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# EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2020

**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 12<sup>th</sup> report was 31 December 2019 and Ukraine submitted it on 21 January 2020.

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 27 May 2019, 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 2016).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2016) found the situation to be in conformity, there was no examination of the situation in 2020.

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 I "Employment, training and equal opportunities":

- the right to work (Article 1);
- the right to vocational guidance (Article 9);
- the right to vocational training (Article 10);
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15);
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18);
- the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20);
- the right to protection in cases of termination of employment (Article 24);
- the right of workers to the protection of their claims in the event of the insolvency of their employer (Article 25).

Ukraine has accepted all provisions from the above-mentioned group except Article 25.

The reference period was from 1 January 2015 to 31 December 2018.

The conclusions relating to Ukraine concern 18 situations and are as follows:

– 2 conclusions of conformity: Articles 1§3 and 24.

– 14 conclusions of non-conformity: Articles 1§1, 1§2, 1§4, 9, 10§1, 10§2, 10§3, 10§4, 15§1, 15§2, 18§2, 18§3, 18§4 and 20.

In respect of the other 2 situations related to Articles 10§5 and 15§3, 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 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).

The deadline for submitting that report was 31 December 2020.

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

## **Article 1 - Right to work**

### *Paragraph 1 - Policy of full employment*

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

The Committee recalls that in 2016, it concluded that the situation in Ukraine was not in conformity with Article 1§1 of the Charter on the ground that it had not been established that employment policy efforts had been adequate in combatting unemployment and promoting job creation (Conclusion 2016).

### **Employment situation**

According to Eurostat, the GDP growth rate rose sharply during the reference period, from -9.8% in 2015 to +3.3% in 2018.

The overall employment rate (persons aged 15 to 64 years) increased from 60.2% in 2015 to 61.6% in 2018.

The employment rate for men increased from 65.2% in 2015 to 66% in 2018, and the rate for women from 55.5% in 2015 to 57.5% in 2018.

The overall unemployment rate (persons aged 15 to 70 years) fell from 9.1% in 2015 to 8.8% in 2018.

The unemployment rate for men remained practically stable, at 10.1% in 2015 and 10% in 2018. The unemployment rate for women fell from 8.1% in 2015 to 7.4% in 2018. Youth unemployment (15 to 24-year-olds) decreased from 22.4% in 2015 to 17.9% in 2018. According to the Government report, the rate of long-term unemployment (12 months or more, as a percentage of overall unemployment for persons aged 15 to 70 years) fell from 24% in 2015 to 21.6% in 2018.

According to the International Labour Organisation (ILO), the proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) fell from 17.6% in 2015 to 16.5% in 2017 (as a percentage of the 15 to 24-year-old age group).

The Committee notes that despite strong economic growth, overall employment and unemployment rates improved only marginally during the reference period.

### **Employment policy**

In its report, the Government states that in April 2017 it approved the Medium Term Priority Action Plan (2020), one of the main strategic goals of which is to promote a labour market reform with the aim of pursuing an active employment policy, and, in particular, accelerating labour market reintegration for unemployed and reducing informal employment. In September 2018, it also approved Decree No. 792 on the procedure for registering and re-registering unemployed and jobseekers, with the aim of improving the quality of services provided by job centres. To this end, the procedure provides for, among other things: a) establishing a Career Advice Institute to ensure a tailored service for each job centre customer; b) profiling the unemployed and jobseekers; and c) individual programmes, which include personalised support for registered unemployed.

In addition to these reforms, the Government reports that an ILO technical assistance project financed by Denmark has begun in 2018. The project, “Inclusive Labour Markets for Job Creation in Ukraine” (December 2017 to December 2022), is based on three pillars: building the capacity of the Ukrainian public employment services, developing workers’ skills and improving social dialogue. The Committee requests that the next report provide information on the results of this programme and on any possible follow-up given to the programme.

The Committee notes that the Government provided no other information on the matters to be examined under Article 1§1. In particular, the report does not state which active labour market measures are available to unemployed persons in general, nor those designed to support

groups or communities with distinct levels of under-employment or unemployment (for example, young people and internally displaced persons). Nor does it provide comprehensive information about the number of participants in the various active measures, the activation rate (i.e. the average number of participants in active measures as a percentage of the total number of unemployed) or public expenditure on active and passive labour market measures (as a percentage of GDP).

The Committee recalls that in order to assess the effectiveness of labour market policies, it requires information on the above indicators. In the absence of information on these issues, and in view of the stagnating employment and unemployment rates (during a period of strong economic growth), the Committee considers that the employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

The Committee also recalls that labour market measures should be targeted, effective and regularly monitored. It reiterates its request for information in the next report on the monitoring of employment policies and the assessment of their effectiveness.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

## **Article 1 - Right to work**

### *Paragraph 2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

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

#### **1. Prohibition of discrimination in employment**

Article 1§2 of the Charter prohibits all forms of discrimination in employment. The Committee asked the State Parties to provide updated information for this reporting cycle on the legislation prohibiting all forms of discrimination in employment, in particular on grounds of gender (had Article 20 not been accepted), race, ethnic origin, sexual orientation, religion, age, political opinion, disability (had Article 15§2 not been accepted), including information on legal remedies. It furthermore asked to indicate any specific measures taken to counteract discrimination in the employment of migrants and refugees.

The Committee will therefore focus specifically on these aspects. It will also assess the replies to all findings of non-conformity or deferrals in its previous conclusion.

Ukraine has accepted Article 15§2 and Article 20 of the Charter. Therefore, it was under no obligation to report on prohibition of discrimination on grounds of disability and gender, which will be examined under the said provisions.

As regards the legislation prohibiting discrimination in general terms, the report provides that the Law of 2015 “On Amendment to the Labour Code of Ukraine Regarding Harmonization of Legislation in the Sphere of Prevention and Fight against Discrimination with the Law of the European Union” prohibits any discrimination in the sphere of labour in particular, any violation of the principle of equal rights and opportunities, any direct or indirect restriction of the rights of workers regarding their racial origin, colour, political, religious and other beliefs, sex, gender identity, sexual orientation, ethnic, social and foreign origin, age, health status, disability, suspicion or presence of HIV / AIDS, marital and financial status, family responsibilities, place of residence, membership in a trade union or other associations of citizens, participation in strikes, appeals or the intention to apply to the court or other authorities for the protection of their rights or to support other workers in the protection of their rights, on linguistic or other grounds not related to the nature of the work or the conditions of its performance. In its previous conclusion (Conclusions 2016), in the absence of any information on the implementation of the relevant legislation in practice, the Committee concluded that it had not been established that the prohibition of discrimination in employment was effectively implemented in practice. The report still does not provide any information in this respect, apart from the description of the legislative provisions. The Committee thus reiterates its question on the implementation of the legislative framework and renews its conclusion that it has not been established that the situation is in conformity with Article 1§2 of the Charter in this respect.

Apart from general information on legal framework prohibiting discrimination, the Committee also requested information on any specific, targeted legislation and practical measures focused specifically on discrimination on grounds of ethnic origin, race, age, sexual orientation, political opinion or religion. The report does not address these issues. In this regard, the Committee notes, in particular, repeated concerns about discrimination on grounds of sexual orientation raised by the United Nations High Commissioner for Human Rights throughout the reference period, and most recently in the Report on the human rights situation in Ukraine, 16 February – 31 July 2020. It also notes as regards discrimination on grounds of ethnic origin and race, that the European Commission against Racism and Intolerance (ECRI) pointed, in its 2017 country report on Ukraine, to shortcomings in the Strategy for the Protection and Integration of the Roma Ethnic Minority and its Action Plan, paying particular attention to employment as well as to the fact that the Commissioner for Human Rights has no investigation powers in order to combat racism and racial discrimination effectively. The Committee renews its request for comprehensive information on how discrimination on the

grounds listed above is prevented and combated. Should the next report not provide exhaustive information in this respect, nothing will allow to show that there is sufficient protection against discrimination in employment on these grounds.

As regards prohibition of discrimination on grounds of nationality, the Committee has previously asked whether and if so, what categories of employment were closed to foreigners (Conclusions 2016). The report states that non-citizens cannot enter civil service. The Committee recalls that, while Article 1§2 of the Charter makes it possible for states to allow foreign nationals to access employment on their territory provided they have a work permit, they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G; restrictions on the rights guaranteed by the Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority. The Committee thus concludes that banning nationals of other State Parties to the Charter from the civil service is not in conformity with Article 1§2 of the Charter.

Apart from questions on the legal framework, during this examination cycle, the Committee assesses specific measures taken to counteract discrimination in the employment of migrants and refugees. The report does not provide any information in this respect. The Committee notes in this regard that ECRI, in its 2017 report mentioned above, observed that refugees face severe challenges in everyday life and obstacles to local integration. The Committee thus renews its request for information, which should include comments on this observation. Should the next report fail to provide it exhaustively, nothing will allow to show that the situation is in conformity with the Charter on this point.

The Committee recalls that appropriate and effective remedies must be ensured in the event of an allegation of discrimination. The notion of effective remedies encompasses judicial or administrative procedures available in cases of an allegation of discrimination and able to provide reinstatement and compensation, as well as adequate penalties effectively enforced by labour inspection; an appropriate adjustment of the burden of proof which should not rest entirely on the complainant, as well as the setting-up of a special, independent body to promote equal treatment.

The report provides that as of 2008 the Ombudsperson's mandate encompasses "ensuring law enforcement and maintaining law and order, the rights and freedoms of citizens, prevention of discrimination". The Committee asks that the next report provide comprehensive information on how the Ombudsperson exercises his or her powers, whether the independence and resources of the Office allow for its effective functioning.

The report does not provide comprehensive information on existing legal institutions, judicial or administrative, for persons alleging that they suffered discrimination in the workplace. It contains no statistical data on discrimination cases before courts or other equality bodies. In particular, the report does not specify what grounds of discrimination have been identified, how violations of the legal provisions prohibiting discrimination in the workplace are scrutinised, whether adequate penalties exist and are effectively enforced by labour inspectors, or whether victims of discrimination are awarded sufficient compensation.

As regards judicial remedies, the Committee concluded in its previous conclusion that the legislation did not provide for a shift in the burden of proof in discrimination cases. There has been no change to the situation. The Committee notes that under the Civil Procedure Code, the plaintiff has to prove that discrimination occurred in the first place, which is not in conformity with the Article 1§2 of the Charter. It thus renews its conclusion of non-conformity on this aspect.



