



February 2019

**REPORT ON THE NEEDS ASSESSMENT
IN RESPECT OF SOCIAL RIGHTS IN UKRAINE**

**CONDUCTED WITHIN THE FRAMEWORK OF THE COUNCIL OF EUROPE
PROJECT “FRAMING COOPERATION FOR SOCIAL RIGHTS DEVELOPMENT IN
UKRAINE”**

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Table of Contents

- 1. EXECUTIVE SUMMARY**
- 2. INTRODUCTORY REMARKS**
- 3. RELEVANT EUROPEAN STANDARDS**
 - a) The rights of persons with disabilities (under Art. 15 ESC)
 - b) The rights of the elderly (under Art. 23 ESC)
 - c) The rights of children (under Art. 7 and 17 ESC)
 - d) The right to protection against poverty and social exclusion (under Art. 30 ESC)
 - e) The right to proper health care (under Art. 11 and 13 ESC)
- 4. OVERVIEW OF THE FINDINGS INCLUDING LEGAL FRAMEWORKS**
 - a) The rights of persons with disabilities (vis-à-vis Art. 15 ESC)
 - b) The rights of the elderly (vis-à-vis Art. 23 ESC)
 - c) The rights of children (vis-à-vis Art. 7 and 17 ESC)
 - d) The right to protection against poverty and social exclusion (vis-à-vis Art. 30 ESC)
 - e) The right to proper health care (vis-à-vis Art. 11 and 13 ESC)
- 5. CONCLUSIONS**
- 6. RECOMMENDATIONS**

EXECUTIVE SUMMARY

1. The aim of the report is to assess the current situation in the area of social rights in Ukraine and define the most pressing issues and needs for further cooperation between Ukraine and the Council of Europe.
2. The report provides an analysis of the results of findings concerning the situation in Ukraine in the area of social rights including legal frameworks in line with European standards, covering especially five areas identified as most needing further support of international partners. Among the selected five areas there are: the rights of persons with disabilities *vis-à-vis* Art. 15 ESC, the rights of the elderly *vis-à-vis* Art. 23 ESC, the rights of children *vis-à-vis* Art. 7 and 17 ESC, the right to protection against poverty and social exclusion *vis-à-vis* Art. 30 ESC and the right to benefit from any measures enabling to enjoy the highest possible standard of health attainable and the right to social and medical assistance *vis-à-vis* Art. 11 and 13 ESC.
3. The report has six parts: executive summary, introductory remarks, description of the relevant European standards, the overview of the findings including legal frameworks, conclusions and recommendations. The third and fourth parts of the report are divided into smaller topics.
4. Ukraine joined the Council of Europe on 9 November 1995 as its 37th member state. To date the country has signed and ratified 86 treaties of the Council of Europe and has committed to the work of a number of the Council of Europe mechanisms. Ukraine ratified the European Social Charter (Revised) (ESC) on 21 December 2006, accepting 76 of its 98 paragraphs including Art. 15 para. 1 – 3, Art. 23, Art. 7 para. 1 – 10, Art. 17 para. 1 – 2, Art. 30, Art. 11 para. 1 – 3 ESC. It has not ratified Art. 13 par. 1 – 4 ESC and has not ratified the Additional Protocol providing for a system of collective complaints¹.
5. To support Ukraine to fulfil its accession commitments towards the Council of Europe, a number of initiatives, mainly focusing on assisting Ukraine's integration in a common European legal space, have been undertaken. The new Council of Europe-Ukraine Action Plan for 2018-2021 was adopted on 21 February 2018, providing for a comprehensive framework for co-operation between the Council of Europe and Ukraine². One of the priority areas for this co-operation is enhancing the respect of social rights in Ukraine. To assist Ukraine to enhance the respect of social rights in line with the European Social Charter, the project **"Framing co-operation for social rights development in Ukraine"** was launched.
6. Ukraine still needs support in adjusting its legal system and practice to the standards of the Council of Europe, especially demanded under the European Social Charter. Although over the last few years a lot of work has been done, especially on the legal frameworks, there are still areas in which the situation in Ukraine does not comply

¹ See the country factsheet:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805ac112>

² Council of Europe-Ukraine Action Plan for 2018-2021, adopted on 21 February 2018, CM/Del/Dec(2018)1308/21bisc

with European standards and obligations imposed under the European Social Charter are not fulfilled. The reforms introduced in recent years advanced at a fast pace, and monitoring their effects is now inevitable.

