximum amount for social services charged to beneficiaries. It noted, namely, that rates for chargeable social services were established by territorial centres and, in order to give services also to people unable to pay it has been established a differentiated fee amounting to not more than 12% of the person's income. The Committee also asked for information on the effective implementation of the quality assessment and of the impact on the quality of social services since the introduction of the Methodical Recommendations for Monitoring and Assessment of Quality of Social Services.

The report provides that the differentiated fee amounts to not more than a range between 75% and 3% of the person's average monthly total income, namely:

- 75% for inpatient care social services, palliative/hospice care in a hospital;
- 12% for home care social services, palliative care at home, day care, supported living, asylum;
- 5% for social services in the field of interests representation, mediation (mediation), in-kind aid;
- 3% for services of social adaptation, social integration and reintegration, social rehabilitation, counselling, social support during employment, social prevention.

Further, the report states that the maximum amount of the monthly differentiated fee for social services shall not exceed the cost of services provided during the month and that in 2018 the procedure for the provision of social services with the establishment of differentiated fees was amended. It does not, however, provide the information on how the system has changed. The Committee notes in this regard the observation made by EAP CSF Working Group "Social & Labour Policies and Social Dialogue" in cooperation with the Bureau of Social and Political Developments of Ukraine in its monitoring report "Social Services System in Ukraine" that provision of most types of care does not take into account income and property of the beneficiary and that the current List of social services and Social service Standards do not allow the calculation of the cost of social services per client, making it difficult to determine what part of social services would be financed by the state budget and what by the recipient, as well as what fee would be applicable.

The Committee recalls that effective and equal access to social services implies that social services may be provided subject to fees, fixed or variable, but they must not be so high as to prevent the effective access of these services. For persons lacking adequate financial



resources, such services should be provided free of charge. It further considers that, on the basis of the information in its disposal, it is not able to assess whether the situation complies with the requirements of Article 14§1 in this regard. It thus asks the next report to provide comprehensive information on the fees for social services, explaining how the differentiated fee system aims at ensuring effective and equal access, whether persons lacking adequate financial resources may be exempted from them and whether there exist a remedy to complain about the level of fees or about refusal of exemption. It also asks for comments on the observations made by the EAP CSF Working Group, quoted above.

As regards the implementation of the Methodical Recommendations for Monitoring and Assessment of Quality of Social Services, the report provides that a number of laws has been amended and instruments have been adopted, including, i.e. on determining the criteria for the activities of entities providing social services; on monitoring and evaluating the quality of social services; standardisation of social services has been introduced. The information provided is rather general and the Committee asks that the next report provides more comprehensive description of how the monitoring and assessment of quality of social services is conducted, what are the outcomes of monitoring activities and how the necessary follow up is ensured.

Pending the information on both aspects described above, the Committee exceptionally defers its conclusion once more and underlines that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 14§1 of the Charter.

In reply to targeted questions concerning provision of social services during the COVID-19 pandemic, the report provides that the protection of social workers was strengthened and additional surcharges up to 100% of salary were awarded to salaries of employees in the field of social protection who directly provide social services at the place of residence/stay of social service recipient (at home). The list of workers to whom the appropriate surcharge is set is determined by the head of the social protection institution or facility. The specified surcharge is paid at the expense and within the spending limits of local budgets provided under the corresponding budgetary programmes of chief controllers of budgetary funds. The report does not indicate how and to what extent the operation of social services has been maintained during the COVID-19 crisis and whether specific measures have been taken in anticipation of similar crises in the future.

### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

## **Article 14 - Right to benefit from social welfare services**

### *Paragraph 2 - Public participation in the establishment and maintenance of social services*

The Committee takes note of the information contained in the report submitted by Ukraine.

The Committee recalls that Article 14§2 requires States Parties to provide support for voluntary associations seeking to establish social welfare services. The “individuals and voluntary or other organisations” referred to in paragraph 2 include the voluntary sector (non-governmental organisations and other associations), private individuals, and private firms.