In the light of the information in its possession, the Committee considers that it cannot make a comprehensive assessment of all aspects pertinent to the existence and functioning of effective remedies in cases of alleged discrimination. It repeats its requests that all relevant data be included in the next report, together with an exhaustive description of all the aspects listed above. It considers that, should the requested information not be provided, nothing will allow to establish that the situation is in conformity with Article 1§2 of the Charter in this regard.

## **2. Forced labour and labour exploitation**

The Committee recalls that forced or compulsory labour in all its forms must be prohibited. It refers to the definition of forced or compulsory labour in the ILO Convention concerning Forced or Compulsory Labour (No.29) of 29 June 1930 (Article 2§1) and to the interpretation given by the European Court of Human Rights of Article 4§2 of the European Convention on Human Rights (*Van der Musselle v. Belgium*, 23 November 1983, § 32, Series A no. 70; *Siliadin v. France*, no. 73316/01, §§ 115-116, ECHR 2005-VII; *S.M. v. Croatia* [GC], no. 60561/14, §§ 281-285, 25 June 2020). The Committee also refers to the interpretation by the Court of the concept of « servitude », also prohibited under Article 4§2 of the Convention (*Siliadin*, § 123; *C.N. and V. v. France*, § 91, 11 October 2012).

Referring to the Court's judgment of *Siliadin v. France*, the Committee has in the past drawn the States' attention to the problem raised by forced labour and exploitation in the domestic environment and the working conditions of the domestic workers (Conclusions 2008, General Introduction, General Questions on Article 1§2; Conclusions 2012, General Introduction, General Questions on Article 1§2). It considers that States Parties should adopt legal provisions to combat forced labour in the domestic environment and protect domestic workers, as well as take measures to implement them.

The European Court of Human Rights has established that States have positive obligations under Article 4 of the European Convention to adopt criminal law provisions which penalise the practices referred to in Article 4 (slavery, servitude and forced or compulsory labour) and to apply them in practice (*Siliadin*, §§ 89 and 112). Moreover, positive obligations under Article 4 of the European Convention must be construed in the light of the Council of Europe Convention on Action against Trafficking in Human Beings (ratified by almost all the member States of the Council of Europe) (*Chowdury and Others v. Greece*, § 104, 30 March 2017). Labour exploitation in this context is one of the forms of exploitation covered by the definition of human trafficking, and this highlights the intrinsic relationship between forced or compulsory labour and human trafficking (see also paragraphs 85-86 and 89-90 of the Explanatory Report accompanying the Council of Europe Anti-Trafficking Convention, and *Chowdury and Others*, § 93). Labour exploitation is taken to cover, at a minimum, forced labour or services, slavery and servitude (GRETA – Group of Experts on Action against Trafficking in Human Beings, *Human Trafficking for the Purpose of Labour Exploitation*, Thematic Chapter of the 7th General Report on GRETA's Activities (covering the period from 1 January to 31 December 2017), p. 11).

The Committee draws on the case law of the European Court of Human Rights and the above-mentioned international legal instruments for its interpretation of Article 1§2 of the Charter, which imposes on States Parties the obligation to protect effectively the right of workers to earn their living in an occupation freely entered upon. Therefore, it considers that States Parties to the Charter are required to fulfil their positive obligations to put in place a legal and regulatory framework enabling the prevention of forced labour and other forms of labour exploitation, the protection of victims and the investigation of arguable allegations of these practices, together with the characterisation as a criminal offence and effective prosecution of any act aimed at maintaining a person in a situation of severe labour exploitation. The Committee will therefore examine under Article 1§2 of the Charter whether States Parties have fulfilled their positive obligations to:

- Criminalise and effectively investigate, prosecute and punish instances of forced labour and other forms of severe labour exploitation;

- Prevent forced labour and other forms of labour exploitation;
- Protect the victims of forced labour and other forms of labour exploitation and provide them with accessible remedies, including compensation.

In the present cycle, the Committee will also assess the measures taken to combat forced labour and exploitation within two particular sectors: domestic work and the “gig economy” or “platform economy”.

The Committee notes that the national authorities have not replied to any of the specific, targeted questions for this provision on the exploitation of vulnerability, forced labour and modern slavery (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”).

### **Criminalisation and effective prosecution**

The Committee notes from previous conclusions (Conclusions 2012) that Article 43 of the Constitution prohibits forced labour. It notes from GRETA’s Report on Ukraine of 2018 that Article 149 of the Criminal Code criminalises trafficking in human beings, including for the purposes of forced labour or services, slavery or practices similar to slavery and servitude (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine, second evaluation round, GRETA (2018)20, 22 November 2018, para. 181).

The Committee recalls that States Parties must not only adopt criminal law provisions to combat forced labour and other forms of severe labour exploitation but also take measures to enforce them. It considers, as the European Court of Human Rights did (*Chowdury and Others*, §116), that the authorities must act of their own motion once the matter has come to their attention; the obligation to investigate will not depend on a formal complaint by the victim or a close relative. This obligation is binding on the law-enforcement and judicial authorities.

The Committee refers to the abovementioned GRETA Report, according to which criminal investigations into cases of trafficking for the purpose of labour exploitation are often discontinued due to the difficulties to obtain evidence or are re-qualified as other offences. According to GRETA’s Report, a significant number of prosecutions into trafficking cases do not lead to convictions for trafficking and even when the perpetrators are convicted, the sentences are often suspended and are not proportionate to the gravity of the offence (para. 209). GRETA accordingly urged the Ukrainian authorities to strengthen their efforts to ensure that trafficking cases are investigated and prosecuted proactively and lead to effective and dissuasive sanctions, in particular by reviewing the legislation so as to identify and address gaps (e.g., in relation to trafficking for the purpose of forced labour/labour exploitation) (para. 211).

The Committee therefore asks that the next report comment on these findings and provide detailed information on the application in practice of Article 149 of the Criminal Code in relation to forced labour and labour exploitation. The report should provide information (including figures, examples of case law and specific penalties effectively applied) on the prosecution and conviction of exploiters during the next reference period, in order to assess in particular how this provision is interpreted and applied.

### **Prevention**

The Committee considers that States Parties should take preventive measures such as data collection and research on the prevalence of forced labour and labour exploitation, awareness-raising campaigns, the training of professionals, law-enforcement agencies, employers and vulnerable population groups, and should strengthen the role and the capacities/mandate of labour inspection services to enforce relevant labour law on all workers and all sectors of the economy with a view to preventing forced labour and labour exploitation. States Parties should

also encourage due diligence by both the public and private sectors to identify and prevent forced labour and exploitation in their supply chains.

The current report provides no information on these points. The Committee notes from the abovementioned GRETA Report that trafficking for the purpose of labour exploitation has emerged as the prevalent form of exploitation in the context of human trafficking in Ukraine. According to GRETA's Report, from 2014 to 2017, out of the 418 victims of trafficking identified, 256 were trafficked for the purpose of labour exploitation (para. 13). On 24 February 2016, the Cabinet of Ministers adopted the State Social Programme to Combat Trafficking in Human Beings for the period 2016-2020 (para. 29). The Committee asks that the next report provide information on the implementation of this programme (i.e., training activities, awareness-raising campaigns) and the results achieved in terms of prevention of trafficking for the purposes of labour exploitation, as well as on any other subsequent programmes or action plans adopted in the meantime.

The Committee further notes that according to GRETA, statistical data on trafficking in human beings remains largely unconsolidated in Ukraine. In this regard, GRETA urged the Ukrainian authorities to develop and maintain a comprehensive and coherent statistical system of trafficking in human beings by compiling reliable statistical data on presumed and identified victims of trafficking, disaggregated by type of exploitation among other factors (para. 50). The Committee has also raised this issue under Article 7§10 of the Charter and asked to be informed of the steps taken to build a consolidated statistical system on trafficking in human beings (Conclusions 2019, Article 7§10).

With regard to labour inspection services, the Committee notes that GRETA urged the Ukrainian authorities to strengthen their efforts to prevent trafficking for the purpose of labour exploitation, in particular by recruiting a sufficient number of labour inspectors and providing them with specialised training on trafficking in human beings for the purpose mentioned above, as well as by ensuring adequate financial and technical means so that they can be actively engaged in the prevention of such a phenomenon in all sectors of the economy, including by means of unannounced inspections (para. 70).

The Committee recalls that it has considered, under Article 3§3 of the Charter, that the labour inspection system was inefficient in the field of occupational health and safety (Conclusions 2012, 2017, Article 3§3). It considered that the labour inspection structures were not sufficiently developed in practice.

In the light of these considerations, the Committee asks that the next report provide detailed and up-to-date information on the mandate and capacity (i.e., resources and training) of labour inspectors to prevent and detect cases of labour exploitation, particularly in high-risk sectors such as agriculture, construction, hospitality, manufacturing and recruitment agencies for employment abroad. The report should also indicate the number, if any, of presumed victims of forced labour or labour exploitation detected as a result of inspections carried out by the competent labour inspection services during the next reference period.

No information has been provided in the report on whether Ukrainian legislation includes measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains. It requires that every precaution be taken in public procurement processes to guarantee that funds are not used unintentionally to support various forms of modern slavery. The Committee accordingly reiterates its request on this point.

### **Protection of victims and access to remedies, including compensation**

The Committee considers that protection measures in this context should include the identification of victims by qualified persons and assistance to victims in their physical, psychological and social recovery and rehabilitation.

No information is provided in the report on these points. The Committee notes from the Ukrainian Government's Reply to the Committee of the Parties' Recommendation (Recommendation CP(2018)29 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine) that in 2019 (outside the reference period) the National Police detected 135 episodes of human trafficking for the purpose of labour exploitation, which accounted for 44% of the 306 detected criminal offences under Article 149 of the Criminal Code (trafficking in human beings). The Committee requests that the next report provide information on the overall number of identified victims of forced labour and labour exploitation and the number of such victims benefiting from protection and assistance measures during the next reference period. It also asks for general information on the type of assistance provided by the authorities (protection against retaliation, safe housing, healthcare, material support, social and economic assistance, legal aid, translation and interpretation, voluntary return, provision of residence permits for migrants), and on the duration of such assistance.

The Committee further asks for confirmation in the next report that the existing legal framework provides the victims of forced labour and labour exploitation, including irregular migrants, with access to effective remedies (before criminal, civil or labour courts or other mechanisms) designed to provide compensation for all damage incurred, including lost wages and unpaid social security contributions. It asks for statistics on the number of victims awarded compensation and examples of the sums granted.