7. The areas, within the field of social rights, most needing further support of the Council of Europe, are: **the rights of persons with disabilities, the rights of the elderly, the rights of children, the right to protection against poverty and social exclusion, and the right to proper health care.** In the above mentioned areas Ukrainian regulations do not fully meet European requirements and the practice of exercising these rights is even farther from European standards.
8. Activities that should be taken to adjust the situation in Ukraine in the area of social rights to the standards of the Council of Europe, especially demanded under the European Social Charter, should go into two directions: **changes in law and changes in practice adjusting the reality to the legal standards.**
9. In the area of changes in the legal system the work on adjusting the standards of protection to European ones should be continued and those shortcomings which still exist should be eliminated – wherever possible – in the process of amending existing regulations. New laws should be introduced in those areas where existing acts do not cover the issues that need regulation.
10. In the area of practice there is even more that can and should be done to adjust the standards of protection of social rights in Ukraine to European ones. The most important activity that can and should be taken is ensuring the compliance of practice with the law, which can be done by raising the awareness and knowledge of the protection of social rights, ensuring the enforcement of court judgments and decisions, promoting social dialogue and monitoring the area of social protection regularly and effectively. Raising the awareness and knowledge on the protection of social rights should be done at all levels and among different groups of people. It is advisable to achieve this goal through measures especially such as trainings for representatives of professions that include involvement in social protection matters and candidates for these professions and awareness raising campaigns that should be widely promoted.

INTRODUCTORY REMARKS

1. The CoE has requested **Mrs Monika Smusz-Kulesza** to draft, with the support of **Mrs Diana Rakus and Mrs Margarita Galstyan**, a report assessing the needs for international support in the area of social rights in Ukraine. The report is based on an analysis of the Ukrainian legislation on social rights and the findings being the result of the meetings with various stakeholders during the fact-finding missions in Kyiv.
2. In particular, the experts were requested to analyse the legal and institutional frameworks currently in place in Ukraine related to social rights in line with European standards, paying special attention to five main areas: the rights of persons with

disabilities (under Art. 15 ESC), the rights of the elderly (under Art. 23 ESC), the rights of children (under Art. 7 and 17 ESC), the right to protection against poverty and social exclusion (under Art. 30 ESC) and the right to protection of health (under Art. 11 and 13 ESC).

3. On 4-7 December 2018 the CoE organised meetings with stakeholders during a fact-finding mission in Kyiv, the results of which are reflected in this report. The experts met representatives of civil society (representatives of: The Ukrainian Helsinki Human Rights Union, The Kharkiv Human Rights Protection Group, The Vostok SOS, The Right to Protection), international counterparts (representatives of the UNHCR and the OHCHR), academia (Taras Shevchenko National University of Kyiv and National Pedagogical Dragomanov University in Kyiv), relevant ministries (the Ministry of Social Policy, the Ministry of Healthcare, the Ministry of Temporary Occupied Territories and Internally Displaced Persons, the Ministry of Education and Science, the Ministry of Justice and Coordination centre on free legal aid), and also met representatives of the Penitentiary Department, of the Government's Envoy on Gender Equality and of the Ombudsperson's office, as well as the member of the Parliament (Verkhnovna Rada).
4. On 16-17 January 2019 the CoE organised a stakeholders conference in Kyiv, the results of which also contributed to the findings reflected in this report. The conference consisted of eight plenary sessions during which on-going reforms in the area of social rights in Ukraine were discussed having regard to the provisions of the European Social Charter.
5. The report is based on an analysis of different laws, in particular: the Law of Ukraine on State Financial Guarantees of Public Health Care (selected articles); the Labour Code (selected articles), the Criminal Code (selected articles), Law of Ukraine on the Principles of Prevention and Counteraction of Discrimination in Ukraine (selected articles), Law of Ukraine on the Fundamentals of Social Protection of Persons with Disabilities in Ukraine (selected articles), Law of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men (selected articles), Education Law of Ukraine (amendment) Regarding the Accessibility of People with Special Educational Needs to Educational Services (selected articles).
6. Different action plans and reports were also taken into account in the preparation of this report, such as: the Cabinet of Ministers of Ukraine Resolution of 14 May 2015, No. 450-r, on approval of the Action Plan to ensure implementation of the provisions of the European Social Charter (Revised) for 2015-2019; the Cabinet of Ministers of Ukraine Resolution of 16 March 2016 No. 161-r, on approval of the Poverty Reduction Strategy; the Strategy of the 2018-2022 State Policy for Public Health and Active Longevity; The Cabinet of Ministers of Ukraine Ordinance of 15 November 2017 No. 909-r, on approval of the Strategy on Integration of Internally Displaced Persons and Implementation of Long-term Decisions on Internal Displacement for the Period until 2020.

