



March 2020

## **EUROPEAN SOCIAL CHARTER**

European Committee of Social Rights

Conclusions 2019

**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".

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.<sup>1</sup>

The European Social Charter (revised) was ratified by Ukraine on 21 December 2006. The time limit for submitting the 11th report on the application of this treaty to the Council of Europe was 31 October 2018 and Ukraine submitted it on 6 June 2019.

This report concerned the accepted provisions of the following articles belonging to the thematic group "Children, families and migrants":

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

Ukraine has accepted all provisions from the above-mentioned group except Articles 19 and 31§3.

The reference period was 1 January 2014 to 31 December 2017.

The present chapter on Ukraine concerns 23 situations and contains:

- 7 conclusions of conformity: Articles 7§7, 7§8, 7§9, 8§2, 8§3, 27§1 and 27§3;
- 11 conclusions of non-conformity: Articles 7§1, 7§2, 7§3, 7§10, 8§1, 8§5, 16, 17§1, 27§2, 31§1 and 31§2.

In respect of the other 5 situations concerning Articles 7§4, 7§5, 7§6, 8§4 and 17§2, the Committee needs further information in order to assess the situation.

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Ukraine under the Revised Charter. The Government consequently has an obligation to provide this information in the next report from Ukraine on the articles in question.

The next report from Ukraine deals with the accepted provisions of the following articles belonging to the thematic group "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 of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

The deadline for the report was 31 December 2019.

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<sup>1</sup> The conclusions as well as state reports can be consulted on the Council of Europe's Internet site ([www.coe.int/socialcharter](http://www.coe.int/socialcharter)).

**Article 7 - Right of children and young persons to protection**  
*Paragraph 1 - Prohibition of employment under the age of 15*

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

The Committee previously noted that according to Article 188 of the Labour Code, the minimum age for employment is 16 years. As an exception, under Section 188 (2) of the Labour Code, children of 15 years of age may be admitted to employment with the consent of one of the parents or a guardian (Conclusions 2011).

The Committee previously noted that children of 14 years of age in secondary, vocational and specialised secondary schools are allowed to perform light work with the consent of one parent or a guardian (Conclusions 2011 and 2015). The Committee concluded that the situation was not in conformity with Article 7§1 of the Charter on the ground that the definition of light work was not sufficiently precise (Conclusions 2011 and 2015).

The current report indicates that Article 299§5 “Requirements for using child labour” of the draft Labour Code of Ukraine provides for the prohibition of use of child labour in types of work where they may be subjected to threats of physical, psychological or sexual violence, or where performance of work may harm their health and lead to negative consequences in moral development. According to the report, the list of types of work for which the use of child labour is prohibited shall be approved by the central executive body.

The Committee notes from the report that the Labour Code has not yet been adopted and asks the Government to provide information on any developments in this regard. In the meantime, noting that the situation has not changed during the reference period, the Committee reiterates its conclusion of non-conformity on this point.

In its previous conclusion (Conclusions 2015), the Committee asked the next report to indicate under which conditions children may be admitted to employment in the cinema, theatre and concerts and how the Labour Inspectorate monitors the involvement of children under 15 years of age in artistic performances. The report indicates that the current labour law does not provide the separate definition of children, including those under the age of 15, as subjects of labour relations in the cinema, theatre and concerts. The Committee asks the next report to indicate the relevant legislation applicable to such working children and points out that should the next report not provide the relevant information, there would be nothing to establish that the situation is in conformity with the Charter.

As regards supervision, the Committee previously asked (Conclusions 2015) the next report to provide information on the number and nature of violations detected as well as of sanctions imposed for breach of the regulations regarding the prohibition of employment under the age of 15.

The current report indicates, among other data, the number of inspections conducted over the reference period, the number of working children, the number of issued orders and the amount of registered financial sanctions. In particular, it points out that in 2017, 90 enterprises were inspected, 17 children were found working, 90 orders were issued, and financial sanctions for 668 802 UAH (EUR 19.699,1) were imposed.

The Committee asks the next report to provide up-to-date information on the activities and findings of the State Labour Service with regard to the prohibition of the employment of children under 15 years of age, including the number of inspections conducted, the number of violations found and the sanctions imposed in practice.

In its previous conclusion (Conclusions 2015), the Committee asked the next report to indicate the measures taken by the authorities (e.g. Labour Inspectorate) to improve the supervision and the mechanisms of detecting cases of children under the age of 15 working in the informal economy, outside the scope of an employment contract.

In this respect, the current report indicates that the State Labour Service of Ukraine (SLS) observes how the executive bodies of city councils and territorial communities monitor the compliance with labour and employment law, including child labour law. The report further points out that information events for children and employers are held to prevent violation of child labour law.

The Committee notes from another source (Observation (CEACR) – adopted 2016, published 106<sup>th</sup> ILC session (2017), Minimum Age Convention, 1973 (No. 138) – Ukraine) that “the ILO project on “the strengthening of the effectiveness of the labour inspection system and social dialogue mechanisms” was initiated in September 2016. This project aims to create conditions that enable the SLS to develop and implement effective measures to comply with international labour standards, including in the areas of occupational safety and health labour inspection in the informal economy”. The Committee asks the next report to provide information on the measures taken within the framework of the project in question to strengthen the labour inspection services in the informal economy.

The Committee notes from the results of the National Child Labour Survey 2014-2015 – published in 2017 and conducted by the ILO, the Ukrainian Centre for Social Reforms and the State Statistics Service of Ukraine – that 607,400 (11.6%) of the total number of children aged 5-17 years perform work in Ukraine. Of these, 264,100 children were involved in child labour (43.5% of the working children and 5.1% of the total number of children aged 5-17 years). Moreover, 76,400 working children (28% of the total number of children in child labour, and 1.5% of the total number of children aged 5-17 years) were performing hazardous work.

According to the survey, out of the total number of working children aged from 5 to 17 years (607,400), 223,700 are aged from 5 to 14 years. In particular, the survey indicates that “among children aged 5–11 years who were economically active, the share of the agricultural economy constituted 98.5%, as they were involved in economic activity almost only because of the need to work in a personal farm”.

The Committee recalls that the prohibition of the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households (Conclusions I (1969), Statement of Interpretation on Article 7§1). It further recalls that the prohibition also extends to all forms of economic activity, irrespective of the status of the worker (employee, self-employed, unpaid family helper or other).

Given the number of children aged 5 to 17 years who work, in particular, the number of children aged 5 to 14 years who are involved in child labour or hazardous work, according to information at the disposal of the Committee, it concludes that the situation in Ukraine is not in conformity with Article 7§1 of the Charter on the ground that the prohibition of employment under the age of 15 is not guaranteed in practice.

The Committee refers to its General question on Article 7§1 in the General Introduction.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 7§1 of the Charter on the grounds that:

- the definition of light work is not sufficiently precise;
- the prohibition of employment under the age of 15 is not guaranteed in practice.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 2 - Prohibition of employment under the age of 18 for dangerous or unhealthy activities*

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

The Committee previously noted (Conclusions 2011) that under Article 190 of the Labour Code, persons under 18 years of age may not be employed in hard work, work with unhealthy or hazardous working conditions, as well as in underground work.

The Committee recalls that in application of Article 7§2 there must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work (Conclusions 2006, France). The Committee asks the next report to indicate whether the relevant legislation in Ukraine provides for such lists of potentially hazardous works or for a definition of work risks.

In its previous conclusion (Conclusions 2015) the Committee noted that young workers under the age of 18 shall be enrolled at the educational institutions to be trained in professions related to harmful or hazardous work conditions. It further noted (Conclusions 2015) that young workers under the age of 18 years pursuing vocational training may perform hazardous types of work for not more than four hours a day on condition that existing sanitary and health norms on labour protection are strictly observed. The Committee asked the next report to indicate how the Labour Inspection monitors the abovementioned conditions. It also asked the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment of young workers under 18 in dangerous and unhealthy activities.

In this respect, the current report indicates that every month the territorial bodies of the Labour Inspectorate inform the central office of the Labour Inspectorate about supervision of the legislation on child labour in the framework of monitoring in order to prevent the performance by children of work dangerous to life and health, compliance with the current sanitary norms, rules and norms of labour protection of children.

As for the number of violations detected and sanctions imposed in practice, the report indicates that the labour inspection found 3 violations in 2014, 8 in 2016 and 7 in 2017 with regard to Article 190 of the Labour Law Code concerning “works prohibiting use labour of persons under the age of 18”. The report further points out the nature of sanctions imposed in practice in cases of violation over the reference period. In particular, in the year 2017, 5 orders for elimination of the violations were issued and 4 protocols on bringing to administrative liability were submitted to court.

The Committee asks the next report to provide up-to-date information on the activities and findings of the State Labour Inspectorate in relation to the prohibition of employment under the age of 18 for dangerous or unhealthy activities and the exceptions permitted, including the number of inspections conducted, the number of violations detected and sanctions imposed in practice.

The Committee notes that the report does not provide specific information on the monitoring activities and findings of the labour inspectors with regard the respect of the conditions under which young workers under the age of 18 years pursuing vocational training are allowed to perform hazardous types of work. The Committee therefore reiterates its question and points out that should the next report not provide the information requested, there would be nothing to establish that the situation is in conformity with Article 7§2 of the Charter.