### **Domestic work**

The Committee reiterates that domestic work may give rise to forced labour and exploitation. Such work often involves abusive, degrading and inhuman living and working conditions for the domestic workers concerned (see Conclusions 2012, General Introduction, General Questions, and the Court's judgment in *Siliadin v. France*). States Parties should adopt legal provisions to combat forced labour in the domestic environment and protect domestic workers as well as take measures to implement them (Conclusions 2008, General Introduction, General Question). The Committee recalls that under Article 3§3 of the Charter, inspectors must be authorised to inspect all workplaces, including residential premises, in all sectors of activity (Conclusions XVI-2 (2003), Czech Republic, relating to Article 3§2 of the 1961 Charter; Statement of Interpretation of Article 3§3 (i.e., Article 3§2 of the 1961 Charter)). It considers that such inspections must be clearly provided for by law and sufficient safeguards must be put in place to prevent risks of unlawful interferences with the right to respect for private life.

In its previous conclusions (Conclusions 2012, 2016), the Committee asked information on the legislation adopted to combat forced labour in the domestic environment and the measures taken to apply it, in the light of its Statement of Interpretation of Article 1§2 in the General Introduction to Conclusions 2012. The Committee pointed out that, should the information on this point not be provided in the next report, nothing would allow to establish that the situation is in conformity with Article 1.2 of the Charter (Conclusions 2016).

The current report indicates that labour law regulates the employment relations of employees working under an employment contract with a natural person. Natural persons shall bear liability for violation of the employment law. According to the report, a draft law "On Amendments on Certain Legislative Acts on the Regulation of Domestic Work" is being examined. The adoption of this law will allow to regulate the employment of domestic workers, to legalise this type of work among informally employed persons and to provide them with social protection. The Committee wishes to be informed in the next report on whether this law has been adopted and if so, about the measures that it contains to prevent and combat exploitative conditions of domestic workers.

In addition, the Committee notes from the abovementioned GRETA Report that labour inspectors' powers extend to all sectors of the economy and entitle them to carry out inspections in domestic households, provided that the person is employed in that household by a formal contract (para. 125). The Committee refers to its question above on the capacity

of labour inspectors to effectively prevent and detect cases of labour exploitation, also having regard to its previous conclusion on Article 3§3 of the Charter. It therefore asks the next report to indicate the number of inspections carried out in respect of domestic workers during the next reference period, and the number, if any, of victims of forced labour and labour exploitation identified as a result.

#### **“Gig economy” or “platform economy” workers**

The Committee notes that the report does not reply to its request for information on the measures taken to protect workers from exploitation in the “gig economy” or “platform economy”.

The Committee reiterates its request and asks for information in the next report on whether workers in the “platform economy” or “gig economy” are generally regarded as employees or self-employed workers. It also asks whether the powers of the competent labour inspection services include the prevention of exploitation and unfair working conditions in this particular sector (and if so, how many inspections have been carried out), and whether workers in this sector have access to remedies, particularly to challenge their status and/or unfair practices.

In the meantime, pending receipt of the information requested in respect of all the points mentioned above (criminalisation, prevention, protection, domestic work, gig economy), the Committee reserves its position on the issue of forced labour and labour exploitation.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 1§2 of the Charter on the grounds that:

- it has not been established that the prohibition of discrimination in employment is effectively implemented in practice;
- the restriction on access of nationals of other States Parties to civil service is excessive, which constitutes a discrimination on grounds of nationality;
- legislation does not provide for a shift in the burden of proof in discrimination cases.

## **Article 1 - Right to work**

### *Paragraph 3 - Free placement services*

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

The Committee notes from the report that in accordance with Article 5 of Law No. 5067 the State shall guarantee free assistance in job placement, in choice of suitable work and in obtaining information on the labour market situation and development prospects. According to the report, everyone has the right to free social services, in particular, information and counselling, vocational training, retraining, upgrading skills in response to demands on the labour market, assistance in employment.

The Committee notes that a law on amendments to certain legislative acts of Ukraine is being developed in order to enhance efficiency of the State Employment Service (SES) by improving its structure, the system of social services, the procedure for their delivery etc. According to the report, free delivery of social services by the SES shall remain unchanged. The Committee asks the next report to provide information about these legislative developments.

In its previous conclusion (Conclusions 2016) the Committee noted that the report did not provide any information about the quantitative indicators that the Committee uses to assess the situation under this provision. In particular, the Committee asked for the following information:

- number of jobseekers and unemployed persons registered with the SES;
- number of vacancies notified to the SES;
- number of persons placed via the SES;
- placement rate;
- average time taken by the SES to fill a vacancy;
- placements by the SES as a percentage of total hirings in the labour market;
- respective market shares of public and private services. Market share is measured as the number of placements effected as a proportion of total hirings in the labour market;
- coordination between central and local employment services.

In this respect, the Committee notes from the report that the total number of registered unemployed persons fell from 1,435,200 in 2015 to 1,064,200 in 2018. Number of previously unemployed persons placed in a job rose from 716,690 in 2015 to 826,100 in 2018, of whom 444,700 were placed by referral from the SES in 2015 and 377,700 in 2018. As regards notification of vacancies, 159,100 employers notified vacancies in 2015, and 201,300 in 2018. The total number of vacancies notified stood at 875,800 in 2015 and 1,114,000 in 2018.

The Committee notes that according to this information the placement rate (i.e. the placements made by the employment services as a share of notified vacancies) stood at 50% in 2015 and 34% in 2018.

The Committee further notes that the placements by the SES as a percentage of total hirings in the labour market stood at 62% in 2015 and 40% in 2018. It also notes that the average time taken to fill a vacancy was estimated at 9 days in 2015 and 11 days in 2018.

In reply to the Committee's question, the report states that in 2015 there were 4,984 employees in the SES involved in placement services and 4,656 in 2018. The Committee notes that this number is relatively low considering the total number of registered unemployed persons. Moreover, the Committee notes from another source (the ILO technical assistance project on "Inclusive Labour Markets for Job Creation in Ukraine", funded by the Danish Government) that less than 21% of the unemployed persons are registered with the SES. Regardless of a number of free services and programmes, the majority of clients will still come to SES solely for receiving their unemployment benefits. The Committee notes that the above-mentioned ILO project (December 2017 to December 2022) is based on three pillars: building the capacity of the Ukrainian public employment services, developing workers' skills and

improving social dialogue. The Committee requests that the next report provide information on the implementation of the pillar concerning employment services.

The Committee asks the next report to provide updated information regarding private employment services, including quantitative indicators of their performance.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 1§3 of the Charter.

## **Article 1 - Right to work**

### *Paragraph 4 - Vocational guidance, training and rehabilitation*

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

The Committee recalls that in the appendix to the letter of 27 May 2019 (whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

As Ukraine has accepted Article 9, 10§3 and 15§1 of the Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to vocational guidance and training for persons with disabilities are examined under these provisions.

The Committee considered the situation to be in conformity with the Charter as regards measures relating to training for persons with disabilities (Article 15§1) (Conclusions 2016).

The Committee however considered that the situation was not in conformity with the Charter on the following grounds:

- it had not been established that vocational guidance within the education system and in the labour market was guaranteed (Article 9) (Conclusions 2020);
- it had not been established that the legislation provides for an individual leave for training for all employed persons (Article 10§3) (Conclusions 2020).

Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 of the Charter on the same grounds.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 1§4 of the Charter on the grounds that it has not been established that:

- vocational guidance within the education system and in the labour market is guaranteed;
- the legislation provides for an individual leave for training for all employed persons.



## **Article 9 - Right to vocational guidance**

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

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

According to the report foreigners legally present in Ukraine have access to vocational guidance on the same grounds as nationals.

### ***Vocational guidance within the education system***

In its previous conclusion (Conclusions 2016), the Committee took note of the information concerning the organisation of vocational guidance within the education system and of the number of beneficiaries of such services over the reference period. It asked the next report to provide details on the number of staff involved in the provision of vocational guidance within the education system and the overall expenditure. It held that if the next report did not provide information in this respect, there would be nothing to establish that the situation is in conformity with the Charter. In the meantime, it reserved its position.

The current report indicates that vocational guidance work in the institutions of general secondary and vocational and technical education are carried out by pedagogical workers, in particular by practical psychologists and social pedagogues.

According to the report, as of the beginning of the academic year 2018-2019, the total number of pedagogical staff in the institutions of general secondary education of all forms of ownership was 44,0006 persons, out of which 8,094 practical psychologists and 4,403 social pedagogues. The Committee asks the next report to indicate what is the ratio between the number of staff employed for the provision of vocational guidance services and the number of students attending such schools and institutions.

The Committee notes that the report does not provide the information requested on the overall expenditure for vocational guidance within the education system, nor on the number of beneficiaries of such services. The Committee accordingly reiterates its question. In the meantime, it concludes that the situation in Ukraine is not in conformity with Article 9 of the Charter on the ground that it has not been established that the right to vocational guidance within the education system is guaranteed.

### ***Vocational guidance in the labour market***

In its previous conclusion (Conclusions 2016), the Committee took note of the organisation of vocational guidance within the labour market, as well as of the data on the number of beneficiaries of vocational guidance services in the labour market during the reference period. The Committee noted however that no information was provided on the estimated expenditure devoted to vocational guidance services in the labour market, nor on the number of counsellors involved in such services. It asked the next report to provide such information. In the meantime, it concluded that the situation in Ukraine was not in conformity with Article 9 of the Charter on the ground that it had not been established that the right to vocational guidance within the labour market was guaranteed.

The current report indicates that in order to modernize the system of vocational guidance, the Board of the Compulsory State Social insurance Fund of Ukraine approved the Programme of the State Employment Service on vocational guidance for 2017-2020 (Order No. 145 of 7 September 2017). This programme provides for systematic vocational guidance services offered by the State employment service in schools, institutions of vocational and technical education in higher education institutions as well as vocational guidance services tailored to labour market needs.

The report further indicates that in 2018, the free Online Platform of the State Employment Service “Career Guidance and Development” was put into practice. The Platform provides to individuals the opportunity for psychological testing and to obtain results, and thus to make their own career guidance in the form of distance learning. In 2018, more than 20,000 people completed such vocational testing.