7. At the meetings of 4-7 December 2018 in Kyiv the consultants identified all preliminarily chosen five areas as most needing further support of international development partners. In all five areas some improvements have been introduced in the past three years, but still important shortcomings have been identified.
8. In the past three years Ukraine has been undergoing important changes in law aiming at improving the level of social protection. The most important have been the reform of the pension system, the reform of the education system and the reform of the health care system. Apart from those, since 2015 Ukraine has been undergoing the decentralization reform started with the “Concept of the Reform of Self-Government and Territorial Organization of Power in Ukraine”.
9. In addition to the comprehensive reforms of the pension system, the education system and the health care system, important amendments were introduced in the regulation of remuneration, social assistance and rehabilitation systems and in the procedure of acquiring documents by undocumented persons.
10. The group of consultants points out that its task is to assess not only the law, but also the compliance in practice with the obligations arising from the Charter.

RELEVANT EUROPEAN STANDARDS³

a) The rights of persons with disabilities (under Art. 15 ESC)

1. The European Social Charter guarantees disabled persons the right to independence, social integration and participation in the life of the community. All of these must be exercised without discrimination based on disability. The rights apply to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age.
2. All persons with disabilities (children and adults who face particular disadvantages in education, such as persons with intellectual disabilities) have the right to education and training: primary education, general and vocational secondary education as well as other forms of vocational training. Non-discrimination legislation is an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy for those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. Legislation may consist of general antidiscrimination legislation, specific legislation concerning education, or a combination of the two.

³ This part of the report is based mostly on the ECSR’s views and interpretations expressed in relevant decisions, conclusions, statements of interpretation and in The Digest of the case law of the European Committee of Social Rights, 2008, available at: <https://rm.coe.int/168049159f>

3. Persons with disabilities (children, adolescents, adults) must be integrated into mainstream facilities; education and training must be made available within the framework of ordinary schemes and, only where this is not possible, through special schools. Lessons provided in mainstream schools and, if needed, in special schools must be adequate. This means that, in order to guarantee an equal and non-discriminatory treatment of persons with disabilities, mainstream and special schools must ensure adapted teaching. States must take measures (such as the support of teachers and the accessibility of premises) in order to enable integration and must demonstrate that tangible progress is being made in setting up inclusive education systems.
4. Art. 15§2 ESC requires states to promote access to employment on the open labour market for persons with disabilities. It applies to both physically and intellectually disabled persons. To this aim, legislation must prohibit discrimination on the basis of disability in employment, as well as the dismissal on the basis of disability. In addition, there must be obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities, in particular persons who have become disabled while in their employment as a result of an industrial accident or occupational disease.
5. Sheltered employment facilities must be reserved for those persons with disabilities who, due to their disability, cannot be integrated into the open labour market. They should aim to assist their beneficiaries to enter the open labour market. Persons working in sheltered employment facilities where production is the main activity are entitled to the basic provisions of labour law and in particular the right to fair remuneration and trade union right.
6. The right of persons with disabilities to social integration provided for by Art. 15§3 ESC implies that barriers to communication and mobility be removed in order to enable access to transport (land, rail, sea and air), housing (public, social and private), cultural activities and leisure (social and sporting activities). To this end Art. 15§3 ESC requires the existence of comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been unlawfully treated; and the adoption of a coherent policy in the disability context: positive action measures to achieve the goals of social integration and full participation of persons with disabilities. Such measures should have a clear legal basis and be coordinated.
7. People with disabilities should have a voice in the design, implementation and review of policies concerning them. Technical aids must be available either for free or subject to a contribution towards their cost. Telecommunications and new information technology must be accessible and sign language must have an official status.