The Committee refers to its conclusion on Article 7§1 where it noted from the results of the National Child Labour Survey 2014-2015 – published in 2017 and conducted by the International Labour Organisation, the Ukrainian Centre for Social Reforms and the State Statistics Service of Ukraine – that 607,400 (11.6%) of the total number of children aged 5-

17 perform work in Ukraine. Of these, 264,100 children are involved in child labour (43.5% of the working children and 5.1% of the total number of children aged 5-17). Moreover, according to the survey, 76,400 working children (28% of the total number of children in child labour, and 1.5% of the total number of children aged 5-17) were performing hazardous work.

Given the number of children aged 5 to 17 years who are involved in hazardous work, according to information at the disposal of the Committee, it concludes that the situation in Ukraine is not in conformity with Article 7§2 of the Charter on the ground that the prohibition of employment under the age of 18 for dangerous or unhealthy activities is not effectively guaranteed in practice.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 7§2 of the Charter on the ground that the prohibition of employment under the age of 18 for dangerous or unhealthy activities is not effectively guaranteed.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 3 - Prohibition of employment of children subject to compulsory education*

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

The Committee refers to its conclusion on Article 7§1 where it noted that according to Article 188 of the Labour Code, the minimum age for employment is 16 years. As an exception, under Section 188 (2) of the Labour Code, children of 15 years of age may be admitted to employment with the consent of one of the parents or a guardian (Conclusions 2011). It further noted that children of 14 years of age in secondary, vocational and specialised secondary schools are allowed to perform light work with the consent of one parent or a guardian (Conclusions 2011 and 2015). The Committee previously concluded that the situation was not in conformity with Article 7§3 of the Charter on the ground that the definition of light work was not sufficiently precise (Conclusions 2011 and 2015).

The Committee refers to its findings regarding light work in its conclusion on Article 7§1 and considers that the situation in Ukraine is not in conformity with Article 7§3 of the Charter on the ground that the definition of light work is not sufficiently precise.

In its previous conclusion (Conclusions 2015), the Committee examined the legislation concerning working time for children who are still subject to compulsory education. It noted that young employees aged from 16 to 18 years old may work up to 36 hours per week. It further noted that the total duration of the general secondary education is 11 years and it starts at the age of six or seven. It therefore referred to its statement of interpretation on Article 7§1 and 7§2 and concluded that the situation was not in conformity with the Charter on the ground that the duration of working time for children aged 16-18 who are still subject to compulsory education is excessive and cannot be qualified as light work.

The report indicates that it is envisaged that the draft Labour Code when determining the list of work to be considered “light” will take into account the maximum permitted duration of such work. The Committee notes from the report that the Labour Code has not yet been adopted and asks the Government to provide information on any developments in this regard. In the meantime, noting that the situation has not changed during the reference period, the Committee reiterates its conclusion of non-conformity on this point.

In its previous conclusion (Conclusions 2015), the Committee noted that according to Law No. 504/1996 employees under the age of 18 benefit of 31 calendar days of leave. It also noted that a person under the age of 18 is entitled to use his/her annual leave at any time, but not less than 14 consecutive days at once. The Committee asked the next report to indicate whether the Labour Inspectorate supervises if young people under the age of 18 are granted 14 consecutive days of leave in practice and which are the measures/sanctions applied in cases of non-compliance.

In this respect, the report indicates that the Labour Inspectorate supervises implementation of legislation on leave and in cases of non-compliance it imposes sanctions on the employers according to granted powers. Financial and administrative liabilities are prescribed in such cases. According to the report Article 265, para. 8, part 2 of the Labour Code provides the liability in the amount of the minimum wage. The Committee asks the next report to provide information on the number of inspections effectively conducted by the labour inspections and on the number of sanctions imposed in practice in cases of violation of the legislation on leave days.

As regards supervision, in its previous conclusion the Committee asked whether fines were imposed on employers who did not comply with the regulations providing short working hours for children who are still subject to compulsory education.

The report points out that the current labour law does not provide separate monitoring activities concerning the regulation on short working hours for children who are still subject to compulsory education. The report provides information on the number of enterprises



inspected over the years 2014-2017 where children were working, namely 58,876 in 2014, 18 in 2015, 5,317 in 2016 and 3,567 in 2017. It further provides information on the number and nature of violations detected regarding working time for young workers under the age of 18 during the reference period, namely: 329 in 2014 (out of which 11 working overtime), 2 in 2015, 157 in 2016 (out of which 5 working overtime), and 83 in 2017 (out of which 6 working overtime).

The Committee notes that the report does not provide information on the sanctions imposed in practice in cases of violations found. It further notes that the current report does not provide information on the monitoring activities and findings of the labour inspectors with specific regard to children still subject to compulsory schooling. It therefore asks the next report to provide the relevant information, including in particular the number of inspection conducted, the number of violations found and the sanctions imposed in practice with specific regard children still subject to compulsory schooling.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 7§3 of the Charter on the grounds that:

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 4 - Working time*

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

The Committee notes from the information provided in the report submitted by Ukraine that there have been no changes to the legal situation which it has previously found to be in conformity with Article 7§4 of the Charter (Conclusions 2011 and 2015).

In its previous conclusion (Conclusions 2015), the Committee recalled that the situation in practice should be regularly monitored and asked the next report to provide information on the number and nature of violations detected as well as on sanctions imposed on employers for breach of the regulations regarding the working time for young workers under the age of 18.

The current report provides information on the number of enterprises inspected by the Labour Inspectorate where children were working, namely 58,876 in 2014, 18 in 2015, 5,317 in 2016 and 3,567 in 2017. It further provides information on the number and nature of violations detected regarding working time for young workers under the age of 18 during the reference period, namely: 329 in 2014 (out of which 11 working overtime), 2 in 2015, 157 in 2016 (out of which 5 working overtime), and 83 in 2017 (out of which 6 working overtime).

The Committee notes that the report does not provide information on the sanctions imposed in practice in cases of violations found. It therefore asks the next report to provide the relevant information. It also asks the next report to provide up-to-date information on activities and findings of the Labour Inspectorate with regard to the legislation on reduced working time of young workers who are no longer subject to compulsory education, including the number of inspections conducted and the number and nature of violations detected.

### *Conclusion*

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

**Article 7 - Right of children and young persons to protection**  
*Paragraph 5 - Fair pay*

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

***Young workers***

In its previous conclusion in 2015, the Committee noted that young workers under 18 are paid for their reduced working hours at the same wage rate (the same salary) as the standard (normal) work time of adult employee of the same profession.

Since Ukraine has not accepted Article 4§1 of the Charter, the Committee makes its own assessment of the adequacy of young workers wage under Article 7§5. In 2015, the Committee concluded that the minimum wage corresponded to only 34.44% of the net average wage, which is too low to secure a decent standard of living for young workers. Accordingly, the situation in Ukraine was not in conformity with Article 7§5 of the Charter.

The report states that in December 2016, the minimum wage amounted to 1600 UAH; in December 2017, the minimum wage amounted to 3200 UAH. There is no more information about net amounts or the net average wage, which does not allow the Committee to conduct its assessment. The Committee therefore requests the next report to provide information on the net monthly minimum wage and the net average wage paid. Pending the receipt of this information, the Committee defers its conclusion on this point.

***Apprentices***

The report does not contain any information on the allowances paid to apprentices. The former report described that the apprentices are paid in case of individual training for worker professions with piece rate wage system as follows: for the first month of apprenticeship at the rate of 75%, for the second – 60%, for the third – 40%, for the fourth and subsequent months till the end of the apprenticeship as envisaged in the program – 20% of the first class grade rate for appropriate profession at the enterprise. Apprentices in case of individual training for worker professions with time-based wage system are paid as follows: for the first and second months of apprenticeship at the rate of 75%, for the third and fourth months – 80%, for the subsequent months till the end of the apprenticeship as envisaged in the program – 90% of the first class grade rate for appropriate profession at the enterprise. The Committee asks for conformation whether this system is still in place and has not changed.

The Committee further requested how the Labour Inspectorate monitors the actual allowances paid to apprentices in practice. The report states that there is no specific or separate monitoring of the allowances paid to apprentices, only on remuneration in general. The Committee reiterates its question in this respect and asks for information about the monitoring of the remuneration to young workers and how legislation is implemented in practice and apprentices. Pending receipt of the information requested, the Committee reserves its position on this point.

*Conclusion*

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

**Article 7 - Right of children and young persons to protection**

*Paragraph 6 - Inclusion of time spent on vocational training in the normal working time*

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

The Committee previously examined the situation and found it to be in conformity with Article 7§6 of the Charter (Conclusions 2011, 2015).

The report indicates that during the reference period the Law on Professional Development of Employees of 21 January 2012, which provides rules of organising employees' professional training, was adopted.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It therefore asked for information on the monitoring of the authorities, on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding the inclusion of time spent on vocational training by young workers in the normal working time. The report states that there is no such monitoring. The Committee further requests to provide information about implementation in practice and, pending receipt of this information, reserves its position on this point.

*Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 7 - Paid annual holidays*

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

The Committee noted previously that young workers under 18 were granted an annual leave of 31 calendar days (Conclusions 2011).

The Committee asked what is the percentage of the enterprises out of the total of the enterprises, that are inspected annually by the Labour Inspectorate with regard to the paid annual holidays of young workers. The Committee also asked whether fines were imposed on employers who did not comply with the regulations concerning paid annual holidays of young workers under 18. The report does not give any information on the number of enterprises inspected, or on the number of inspections conducted. It just states that no violations have been found during the period of reference on paid annual holidays of young workers. The Committee reiterates its questions and requests information on enterprises inspected, number of inspections conducted, violations found and sanctions imposed.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 7§7 of the Charter.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 8 - Prohibition of night work*

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

The Committee noted previously that young workers under 18 may not be employed in night work, overtime work and work on days off. The Committee requested information on legislative developments during the period of reference. There is no information in the report on this aspect, so the Committee reiterates its question on whether there have been recent legislative changes in the Labour Code.