As regards the financial resources allocated to vocational guidance services in the labour market, the report indicates that the budget of the Compulsory State Social Insurance Fund of Ukraine against Unemployment for “Vocational guidance” amounted to € 4,474.7 in 2015, € 2,798.4 in 2016, € 4,409.8 in 2017 and € 5,144.5 in 2018. The Committee notes that these amounts seem extremely low, and asks for confirmation that these figures are correct.

The Committee takes also note of the number of beneficiaries of vocational guidance provided by the state employment service during the reference period. In particular, the Committee notes that in 2018, such services were offered to a total of 3,497.3 persons – of which 1,028.7 unemployed and 1,338.1 persons in educational institutions of different types. The Committee notes that these numbers seem extremely low, and asks for confirmation that these figures are correct.

While taking note of this information, the Committee notes that the report does not provide the information requested on the number of counsellors involved in vocational guidance services in the labour market. It accordingly asks the next report to provide information on the number of staff involved in vocational guidance services in the labour market, as well as on their qualification. In the meantime, it reiterates its previous finding of non-conformity.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 9 of the Charter on the ground that it has not been established that vocational guidance within the education system and labour market is guaranteed.

## **Article 10 - Right to vocational training**

### *Paragraph 1 - Technical and vocational training; access to higher technical and university education*

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

The Committee points out that in its Conclusions 2016, it found that the situation was not in conformity on the ground that it had not been established that the system of secondary and higher vocational education operated in an efficient manner.

The Committee notes that a decree issued in 2017 has changed the mechanism for drawing up and approving professional standards. In addition, between 2016 and 2018, many professional standards were updated with a competency-based approach, in co-operation with employers and social partners. Moreover, in 2018, the Ministry of Education and Science adopted a conceptual framework for developing vocational education (“Contemporary Vocational Education”).

The Committee notes, however, that the information submitted only responds to a very limited extent to the requests previously made. Although the authorities indicate that the percentage of GDP allocated to education varies between 5.5% and 6% depending on the year, they do not specify how much is allocated to vocational training as such. The Committee wishes to point out that the main indicators for determining whether the situation of a Party is in conformity with the provisions of Article 10§1 are as follows:

- Existence of an education and training system;
- Total capacity (ratio of training places to candidates);
- Total spending on education and training (% of GDP);
- Completion rate of young people enrolled;
- Employment rate of graduates and how long it takes them to find their first skilled job.

The Committee considers that in the absence of information on these different points, it has not been established that the system of secondary and higher vocational education operates in an efficient manner.

### ***Measures taken to match the skills with the demands of the labour market***

According to the information submitted regarding Article 10§2, between 2015 and 2017, the authorities experimented with and then institutionalised, in 2019, a dual vocational training mechanism which now makes it possible to combine theoretical learning in class (30% of the time) and practical learning in an enterprise (70% of the time) on the basis of a training contract with the enterprise. In 2018, 198 vocational training institutions taught the standards of more than 114 occupations to 7 000 students, and 800 employers were involved in vocational training. According to the data provided by the authorities, there is growing interest in the mechanism.

In the light of the information submitted by the authorities, the Committee considers it is not in a position to assess the situation in this respect and decides to reserve judgment on the matter. The Committee repeats its request that the authorities indicate which strategies and measures have been adopted to match the skills acquired through vocational education and training with the demands of the labour market, and in particular in view of technological developments and of globalisation.

### ***Measures taken to integrate migrants and refugees***

According to the information provided concerning Article 9, the law “On the Legal Status of Foreigners and Stateless Persons” allows foreigners and stateless persons lawfully resident in Ukraine to enjoy the same rights and freedoms as Ukrainians, unless otherwise stated in the Constitution or in laws or international treaties. In particular, according to the Ukrainian law “On Education”, foreigners and stateless persons must receive an education.

However, according to information submitted regarding Article 10§5, a decree issued in September 2018 sets quotas for higher education for certain categories of foreigners and stateless persons (approximately 1 000 places).

In the light of the information provided by the authorities, the Committee considers that it is not able to assess whether the measures taken to integrate migrants and refugees into vocational education and training are in conformity with Article 10§1. The Committee reserves its position and asks the authorities to specify the number of refugees and foreigners lawfully resident on Ukrainian territory who benefit from vocational training programmes and the results achieved in terms of integration into the labour market. The Committee also asks whether refugees or third-country nationals lawfully resident on national territory also benefit from Ukrainian language classes to facilitate their integration into the labour market.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 10§1 on the ground that it has not been established that the system of secondary and higher vocational education operates in an efficient manner.

## **Article 10 - Right to vocational training**

### *Paragraph 2 - Apprenticeship*

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

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

The Committee recalls that in its 2016 conclusions, it had concluded that the situation was not consistent with the reasoning that the existence of an effective apprenticeship system was not established.

It emerges from the report that the authorities experimented between 2015 and 2017, then institutionalised in 2019 a dual vocational training mechanism which now makes it possible to combine theoretical instruction in the classroom (30% of the time) and practical instruction in a company (70% of the time), on the basis of a training contract with the company. Several memoranda of cooperation have been signed in this respect between the Ministry of Education and Science and the social partners.

In 2018 198 vocational training institutions were teaching the standards of more than 114 occupations to 7,000 students. 800 employers were involved in vocational training.

The data provided by the authorities show a growing attraction to this mechanism, supported by the authorities who have financed the creation of around 100 specialised learning centres during the 2016-2018 period (e.g. learning centres for tractor driving, sewing, welding, etc.).

The Committee notes that in their report, the authorities demonstrate the existence of an apprenticeship system and indicate how time is allocated between theory and practice. However, the Committee recalls that in order to be able to assess the constituent elements of the apprenticeship system, the authorities must provide details on the duration of the apprenticeship, the selection of apprentices, the selection and training of teachers and the arrangements for terminating the apprenticeship contract.

The Committee notes that the authorities do not indicate the total amount of public and private spending on apprenticeship.

In the absence of these elements, the Committee considers it has not been established that an effective apprenticeship system exists.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 10§2 of the Charter on the ground that it has not been established that an effective apprenticeship system exists.

## **Article 10 - Right to vocational training**

### *Paragraph 3 - Vocational training and retraining of adult workers*

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

In its previous conclusion (Conclusions 2016), the Committee deferred its conclusion.

The Committee notes that Ukraine was asked to reply to the specific targeted questions for this provision (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”).

The Committee notes from the report that during the reference period, in September 2017, Law No. 2145-VIII ‘On Education’ and, in January 2018, Order of the Ministry of Social Policy No. 74 ‘On approval of the methodological recommendations for development of professional standards’, were adopted. The latter recommendations include the development of mentoring in companies, in the form of training from experienced to less experienced employees, with the aim to enhance professional adaptation and development.

In its previous conclusions (Conclusions 2016 and Conclusions 2012), the Committee requested information on the existence of the legislation on individual leave for training and its characteristics, in particular the length, the remuneration, and the initiative to take it. According to the report, pursuant to Article 62 of the Law ‘On Education’, a framework is laid down for persons attending higher education institutions, providing for paid study leave, the right to work afterhours and reduced working hours. In addition, according to Article 202 of the Code of Labour Laws, the employer is obliged to provide for the suitable conditions without interruption of work for employees that participate in vocational training or education offered by educational institutions, while Article 216 of the above Code, in combination with Article 15 of the Law ‘On Leave’, provides for the right of employees that study in higher and postgraduate educational institutions to paid study leave. Finally, the duration of the study leave depends on the form and level of education, as well as the course that the employee attends and may last 10,20,30 or 40 days. While the employee is on a study leave, their average wage should not be decreased. The Committee takes note of this information. It, however considers that it has not been established that that individual leave for training is available to workers that attend training courses and programmes, other than higher and post-graduate education courses.

In its previous conclusion (Conclusions 2016), the Committee asked the next report to provide figures on the total number of unemployed persons having participated in a training and in proportion to the total number of unemployed persons, as well as the percentage of those who found a job afterwards. In addition, it asked the next report to provide clarifications on the rates of employment following vocational training. The Committee notes from the report that the share of persons that have been trained in proportion to the total number of unemployed persons was 12.5% in 2015, 13.1% in 2016, 14.3% in 2017 and 13.8% in 2018. The level of employment after vocational training stood at 94% in 2015, 95.8% in 2016, 95.6% in 2017 and 96.1% in 2018.

In relation to the targeted question addressed to Ukraine with the letter of 27 May 2019, the report does not provide the requested information. The Committee, therefore, reiterates its question and asks the next report to provide information on strategies and measures (legal, regulatory and administrative frameworks, funding and practical arrangements) in place to ensure skilling and re-skilling in the full range of competencies (in particular digital literacy, new technologies, human-machine interaction and new working environments, use and operation of new tools and machines), needed by workers to be competitive in emerging labour markets.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 10§3 of the Charter on the ground that it has not been established that the legislation provides for an individual leave for training for all employed persons.

## **Article 10 - Right to vocational training**

### *Paragraph 4 - Long term unemployed persons*

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

The Committee notes that the present report was asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”).

The Committee previously concluded that the situation in Ukraine was not in conformity with Article 10§4 of the Charter on the ground that it has not been established that special measures for the retraining and reintegration of the long-term unemployed have been effectively provided or promoted (Conclusion 2016). It reiterated its questions about the types of training and retraining measures available on the labour market for long-term unemployed persons, the number of long-term unemployed persons undergoing such training, the special attention given to young long-term unemployed and the impact of the measures on reducing long-term unemployment.

The report indicates that by Order of the Ministry of Social Policy No. 1044 of 21 September 2016 (registered in the Ministry of Justice of Ukraine on 17 October 2016 under No. 1359/29489), the State Standard for Social Assistance Services in the field of employment placement was approved. Furthermore, in order to prevent long-term unemployment, the Employment Service has implemented new approaches to improve the delivery of social services to beneficiaries. In particular, since the beginning of 2018, employment centres have been providing job profiles and a case management approach for the unemployed.

The Committee notes from the report that the rate of long-term unemployed in relation to the general unemployed population during the reference period was as follows: 24% in 2015, 25.3% in 2016, 26.7% in 2017 and 21.6% in 2018.

However, the Committee did not find in the report the specific information previously requested on the measures offered to the long-term unemployed persons, including the young unemployed, or on their participation rate in training. In addition, no information is provided on the impact of the measures implemented on the reduction of long-term unemployment.

The Committee therefore reiterates its request that the next report provide a detailed response to the questions asked and reiterates its previous conclusion.