8. Public transport (land, rail, sea and air), all newly constructed or renovated public buildings, facilities and buildings open to the public, and cultural and leisure activities should be physically accessible.
9. The needs of persons with disabilities must be taken into account in housing policies, including the construction of an adequate supply of suitable, public, social or private, housing. Further, financial assistance should be provided for the adaptation of existing housing.

b) The rights of the elderly (under Art. 23 ESC)

1. The European Social Charter guarantees every elderly person the right to social protection. One of the primary objectives of Article 23 is to enable elderly persons to remain full members of society. The expression “full members” means that elderly persons must suffer no ostracism on account of their age. The right to take part in society’s various fields of activity should be granted to everyone active or retired, living in an institution or not. The effects of restrictions to the legal capacity should be limited to the purpose of the measure.
2. Non-discrimination legislation (or similar legislation) should exist at least in certain domains protecting persons against discrimination on grounds of age. Some elderly persons at times may have reduced decision making capacity or no such capacity at all. Therefore, there should exist a procedure for ‘assisted decision making’ for the elderly.
3. Enabling elderly persons to remain full members of society for as long as possible should be achieved by different means, e.g. by providing them with adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life. The primary focus of the right to adequate resources is on pensions. Pensions and other state benefits must be sufficient in order to allow elderly persons to lead a ‘decent life’ and play an active part in public, social and cultural life. Pensions must be linked to the average wage levels and the overall cost of living. Pensions must be index-linked. The costs of transport, medical care and medicines, as well as the existence of a carer’s allowance for family members looking after an elderly relative must be taken into consideration while assessing the rights of the elderly.
4. Elderly persons have the right to certain services and facilities and to provision of information about services and facilities available for them. In particular, information is required on the existence, extent and cost of home help services, community based services, specialised day care provision for persons with dementia and related illnesses and services such as information, training and respite care for families caring for elderly persons, in particular, highly dependent persons, as well as cultural leisure and educational facilities available to elderly persons.

5. Another objective of Article 23 is to enable elderly persons to choose their lifestyle freely and to lead independent lives in their familiar surroundings for as long as they wish and are able. To achieve this aim, the needs of elderly persons must be taken into account in national or local housing policies. The supply of adequate of appropriate housing for elderly person must be sufficient. Housing law and policy must take account of the special needs of this group. Policies should help elderly persons to remain in their own homes for as long as possible through the provision of sheltered/supported housing and assistance for the adaptation of home.
6. In the context of a right to adequate health care for elderly persons it is required that health care programs and services (in particular primary health care services including domiciliary nursing/health care services) specifically aimed at the elderly must exist together with guidelines on healthcare for elderly persons. In addition, there should be mental health programs for any psychological problems in respect of the elderly, and adequate palliative care services.
7. Elderly persons living in institutions must be provided with appropriate support, while respecting their privacy, and they should be able to participate in decisions concerning living conditions in their institution. To achieve this aim the following rights must be guaranteed: the right to appropriate care and adequate services, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact with persons close to the elderly person and the right to complain about treatment and care in institutions. There should be a sufficient supply of institutional facilities for elderly persons (public or private), care in such institutions should be affordable and assistance must be available to cover the cost. All institutions should be licensed, subject to a declaration regime, to inspection or to any other mechanism which ensures, in particular, that the quality of care delivered is adequate.