The Committee further notes that for the purposes of the current examination, States were asked to reply to the specific targeted questions posed to States in relation to this provision (questions included in the appendix to the letter of 3 June 2020, in which the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the scope of the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals. States were therefore requested to provide information on user involvement in social services (“co-production”), in particular on how such involvement is ensured and promoted in legislation, in budget allocations and decision-making at all levels, as well as in the design and delivery of services in practice. Co-production is understood here to mean that social services work together with users of the services on the basis of fundamental principles, such as equality, diversity, accessibility and reciprocity.

The Committee has previously found the situation to be in conformity with the Charter (Conclusions 2017).

The report provides that the 2020 Law on Social Services stipulates that the authorised bodies of the social service system may involve associations of social services, associations of providers and recipients of social services on a paid or pro bono basis in the manner approved by the central executive authority in charge of shaping the state policy on social protection to perform the following activities, i.e.: determine the needs of the population in social services; monitor the provision of social services, assess their quality, analyse compliance of social services with certain needs for social services; inform the population about the list of social services, their content, and the procedure; monitor the interaction between the parties to the social service system; provide assistance to persons in exercising the right to receive social services; develop local programmes that provide social services. Also, associations of social service system employees, associations of providers and recipients of social services have the right to hold other activities on the provision of social services. The recipient of social services is involved by participating in the assessment of individual needs, development of an individual social service plan, its implementation and adjustment, the conclusion of a social service contract. Under the Tax Code of Ukraine, operations on rendering of charitable support, namely, gratuitous supply of the goods/services, as well as rendering of such support by charitable organisations to the recipients are exempt from the VAT. Many organisations providing social services are registered in the form of charitable foundations that belong to non-profit organisations. Non-profit organisations included in the Register of non-profit institutions and organisations are not payers of income tax and VAT. The tax abatement of a taxpaying individual includes the amount of funds or the value of the property transferred (conveyed) by the taxpayer in the form of donations or charitable contributions to qualified non-profit organisations, not exceeding 4% of its total taxable income for the reporting year.

The Committee asks whether user involvement in other forms than through non-profit organisations is supported in budget allocations or tax exemptions.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 14§2 of the Charter.

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

The Committee takes note of the information contained in the report submitted by Ukraine.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government’s replies to the targeted questions, namely about measures taken to ensure that the social and economic rights of older persons are respected and Covid-19 and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (namely, after 31 December 2019). In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

The previous conclusion was one of non-conformity on the ground that the level of the minimum pension was manifestly inadequate (Conclusions 2017).

### ***Autonomy, inclusion and active citizenship***

#### ***Legislative framework***

The Committee recalls that Article 23 of the Charter requires State Parties to undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular to enable older persons to remain full members of society for as long as possible. The expression “full members of society” used in Article 23 requires that older persons must suffer no ostracism on account of their age. The right to take part in society’s various fields of activity should be ensured to everyone active or retired, living in an institution or not.

The Committee takes due account of contemporaneous definitions of ageism which refer to the stereotypes, prejudices and discrimination directed towards other or oneself based on age (see for example WHO report on Ageism, 2021, p. XIX) As the World Health Organisation has noted, “... ageism has serious and far-reaching consequences for people’s health, well-being and human rights“(WHO report on Ageism, 2021, p. XVI).

The Covid-19 crisis has exposed and exacerbated a lack of equal treatment of older persons. This has included in the healthcare context, where there have been instances of rationing of scarce resources (e.g. ventilators) based on stereotyped perceptions of quality of life, vulnerability and decline in old age.

Equal treatment calls for an approach based on the equal recognition of the value of older persons’ lives in all the areas addressed by the Charter.

Article 23 of the Charter requires the existence of an adequate legal framework for combating age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services, such as insurance and banking products, allocation of resources and facilities. Discrimination against older persons in terms of social rights enjoyment, is also contrary to Article E.