In its previous conclusions (Conclusions 2012 and 2016), the Committee recalled that equal treatment with respect to access to training and retraining for long-term unemployed persons must be guaranteed to nationals of other States Parties lawfully residing in Ukraine. It therefore asked whether this was the case. In response, the report indicates that enterprises, institutions and organisations have the right to employ foreigners on the territory of Ukraine on the basis of a work permit issued to the employer.

The Committee considers that the report does not provide sufficient information on equal treatment as regards access to training and retraining for non-nationals who are long-term unemployed. It asks again whether nationals of other States Parties lawfully residing in Ukraine who are long term unemployed have access to training and re training on the same basis as nationals. Meanwhile it concludes that it has not been established that equal treatment with respect to access to training and retraining for the long-term unemployed persons is guaranteed to nationals of other State Parties to the Charter.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 10§4 of the Charter on the grounds that 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;
- equal treatment with respect to access to training and retraining for the long-term unemployed persons is guaranteed to nationals of other State Parties to the Charter lawfully residing in Ukraine.



**Article 10 - Right to vocational training**  
*Paragraph 5 - Full use of facilities available*

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

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

The Committee previously concluded that the situation in Ukraine was not in conformity with Article 10§5 of the Charter on the ground that it had not been established that there is a system of financial assistance for vocational education and training.

The Committee notes from the report that according to Article 1 of Law No. 2145 of 5 September 2017 'On Education', the State shall ensure social protection of applicants for education in cases provided for by legislation, and equal access to education for persons belonging to socially vulnerable groups. According to Article 56 of this Law, applicants for vocational education and training, pre-tertiary vocational education and higher education may receive financial support from the State, subsidised loans and guarantees for obtaining loans.

The Committee also notes that several decrees of the Cabinet of Ministers of Ukraine address financial assistance or scholarships for students of vocational schools, students of higher education institutions, State scientific institutions and communal Institutions.

In its previous report, Ukraine stated that according to Article 5 of the Law of Ukraine 'On Vocational and Technical Education' foreigners and stateless persons, residing in Ukraine on legal grounds have the same right to vocational training as citizens of Ukraine. The Committee therefore asked whether this equal treatment also covers financial assistance for vocational education.

In response, the report states that according to the Decree of the Cabinet of Ministers of Ukraine No. 729 of 12 September 2018 "On Higher Education Issues for Certain Categories of Persons" the Government has set quotas for higher education for certain categories of foreigners and stateless persons to be paid from the State budget. The Committee notes that within the limit of 1,000 places, quotas of up to 150 places are set for foreigners and stateless persons residing in Ukraine who come to study in accordance with international treaties binding the country, for persons who have been granted the status of Ukrainian foreigners, for persons who have been granted refugee status and for persons in need of additional or temporary protection. Persons enrolled in an institution of higher education within the established quotas are provided with scholarships and dormitories under the same conditions as those set for citizens of Ukraine, unless otherwise stipulated in international treaties concluded by Ukraine.

The Committee asked in its previous conclusion (Conclusions 2016) that the next report indicate whether time spent on supplementary training at the request of the employer is included in normal working hours. It notes that the information contained in the report does not answer this question. It therefore reiterates its question as to whether the time spent on further training at the request of the employer is included in the normal working hours.

The Committee recalls that the participation of employers' and workers' organisations is required in the supervision process. It therefore requests that the next report indicate whether employers' and workers' organisations are involved in the process of supervising vocational training programmes, in particular for young workers.

*Conclusion*

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

## **Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community**

### *Paragraph 1 - Vocational training for persons with disabilities*

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

The Committee previously concluded that the situation in Ukraine was not in conformity with Article 15§1 of the Charter on the ground that the right of persons with disabilities to mainstream education was not effectively guaranteed (Conclusions 2016).

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 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”). The questions posed for this cycle of supervision focused exclusively on the education of children with disabilities.

The Committee recalls nonetheless that under Article 15 all persons with disabilities, irrespective of age and the nature and origin of their disabilities, are entitled to guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialized bodies, public or private.

Therefore, in its next cycle of supervision, the Committee will examine Article 15§1 issues as they apply to all persons with disabilities (not just as they apply to children).

### **Legal Framework**

According to the report in the Law of Ukraine No. 2145-VIII “On Education” was adopted in 2017. In accordance with Articles 19 and 20 of the Law No. 2145 state authorities and bodies of local self-government must create the conditions to ensure the rights and opportunities of persons with special educational needs to gain education at all its levels based on their individual needs, capabilities and interests. The state shall ensure the training of professionals to work with persons with special educational needs at all levels of education.

Education shall be provided to persons with special educational needs on a par with other persons, through the provision of funding, staffing, infrastructure adjustments and the provision of reasonable adjustment based on the individual needs of such persons identified in individual development programmes.

Persons with physical, mental, intellectual developmental disorders and sensory impairments shall be provided with auxiliary aids necessary for their studies as well as other supports.

A Resolution of the Cabinet of Ministers of Ukraine No. 545 of 12 July 2017 approved the Regulation on the Inclusive Resource Center. The Inclusive Resource Center is an institution created to ensure the right of children with special educational needs to pre-school and general secondary education, including vocational education, through the provision of comprehensive psychological and pedagogical assessments and the provision of psychological and pedagogical, correctional and developmental services.

The Committee recalls from previous conclusions (Conclusions 2016) that legislation prohibits discrimination on grounds of disability in the field of education.

As regards the definition of disability the Committee has previously stressed the importance of moving away from a medical definition of disability towards a social definition. An early example is that endorsed by the World Health Organisation in its International Classification of Functioning (ICF 2001) which focuses on the interaction of health conditions, environmental factors and personal factors.

Article 1 of the UN Convention on the Rights of Persons with Disabilities (CRPD) crystallises this trend by emphasizing that persons with disabilities include those with long term disabilities including physical, mental or intellectual disabilities which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Importantly, this means there is no a priori exclusion from inclusive education based on the type of disability. Indeed, Article 2 of the CRPD which prohibits discrimination “on the basis of disability” may be read to go further by including those who have had a record of disability in the past but who continue to be treated negatively and those who never had a disability but may nevertheless be treated by others as if they had a disability (the so-called “attitudinally disabled”).

The Committee therefore asks the next report to clarify whether the assessment of disability in the fields of education and vocational training takes into account the personal and environmental factors interacting with the individual. These factors are particularly relevant when it comes to an assessment of “reasonable accommodation”

### **Access to education**

The Committee previously noted that only a minority of children with disabilities attended mainstream schools and concluded in the light of the information available, that the right of persons with disabilities to mainstream education was not effectively guaranteed (Conclusions 2016).

According to the report during the reference period, the number of general secondary education institutions (institutions providing compulsory education) with inclusive classes increased 2.5 times (1518 schools in 2016, 2620 schools in 2016 and 788 schools in 2018). The number of pupils with special needs increased almost 3 times (4 180 pupils in 2016, 7,179 pupils in 2017 and 11,839 pupils in 2018). The Committee seeks confirmation that this is the number of children with special needs in inclusive classes.

The report also states that the number of pupils with disabilities in day schools increased from 62, 075 in 2015 to 73,161. The Committee understands that this refers to the total number of children with disabilities in education both in mainstream and special schools. It seeks confirmation that its understanding is correct.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities on the first periodic report of Ukraine (CRPD/C/UKR/CO/1, 2 October 2015 that the UN Committee noted that special segregated schools still remain the predominant means for educating children with disabilities. It regretted that the State party has not introduced universal design and reasonable accommodation principles in its legislative framework on education, and did not have in place such measures as training teachers and other professionals, providing architectural access to school premises and other support mechanisms to develop quality, inclusive education.

The Committee asks for the Governments comment’s on this.

The Committee notes the measures taken during the reference period (see above) to promote inclusive education. However the Committee considers that the information available to it is not sufficient for it to alter its previous assessment. It recalls from its previous conclusion (Conclusions 2016) that out of a total of some 168 280 children reported as having disabilities, only a minority appeared to be attending mainstream schools. It notes from that other sources (UNICEF) that in 2015 70,000 children with disabilities lived in institutions and hence were not attending mainstream schools.

In the light of the information available, the Committee cannot conclude that the right of persons with disabilities to inclusive education is effectively guaranteed.

In order to assess the effective equal access of children with disabilities to education, the Committee needs States parties to provide information, covering the reference period, on:

- the number of children with disabilities, including as compared to the total number of children of school age;
- the number and proportion of children with disabilities educated respectively in:
  - mainstream classes.

- special units within mainstream schools (or with complementary activities in mainstream settings)
  - in special schools
- the number and proportion of children with disabilities out of education;
- the number of children with disabilities who do not complete compulsory school, as compared to the total number of children who do not complete compulsory school;
- the number and proportion of children with disabilities under other types of educational settings, including:
  - home-schooled children
  - attending school on a part time basis
  - in residential care institutions, whether on a temporary or long-term basis
- the drop-out rates of children with disabilities compared to the entire school population.

As regards measures in place to address the issue of costs associated with education the Committee asks whether children with disabilities or SEN are entitled to financial support to cover any additional costs that arise due to their disability.

### ***Measures aimed at promoting inclusion and ensuring quality education***

According to the report in 2018, 516 inclusive-resource centers and 24 regional resource centres were created by local self-government authorities and local executive authorities to support children with disabilities and special educational needs (SEN).

In 2017-2018, 10,000 teachers who work in inclusive classes were provided with additional training. In 2018, 7,633 teacher assistants worked in inclusive classes.

The Committee recalls that Article 15§1 of the Charter makes it an obligation for States Parties to provide quality education for persons with disabilities, together with vocational guidance and training, and that priority should be given to inclusive education in mainstream school. States parties must demonstrate that tangible progress is being made in setting up inclusive and adapted education systems.

The Committee has recognised that “integration” and “inclusion” are two different notions and that integration does not necessarily lead to inclusion (Mental Disability Advocacy Centre (MDAC) v. Belgium Complaint No.109/2014, Decision on the admissibility and merits 16 October 2017, International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium Complaint No. 141/ 2017, Decision on the merits of 20 September 2020). The right to an inclusive education relates to the child’s right to participate meaningfully in mainstream education.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities, in its General Comment No. 4, (2016), on the Right to inclusive education has stated that “inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion”.