The Committee takes note that the report indicates the number of violations detected, which were 7 in 2014, 0 in 2015, 6 in 2016 and 5 in 2017. As regards the measures taken by the Labour Inspectorate, the report indicates that during the reference period, a total number of 11 instructions to remedy the violations were issued and 9 administrative protocols were drawn up against the employers. The Committee asked whether fines were imposed on employers who did not comply with the prohibition of night work for young workers under 18. The report did not contain any information on fines. The Committee therefore asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of night work for young workers under the age of 18.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 7§8 of the Charter.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 9 - Regular medical examination*

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

The Committee noted previously that all persons under 18 years in Ukraine are employed only after a medical examination is carried out, and they must undergo mandatory annual medical examination until they reach 21 years of age (Conclusions 2011). The Committee further noted in former conclusions that the draft of the new Labour Code providing for mandatory medical examination prior to practical training or industrial training for persons under 18 years of age had not been adopted yet. The Committee asked to be informed of any future developments.

The report does not contain any information on the new Labour Code or any changes in this field. The report states that the Labour Inspectorate identified 74 violations of the regulations regarding medical examination of young workers in 2014, 2 in 2015, 91 in 2016 and 18 in 2017. As regards the measures taken by the Labour Inspectorate, the report indicates that in 2014, 67 instructions to remedy the violations were issued and 56 administrative protocols were drawn up against the employers. The Committee notes that in 2015 there was 1 instruction to remedy the violations and 1 administrative protocol; in 2016, 32 instructions and 27 administrative protocols and in 2017 16 instructions and 16 administrative protocols. It appears from the report that administrative liability was sought, but no fines were imposed in any case.

The report does not indicate the percentage of enterprises inspected annually by the Labour Inspectorate in respect to the mandatory medical examinations of young workers under the age of 18 out of the total number of enterprises. The Committee asks the next report to indicate these figures, as well as provide information on the monitoring activity of the Labour Inspectorate, on the number and nature of violations detected, as well as on the measures taken and whether fines were imposed on employers who did not comply with the prohibition of night work for young workers under 18.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 7§9 of the Charter.

**Article 7 - Right of children and young persons to protection**  
*Paragraph 10 - Special protection against physical and moral dangers*

***Protection against sexual exploitation***

In its previous conclusion (Conclusions 2015), the Committee considered that the situation in Ukraine was not in conformity with the Charter on the grounds that legislation did not protect children under the age of 18 years from child prostitution, the use of children in the production of pornographic materials was not criminalized if it was proved that the child was paid for their services or consented to being involved and the simple possession of child pornography was not a criminal offence.

The Committee asked to be kept informed of any legislative developments, as according to the report, the Action Plan for the Implementation of the Social Charter envisaged amending the legislation to bring it into conformity with the Charter as regards the provisions concerning sexual exploitation of children.

The Committee notes from the report that several laws have been adopted during the reference period to protect children against sexual exploitation, in particular Law No. 2229-VIII of 7 December 2017 “On Preventing and Combating Domestic Violence” which contains provisions aimed at protecting children under the age of 18 against violence.

The Committee also notes that during the reference period amendments to the Criminal Code were adopted to strengthen the protection of children from sexual abuse and exploitation

In addition, the Government of Ukraine has prepared a draft Law “On Amendments to Certain Legislative Acts of Ukraine in Connection with the Ratification of the Convention of the Council of Europe on the Protection of Children against Sexual Exploitation and Sexual Abuse”, which was registered by the Verkhovna Rada of Ukraine No. 6588 on 15 June 2017.

The Committee asks that the next report provide information on the adoption and implementation of this draft law.

The Committee notes from the report of the Governmental Committee [GC (2016)22, report concerning Conclusions 2015 of the European Social Charter] that as regards the previous conclusions of non-conformity relating to the grounds that engaging in prostitution with a child over 16 years of age is not a criminal offence, the issue will be addressed in new legislation. As this legislation has not been adopted yet the Committee reiterates its previous conclusion of non-conformity.

As regards the second ground of non-conformity in Conclusions 2015 the representative of the Governmental Committee stated that in fact paragraph 4 of Article 301 of Criminal Code, which made reference to paragraph 1 of Article 301, provided for criminal liability for the production of works, images and other pornographic material depicting children, in cases where coercion is exerted on a child, as well as in cases where a child him/herself consents to producing such materials and regardless of whether the child was paid for the services. The Committee asks the next report to provide updated information on this point meanwhile it reserves its position on the conformity of the situation.

The Committee notes the projects undertaken in the area of protection of children against sexual exploitation and sexual abuse, such as:

- Establishment of the Information and Resource Center “Childhood without Violence” by All Ukrainian Charity “Child Well-being Fund Ukraine”;
- Launching, in 2014, of the project “Prevention of Sexual Abuse and Sexual Exploitation of Children in the countries of Central and Eastern Europe – Comprehensive Approach”, in cooperation with the Foundation « Empowering Children » (Poland) and with the financial support of the OAK Foundation (Switzerland) (to be implemented until 2019);



- Drafting of the methodological manual "Skills formation for safe behaviour of children », approved by the Ministry of Education and Science for use in educational institutions and of the methodological manual "Teach your child to protect oneself »;
- Training sessions, awareness raising campaigns, pilot projects and other activities in cooperation with the Council of Europe related to the implementation of the Lanzarote Convention.

The Committee asks the next report to provide updated information on the extent of the problem of the use, procuring or offering children of under the age of 18 years for prostitution, for the production of pornography and for pornographic performances. It requests the next report to provide statistical information on the number and nature of violations reported, investigations, prosecutions, convictions and criminal penalties imposed.

The Committee further asks if child victims of sexual exploitation, whether or not related to trafficking, can be held criminally responsible for their actions.

### ***Protection against the misuse of information technologies***

The Committee notes that the report does not provide updated information on the protection of children against the misuse of information technologies.

The Committee recalls that new information technologies have made the sexual exploitation of children easier. The internet is becoming one of the most frequently used tools for the spread of child pornography.

The Committee notes from the GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine (2018) that the Cyber Police Department of the National Police monitors the Internet to detect, identify and prosecute criminals creating online accounts and resources for disseminating images of sexual abuse of children and other forms of sexual exploitation and that this department participates in the International Task Force (VCACITF) of law enforcement officials from more than 40 countries with the purpose of counteracting online sexual abuse of children.

However, it notes that according to the ECPAT International Global Study on the Sexual Exploitation of Children in Travel and Tourism (2015), that currently, according to unofficial data, child pornography from Russia, Belarus and Ukraine on paid websites accounts for almost one third of the total volume of such products worldwide.

The Committee requests that the next report provide updated information on concrete measures taken to protect children against the misuse of information technologies and on the results achieved.

### ***Protection from other forms of exploitation***

In its previous conclusion (Conclusions 2015), the Committee requested to be informed about the measures taken to improve the identification of victims of trafficking among unaccompanied foreign minors and the measures taken to address the problem of unaccompanied foreign children, in particular by providing them with appropriate and safe accommodation and by assigning adequately trained legal guardians.

The report indicates the steps taken during the reference period to prevent trafficking in human beings, to increase the effectiveness of the detection of persons who commit or facilitate such offences, to ensure the protection of the rights of victims of trafficking, in particular children, and to provide them with assistance, namely:

- the State Programme for Combating Trafficking in Human Beings for the period up to 2020 (approved by Resolution No. 1053 of the Cabinet of Ministers on 7 October 2015);

- the State Social Programme for Combating Trafficking in Human Beings for the period up to 2020 (adopted by Decree No. 111 of the Cabinet of Ministers of Ukraine on 24 February 2016);

- the Action Plan on Combating Trafficking in Human Beings for the period up to 2020 (approved by Order No. 405 of the Ministry of Education and Science of Ukraine on 8 April 2016).

According to the report, 50 children have been identified as victims of human trafficking in the period 2012-2017.

According to the above-mentioned report of GRETA, 40 children (25 girls and 15 boys) were victims of trafficking between 2014 and 2017. The report indicates that, in general, victims are recruited among internally displaced persons, persons affected by unemployment and poverty, young people leaving specialised institutions and children in street situations. Recruiting victims through the Internet, job websites and social networks is a growing trend. The report indicates that the Ministry of Social Policy identified 29 Ukrainian children (13 boys and 16 girls) as victims of trafficking between 2014 and June 2017. The majority of them (eight boys and 14 girls) were trafficked within Ukraine. Most of the trafficked children (16) were subjected to labour exploitation, followed by sexual exploitation (11) and exploitation of begging (7). According to the authorities, in most cases the trafficked children were identified by law enforcement authorities.

The Committee notes from the GRETA report, that statistical data on human trafficking in Ukraine remains largely unconsolidated: law enforcement agencies collect data on the number of victims of trafficking registered in the course of criminal investigations, the Ministry of Social Policy keeps records of persons who have formally applied for the status of victim, and the IOM Office, NGOs and social service providers keep their own statistics on victims and presumed victims of trafficking assisted by them. GRETA once again urged the Ukrainian authorities to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings.