c) The rights of children (under Art. 7 and 17 ESC)

1. The European Social Charter guarantees children and young persons the right to special protection against the physical and moral hazards to which they are exposed.
2. States are obliged to set the minimum age of admission to employment at 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education. The prohibition on 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. It also extends to all forms of economic activity, irrespective of the status of the worker (employee, self-employed, unpaid family helper or other). The effective protection of this right cannot be ensured solely by legislation; the legislation must be effectively

applied in practice and rigorously supervised. The Labour Inspectorate has a decisive role to play in this respect.

3. Art. 7 § 1 ESC allows for an exception concerning light work, i.e. work which does not entail any risk to the health, moral welfare, development or education of children. States are required to define the types of work which may be considered light, or at least to draw up a list of those which are not. Work considered to be light ceases to be so if it is performed for an excessive duration. Regarding work done at home, States are required to monitor the conditions under which it is performed in practice.
4. States are obliged to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy. 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. However, if such work proves absolutely necessary for their vocational training, they may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary. The Labour Inspectorate must monitor these arrangements. Exceptions are acceptable also in cases where young persons under the age of 18 have completed their training for performing dangerous tasks and, thus, received the necessary information.
5. States are obliged to guarantee the right of every child to education by safeguarding its capacity to learn. Only light work is permissible for schoolchildren. During school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework. Allowing children to work before school begins in the morning is, in principle, contrary to Art. 7§3 ESC. In order that children still subject to compulsory education benefit fully from school after the holiday, work must be prohibited for a period of at least 4 weeks during the summer holidays and for at least half of each holiday period granted in the course of the school year.
6. Domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory schooling. The limitation may be the result of legislation, regulations, contracts or practice. For persons under 16 years of age, a limit of eight hours a day or forty hours a week is contrary to Art. 7 § 4 ESC. However, for persons over 16 years of age, the same limits are in conformity with the Article.
7. Domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances. The “fair” or “appropriate” character of the wage is assessed by comparing young workers' remuneration with the starting wage or minimum wage paid to adults (after deduction of taxes and social security contributions). The young worker's wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For fifteen/sixteen year-olds, a wage of 30% lower than the adult starting wage is acceptable. For sixteen/eighteen year-olds, the difference may not exceed 20%. The

adult reference wage must in all cases be sufficient to comply with Art. 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair. Apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period: starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end.

8. The time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day. Such training must, in principle, be done with the employer's consent and be related to the young person's work. It does not have to be financed by the employer. Training time must thus be remunerated as normal working time, and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked.
9. Employed persons under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay. The arrangements which apply are the same as those applicable to annual paid leave for adults under Art. 2§3 ESC. For example, employed persons under 18 years of age should not have the option of giving-up their annual holiday with pay; the annual holiday with pay should not be suspended in the event of illness or accident during the holidays.
10. Persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations.
11. Domestic law must provide for compulsory regular medical check-ups for under-eighteen year olds employed in occupations specified by national laws or regulations. These check-ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed. The intervals between check-ups must not be too long.
12. Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular children's involvement in prostitution. This prohibition must be accompanied by an adequate supervisory mechanism and sanctions. All acts of sexual exploitation must be criminalised, including and in particular as regards children under 18 years of age irrespective of lower national ages of sexual consent. Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation. An effective policy against sexual exploitation of children for economic gain should cover the following three primary and interrelated forms: child prostitution, child pornography and trafficking of children. All acts relating to procurement, production, distribution, making available and simple possession of child pornography must be criminalized.