The overall emphasis in the Charter on using social rights to underpin personal autonomy and respect the dignity of older persons and their right to flourish in the community requires a commitment to identifying and eliminating ageist attitudes and those laws, policies and other measures which reflect or reinforce ageism. The Committee considers that States

Parties, in addition to adopting comprehensive legislation prohibiting discrimination on grounds of age, must take a wide range of measures to combat ageism in society. Such measures should include reviewing (and as necessary amending) legislation and policy for discrimination on grounds of age, adopting action plans to ensure the equality of older persons, promoting positive attitudes towards ageing through activities such as society-wide awareness campaigns, and promoting inter generational solidarity.

Article 23 further requires that States parties provide for a procedure of assisted decision making.

The Committee previously asked whether there is a case-law on age discrimination outside employment which would protect older persons from such a form of discrimination (Conclusions 2017).

The report states that there is no case law of the Supreme Court. The Committee asks the next report to provide up to-date information on the legislation prohibiting discrimination on grounds of age in terms of access to good and services, as well as any case law from any courts or the Commissioner for Human Rights.

According to the report the Action Plan for the Implementation of the State Policy on healthy and active longevity for the period up to 2022 contains measures for the encouragement of positive attitudes towards older persons, recognition of their contribution to society and for the strengthening of inter-generational solidarity and prevention on grounds of age.

As regards assisted decision making the Committee recalls that there should be a national legal framework related to assisted decision making for older persons guaranteeing their right to make decisions for themselves. Older persons must not be assumed to be incapable of making their own decisions just because they have a particular medical condition or disability.

States Parties must take measures to replace regimes of substituted decision-making by supported decision-making, which respects the person's autonomy, will and preferences. These may be formal or informal.

Older persons may need assistance to express their will and preferences, therefore all possible ways of communicating, including words, pictures and signs, should be used before concluding that they cannot make the particular decision on their own.

In this connection, the national legal framework must provide appropriate safeguards to prevent the arbitrary deprivation of autonomous decision making by older persons. It must be ensured that any person acting on behalf of older persons interferes to the least possible degree with their wishes and rights (Statement of Interpretation 2013).

The Committee asks whether there is provision for assisted decision making.

### ***Prevention of abuse of older persons***

As regards abuse of older persons the report states that the regions in Ukraine have coordination councils which act as advisory bodies inter alia on the prevention of domestic violence. The charitable organization Care for the Elderly also runs several projects aimed at preventing violence against older persons, including the establishment of counselling centres for older persons in certain cities. The State Policy Strategy on Healthy and Active Longevity for the Period up to 2022 also provides for measures to combat the abuse of older persons.

The Committee asks for updated information to be provided in the next report, on measures taken to combat abuse of older persons such as measures to raise awareness of the need to eradicate older abuse and neglect (beyond the institutional care context) and any legislative or other measures. It also asks whether data has been collected which would indicate the prevalence of older abuse.

### ***Independent living and Long term care***

The Committee asks whether steps have been taken to move away from the institutionalisation of older persons and adopt a long term care and support in the community model. The Committee recalls that Article 23 provides that measures should be taken to enable older persons to lead independent lives in their familiar surroundings therefore it considers that older persons requiring long term care should be able to choose their living arrangements. In particular, this requires states to make adequate provision for independent living, including housing suited to their needs and state of health, as well as the necessary resources and supports needed to make independent living possible.

Institutionalisation is a form of segregation, often resulting in a loss of autonomy, choice and independence. The Covid-19 pandemic has put the spotlight on the shortcomings of institutionalised care. The Committee refers in this respect to its Statement on Covid-19 and social rights (adopted March 2021) where it stated that enabling older persons to remain in their familiar surroundings as required by Article 23 of the Charter has become even more important in view of the heightened risk of contagion in the congregated settings of nursing homes and other long-term institutional and residential facilities and to the human rights-based argument for investment in the community to give reality to the right to community living is now added a public health argument in favour of moving away from residential institutions as an answer to long term care needs.

According to the report one of the priorities of the reform of the social care system is to provide social services in the community.

The Committee asks the next report to provide updated information on the progress made in providing care in the community, it asks in particular how many older persons reside in institutions -residential care and trends in the area.