The Committee asks to be informed of the steps taken to build a consolidated statistical system on trafficking in human beings.

As regards the labour exploitation of children the Committee notes from a report National Child Labour Survey 2015 national survey conducted by the National Statistical Institute of Ukraine with financial and technical support of the International Labour Organization (ILO) (outside the reference period) that 5.1 percent of the total number of children aged 5–17 years were involved in child labour some of which were involved in hazardous work.

The Committee asks the next report to provide information on the number of children estimated to be engaged in child labour along with information on measures taken to address the problem.

With regard to children in street situations, the Committee takes note of the action plan for the implementation of the “National Strategy for the Prevention of Social Orphanhood” for the period up to 2020, approved by the Cabinet of Ministers of Ukraine on 27 March 2013. It requests that the next report provide information on the achievements of the National Strategy.

In this context, the Committee refers to the General Comment No. 21 of the UN Committee on the Rights of the Child which provides authoritative guidance to States on developing comprehensive, long-term national strategies on children in street situations using a holistic, child rights approach and addressing both prevention and response in line with the Convention on the Rights of the Child, which has been ratified by Ukraine.

The Committee requests to be informed on the extent of the problem and the measures taken to improve the protection and assist children in street situations.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 7§10 of the Charter on the grounds that not all children under the age of 18 are protected against sexual exploitation.

**Article 8 - Right of employed women to protection of maternity**  
*Paragraph 1 - Maternity leave*

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

***Right to maternity leave***

In its previous conclusions (Conclusions 2015 and 2017), the Committee found that the situation was not in conformity with Article 8§1 on the grounds that it had not been established that there were adequate safeguards in law and in practice to protect employees from undue pressure inciting them to take less than six weeks' postnatal leave. Therefore, the Committee asks again for specific information on this point, including figures on the average length of maternity leave actually taken.

In reply, the report states that there have been no changes in legislation during the reference period, and it reiterates that Article 179 of the Labour Code provides that, on medical advice, employees are entitled to 70 days' paid maternity leave before the birth of their child and 56 days' after (which can be extended to 70 days in the event of multiple births or birth-related complications). The Committee has already noted that these provisions are worded in terms which do not explicitly state that there must be a compulsory period of postnatal leave of at least six weeks, as required by the Charter. The Committee also notes from comments by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2010 (99th session of the International Labour Conference) on Convention No. 103 on maternity protection (revised, 1952), that, under the provisions of paragraph 9 of Instruction No. 532/274/136-oc/1406 of 3 November 2004 concerning the issue of medical certificates, women who have given birth shall return to work following a maternity leave of 126 days. Under paragraph 4.1 of this instruction, a return to work following maternity leave without the prior authorisation of the attending physician constitutes a violation of the provisions relating to medical care contained in the regulations in force. However, the Committee notes from the report that, since maternity leave is a right, not an obligation, women have the right to interrupt their maternity leave despite the dates on their medical certificate. Furthermore, if a woman continues to work of her own free will despite the medical certificate issued to authorise her to take maternity leave, or if she resumes work earlier, the social insurance body only covers the actual days of leave taken.

The Committee takes note of the information reporting the inspections carried out by the Labour Inspectorate with regard to the use of maternity leave, particularly the figures on the number of inspections conducted, the breaches recorded and the penalties imposed.

Noting that no evidence has been provided to show that Article 2§1 of the Labour Code can be applied and is actually applied to avoid any shortening of maternity leave (Conclusions 2015), the Committee asks again for detailed information in the next report on the legal safeguards set up to protect women who have recently given birth from pressure inciting them to shorten their maternity leave, such as legislation against discrimination at work based on sex and family responsibilities, an agreement between the social partners protecting the freedom of choice of the women concerned or other guarantees provided for by the general legal framework on maternity. It also asks for relevant figures on the average length of maternity leave actually taken. In the meantime, the Committee finds that the situation is not in conformity with Article 8§1 of the Charter on the ground that it has not been established that there are sufficient safeguards in law or in practice to protect employees from pressure to take less than six weeks' postnatal leave.

***Right to maternity benefits***

The Committee noted previously (Conclusions 2015 et 2011) that under Article 38 of the Law on Mandatory State Social Insurance against Temporary Disability and Expenses Incurred by Births and Funerals, benefits are provided during maternity leave to compensate for the

loss of wages. Under Article 39 of the aforementioned law, these benefits amount to 100% of the employees' average wage and do not depend on their insurance record.

In its previous conclusion, the Committee asked whether the minimum amount of maternity benefits corresponded to at least 50% of the median equivalised income.

In reply, the report states that under Articles 25 and 26 of the Law on the state compulsory insurance scheme, the monthly amount of maternity benefits can not be lower than the amount of benefit calculated on the basis of the minimum wage. Maternity benefit is paid to insured persons regardless of the number of actual days of maternity leave taken before the birth.

According to the report, in 2015, the minimum monthly wage was UAH 1,378 (€52) and the minimum maternity benefit was UAH 5,704.02 (€215); UAH 1,600 (€60) and UAH 6,622.56 (€250) respectively in 2016 and UAH 3 723 (€110) and UAH 15 411,06 (€454) respectively in 2017. In the light of the above, the Committee notes that the minimum maternity benefit is considerably higher than the minimum wage. It also notes that the report fails to answer its question, so it repeats it. 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 8§1 of the Charter in this respect.

The Committee recalls that, under Article 8§1, the level of income-replacement benefits should be fixed so as to stand in reasonable proportion to the previous salary (these shall be equal to the previous salary or close to its value, and not be less than 70% of the previous wage) and it should never fall below 50% of the median equivalised income (Statement of Interpretation on Article 8§1, Conclusions 2015). If the benefit in question stands between 40% and 50% of the median equivalised income, other benefits, including social assistance and housing, will be taken into account. On the other hand, if the level of the benefit is below 40% of the median equivalised income, it is manifestly inadequate and its combination with other benefits cannot bring the situation into conformity with Article 8§1.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 8§1 of the Charter on the ground that it has not been established that there are sufficient safeguards in law or in practice to protect employees from pressure to take less than six weeks' postnatal leave.

**Article 8 - Right of employed women to protection of maternity**  
*Paragraph 2 - Illegality of dismissal during maternity leave*

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

***Prohibition of dismissal***

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§2 of the Charter on this point. Since, according to the report, the situation remains unchanged, it confirms its previous finding of conformity.

***Redress in case of unlawful dismissal***

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§2 of the Charter on this point. The report confirms that there is no ceiling on non-pecuniary damages in the case of unlawful dismissal of an employee during her pregnancy or maternity leave.

The report also states that 26 violations of Article 184 of the Labour Code were found in 2014, seven in 2015 and 13 in 2016 and 2017.

*Conclusion*

The Committee concludes that the situation in Ukraine is in conformity with Article 8§2 of the Charter.

**Article 8 - Right of employed women to protection of maternity**

*Paragraph 3 - Time off for nursing mothers*

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§3 of the Charter. Since the situation remains unchanged, it confirms its previous finding of conformity.

The Committee asks what rules apply to women working part-time.

*Conclusion*

The Committee concludes that the situation in Ukraine is in conformity with Article 8§3 of the Charter.

**Article 8 - Right of employed women to protection of maternity**  
*Paragraph 4 - Regulation of night work*

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§4 of the Charter. The report indicates that the situation remained unchanged during the reference period: Article 176 of the Labour Code prohibits night work for pregnant women and women with children under the age of three years.

In its previous conclusion, the Committee asked whether the employed women concerned were transferred to a daytime post until their child was three years old and what rules applied if such a transfer were not possible.

The Committee refers to its conclusion concerning Article 2§7 (Conclusions 2018) pointing out that the situation was not in conformity with the Charter on the grounds that possibilities of transfer to daytime work were not sufficiently provided for; laws and regulations did not provide for continuous consultation with workers' representatives on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work; and there was no provision in the legislation for compulsory medical examinations prior to employment on night work and regularly thereafter.

The Committee notes that the report provides no new information. Consequently, it reiterates its questions. 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 8§4 of the Charter in this respect.

The Committee refers to its Statement of Interpretation on Articles 8§4 and 8§5 (Conclusions 2019) and asks the next report to confirm that no loss of pay results from the changes in the working conditions or reassignment to a different post and that in case of exemption from work related to pregnancy and maternity, the woman concerned is entitled to paid leave; it furthermore asks the next report to confirm that the women concerned retain the right to return to their previous employment at the end of the protected period.

*Conclusion*

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



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

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

In its previous conclusions (Conclusions 2017), the Committee found that the situation was in conformity with Article 8§5 of the Charter as regards protection against dangerous, unhealthy or arduous work. It noted that Ministry of Health Order No. 256 of 29 December 1993 prohibited these activities for all women. However, the Committee notes that this order was repealed by the Ministry of Justice Order No. 1254 of 13 October 2017, registered by the Ministry of Justice on 13 December 2017 (under No. 1508/31376). The report states that this decree contains a list of 450 professions. The Committee asks for the next report to provide detailed information on the content of this order.

The report states that national rules on the hygienic classification of indicators of harmfulness and danger factors in the production environment, and on the severity and intensity of the labour process were approved by the Ministry of Health Order No. 248 of 8 April 2014 (registered by the Ministry of Justice on 6 May 2014 (under No. 472/25249). According to the report, there are four categories of working conditions: 1) optimal working conditions; 2) acceptable working conditions – they do not exceed the established hygiene standards and have no adverse effect on the health of workers and their offspring in the short- or long-term; 3) harmful working conditions, and 4) dangerous working conditions. The report states that working conditions are assessed by taking into account chemical and biological factors, noise, vibration, atmospheric pressure, ionising radiation, etc.