The Committee also recalls that inclusive education implies the provision of support and reasonable accommodations which persons with disabilities are entitled to expect in order to access schools effectively. Such reasonable accommodations relate to an individual and help to correct factual inequalities (MDAC v. Belgium, Complaint No.109/2014, Decision on admissibility and merits 16 October 2017 para 72). Appropriate reasonable accommodations

may include: adaptations to the class and its location, provision of different forms of communication and educational material, provision of human or assistive technology in learning or assessment situations as well as non-material accommodations, such as allowing a student more time, reducing levels of background noise, sensitivity to sensory overload. Alternative evaluation methods or replacing an element of the curriculum by an alternative element.

The Committee asks the States parties to provide information on how reasonable accommodation is implemented in mainstream education, whether and to what degree there is an individualized assessment of 'reasonable accommodation' to ensure it is adequately tailored to an individual's circumstances and learning needs, and to indicate what financial support is available, if any, to the schools or to the children concerned to cover additional costs that arise in relation to ensuring reasonable accommodations and access to inclusive education.

It asks in particular what measures are taken to ensure that teachers and assistants dealing with pupils and students with disabilities are adequately qualified.

It furthermore asks whether the qualifications that learners with disabilities can achieve are equivalent to those of other learners (regardless of whether learners with disabilities are in mainstream or special education or of whether special arrangements were made for them during the school-leaving examination). The Committee also asks whether such qualifications allow persons with disabilities to go on to higher education (including vocational training) or to enter the open labour market. The Committee also asks the state to provide information on the percentage of disabled learners who go on to higher education or training. The Committee also asks what percentage of learners with disabilities enter the open labour market.

### ***Remedies***

The Committee previously asked that the next report include information on the measures taken to ensure effective remedies against alleged discrimination in education and training on grounds of disability (including examples of relevant case law and its follow up) (Conclusions 2016). The report states that no decisions regarding discrimination in education or training on grounds of disability were registered during the reference period.

The Committee asks the next report to provide information on the remedies available in the case of discrimination on the ground of disability with respect to education (including access to education, including the provision of adequate assistance or reasonable accommodation) and the relevant case-law.

### ***Conclusion***

The Committee concludes that the situation in Ukraine is not in conformity with Article 15§1 of the Charter on the ground that the right of children with disabilities to mainstream education is not effectively guaranteed.

## **Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community**

### *Paragraph 2 - Employment of persons with disabilities*

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

The Committee notes that the present report was asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”) as well as conclusions of non-conformity and deferrals.

The Committee previously concluded that the situation was not in conformity with Article 15§2 of the Charter on the grounds that it had not been established that the reasonable accommodation obligation was effectively respected and that employment in the open labour market was not effectively guaranteed in respect of persons with disabilities (Conclusions 2016).

### **Legal framework**

The Committee refers to its previous conclusions for a description of the relevant legal framework with regard to disability and non-discrimination (Conclusions 2016).

The Committee previously asked that the next report provide further details of the legislation in relation to the employment of persons with disabilities. No information is provided therefore the Committee reiterates its request; it asks that the next report provide updated information on the legislation governing the employment of persons with disabilities. If this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

### **Access of persons with disabilities to employment**

The Committee previously concluded that the situation in Ukraine was not in conformity with Article 15§2 of the Charter on the grounds that employment on the open labour market was not effectively guaranteed in respect of persons with disabilities (Conclusions 2016).

The report states that according to State Employment Service, the number of persons with disabilities who had not yet reached retirement age in 2015 was 11912 persons; in 2016 – 11450 persons and in 2017 – 11466 persons. No further information is provided, for example the number of persons with disabilities in employment either on the open market or in sheltered accommodation, the number who are unemployed etc. The Committee recalls that in order to assess the situation it needs to be systematically provided with figures relating to the reference period, on the total number of persons with disabilities of working age, specifying how many of them are active and in work (in the public and private sector, and in the open labour market or in sheltered employment) and how many are unemployed. It also asks for information on the rate of progress of persons in sheltered employment into the open market.

In the absence of this information the Committee concludes that the situation is not in conformity with the Charter as it has not been established that the right of persons with disabilities to employment is effectively guaranteed.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities (CRPD/C/UKR/CO/1, September 2015) that the UN Committee was concerned that the majority of persons with disabilities remain unemployed. Furthermore, the Committee was concerned about the lack of employment opportunities for persons with intellectual and psychosocial disabilities and the absence of policies or programmes for supported employment in the open labour market.

The Committee asks for the Government’s comments on this.

### ***Measures to promote and support the employment of persons with disabilities***

The Committee previously concluded that the situation in Ukraine was not in conformity with Article 15§2 of the Charter on the grounds that it had not been established that the reasonable accommodation obligation is effectively respected (Conclusions 2016).

The report states that the Law of Ukraine “On the Fundamentals of Social Security for Persons with Disabilities in Ukraine” provides that enterprises, institutions, and organizations shall create special workplaces if necessary at the expenses of the Social Security Fund for Persons with Disabilities or at their own expenses, through adapting workplaces and providing technical equipment and reasonable accommodation, for persons with disabilities.

The Committee notes that no further information is provided; for example, on the number of persons with disabilities who benefitted from adapted workplaces or technical equipment through the Social Security Fund, the amount of expenditure, the number of requests etc. In the absence of this information the Committee reiterates its previous conclusion of non-conformity.

The report provides no information on any other measures in place to encourage or support the employment of persons with disabilities. The Committee refers to its previous conclusions (Conclusions 2016) in which took note of certain measures such as reserved posts, and vocational rehabilitation. The Committee asks the next report to provide updated information in this respect as well as information on the number of persons with disabilities benefitting from such measures.

### ***Remedies***

The Committee previously asked that the next report include information on the measures taken to ensure effective remedies against alleged discrimination in employment on grounds of disability (including examples of relevant case law and its follow up) (Conclusions 2016). According to the report no decisions regarding to discrimination in employment were registered in the reporting period.

The Committee asks the next report to provide updated information on remedies as well as examples of relevant case law. It recalls that legislation must confer an effective remedy on those who have been discriminated against on grounds of disability and denied reasonable accommodation

### ***Conclusion***

The Committee concludes that the situation in Ukraine is not in conformity with Article 15§2 of the Charter on the grounds that:

- the employment of persons with disabilities is not effectively guaranteed;
- it has not been established that the obligation to provide reasonable accommodation is effectively guaranteed.

## **Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community**

### *Paragraph 3 - Integration and participation of persons with disabilities in the life of the community*

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 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”) as well as previous conclusions of non-conformity or deferrals.

The Committee previously concluded that the situation of Ukraine was not in conformity with Article 15§3 of the Charter on the grounds that it had not been established that the anti-discrimination legislation covers the fields of housing, transport and communications (Conclusions 2016).

### ***Relevant legal framework and remedies***

The Committee considers that Article 15 reflects and advances the change in disability policy that has occurred over the last two decades, away from welfare and segregation and towards inclusion, participation and agency. In light of this, the Committee emphasises the importance of the non-discrimination norm in the disability context and finds that this forms an integral part of Article 15§3 of the Revised Charter. The Committee in this respect also refers to Article E on non-discrimination.

In response to the previous conclusion of non-conformity the report states that the Law No. 5207-VI “On the Principles of Prevention and Combating Discrimination in Ukraine” applies to housing, access to goods and services, health care and other spheres of public life. The Committee seeks confirmation that it also applies to telecommunications. It asks the next report to provide updated information on remedies for breaches of the legislation with examples of relevant case law. In the meantime, the Committee reserves its position on this issue.

### ***Consultation***

The Committee recalls that Article 15§3 of the Charter requires inter alia that persons with disabilities should have a voice in the design, implementation and review of coordinated disability policies aimed at achieving the goals of social integration and full participation of persons with disabilities. It asks the next report to provide information on consultation with people with disabilities, as well as other measures to ensure their participation in the design, implementation and review of disability policies.

### ***Measures to ensure the right of persons with disabilities to live independently in the community***

#### ***Financial and personal assistance***

No information was provided in the report on personal assistance, in home, or other community support services. The Committee asks the next report to provide information on the services available to enable persons with disabilities to live independently in the community.

In particular the Committee asks the next report to provide information on any personal assistance schemes; the legal framework, its implementation, the number of beneficiaries, and the budget allocated. It also asks whether funding for personal assistance is granted based on an individual needs’ assessment and whether persons with disabilities have the right to choose services and service providers according to their individual requirements and



personal preferences. Further the Committee asks what measures have been taken to ensure that there are sufficient numbers of qualified staff available to provide personal assistance.

The Committee asks for updated information on different allowances and benefits available to persons with disabilities in order to enable them to live independently in the community.

In the meantime, the Committee reserves its position on this issue.

The prevalence of poverty amongst people with disabilities in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of people with disabilities to enjoy independence, social integration and participation in the life of the community.

The obligation of states to take measures to promote persons with disabilities full social integration and participation in the life of the community is strongly linked to measures directed towards the amelioration and eradication of poverty amongst people with disabilities. Therefore, the Committee will take poverty levels experienced by persons with disabilities into account when considering the state's obligations under Article 15§3 of the Charter. The Committee asks the next report to provide information on the rates of poverty amongst persons with disabilities as well as information on the measures adopted to reduce such poverty, including non-monetary measures.

Information should also be provided on measures focused on combatting discrimination against, and promoting equal opportunities for, people with disabilities from particularly vulnerable groups such as ethnic minorities, Roma, asylum-seekers and migrants.

States should also make clear the extent to which the participation of people with disabilities is ensured in work directed towards combatting poverty amongst persons with disabilities.

### ***Technical aids***

The Committee asks the next report to provide updated information on the availability of technical aids.

### ***Housing***

No information is provided on the accessibility of housing for persons with disabilities.

The Committee asks the next report to provide information on the progress made to phase out large institutions (including information on measurable targets clear timetables and strategies to monitor progress) and whether there is a moratorium on any new placements in large residential state institutions. It asks what proportion of private and public housing is accessible. It asks for information about the existence accessible sheltered housing and whether financial assistance is provided to adapt existing housing.

The Committee asks how many persons with disabilities live independently with support and how many live institutions and small group homes.

In the meantime, the Committee reserves its position on this issue.

### ***Mobility and transport***

The Committee previously asked for information on the progress made in implementing the 2009-2012 'Barrier-Free Ukraine' action plan, approved by Resolution No. 784 of 29 July 2009 of the Cabinet of Ministers.