### **Services and facilities**

The report provides information on services and facilities in response to the Committee previous questions. As of 31 December 2020, there were 667 territorial centres of social services (provision of social services) and 125 centres of social services in Ukraine — institutions that provide comprehensive services to both the elderly and families with children. The number of people served by these institutions was over 1.22 million people. The number of recipients who had to pay a fee for services was 183,000. During 2019, more than 5 million services were provided.

The Committee asks the next report to provide updated information on the range of services and facilities available to older persons, including long term care, in particular those enabling them to remain active members of their community and to remain in their home. It also asks for information on the costs of such services, whether there is an adequate supply of care services, including long term care services and whether there are waiting lists for services.

The Committee notes that according the report a draft Law “On amendments to certain laws of Ukraine on social protection of the elderly” registered in the *Verkhovna Rada* on 29 October 2020 provides inter alia for the reimbursement of expenses to individuals (not as a business) who provide social services for the care of older people. The Committee asks what other support is available for informal carers.

As regards information about services the report states that the website of the Ministry of Social Policy provides information on services for older persons. In addition a number of information materials on the rights of older persons, including the right to support from children, social benefits and guarantees, have been prepared and disseminated in the media, including via the Internet. The right to free legal aid has been expanded including for older persons.

The Committee notes that many services (and information about services) are increasingly accessible online. Digitalisation provides opportunities for older persons. However older persons may have more limited access to the internet than other groups and may lack the

necessary skills to use it. Therefore, the Committee asks what measures have been taken to improve the digital skills of older persons, ensure the accessibility of digital services for older persons and ensure non digital services are maintained.

The report provides comprehensive information on how the participation of older persons is ensured in cultural and leisure facilities. The report states that there are 331 Universities of the Third Age, which provide classes on subjects such as foreign languages, theatre and computer literacy. Day leisure centres for older person exist in many cities.

### ***Housing***

The Committee previously requested information on a new law on housing benefits and on a programme providing for grants and their impact on older persons living conditions (Conclusions 2017).

The report provides information on measures taken at the regional level to ensure accessible living conditions inter alia for older persons, as well as measures taken to promote supported living.

According to the report in 2018 the system providing for housing subsidies was changed in order to target their provision to those who need them most, no further information is provided.

The Committee asks the next report to provide information on how the needs of older persons are taken into account in national or local housing policies and strategies as well as information on the supply of sheltered/supported housing and the range of accommodation options for older persons.

### ***Health care***

The report provides information on the State Policy Strategy on Healthy and Active Longevity for the Period up to 2022 which provides for measure to maintain the health and well-being of older persons — disease prevention and geriatric care, palliative care, approval of standards and clinical protocols for geriatric care, and the promotion of healthy lifestyles.

Palliative care services were extended through the introduction of home based palliative care .

The Committee asks that the next report provide information on healthcare programmes specifically designed for older persons.

The Committee notes that the pandemic has had devastating effects on older persons' rights, in particular their right to protection of health (Article 11 of the Charter), with consequences in many cases for their rights to autonomy and to make their own decisions and life-choices, their right to continue to live in the community with adequate and resilient supports to enable them to do so, as well as their right to equal treatment in terms of Article E when it comes to the allocation of health care services including life-saving treatments (e.g., triage and ventilators). Whether still living independently or not, many older persons have had their services removed or drastically reduced. This has served to heighten the risk of isolation, loneliness, hunger and lack of ready access to medication.

Further the Covid-19 crisis has exposed examples of a lack of equal treatment of older persons, too much space was allowed for implicit judgments about the 'quality of life' or 'worth' of lives of older persons when setting the boundaries for triage policies.

The Committee also asks whether decisions around the allocation of medical resources may be made solely on the basis of age and asks whether triage protocols have been developed and followed to ensure that such decisions are based on medical needs and the best scientific evidence available.

### ***Institutional care***

The Committee previously asked whether there were enough places in institutional facilities, it also sought information on fees payable as well as information on the licensing system. (Conclusions 2017).