In the light of the above, the Committee asks for confirmation that the employment of pregnant women, women who have recently given birth and are nursing their infant, is still prohibited in underground work in mines and that other dangerous activities, such as those involving exposure to lead, benzene, ionising radiation, high temperatures, vibration or viral agents, are prohibited or strictly regulated for the group of women concerned depending on the risks posed by the work.

In its previous conclusions (Conclusions 2015), the Committee found (given the repeated lack of information on this point) that the situation was not in conformity with Article 8§5 of the Charter on the ground that under Ukrainian law did not guaranteed the employees' right to return to their previous employment at the end of their maternity/nursing period.

Concerning the ground of non-conformity, the report reiterates the information already noted by the Committee (Conclusions 2011 and 2015) concerning the right of employees to be transferred to another post without loss of pay, until their child reaches the age of three. However, it still does not specify whether, at the end of the protected period (i.e. when the child turns three years old), workers have the right to return to the post that they held before they were reassigned on maternity grounds. In view of the repeated absence of information on this point, the Committee reiterates its finding of non-conformity.

The Committee points out that Article 8 of the Charter provides specific rights protecting employed women during pregnancy and maternity (Statement of Interpretation on Articles 8§4 and 8§5, Conclusions 2019). Since pregnancy and maternity are gender-specific, any less favourable treatment due to pregnancy or maternity is to be considered as direct gender discrimination. Consequently, the non-provision of specific rights aimed at protecting the health and safety of a mother and a child during pregnancy and maternity, or the erosion of their rights due to special protection during such a period are also direct gender discrimination. It follows that, in order to ensure non-discrimination on the grounds of gender, employed women during the protected period may not be placed in a less advantageous situation, also with regard to their income, if an adjustment of their working conditions is necessary in order to ensure the required level of the protection of health. It follows that, in the case a woman cannot be employed in her workplace due to health and safety concerns and as a result, she is transferred to another post or, should such transfer not be possible,

she is granted leave instead, States must ensure that during the protected period, she is entitled to her average previous pay or provided with a social security benefit corresponding to 100% of her previous average pay. Further, she should have the right to return to her previous post.

*Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 8§5 of the Charter on the ground that in case of reassignment to a different post, the law does not guarantee the employees' right to return to their previous employment at the end of their maternity/nursing period.

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

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

### ***Legal protection of families***

#### ***Rights and obligations, dispute settlement***

The Committee refers to its previous conclusions (Conclusions 2011 and 2015) for a description of the **rights and obligations of spouses**, in which it found the situation to be in conformity with the Charter, also in respect of legal framework relating to the **settlement of disputes** including in respect of children and **mediation services**. It asks nevertheless the next report to provide updated information on these issues, also in the light of the concerns expressed in 2017 by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) (see below, as regards Domestic violence) in its Concluding observations on the eighth periodic report of Ukraine.

Issues related to **restrictions to parental rights and placement of children** are examined under Article 17§1.

#### ***Domestic violence against women***

The Committee refers to its previous conclusions, finding that the situation was not in conformity with the Charter on this point (Conclusions 2011, 2015 and 2017).

It recalls that States Parties are required to ensure an adequate protection with respect to women, both in law and in practice, in the light of the principles laid down in Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe to member States on the protection of women against violence and Parliamentary Assembly Recommendation 1681 (2004) on a campaign to combat domestic violence against women in Europe. It notes that these instruments have been superseded in 2011 by the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which is legally binding for the States which have ratified it. However, Ukraine has not ratified it yet.

In this respect, the report indicates that new legislation was adopted end of 2017, amending on the one hand the Criminal Code and Code of Criminal Procedure with a view to implementing the Istanbul Convention (Law No. 2227-VIII of 6 December 2017) and, on the other hand, defining the organisational and legal principles of prevention and counteraction to domestic violence and the main directions of implementation of the state policy in that area in order to protect the rights and interests of victims (Law No. 2229-VIII of 7 December 2017). The Committee takes note of these measures, which have in particular better defined the notion of domestic violence, including economic and psychological violence, and provide for increased protection of victims of violence (information measures for the victims, also through a call center; setting up of confidential support services and shelters; provision of free legal assistance; possibility to get material and moral damage, etc.). It notes however that this new legislation entered into force out of the reference period (Law No. 2227 entered into force on 11 January 2019 and Law No. 2229 entered into force on 7 January 2018).

Furthermore, the report does not provide the information requested on actions and measures (prevention, protection, prosecution, integrated policies...) effectively implemented in this field nor does it provide any information on the results achieved through the implementation of the measures previously presented (Conclusions 2011, 2015 and 2017). The Committee also notes that the CEDAW, in its Concluding observations on the eighth periodic report of Ukraine (2017), expressed concern about certain shortcomings as regards the definition of rape, the limited capacity of law enforcement officials and the judiciary to investigate, document and prosecute cases of sexual violence; the lack of relevant statistical data; the allegation that judges often resort to mediation even in situations of domestic

violence and do not take account of gender-based violence issues when ruling in cases of child custody and visitation rights.

The Committee asks the next report to provide comprehensive and updated information on all the points considered above, including relevant statistical data and examples of case-law in order to assess in particular how the new legislation is interpreted and applied and its impact in preventing and reducing domestic violence. It considers in the meantime that women are not ensured adequate protection against domestic violence, in law and in practice.

### ***Social and economic protection of families***

#### ***Family counselling services***

The Committee previously noted that family counselling services are provided by Centers for Social Services to Family, Children and Youth (Conclusions 2015).

#### ***Childcare facilities***

The Committee refers to its previous conclusions (Conclusions 2011 and 2015, Article 27§1) where it noted the number of public and private pre-school institutions, the attendance rate for children under the age of three and under the age of five, and the provisions for financial assistance to parents of children attending childcare facilities. It notes however that according to Unicef, alternative family-oriented care systems were underdeveloped and, as a result, in 2017 there were around 106 000 children separated from their families and living in various child-care institutions. It asks the next report to comment on this situation and to provide updated information on childcare facilities in Ukraine (types of facilities, coverage with respect to the number of children aged 0-6, ratio of staff to children, staff training, suitable premises and cost of childcare to parents, etc.).

#### ***Family benefits***

##### ***Equal access to family benefits***

In its previous conclusions (Conclusions 2015 and 2017) the Committee asked what were the criteria to receive family benefits for foreign nationals and, if relevant, the criteria for acquiring permanent residence. In the meantime, the Committee considered that the situation was not in conformity with the Charter on the ground that it had not been established that there was equal treatment of nationals of other States Parties with regard to family benefits. The Committee notes from the report that in accordance with the Law No. 2811 foreign citizens with permanent residence in Ukraine as well as persons with refugee status in Ukraine have equal rights to state assistance as the citizens of Ukraine on conditions stipulated by this Law, other laws of international treaties of Ukraine approved as mandatory by the Parliament of Ukraine.

The Committee recalls that Article 16 precludes length of residence requirements as far as contributory benefits are concerned, but States may apply a length of residence requirement as regards non-contributory benefits on condition that the length is not excessive. The proportionality of such length of residence requirements is examined on a case-by-case basis having regard to the nature and purpose of the benefit: a period of 6 months is reasonable and therefore in conformity with Article 16. On the other hand, periods of 1 year, and a fortiori, 3-5 years are manifestly excessive and therefore in violation of Article 16. The Committee asks what are the conditions for obtaining permanent residence?.

##### ***Level of family benefits***

In its previous conclusion (Conclusions 2015) the Committee asked the next report to provide information on the minimum wage as well as on the median equivalised income or similar indicators, such as average income, etc. The Committee also asked to next report to indicate the percentage of families receiving child benefit.

The Committee notes from the report that in accordance with the Law of Ukraine On the subsistence level No. 966 of 15 July, 1999, the subsistence level shall be applied, in particular for establishing assistance size for families with children. The subsistence level shall be determined on a monthly basis per person, as well as separately for those belonging to the main social and demographic groups, in particular children under the age of 6 and children aged 6 to 18 years. The Committee further takes note from the report of the information concerning subsistence levels.

The Committee also notes from MISSCEO that under Law On State assistance to families with children, as amended, families have the right to assistance for children up to the age of 16 years or 18 years if the child is still at school. Assistance equals 50% of the minimum wage for each child if the aggregate average monthly income per member of the family in the previous quarter did not exceed three times the amount of the minimum wage.

The Committee further notes that mothers or fathers who care for 3 or more children up to the age of 16 years (18 if full-time students) are entitled to 100% of the minimum wage and 200% of the minimum wage for caring for 4 or more children.

The Committee recalls that in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of the median equivalised income. In its previous conclusion the Committee asked for information about the median income. The Committee notes that the report does not provide this information. Therefore, the Committee considers that it has not been established that the amount of child benefit is adequate.

### ***Measures in favour of vulnerable families***

The Committee asks what specific measures are taken to provide economic and protection for vulnerable families, such as single parent families and Roma families.

### ***Housing for families***

Ukraine has accepted Article 31 of the Charter on the right to housing. As all aspects of housing of families covered by Article 16 are also covered by Article 31, for states that have accepted both articles, the Committee refers to Article 31 on matters relating to the housing of families.