According to the report, the Order of the Ministry of Regional Development, Building and Housing and Communal Services of Ukraine No. 327 of 30 November 2018 approved the State building standards (hereinafter referred to as "DBN") on the accessibility of buildings and structures, which came into force on 1 April 2019.

The requirements are mandatory for legal entities and natural persons-entrepreneurs. These regulations shall extend to the design and building of new constructions as well as the renovation of existing dwellings and public buildings.

The Committee asks the next report to provide information on the proportion of buildings that are accessible to persons with disabilities as well as information on sanctions that are imposed in the event of a failure to respect the rules regarding the accessibility of buildings (including the nature of sanctions and the number imposed). It also asks for information on monitoring mechanisms to ensure the effective implementation of the rules.

The Committee previously asked to be kept informed of the progress made in ensuring the accessibility of public transport (Conclusions 2016).

According to the report, 61 trolleys have been purchased to support the mobility of persons with disabilities in railway stations in Ukraine, and 138 trolleys have been purchased for passenger carriages. During 2015, 12 railway stations were equipped with lifting devices for lifting / lowering persons with wheelchairs to and from the wagon. In previous years, 6 railway stations were equipped with these lifting devices.

The report states that all airports have certain services to facilitate the air travel of persons with disabilities. One of the terminals of the largest airport is built in accordance with all the principles of Universal Design.

As regards mobility more generally, the report provides details of measures taken to facilitate mobility such as adapted pedestrian crossings and designated parking spaces.

The Committee asks the next report to provide updated information on measures taken to ensure the accessibility of the public transport system as well as any other measures in place to facilitate mobility for persons with disabilities.

### ***Communication***

The Committee asks the next report to provide information on the measures taken to ensure sufficient accessibility to all public and private information and communication services, including television and the Internet, for all persons with disabilities.

### ***Culture and leisure***

The Committee asks the next report to provide updated information on measures taken to ensure access of persons with disabilities to culture and leisure activities including sporting activities, especially for those in rural areas.

### ***Conclusion***

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

**Article 18 - Right to engage in a gainful occupation in the territory of other States  
Parties**

*Paragraph 1 - Applying existing regulations in a spirit of liberality*

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 2 - Simplifying existing formalities and reducing dues and taxes*

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

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

### ***Administrative formalities and time frames for obtaining the documents needed for engaging in a professional occupation***

In its previous conclusion (Conclusions 2016), the Committee noted that it was not possible to obtain residence and work permits through a single procedure. It therefore concluded that the situation was not in conformity with Article 18§2 of the Charter on this point and asked for clarification as to whether obtaining a residence permit was a precondition for being granted a work permit. It also asked for confirmation as to whether there were two separate procedures to follow for obtaining residence and work permits.

In reply, the report states that foreign nationals wishing to work in Ukraine must apply for temporary residence permits and for work permits. Applications for work permits must be submitted by employers, while those for temporary residence permits must be submitted by foreign nationals who have arrived in Ukraine for employment on the basis of work permits. According to the report, temporary residence permits are issued for the duration indicated on the work permits. The report underlines that obtaining work permits and temporary residence permits are two separate procedures.

The Committee reiterates that conformity with Article 18§2 presupposes the possibility of completing the formalities concerning the issuance of work and residence permits in the country of destination as well as in the country of origin and obtaining residence and work permits at the same time and through a single application. It also implies that waiting times for the requisite documents (residence/work permits) must be reasonable. As work and residence permits are still issued under two separate procedures, the Committee holds that the formalities have not been simplified and that the situation is therefore still not in conformity with Article 18§2 of the Charter on the ground that there is a dual procedure for obtaining work and residence permits.

With regard to the time taken to issue work permits, the Committee noted previously that under Resolution No. 42 of 28 January 2015, decisions to issue work permits to foreigners were taken by the State Employment Service within seven working days from the date of registration of the applications. The Committee requests that the next report indicate the average timeframes for obtaining residence permits.

The Committee also requests that the next report indicate what formalities apply in respect of self-employed workers and what formalities apply to the renewal of work permits.

### ***Chancery dues and other charges***

In its previous conclusion (Conclusions 2016), the Committee concluded that it had not been established that the situation was in conformity with Article 18§2 in terms of reduced chancery fees and other charges payable by foreign workers or their employers.

The report indicates the various service fees. However, the Committee notes that the nature and purpose of the fees are not clear from the report.

The Committee again asks for clear, precise and up-to-date information concerning the cost of obtaining residence permits and work permits. It also again requests that the next report provide up-to-date information on the regulatory criteria governing the level of these fees – whether, for instance, it corresponds to the actual cost of processing residence permit

applications – and whether there is provision for measures to reduce the costs for workers and employers. In the meantime, in the light of the above, the Committee maintains its previous finding of non-conformity on this point.

*Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 18§2 of the Charter on the grounds that:

- there is a dual procedure for obtaining work and residence permits;
- it has not been established that measures have been taken to reduce chancery fees and other charges payable by foreign workers or their employers.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 3 - Liberalising regulations*

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

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

### ***Access to the national labour market/Exercise of the right of employment***

In its previous conclusion (Conclusions 2016), the Committee asked on which grounds a residence and work permit can be refused to a national of other States Parties wishing to work as self-employed or employees. The Committee notes, from the statistics provided in the report, that the number of work permit applications submitted by foreign nationals (not only foreign nationals of States Parties to the Charter) significantly increased (from 3,656 in 2016 to 9,130 in 2018), while the permit refusal rate fell during the reference period (from 29% in 2015 to 8.1% in 2018). The Committee reiterates its request that the next report provide information on the reasons for refusal of first-time and renewal applications for work permits by nationals of States Parties to the Charter.

The report further states that, under the Tax Code, state registration of a foreigner as an individual entrepreneur means that he or she is recognised as a resident of Ukraine. The Committee asks that the next report clearly indicate under what conditions a foreign national from a State Party to the Charter can gain access to the Ukrainian labour market as a self-employed worker. 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 18§3 of the Charter in this respect.

In its previous conclusion, the Committee also asked for information on measures taken to liberalise regulations governing the recognition of foreign certifications, professional qualifications and diplomas, necessary to engage in a gainful occupation as employees or self-employed workers. In response, the report explains that the recognition of degrees awarded by foreign higher education institutions and documents concerning secondary and vocational education is governed by Order No. 504 of the Ministry of Education and Science of 5 May 2015. According to the report, the procedure for recognition of foreign education documents is intended to secure for nationals of other countries the right to further training and/or professional activity in Ukraine. This procedure includes: authentication of education documents, confirmation of the status of an educational institution and/or educational programme, appraisal of qualifications or period of study, and the establishment of equivalence. Following the recognition procedure, the holder of the foreign education documents receives a certificate issued on the basis of a decision of the competent authority (a higher education institution or the Ministry of Education and Science). The Committee notes from the report that the number of procedures for the recognition of foreign education documents and certificates issued by the Ministry significantly increased during the reference period (2,769 and 2,585 respectively in 2015 and 14,129 and 10,880 in 2018).

The Committee points out that a person who has been legally resident for a given length of time on the territory of another Party should be able to enjoy the same rights as nationals of that country. The restrictions initially imposed with regard to access to employment (which can be accepted only if they are not excessive) must therefore be gradually lifted. It therefore asks for information on the conditions which must be met in order to have unlimited access to the national labour market.

### ***Consequences of the loss of employment***

In its previous conclusion (Conclusion 2016), the Committee concluded that the situation was not in conformity with Article 18§3 of the Charter on the ground that loss of employment led to the cancellation of the residence permit.

In this regard, the report again states that the work permit will be cancelled in the event of termination of the contract of employment. Since, according to the report, a work permit is a precondition for issuing a residence permit, the Committee notes that the situation is still not in conformity with Article 18§3 of the Charter in this respect.

The Committee points out that both the granting and the cancellation of work and temporary residence permits may well be interlinked, in as much as they pursue the same goal, namely to enable a foreigner to engage in a gainful occupation. However, if a work permit is revoked before the date of expiry, either because the work contract is prematurely terminated, or because the worker no longer meets the conditions under which the work permit was granted, it would be contrary to the Charter to automatically deprive any such worker of the possibility to continue to reside in the state concerned and to seek another job and a new work permit.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 18§3 of the Charter on the ground that loss of employment leads to the cancellation of the residence permit.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 4 - Right of nationals to leave the country*

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

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

It points out that it deferred its previous conclusions (Conclusions 2016 and 2012) pending receipt of the information requested on the legal framework guaranteeing the right of nationals to leave the country and on what restrictions applied in this respect.

In its previous conclusions (Conclusions 2012 and 2016), the Committee noted that anyone residing lawfully in Ukraine was guaranteed freedom of movement, free choice of place of residence and the right to leave the country. Ukrainian nationals had the right to engage in work abroad provided that this activity was not incompatible with existing laws in Ukraine. The Committee asked for more details regarding this law.

In reply, the report states that Law No. 3855 of 21 January 1994 on State Secrets provides that the right of a Ukrainian citizen to reside permanently in a foreign state may be temporarily restricted if he or she has been given access to state secrets within the meaning of the relevant law and was fully aware of this. According to the report, this restriction applies until declassification of the relevant information, although not for a period of more than five years after the termination of the activities connected with state secrets. The Committee asks whether an appeal may be lodged against such restrictions.

The Committee points out that under Article 18§4, States undertake not to restrict the right of their nationals to leave the country to engage in gainful employment in other Parties to the Charter. The only permitted restrictions are those which are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals. The Committee considers that the blanket restriction on leaving the country provided for in the Law on State Secrets goes beyond the permitted restrictions. The Committee therefore considers that the situation is not in conformity with Article 18§4 of the Charter.

The Committee asks how many persons have been affected by the prohibition on leaving the country.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 18§4 of the Charter on the ground that there are restrictions on the right of Ukrainian citizens to leave the national territory.



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

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

The Committee notes that this report responds to the targeted questions on this provision, which relate specifically to equal pay (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”). The Committee will therefore focus specifically on this aspect. It will also assess the replies to all findings of non-conformity or deferral in its previous conclusion.

### ***On the obligations to guarantee the right to equal pay for equal work or work of equal value***

#### ***Legal framework***

The report points to the Decree adopted by the Cabinet of Ministers of Ukraine No. 273 of 11 April 2018 about “Approval of the State Social Program on Providing Equal Rights and Opportunities for Women and Men up to 2021”. This decree contains the program adopted to implement the right to equal pay. There is no other reference to specific legislation or other sources.