According to the report there are 282 residential institutions including 91 care homes for older persons and people with disabilities, and 50 psychoneurological care homes. The report states that there is no waiting period for places in residential institutions.

As regards fees the report explains that social services are entirely free for certain categories of persons, such as persons with disabilities. Fees are payable by other persons depending on their income.

The report confirms that institutions must be licensed and states that 166 licenses have been issued (the committee notes however that there are 282 residential institutions and seeks confirmation that all residential institutions irrespective of whether they provide medical services, must be licensed.

The Committee refers to its statement above on the importance of moving away from institutional care and towards care in the community.

The Committee considers that the overall emphasis in the Charter on personal autonomy and respect for the dignity of older persons results in a pressing need to re-invest in community-based supports as an alternative to institutions. Where, in the transition period, institutionalisation is unavoidable, Article 23 requires that living conditions and care be adequate and that the following basic rights are respected: the right to autonomy, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact (including through internet access) with persons close to the older person and the right to complain about treatment and care in institutions. This also applies in the Covid-19 context.

Due to the specific Covid-19 related risks and needs in nursing homes, States Parties must urgently allocate sufficient additional financial means towards them, organise and resource necessary personal protective equipment and ensure that nursing homes have at their disposal sufficient additional qualified staff in terms of qualified health and social workers and other staff in order to be able to adequately respond to Covid-19 and to ensure that the above mentioned rights of older people in nursing homes are fully respected.

### ***Adequate resources***

When assessing the adequacy of the resources of older persons under Article 23, the Committee takes into account all social protection measures guaranteed to older persons and aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to older persons. These resources are then compared with median equivalised income. It also takes into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The Committee previously found the situation not to be in conformity on the ground that the level of the minimum pension was manifestly inadequate (Conclusions 2017).

The report states that in 2019, a pension supplement was established for persons who receive a pension granted according to the Law of Ukraine “On Compulsory State Pension Insurance” and have pensionable service of 35 years for men and 30 years for women if the amount of monthly pension payment, taking into account statutory allowances, increases, additional pensions, targeted monetary assistance, indexation amounts, and other surcharges to pensions does not reach UAH 2000 (€ 65,70 ).

No further information is provided. According to MISSCEO the minimum old age pension for men having 35 years and women, having 30 years of covered service. The amount is set at



the level of the minimum subsistence for individuals who are unable to work, which was 1497 UAH (€48.29 ) per month in 2019.

The Committee asks the next report to provide updated information on the minimum pension levels, including supplements, as well as information on the poverty threshold and on assistance available to those persons who do not qualify for a pension. Meanwhile the Committee concludes that it has not been established that the minimum pension levels are adequate.

### ***Covid-19***

The Committee asked a targeted question on measures taken to protect the health and well-being of the elderly in the context of a pandemic crisis such as Covid-19.

The report provides information on measures taken to protect and assist older persons during the Covid-19 pandemic. Measures taken included the visiting of older persons, delivery of food and medicines, constant monitoring of the epidemic situation in facilities and institutions and limiting visits.

A Help Is Near Information Platform was created on 1 April 2020, to provide assistance to Older persons in need. Persons could contact hotlines indicating a need for food, personal care products, household chemicals and transportation services.

In addition other media campaigns sought to encourage the public to provide assistance to older persons in quarantine to prevent the spread of Covid-19 (“Take Care of Your Neighbours” and “How to take care of the elderly during the quarantine”).

The Committee refers to the section on older persons in its statement on Covid-19 and Social Rights (March 2021) (and to sections cited above). It recalls Article 23 requires that older persons and their organisations be consulted on policies and measures that concern them directly, including on ad hoc measures taken with regard to the current crisis. Planning for the recovery after the pandemic must take into account the views and specific needs of older persons and be firmly based on the evidence and experience gathered in the pandemic so far.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 23 of the Charter on the ground that it has not been established that the level of the minimum pension is adequate.