### ***Participation of associations representing families***

The Committee refers to its previous conclusions (Conclusions 2015) where it found the situation to be in conformity with the Charter on this point.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 16 of the Charter on the grounds that:

- women are not ensured adequate protection against domestic violence, in law and in practice;
- it has not been established that the level of family benefits is adequate.

## **Article 17 - Right of children and young persons to social, legal and economic protection**

### *Paragraph 1 - Assistance, education and training*

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

#### ***The legal status of the child***

The Committee has noted with concern the increasing number of children in Europe registered as stateless, as this will have a serious impact on those children's access to basic rights and services such as education and healthcare.

In 2015, UNHCR estimated the total number of stateless persons in Europe at 592,151 individuals. The Committee notes from other sources [European Network on Statelessness and Institute on Statelessness and Inclusion, Country briefing Ukraine 2018] that according to data provided by the Ombudsman's Office in 2017, there were 6,500 stateless persons officially registered in Ukraine. At the same time, according to the UN Refugee Agency, in 2016, 35,363 stateless persons lived in Ukraine.

The Committee asks what measures have been taken by the State to reduce statelessness (such as ensuring that every stateless migrant child is identified, simplifying procedures for obtaining nationality, and taking measures to identify children unregistered at birth).

The Committee asks further what measures have been taken to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular situation.

#### ***Protection from ill-treatment and abuse***

The Committee recalls that it previously found the situation to be in conformity in this respect, all forms of corporal punishment are prohibited in all settings (Conclusions 2015).

There has been no change to this situation.

#### ***Rights of children in public care***

The Committee previously asked for information on any amendments to the procedure for removing children from their families, following the judgment of the European Court of Human Rights in the case *Saviny v. Ukraine*, judgment of 18 December 2008, concerning the taking of the applicants' children in to care due to their inability to ensure adequate living conditions (Conclusions 2015).

The report states that Resolution of 31 January, 2018 CM / ResDH (2018) 39 recognized that Ukraine has executed the judgment of the European Court in the case of "*Saviny v. Ukraine*" (Application No. 39948/06). The Committee notes in this respect that the judgment was disseminated to all authorities concerned and training sessions for judges and juvenile authorities were organized.

The Committee asks for information on any further measures taken to ensure children are not taken into care solely on the basis of the lack of financial means of the parents. This issue is particularly pressing given the information below on the number of children in institutions with living parents.

The Committee previously asked to be kept informed of the situation regarding the development of foster care and deinstitutionalization; it also asked what is the average size of a single institution? (Conclusions 2015).

The report states that in accordance with Article 254 "The rights of the child placed with a foster family" of the Family Code of Ukraine (as amended by the Law No. 936 of 26 January, 2016), the placement of a child with a foster family requires the consent of the child if he/she has attained the age and level of development of being able to express it. The placement of

the child in foster family also in principle requires the written consent of his/her parents or other legal representatives.

The placement of the child with a foster family without the consent of parents, or other legal representatives is possible if, inter alia, the parents were deprived their parental rights or if there is an immediate threat to the life or health of the child.

The child, who is placed in foster family, has the right to maintain personal contacts with parents and other relatives.

According to data of State Statistics Service, by the end of 2017 there were 3677 foster families in Ukraine, in which there were 6880 foster children.

No information is provided on the number of children in institutions or on the progress made in de-institutionalization. The Committee asks the next report to provide full information on the progress made in deinstitutionalization of children, including the number of children in institutions, foster families and other forms of care.

According to other sources [Opening Doors for Europe's Children, Country factsheet Ukraine 2017] as of 1 September 2017, a total of 104,000 children were accommodated in 759 institutions, with some of them accommodating 300-400 children per setting. Out of this total, 2,755 children between 0 and 3 years old were living in 38 baby homes. More than 90% of these children have parents who are not deprived of parental rights but due to such reasons as poverty, social vulnerability of families, lack of services or inclusive education in the community are in institutions.

Further according to this source at the beginning of 2018, (outside the reference period) there were 13,689 children in foster care and 51,101 children in kinship care, Furthermore, due to the lack of capacity and the reduction in the number of social workers, as well as inadequate training of potential foster carers and their insufficient support after the child's placement, the number of children who were returned to institutions from family-based care has increased. At the same time, there is an eight-fold increase in the number of children successfully re-integrated with their birth families: from 83 in 2016 to 694 by the end of 2017.

In 2017, the Government of Ukraine adopted the National Strategy on Reform of Institutional Care System for 2017-2026 and Action Plan for its realization in the first stage (2017- 2018).

No other information is provided on the number of children in institutions or on the progress made in de-institutionalization. **The Committee asks the next report to provide full information on the progress made in the de-institutionalization of children, including the number of children in institutions, foster families and other forms of care.**

The Committee notes that the number of children in institutions has not decreased significantly since its Conclusion in 2011 where it noted that approximately 100,000 children were in institutions.

The Committee finds the situation not to be in conformity with the Charter on the grounds that the ratio of children in institutional care to the number of children in foster-care or other forms of family-based care is too high.

### ***Right to education***

As regards education, the Committee refers to its conclusion under Article 17§2.

### ***Children in conflict with the law***

The Committee recalls that under article 22 of the Criminal Code, persons who have reached the age of 16 may be held be criminally liable. Those who committed crimes between the ages of 14 and 16 are criminally liable only if they have committed violent or property crimes, such as murder, rape, theft.

Under Criminal Code article 102(1), persons having committed a crime before the age of 18 may receive a prison sentence ranging from 6 months to 10 years, save for cases, stipulated in article 102(3)(e), when, for a particularly grave crime connected with loss of life, a child may be sentenced to imprisonment for up to 15 years. Imprisonment may not be imposed on a child who committed a minor offense for the first time. In such cases, the court imposes on the child measures of an educational character.

The Committee recalls that prison sentences should only exceptionally be imposed on young offenders as a measure of last resort and be of short duration and be regularly reviewed. It asks whether prison sentences imposed on children are subject to regular review.

The Committee previously sought confirmation that legislation allows children to be detained for 12 months pending trial. The report does not specifically answer this question. The Committee reiterates its request for this information and considers that 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 on this point.

The Committee notes from other sources [Report of the Committee for the Prevention of Torture following its visit to Ukraine in December 2017 CPT/Inf (2018) 41] that Ukrainian law still permits the placement of juveniles in disciplinary solitary confinement (for up to 5 days) and that the Committee for the Prevention of Torture recommended that this legal provision be abolished.

The Committee asks what measures have been taken to abolish solitary confinement for children.

### ***Right to assistance***

Article 17 guarantees the right of children, including children in an irregular situation and non-accompanied minors to care and assistance, including medical assistance and appropriate accommodation [International Federation of Human Rights Leagues (FIDH) v. France, Complaint No 14/2003, decision on the merits of September 2004, § 36, *Defence for Children International (DCI) c. Pays-Bas*, Complaint NO. 47/2008, decision on the merits of 20 October 2009, §§70-71, European Federation of National Organisations working with the Homeless (FEANSA) v, Netherlands, Complaint No.86/2012, Decision on the merits of 2 July 2014, §50].

According to the report unaccompanied children arriving in Ukraine are under the responsibility of the service for children and state service for migration, and upon arrival they are given health checks. Subsequently they are referred to the Centre for Social Services for Family, Children and Youth who shall carry out an assessment of the needs of the child and will form the basis for an individual plan for the protection of the child.

The Committee considers that that the detention of children on the basis of their or their parents' immigration status is contrary to the best interests of the child. Likewise, unaccompanied minors should not be deprived of their liberty and detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status or lack thereof.

The Committee requests information on accommodation facilities for migrant children whether accompanied and unaccompanied, including measures taken to ensure that children are accommodated in appropriate settings. It also requests further information on the assistance given to unaccompanied children, in particular to protect them from exploitation and abuse. Lastly it requests information as to whether children who are irregularly present in the State accompanied by their parents or not, may be detained and if so under what circumstances.

The Committee asks whether children in an irregular situation have access to healthcare.



As regards age assessments, the Committee recalls that, in line with other human rights bodies, it has found that the use of bone testing in order to assess the age of unaccompanied children is inappropriate and unreliable. The use of such testing therefore violates Article 17§1 of the Charter. [European Committee for Home Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, Decision on the merits of 24 January 2018, §113]. The Committee asks whether Ukraine uses bone testing to assess age and, if so, in what situations the state does so. If the state does use such testing, the Committee asks what the potential consequences of such testing are (e.g., can the results of such a test serve as the sole basis for children being excluded from the child protection system?).

### ***Child poverty***

The prevalence of child poverty 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 children and young persons to social, legal and economic protection. The obligation of states to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need is strongly linked to measures directed towards the amelioration and eradication of child poverty and social exclusion. Therefore, the Committee will take child poverty levels into account when considering the state's obligations in terms of Article 17 of the Charter.

The Committee notes the lack of recent reliable statistical data on poverty including child poverty in Ukraine. However, the data indicates that poverty is widespread in Ukraine, data from the World Bank indicates that in 2014, 15% of the population of Ukraine lived below the national poverty line, in 2018 it was 25%. The United Nations Development Program in Ukraine has stated that, despite economic growth, about 60 percent of Ukrainians live below the official poverty line

The Committee asks the next report to provide information on the rates of child poverty as well as on the measures adopted to reduce child poverty, including non-monetary measures such as ensuring access to quality and affordable services in the areas of health, education, housing etc. Information should also be provided on measures focused on combatting discrimination against and promoting equal opportunities for, children from particularly vulnerable groups such as ethnic minorities, Roma children, children with disabilities, and children in care.