The Committee notes that in its previous conclusions (Conclusions 2014 (Article 4§3), Conclusions 2016 (Article 20) and Conclusions 2018 (Article 4§3), the Committee took note of Section 17 of the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” which provides that the employer shall, in particular, ensure equal pay for women and men with the same qualification and working conditions. The Committee asked in 2018 if the statutory provisions prohibit both direct and indirect discrimination, but the report does not contain any information in this respect.

The Committee had also previously asked for clarifications on the legislation on equal pay for work of equal value (Conclusions 2012 on Article 20) as it noted the concerns expressed by ILO-CEACR that the principle provided by Section 17 of the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” is “more restrictive than the principle of equal remuneration for work of equal value” and “jobs performed by a man and a woman may involve different skills and working conditions, but may nevertheless be jobs which are of equal value and thus would have to be remunerated at an equal level”. The report refers to the Law on minimum wage of Ukraine on the State budget. It also states that, according to statistics, men receive higher wages than women (the difference ratio of women and men was 77.7% in 2018).

The Committee had also asked whether there are exceptions to the prohibition on discrimination on grounds of sex in respect of certain occupations. According to the report Order of the Ministry of Health of Ukraine No.1254 of 13 October 2017 repealed former Order of 1993 laying down detailed a list of heavy work and works with harmful and dangerous working conditions for which the use of women’s work was prohibited, therefore improving the situation.

The Committee further asked in its former conclusions (Conclusions 2016, Article 20), whether there has been any progress, mainly as regards what is the definition of equal work or work of equal value. It also asks what is understood by ‘the same qualification and working conditions’, what methods are used to evaluate work and whether such methods are gender neutral and exclude the discriminatory undervaluation of jobs traditionally performed by women.

The Committee therefore reiterates its questions for the next cycle and reserves its position on this point. It underlines that if the necessary information is not provided in the next report there will be nothing to show that the situation in Ukraine is in conformity with the Charter on this point.

### ***Effective remedies***

The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely. Moreover, any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter. The burden of proof must be shifted meaning that where a person believes she or he has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus should be on the defendant to prove that there has been no infringement of the principle of non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol). Employees who try to enforce their right to equality must be legally protected against any form of reprisals from their employers, including not only dismissal, but also downgrading, changes to working conditions and so on.

As regards the shift in the burden of proof the report highlights that Article 81 of the Code of Civil Procedure establishes special procedure for proof in discrimination cases. According to part two of this Article the plaintiff is required to provide factual evidence that the discrimination took place. If such evidence is brought, the burden of proof regarding the absence of discrimination lies with the defendant. Thus, if the plaintiff presents factual evidence of discrimination in employment, the presumption of discrimination is established, and the defendant is obliged to prove otherwise, that is, the absence of facts of discrimination on his/her part. The Committee refers to its Conclusion under Article 20 (Conclusions 2016) where it took note of the same provision according to which the claimant has to prove that the discrimination took place. The Committee considers that there is no change to this situation and therefore it concludes that the situation in Ukraine is not in conformity with Article 20 of the Charter on the ground that legislation does not provide for a shift in the burden of proof in gender discrimination cases.

The report contains no reference to the rules applicable to compensations in case of pay discrimination or on ceilings to compensation. The Committee had previously requested information on whether the law provided for the right to the compensation for pecuniary and non-pecuniary damage and if there was any limit on such compensation. The Committee reiterates the question and should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation is in conformity with Article 20 of the Charter in this respect.

The report finally states that there have been no cases in the reporting period on discrimination in employment. The Committee had previously considered that the absence of cases of gender discrimination in employment was likely to indicate a lack of awareness of rights, lack of confidence in or absence of practical access to procedures or fear of reprisals. It had considered the situation not to be in conformity with the Charter on the ground that it has not been established that the right to equal treatment in employment without discrimination on grounds of sex is guaranteed in practice (Conclusions, 2016, Article 20).

The Committee reiterates this conclusion and requests that the next report include information about existing national case law relating to breaches of the right to equal pay, as well as on sanctions imposed.

### ***Pay transparency and job comparisons***

The Committee recalls that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities. States should take measures in accordance with national conditions and traditions with a view to ensuring

adequate pay transparency in practice, including measures such as those highlighted in the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender. The Committee regards such measures as indicators of compliance with the Charter in this respect. The Committee also recalls that, in order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, as well as educational and training requirements must be taken into account. States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law. In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination.

As regards *pay transparency* in the labour market and notably the possibility for workers to receive information on pay levels of other workers and available information on pay, the report refers to the fact that the conditions of remuneration of employees of institutions and organisations financed by the State budget shall be determined by the Cabinet of Ministers of Ukraine, except in some cases provided by the Law “On Remuneration”. The Cabinet of Ministers of Ukraine shall approve the salary schemes (wage rates), which are divided according to the complexity of the work, the organisational and legal level of the position, the functions performed by the unit in which the employee works and other working conditions. The working conditions of employees of institutions and organizations financed by the State budget shall be established irrespective of origin, social and property status, race, nationality or sex. In accordance with the Law of Ukraine “On remuneration” enterprises independently determine the conditions and amounts of remuneration of their employees in a collective agreement which has to comply with rights provided by the legislation, general and sectoral (territorial) collective agreements. The report does not contain any further information on whether the employees may obtain specific information on wages in the private sector, therefore the Committee asks the next report provide such information, and also whether employers have equality plans within their enterprises.

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter and does so therefore every two years (under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”). Articles 20 and 4§3 of the Charter require the possibility to make *job comparisons across companies* (see in this respect Complaints Nos. 124 to 138, University Women Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, 5-6 December 2019). In particular, the Committee asks whether it is possible to make pay comparisons across companies in equal pay litigation cases.

The Committee had previously asked this question in former conclusions (Article 4§3, Conclusions 2014, Article 20, Conclusions 2016). There is no information in the report, particularly on whether the scope of job comparisons can extend outside the company directly concerned, if remuneration is set centrally by a group of companies owned by the same person or controlled by a holding or a conglomerate. The Committee asks again for information in the next report on this point.

### **Enforcement**

There is no information on this issue on the report.

The Committee asks that the next report provide further information about how equal pay is ensured, notably, about the inspections conducted by the Labour Inspectorate in this respect. Pending the information requested, it defers its conclusion.

### ***Obligations to promote the right to equal pay***

The Committee recalls that in order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases are crucial. The collection of such data increases pay transparency at aggregate levels and ultimately uncovers the cases of unequal pay and therefore the gender pay gap. The gender pay gap is one of the most widely accepted indicators of the differences in pay that persist for men and women doing jobs that are either equal or of equal value. In addition, to the overall pay gap (unadjusted and adjusted), the Committee will also, where appropriate, have regard to more specific data on the gender pay gap by sectors, by occupations, by age, by educational level, etc. The Committee further considers that States are under an obligation to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it (see in this respect Complaints 124 to 138, *UWE, op. cit.*).

The report refers to the State Social Program of 2018 on Providing Equal Rights and Opportunities for Women and Men up to 2021. The program provides for improvement of the mechanism of exercising the right to protection against discrimination and taking appropriate measures on its results through collection of data on the number of claims filed to the judiciary by category and the type of sex discrimination complaint; developing a mechanism (roadmap) to assist victims of gender discrimination; carrying out actions at national and regional level to ensure equal rights and opportunities for women and men in the workplace; conducting awareness campaigns aimed at preventing and combating gender-based discrimination and violence, etc. There is no information on how these measures have been implemented in practice.

Concerning the gender pay gap, the report states that according to a comparison between women's and men's average pay for the entire labour market in 2018, women had 77,7% of men's pay, i.e. a pay gap of 22,3%. In 2018, the pay gap decreased 0,6% compared to 2017. In the period 2005-2018, the pay gap has decreased, according to the report, 2,8%.

The Committee notes that the Government has adopted a specific program on equal rights and opportunities. However, the gender pay gap is, according to the report, quite high (of 22,3%) and has not decreased substantially in the years covered by the current cycle. Therefore, the situation in this respect is not in conformity with Article 20(c) of the Charter.

#### ***Conclusion***

The Committee concludes that the situation in Ukraine is not in conformity with Article 20(c) of the Charter on the grounds that:

- there is no shift in the burden of proof in gender discrimination cases;
- the right to equal pay is not guaranteed in practice;
- there is sufficient measurable progress in respect of the obligation to promote the right to equal pay.

## **Article 24 - Right to protection in case of dismissal**

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

### **Scope**

The Committee notes that there have been no changes to the situation which it has previously considered to be in conformity with the Charter. The Committee asks for updated information concerning the categories of persons that are excluded from protection against dismissal (i.e. workers on probationary period).

The Committee addressed specific targeted questions to the States (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”) concerning strategies and measures that exist or are being introduced to ensure dismissal protection for workers (labour providers), such as “false self-employed workers” in the “gig economy” or “platform” economy. The Committee notes that the report does not provide information in this respect. It asks what safeguards exist to ensure that employers hiring workers in the platform or gig economy do not circumvent labour law as regards protection against dismissal on the grounds that a person performing work for them is self-employed, when in reality, after examination of the conditions under which such work is provided it is possible to identify certain indicators of the existence of an employment relationship.

### ***Obligation to provide valid reasons for termination of employment***

The Committee notes that there have been no changes to the situation which it has previously considered to be in conformity with the Charter.

### ***Prohibited dismissals***

The Committee recalls that, under Article 24 of the Charter, dismissal on the ground of the temporary absence from work due to illness or injury must be prohibited. A time limit can be placed on protection against dismissal in such cases. Absence can constitute a valid reason for dismissal if it severely disrupts the smooth running of the undertaking and a genuine, permanent replacement must be provided for the absent employee. The Committee asks what rules apply in case of termination of employment on the ground of long-term or permanent disability, such as the procedure for establishing long-term disability and the level of compensation paid in such cases.

### ***Remedies and sanctions***

In its previous conclusion the Committee asked whether in proceedings relating to dismissal, the burden of proof was subject to an appropriate adjustment between employee and employer. It notes in this respect from the report that in cases involving dismissal, compulsory dismissal, disciplinary action, transfer, certification, change of working conditions, refusal of appointment to a higher position etc, the defendant shall be responsible for proving the lawfulness of undertaken decisions and actions.

### ***Conclusion***

The Committee concludes that the situation in Ukraine is in conformity with Article 24 of the Charter.