### **Article 30 - Right to be protected against poverty and social exclusion**

The Committee takes note of the information contained in the report submitted by Ukraine.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions related to this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter with respect to the provisions falling within the thematic group "Health, social security and social protection") as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government's replies to the targeted questions, namely about measures (legal, practical and proactive, including some concerning supervision and inspection) taken to ensure that no person falls below the poverty threshold, during or after the Covid-19 crisis, the impact of these measures and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 which relates to developments outside the reference period (namely, after 31 December 2019) for information purposes only. In other words, the information referred to in this section – "Poverty and social exclusion in times of the Covid-19 crisis" – will not be assessed for the purposes of Charter compliance in the current reporting cycle.

In its previous conclusion, the Committee found that the situation in Ukraine was not in conformity with Article 30 of the Charter on the ground that there was no adequate overall and coordinated approach to combating poverty and social exclusion (Conclusions 2017).

#### ***Measuring poverty and social exclusion***

The Committee recalls that, under Article 30, States Parties must provide detailed information on how they measure poverty and social exclusion. The main indicator used by the Committee to measure poverty is the relative poverty rate. This corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income.

The report states that Ukraine uses the relative or absolute poverty criterion (income below the subsistence minimum established by law or the actual subsistence minimum) as well as the UN criterion (expenditure below \$5.05) to measure poverty. Under the relative poverty criterion, the poverty rate was 24.4% in 2019, up from 23.5% in 2016. The report adds that under the EU poverty criterion (60% of median equivalised income), the poverty rate was 11.4% in 2019, down from 7.7% in 2016. The rate fell for families with one child (18.4% in 2016; 17% in 2019) or two children (36.5% in 2016; 36.2% in 2019) but rose for those with three or more children (47.8% in 2016; 54.1% in 2019). The poverty rate also increased among children under 18 (29.3% in 2016; 29.7% in 2019) and among pensioners (22.6% in 2016; 27.3% in 2019).

The poverty depth coefficient, which reflects the share of the extremely poor population within the poor population increased from 20.2% in 2016 to 21.2% in 2019.

According to the report, the poverty rate based on the criterion of an income below the actual subsistence level decreased very significantly from 51.1% in 2016 to 23.1% in 2019. It states that this sharp decline is partly explained by technical issues relating to the recalculation of purchasing power parities that World Bank experts had to address.

With regard to social exclusion, the report states that the integrated poverty assessment methodology which has been improved, allows for the use of indicators which are calculated on the basis of annual data and data prepared once every two years, to assess the situation

in this area. The report provides a list of indicators, expressed as a percentage. For example, the report shows that the proportion of households that spend more than 60% of their income on food had decreased from 31.8% in 2016 to 27.7% in 2019 and that the proportion of single elderly people using local authority social service centres increased from 92.3% in 2016 to 96% in 2019.

The Committee notes that poverty rates increased during the reference period, especially in households with three and more children, among children, among pensioners and that the share of the extremely poor population within the poor population had increased.

### ***Approach to combating poverty and social exclusion***

In its previous conclusion, the Committee found that the situation in Ukraine was not in conformity with Article 30 of the Charter on the ground that there was no adequate overall and coordinated approach to combating poverty and social exclusion. The Committee asked for detailed information demonstrating that the budgetary resources allocated to combating poverty and social exclusion were sufficient in view of the scale of the problem at hand (Conclusions 2017).

The report provides information on the poverty reduction strategy (approved by the Order of the Ukrainian Council of Ministers No. 161-r of 16 March 2016), which identifies priority areas for poverty reduction, including the wider roll-out of schemes providing access to productive employment and measures to raise income from employment and benefits from the public social security system to ensure decent working conditions, ensuring access to social services regardless of residence to minimise the risk of social exclusion of the rural population, combating social exclusion and minimising the risk of poverty among the most vulnerable groups, and preventing poverty and the emergence of chronic poverty and social exclusion among internally displaced persons.

The report states that, to ensure the implementation of tasks set out in the poverty reduction strategy, the Government approves a plan of specific measures each year.