States should also make clear the extent to which child participation is ensured in work directed towards combatting child poverty

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 17§1 of the Charter on the ground that the ratio of children in institutional care to the number of children in foster-care or other forms of family-based care is too high.

## **Article 17 - Right of children and young persons to social, legal and economic protection**

### *Paragraph 2 - Free primary and secondary education - regular attendance at school*

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

According to the report new legislation entered into force which provides for the introduction of 12 years of compulsory education from 2018.

### ***Enrolment rates, absenteeism and drop-out rates***

The Committee notes from UNESCO that net enrolment rate for primary education for both sexes was 91.66% in 2014 (the latest figures available), the corresponding rate for secondary education was 89.81%. The Committee notes that these figures are low and asks for the Governments' comments on the reasons for this.

The Committee asks the next report to provide up to date information on enrolment rates, absenteeism and drop-out rates as well as information on measures taken to address issues related to these rates.

### ***Costs associated with education***

The Committee previously asked what assistance is provided to families in financial difficulties to cover the costs of education, such as school textbooks, transport etc. (Conclusions 2015).

According to the report, all textbooks are free of charge for pupils in general secondary education. Local authorities provide preferential tariffs for public transport for school children travelling to and from school. Further certain children including children from families in receipt of assistance in accordance with the Law of Ukraine "On State Social Assistance to Low-income Families" receive free meals.

### ***Vulnerable groups***

The Committee previously noted that the Ministry of Education and Science had directed that educational administrators must give access to general secondary education to children in an irregular migration situation (Conclusions 2015). The Committee wishes to receive updated information in this respect, and in particular whether such children can also access primary education. 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.

The Committee asks the next report to provide updated information on the situation of Roma children: enrolment, drop out and completion rates as well as measures taken to encourage school attendance and support Roma children in education. It also asks for information on the number of Roma children in special schools.

The Committee notes that ECRI in 2016 [report fifth monitoring cycle on Ukraine CRI(2017)38] noted that reports continue to indicate that over 90% of Roma children drop out of school, only completing five or six years of education, and only 6% have completed secondary education or professional training. ECRI notes that segregated schools for Roma, often with low academic standards, continue to exist in Ukraine. This occurs in particular in Uzhhorod and Odesa due to a combination of high density of Roma in certain areas and a practice of channelling Roma children into certain schools.

The Committee considers that the drop -out rates among Roma children to be extremely high and asks the next report to provide information on measures taken to address the issue. Meanwhile it reserves it's position on this point.

The Committee seeks information on measures taken to facilitate access to education for children from vulnerable families, such as internally displaced persons, children living in rural areas etc.

As Ukraine has accepted Article 15§1 of the Charter the Committee will examine the right of children with disabilities to education under that provision.

***Anti-bullying measures***

The Committee asks what measures have been taken to introduce anti bullying policies in schools, i.e., measures relating to awareness raising, prevention and intervention.

***The voice of the child in education***

Securing the right of the child to be heard within education is crucial for the realisation of the right to education in terms of Article 17§2. This requires states to ensure child participation across a broad range of decision-making and activities related to education, including in the context of children's specific learning environments. The Committee asks what measures have been taken by the State to facilitate child participation in this regard.

*Conclusion*

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

**Article 27 - Right of workers with family responsibilities to equal opportunity and treatment**

*Paragraph 1 - Participation in working life*

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 27§1 of the Charter. Since, according to the report, the situation remains unchanged, it reiterates its previous finding of conformity.

The Committee asks for the next report to contain a full update of the information on this subject.

*Conclusion*

The Committee concludes that the situation in Ukraine is in conformity with Article 27§1 of the Charter.

## **Article 27 - Right of workers with family responsibilities to equal opportunity and treatment**

### *Paragraph 2 - Parental leave*

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

In its previous conclusion (Conclusions 2015), the Committee noted that the Law on Support for Families with Children provided for an allowance for children under the age of three. This was paid to the mother or the father, to adoptive parents, the guardian, the grandfather or grandmother, or to any other relative who cares for the child. Since 2010, the amount of the aid had been equal to the difference between 100% of the minimum subsistence level and the average total family income per person over the previous six months but could not be less than 130 UAH (around €13 in 2010). Consequently, the Committee asked what the average amount of parental benefit was, and how the average total family income was calculated.

In reply, the report states that under Decree No. 208 of 25 June 2014 of Ukraine's Cabinet of Ministers on "Amendments to the procedure on the allocation and payment of public aid to families with children", the childcare assistance paid until a child turns three was, on 1 July 2014, aggregated with childbirth allowance into a single childbirth allowance of UAH 41,280 (or €1,215.87 at the rate of 31 December 2017), whatever the number of children in the family. After the birth, the family receives a one-off payment of UAH 10,320 (or €304 at the rate of 31 December 2017), while the remaining UAH 30,960 (or €912 at the rate of 31 December 2017) is paid to the family over the following 36 months, i.e. UAH 860 per month (or €25 at the rate of 31 December 2017). According to the report, this type of allowance is considered as income, meaning that childcare leave until the age of three may be included in insurance periods. The report also indicates that a childbirth allowance should be awarded to anyone who takes such leave. The Committee considers that the level of parental leave benefit is too low and as such, inadequate. The situation is therefore not in conformity with the Charter.

In its previous conclusion, the Committee also asked if there was a part of parental leave that was individual and non-transferable. In reply the report states that domestic law does not provide for this possibility. The Committee reiterates that it deems it very important that national regulations should entitle men and women to an *individual right* to parental leave after birth or adoption. In order to promote equal opportunities and equal treatment between men and women, the leave should, in principle, be provided to each parent and at least some part of it should be non-transferable. In the light of the foregoing, the Committee notes that, although both parents are entitled to parental leave, this right is not an individual, non-transferable one. Consequently, it notes that the situation is not in conformity with Article 27§2 of the Charter on the ground that there is no guarantee of an individual, non-transferable right to parental leave.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 27§2 of the Charter on the grounds that:

- the level of parental leave benefit is inadequate,
- there is no guarantee of an individual, non-transferable right to parental leave.

**Article 27 - Right of workers with family responsibilities to equal opportunity and treatment**

*Paragraph 3 - Illegality of dismissal on the ground of family responsibilities*

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 27§3 of the Charter. Since, according to the report, the situation remains unchanged, it reiterates its previous finding of conformity.

The Committee asks for the next report to provide a full update of the information on this subject.

*Conclusion*

The Committee concludes that the situation in Ukraine is in conformity with Article 27§3 of the Charter.

**Article 31 - Right to housing**  
*Paragraph 1 - Adequate housing*

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

***Criteria for adequate housing***

In its previous conclusion (Conclusions 2015), the Committee considered that the situation was not in conformity with the Charter on the ground that the right to adequate housing was not guaranteed.

The report indicates that according to Article 50 of the Housing Code, the living premises provided to citizens for living must be well-equipped according to the conditions of the inhabited locality and comply with the established sanitary and technical requirements. The report refers to the State Construction Standards of Ukraine, which were approved by the Order of the State Committee of Ukraine for Construction and Architecture of 18 May 2005 (entered into force in January 2006). Its provisions regulate matters such as sanitary and hygienic requirements, fire safety requirements, requirements for garbage disposal, water supply, sewage, heating, ventilation, gas supply, electricity and energy efficiency saving.

The Committee recalls that the notion of adequate housing must be applied not only to new constructions, but also gradually to the existing housing stock. It therefore asks the next report to precise whether the requirements mentioned above or similar requirements apply to the housing stock which existed before the entry into force of those standards. It also asks the next report to specify whether there are any requirements established by law in respect of house size (i.e. the minimum living space size). The Committee recalls that the size of a dwelling must be suitable in light of the number of persons and the composition of the household in residence.

The Committee further asks that the next report provide statistics relating to the adequacy of housing (overcrowding, water, heating, sanitary facilities, electricity).

Pending receipt of the information requested, the Committee reserves its position on this point.

***Responsibility for adequate housing***

In its previous conclusions (Conclusions 2015, 2017), the Committee considered that the situation was not in conformity with the Charter on the ground that it had not been established that the supervision of housing standards was adequate.

The report states that the Order of the State Committee of Ukraine on Housing and Communal Services of 17 May 2005 approved the Rules for the maintenance of residential buildings and adjoining territories. These rules establish the procedure for providing maintenance services for houses and adjoining areas, with a view to ensuring compliance with the requirements of current standards for maintenance, repairs and reconstruction of residential buildings. The report also refers to an Exemplary List of Services for the maintenance of buildings and structures of 10 August 2004. It explains that preventive maintenance of buildings is an integral part of technical maintenance and includes the prevention of violations of sanitary and hygiene requirements. The frequency of preventive maintenance and the deadlines for the immediate elimination of identified defaults in residential buildings are determined in the relevant annexes.

The Committee takes note of the information provided in the report. It asks the next report to indicate which authorities have overall responsibility for ensuring compliance with the aforementioned rules (in respect of the entire housing stock, whether rented or not, privately or publicly owned), whether these authorities may carry out inspections and the frequency of those inspections, and what follow-up is given to decisions finding that a dwelling does not comply with the relevant regulations.

Pending receipt of the information requested, the Committee reserves its position on this point.