13. State parties must prohibit the use of children in other forms of exploitation such as, domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs. States parties must also take measures to prevent and assist street children. States parties must ensure not only that they have the necessary legislation to prevent exploitation and protect children and young persons, but also that this legislation is effective in practice.
14. The European Social Charter in Art. 17 guarantees children and young persons (all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier)⁴ the right to appropriate social, legal and economic protection. And within this right, the right to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities. In order to provide young people with this right the domestic law must stipulate all appropriate and necessary measures designed to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose.
15. Children and young persons must be protected against negligence, violence or exploitation.
16. Protection and special aid from the state must be provided for children and young persons temporarily or definitively deprived of their family's support.
17. Every child has the right to education. Education should be both accessible and effective. Equal access to education must be ensured for all children, and in this respect particular attention should be paid to vulnerable groups such as children from minorities, disabled children including children with intellectual disabilities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty, children unlawfully present in the territory, etc. Children belonging to these groups must be integrated into mainstream educational facilities and ordinary educational schemes. Where necessary, special measures should be taken to ensure equal access to education for these children. However, special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group.
18. Children and young persons must be provided with free primary and secondary education. Hidden costs such as books or uniforms must be reasonable and assistance must be available to limit their impact on the most vulnerable groups. Measures must be taken to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism.

⁴ Art.1 of the UN Convention on the Rights of the Child, adopted on 20 November 1989, GA resolution 44/25: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

19. Any restriction or limitation of parents' custodial rights should be based on criteria laid down in legislation, and should not go beyond what is necessary for the protection and best interest of the child and the rehabilitation of the family. The financial conditions or material circumstances of the family should not be the sole reason for placement. The long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions.
20. Domestic law must prohibit and penalise all forms of violence against children, which are acts or behaviour likely to affect the physical integrity, dignity, development or psychological wellbeing of children. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.

d) The right to protection against poverty and social exclusion (under Art. 30 ESC)

1. The European Social Charter provides for the right to protection against poverty and social exclusion. With a view to ensuring the effective exercise of this right, States are obliged to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance. There should also be monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion.
2. The measures taken by the state in this regard should strengthen access to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions.
3. As long as poverty and social exclusion persist, alongside the measures there should also be an increase in the resources deployed to make social rights effective and efficient. Adequate resources are one of the main elements of the overall strategy to fight social exclusion and poverty, and should consequently be allocated to attain the objectives of the strategy. Adequate resources are an essential element to enable people to become self-sufficient. The measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country.
4. Proactive measures may be necessary to enable people in a situation of exclusion to exercise of their social rights. In certain extreme cases, it may be incumbent on the authorities to assist the persons concerned to overcome the barriers to the exercise of rights and bridge the disadvantage gap so that they can effectively assert their rights. Failing such a proactive approach on the part of the government, the rights and remedies may be rendered illusory for particularly disadvantaged communities.

e) The right to protection of health (under Art. 11 and 13 ESC)

1. The right to protection of health guaranteed in Art. 11 of the Charter complements Art. 2 and 3 of the European Convention on Human Rights – as interpreted by the European Court of Human Rights – by imposing a range of positive obligations designed to secure its effective exercise. The rights relating to health embodied in the two treaties are inextricably linked, since – as stated in Collective Complaint FIDH v. France (No. 14/2003) - "human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights – and health care is a prerequisite for the preservation of human dignity"⁵. The right to protection of health guaranteed in Article 11 of the Charter includes also the right to a healthy environment.
2. Under Article 11, health means physical and mental well-being, in accordance with the definition of health in the Constitution of the World Health Organisation (WHO), which has been accepted by all to Parties to the Charter.
3. States must ensure the best possible state of health for the population according to existing knowledge. Health systems must respond appropriately to avoidable health risks, which are the ones that can be controlled by human action. The main indicators are life expectancy and the principal causes of death.⁶ These indicators must show an improvement and not be too far behind the European average. Infant and maternal mortality are also good indicators of how well a particular country's overall health system is operating. These are avoidable risks and every step should be taken, particularly in highly developed health care systems, to reduce these rates to as close to zero as possible.
4. The health care system must be accessible to everyone. In assessing whether the right to protection of health can be effectively exercised, particular attention must be paid to the situation of disadvantaged and vulnerable groups. Hence, any restrictions on the right must not be interpreted in such a way as to impede the effective exercise by these groups of the right to protection of health.
5. The right of access to care requires that: the cost of health care should be borne, at least in part, by the community as a whole; the cost of health care must not represent an excessively heavy burden for the individual. Steps must therefore be taken to reduce the financial burden on patients from the most disadvantaged sections of the community. Arrangements for access to care must not lead to

⁵ Decision on the merits of the ECSR, complaint no. 14/2003 by the International Federation of Human Rights Leagues (FIDH) v. France.