It also states that the methodology of comprehensive poverty assessment (approved by the Order of the Ministry of Social Policy, Ministry of Economic Development, Ministry of Finance, State Statistics and the National Academy of Sciences of Ukraine, No. 827/403/507/113/232 of 18 May 2017) defines three categories of poverty assessment criteria: firstly, basic monetary criteria of poverty; secondly, the other monetary criteria of poverty; and, thirdly, the non-monetary criterion of poverty. The report provides an extensive explanation on how the poverty indicators are analysed.

The report also shows that, between 2016 and 2019, there was an increase in all types of income, primarily because of higher state social standards and guarantees, wages, pensions and various types of social benefits. Nominal income also increased by 80.3%. The index of real disposable income of the population rose by 2% in 2016, by 10% in 2017, by 10.9% in 2018 and by 6.5% in 2019. The subsistence level per person increased by 52.4% (from 1,330 Ukrainian Hryvnia (UAH) (approximately €43) in December 2015 to UAH 2,027 (approximately €66) in December 2019). The minimum wage increased from UAH 1,378 (approximately €45) in December 2015 to UAH 4,175 (approximately €136) in 2019, as did the minimum pension which increased from UAH 1,074 (approximately €35) in December 2015 to UAH 1,638 (approximately €53) in December 2019.

In addition, the report states that the employment rate increased from 56.3% in 2016 to 58.2% in 2019, and the unemployment rate fell from 9.3% in 2016 to 8.2% in 2019. In 2019, the annual indexation of pensions was introduced and it became possible to automatically recalculate them. Since 1 January 2019, a new type of social assistance was introduced for persons caring for severely ill children who are not officially recognised as disabled. The mechanism of providing monthly targeted assistance to internally displaced persons to cover living expenses, including housing and utility services, and issue of a certificate of

registration has been improved. Also, the housing subsidies programme has been improved and, since the beginning of 2019, subsidies were introduced to help people in financial difficulty to pay for housing and utilities.

The Committee notes that, despite some measures taken to ensure more adequate minimum pensions and minimum wages, a large share of the population is still at risk of poverty. The Committee also notes that no information about the extent of budgetary resources allocated to combat poverty and social exclusion is provided. Therefore, it reiterates its request.

The Committee also refers to its conclusions of non-conformity regarding other relevant provisions of the Charter for an assessment of conformity with Article 30 (see Conclusions 2013 and the Statement of interpretation on Article 30). It refers in particular to:

- Article 1§1 and its conclusion that employment policy efforts have not been adequate in combating unemployment and promoting job creation (Conclusions 2020);
- Article 10§4 and its conclusion that it has not been established that special measures for the retraining and reintegration of the long-term unemployed, including youth, have been effectively provided or promoted (Conclusions 2020);
- Article 15§2 and its conclusion that it has not been established that the employment of persons with disabilities is effectively guaranteed (Conclusions 2020);
- Article 16 and its conclusion that it has not been established that the level of family benefits is adequate (Conclusions 2019);
- Article 23 and its conclusion that it has not been established that the level of the minimum pension is adequate (Conclusions 2021);
- Article 31§1 and its conclusion that it has not been established that sufficient measures are taken to improve the substandard housing conditions of Roma (Conclusions 2019);
- Article 31§2 and its conclusion that it has not been established that the right to shelter is adequately guaranteed (Conclusions 2019).

On the basis of the above, the Committee considers that the situation in Ukraine is not in conformity with Article 30 on the ground that there is no adequate overall and coordinated approach in place to combat poverty and social exclusion.

### ***Monitoring and evaluation***

In its previous conclusion, the Committee requested comprehensive information on monitoring mechanisms covering all sectors and areas relating to the combat against poverty and social exclusion (Conclusions 2017).