### ***Legal protection***

The report states that according to the Constitution, the Civil Code of Procedure, the Code of Administrative Legal Procedure and the Civil Code, everyone has the right to apply to a court to protect his/her rights and interests. In particular, under Article 16 of the Civil Code, everyone has the right to apply to a court to protect his/her personal property or non-property rights and interests.

The Committee asks for the next report to describe which cases concerning the right to adequate housing might be brought before the courts and whether extra-judicial remedies are also available concerning this right. In this connection, it wishes the next report to provide information on any relevant case-law of domestic courts. Meanwhile, it reserves its position on this point.

### ***Measures in favour of vulnerable groups***

The report explains that there are housing subsidies which are granted to residents of households who cannot pay for housing and communal services. The right to receive a housing subsidy applies to citizens of Ukraine, foreigners and stateless persons who are legally staying in the territory of Ukraine and depends solely on family income.

Concerning Roma, the Committee concluded in its previous conclusions (Conclusions 2015, 2017) that it had not been established that measures were taken by public authorities to improve the substandard housing conditions of Roma. The Committee asked for information on the implementation of the Strategy of Roma national minority protection and integration into Ukrainian society for the period up to 2020, approved by the Decree of the President of 8 April 2013 (Conclusions 2015).

In its reply to the Committee's request, the report indicates that the Action Plan implementing the Strategy involves state authorities and regional, Kyiv and Sevastopol city administrations. The Ministry of Regional Development of Construction and Housing and Communal Services has established a permanent working group on Roma housing issues. The report further explains that residents of Roma settlements may use long-term preferential loans under the regional programme "Own Home" and that plots of land are allocated to persons belonging to the Roma minority for private agricultural use and individual construction of housing.

The Committee notes however from the Concluding observations adopted by the United Nations Committee on Economic, Social and Cultural Rights on the sixth periodic report of Ukraine on 23 May 2014 that the majority of Roma continued to live in substandard housing conditions without safe drinking water or sanitation facilities, electricity, heating, sewage, waste disposal or legal security of tenure (§ 18). The United Nations Committee expressed concern about the lack of indicators to assess progress in implementing the Strategy and the Action Plan and the insufficient budget allocations for their effective implementation (§ 8).

The Committee also notes from the last ECRI report on Ukraine adopted on 20 June 2017 that access to decent housing continued to be one of the most serious problems for Roma. While ECRI noted with satisfaction that the authorities had conducted awareness raising about the existing programmes for loans, allocated plots of land to Roma in 2015 and improved the infrastructure and transport in several settlements, it noted that state institutions and agencies involved in implementing the Strategy had no sufficient funds (§§ 62 and 80). The Committee further notes that the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities, in its fourth opinion on Ukraine adopted on 10 March 2017, has also raised concerns about the housing situation of Roma, in particular the living conditions of some Roma settlements (§ 62).



The Committee therefore asks the next report to indicate whether sufficient funding is being allocated to the implementation of the Strategy and the Action Plan with regard to the housing conditions of Roma, as well as to other measures foreseen in this area during the next reference period.

Meanwhile, it considers that the situation remains in breach of the Charter on the ground that it has not been established that sufficient measures are taken by public authorities to improve the substandard housing conditions of Roma.

In its previous conclusion (Conclusions 2015), the Committee asked about the measures that were taken on adequate housing in favour of internally displaced persons. In its reply, the report indicates that a Decree of the Cabinet of Ministers of 4 October 2017 approved the procedure and conditions for granting subsidies from the State budget to local budgets for implementing measures to support territories affected by the armed conflict in Eastern Ukraine. Under this procedure, subsidies may be granted for the construction, reconstruction or acquisition of housing for communal ownership for accommodation or temporary use by internally displaced persons. In 2017, subsidies of an amount of 17.0 UAH million were allocated for the purchase of nine apartments in the city of Pokrovsk and for the purchase of 42 apartments for a temporary use by internally displaced persons in the city of Mariupol. The report also refers to the Strategy of Integration of Internally Displaced Persons up to 2020, approved by a resolution of the Cabinet of Ministers of 15 November 2017. This Strategy contains a separate section on the protection of property rights of displaced persons, which envisages specific measures aimed at providing these persons with temporary or permanent housing.

The Committee takes note of the measures that are being taken in favour of internally displaced persons. It notes however from the last ECRI report on Ukraine of 2017 that according to available data, only 7% of internally displaced persons lived in accommodation provided by the State (ECRI report, § 106). It asks the next report to continue to provide information on the measures taken to guarantee the right to housing for internally displaced persons.

Finally, the Committee refers to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015). It notes from the last ECRI report on Ukraine that there was no government housing scheme for refugees and that social housing was not available to them (ECRI report, § 92). The Committee therefore asks the next report to indicate which measures are taken to ensure adequate housing for refugees.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is not in conformity with Article 31§1 of the Charter on the ground that it has not been established that sufficient measures are taken to improve the substandard housing conditions of Roma.

## **Article 31 - Right to housing**

### *Paragraph 2 - Reduction of homelessness*

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

#### ***Preventing homelessness***

In its previous conclusion (Conclusions 2015), the Committee asked about the number of homeless persons and whether the demand for emergency solutions corresponded to the offer. It also asked about the implementation of a national programme concerning dormitories.

The report states that in 2017 there were 119 institutions for homeless persons and specialised institutions for released prisoners. These institutions provided services to 23 715 persons, compared to 17 115 persons in 2014. The report also indicates that there is a specific procedure for the placement of homeless elderly persons and persons with disabilities in social and medical institutions. In addition, the Ministry of Social Policy has approved orders concerning the standard of shelter for homeless persons (2013, outside the reference period) and the standard of supportive housing for homeless persons (2015). The provision of shelter is aimed at reducing the number of homeless persons by providing them with overnight or temporary stay. The provision of social supportive housing is aimed at creating the conditions for the independent living of adult homeless persons who work or have another source of income, but who cannot afford to rent or purchase a house.

As regards the National Targeted Programme to transfer dormitories into ownership of local communities for 2012-2015, the report indicates that 336 dormitories were transferred from state ownership into ownership of local communities. As of 1 October 2016, there were 2 996 dormitories of state ownership and 1 634 dormitories transferred into communal property (property owned by municipalities).

The Committee takes note of all the information contained in the report. It reiterates its question regarding the number of homeless persons in Ukraine and asks the next report to continue to provide information on measures taken to prevent and remedy the situation of homelessness. As regards the placement of homeless elderly persons and persons with disabilities, the Committee wishes the next report to indicate whether the number of institutions for such persons corresponds to the demand and to provide information on the conditions of those institutions. The Committee recalls that, under Article 31§2 of the Charter, States must take action to prevent categories of vulnerable people from becoming homeless. To this effect, States Parties must (see Conclusions 2011, Italy):

- adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- maintain meaningful statistics on needs, resources and results;
- undertake regular reviews of the impact of the strategies adopted;
- establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
- pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.

Pending receipt of the information requested, the Committee reserves its position on this point.

#### ***Forced eviction***

The Committee previously considered that the legal protection for persons threatened by eviction was not adequate (Conclusions 2015). In particular, it considered that the notice period of one month in case of eviction due to insolvency or wrongful occupation was not reasonable and that the obligation to find alternative solutions was not fulfilled.

The report stresses that eviction without provision of alternative accommodation does not cover eviction due to insolvency. It underlines that in cases of foreclosure of dwelling premises acquired through a loan from a bank or other person (under mortgage), the evicted persons shall be provided with another dwelling, out of temporary housing stocks in accordance with Article 132-2 of the Housing Code (see also the Governmental Committee's report of 2016 concerning Conclusions 2015, p. 74). The person concerned must release the dwelling within one month from when he/she receives a written request from the lender or the new owner. In addition to this notice period, there is a possibility for the parties to agree on a more extended period. Only after the expiry of this agreed period is the compulsory eviction carried out by judicial procedure.

The report further states that eviction without provision of alternative accommodation may take place in the following cases: destruction or damage to the dwelling premises; use of dwelling premises for purposes other than the one intended; systematic breach of the neighbours' rights and interests; squatting; recognition that the housing allocation order is invalid because of illegal actions of its beneficiaries.

The Committee takes note of this information. It asks the next report to indicate the notice period that applies in cases of eviction without provision of alternative accommodation. It also asks the next report to provide information on whether the law prohibits evictions at night or during winter; access to legal remedies against eviction and compensation in the event of illegal eviction.

Pending receipt of the information requested, the Committee considers that the situation remains in breach of the Charter on the ground that the legal protection for persons threatened by eviction is not adequate.

### ***Right to shelter***

In its previous conclusions (Conclusions 2015, 2017), the Committee found that it had not been established that the right to shelter was guaranteed. In particular, the Committee had asked clarifications on whether shelters/emergency accommodation satisfied security requirements and health and hygiene standards, and whether the law prohibited eviction from shelters or emergency accommodation without the provision of alternative accommodation (Conclusions 2011, 2015). The Committee also asked about the situation of those unlawfully present foreigners who were outside the detention centres providing temporary shelter (Conclusions 2015).

The Committee notes that Ukraine has submitted no information in its report in response to its previous conclusions and requests. It therefore reiterates its requests and concludes that it has not been established that the right to shelter is adequately guaranteed.

### ***Conclusion***

The Committee concludes that the situation in Ukraine is not in conformity with Article 31§2 of the Charter on the grounds that:

- the legal protection for persons threatened by eviction is not adequate;
- it has not been established that the right to shelter is adequately guaranteed.