In response, the report states that, during the period 2016-2019, a comprehensive assessment of poverty was conducted each quarter. This was done using poverty indicators to monitor the impact of the measures being implemented to combat it. To ensure the comprehensive analysis of the progress of activities planned for certain components of the poverty reduction strategy, the authorities have used indicators to assess initiatives focused on the wider deployment of schemes providing access to productive employment and the measures to increase income from employment and benefits paid by the public social security system to ensure decent working conditions; guaranteed access to social services regardless of residence so as to minimise the risks of social exclusion of the rural population; the minimisation of social exclusion and the risks of poverty among the most vulnerable groups; and the prevention of poverty and the emergence of chronic poverty and social exclusion among internally displaced persons. The Ukrainian Ministry of Social Policy coordinated the work of the central and local executive authorities in meeting the objectives and implementing the tasks and measures set out in the poverty reduction strategy.

On the basis of the reports submitted by the central and local executive authorities, a general assessment of the implementation of the various poverty reduction measures was prepared on a quarterly basis and submitted to the Ukrainian Council of Ministers, and, upon specific request, to *Verkhovna Rada*, the Ukrainian Parliament. Information was also provided to public bodies and individual citizens who requested it.

The report states that, since 2014, social support programmes were monitored to study the impact of certain types of social protection on poverty indicators and on improving household social protection.

The Committee asks that the next report contain up-to-date information on the monitoring and evaluation of efforts to combat poverty and social exclusion. It also asks for information on how civil society and people directly affected by poverty and social exclusion are involved in evaluating these policies.

### ***Poverty and social exclusion in times of the Covid-19 crisis***

The report indicates that during the Covid-19 crisis, the Ukrainian Government adopted a number of regulations aimed at providing social support for the most vulnerable categories of citizens. The Resolution of the Ukrainian Council of Ministers No. 247 of 25 March 2020 provides for the prohibition, with some exceptions, of any suspension of housing benefits for the lockdown period; the automatic renewal for the next period of housing benefits for all households that received them in the 2019-2020 period; the taking into account of the amount of unemployment benefit rather than salary when allocating housing subsidies to people made redundant as a result of the lockdown; as well as the taking into account of the rise in the prices of utilities in the calculation of the subsidy during the lockdown period.

In addition, the Resolution of the Ukrainian Council of Ministers No. 1324 of 23 December 2020 authorised the payment of housing subsidies, state social allowances to low-income families and assistance to single mothers, and partial unemployment benefits for the lockdown period without requiring the payment of a single social security contribution.

Further, the report states that the Resolution of the Ukrainian Council of Ministers No. 251 of 1 April 2020 resulted in the following allowances: in April, a one-off payment of UAH 1,000 (approximately €32) was made to pensioners receiving a pension of less than UAH 5,000 (approximately €162) and a monthly pension supplement of UAH 500 (approximately €16) for 1.5 million pensioners over 80 years old; in May, workers' pensions were indexed by 11% and the minimum pension payment was raised to UAH 2,100 (approximately €68) for persons with a long period of contributions (30 years for women and 35 years for men).

Under Resolution of the Ukrainian Council of Ministers No. 264 of 8 April 2020, social allowance payments of the same amount as for the previous period were renewed without the need to re-apply, and new applications for certain types of state assistance and social allowances for persons with disabilities since childhood, and for children and adults with disabilities, were approved even in cases where the deadline to re-apply had been missed.

The report notes that other Ukrainian Council of Ministers resolutions were adopted which, for example, assisted pensioners and recipients of social allowances to make electronic payments for housing and utilities and to meet their social and family needs during lockdown (Resolution No. 287 of 8 April 2020); allowed job-seeker status to be granted immediately upon application and unemployment benefits to be paid on the day after registration (Resolution No. 244 of 29 March 2020); strengthened social protection for internally displaced persons who were not employed during lockdown (Resolution No. 491 of 17 June 2020); provided child allowances to the self-employed persons who had opted for a simplified taxation regime (Resolution No. 329 of 22 April 2020).

### ***Conclusion***

The Committee concludes that the situation in Ukraine is not in conformity with Article 30 of the Charter on the ground that there is no adequate overall and coordinated approach in place to combat poverty and social exclusion.