⁶ The Digest of the case law of the European Committee of Social Rights 2008, pp 336-338. Available at: <https://rm.coe.int/168049159f>

unnecessary delays in its provision. The management of waiting lists and waiting times in health care should take account of the Committee of Ministers Recommendation (99)21 on criteria for such management. Access to treatment must be based on transparent criteria, agreed at national level, taking into account the risk of deterioration in either clinical condition or quality of life. The number of health care professionals and equipment must be adequate. In case of hospitals, the objective laid down by WHO for developing countries of 3 beds per thousand population is being used as a minimum is treated as an obstacle to access to health care for the largest possible number of people. Conditions of stay in hospital, including psychiatric hospitals, must be satisfactory and compatible with human dignity.

6. Public health policy must pursue the promotion of public health in conformity with the objectives fixed by the World Health Organization (WHO). National rules must provide for informing the public, education and participation. States must demonstrate through concrete measures that they implement a public health education policy in favour of the general population and population groups affected by specific problems. These measures should be introduced to discourage activities that are damaging to health, such as smoking, alcohol and drugs, and to develop a sense of individual responsibility, including such aspects as a healthy diet, sexuality and the environment.
7. Health education must continue throughout school life and form part of school curricula. Informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned.
8. There must be free and regular consultation and screening for pregnant women and children throughout the country. Free medical checks must be carried out throughout the period of schooling. The frequency of school medical examinations, their objectives, the proportion of pupils concerned and the level of staffing are factors taken into consideration while assessing the fulfilment of the obligation to provide proper medical care. There should also be screening, preferably systematic, for all the diseases that constitute the principal causes of death.
9. Overcoming pollution is an objective that can only be achieved gradually. Nevertheless, states party must strive to attain this objective within a reasonable time, by showing measurable progress and making best possible use of the resources at their disposal. In this respect the guarantee of a healthy environment requires that States develop and regularly update sufficiently comprehensive environmental legislation and regulations and take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level and to help to reduce it on a global scale. Apart from this, States are obliged to ensure that environmental standards and rules are properly

applied and assess health risks through epidemiological monitoring of the groups concerned.

10. Anti-smoking measures are particularly relevant for the compliance with the right to proper health care, since smoking is a major cause of avoidable death in developed countries (in Europe 30% of deaths from cancer are attributable to smoking) and is associated with a wide range of diseases (cardiac and circulatory diseases, cancers, pulmonary diseases, etc.). Smoking kills one adult in ten throughout the world. The World Health Organization (WHO), as part of the Health for All campaign, has set a target for European countries of raising the proportion of non-smokers in the population by at least 80% and protecting non-smokers against involuntary exposure to tobacco smoke.⁷ To be effective, any prevention policy must restrict the supply of tobacco through controls on production, distribution, advertising and pricing.⁸ In particular, the sale of tobacco to young persons must be banned as well as smoking in public places, including transport, and advertising on posters and in the media. The effectiveness of such policies is being assessed on the basis of statistics on tobacco consumption. The same approach also applies *mutatis mutandis* to anti-alcoholism and drug addiction measures.
11. States must operate widely accessible immunisation programs. They must maintain high coverage rates not only to reduce the incidence of these diseases, but also to neutralise the reservoir of the virus and thus achieve the goals set by WHO to eradicate several infectious diseases.
12. Countries must demonstrate their ability to cope with infectious diseases, such as arrangements for reporting and notifying diseases, special treatment for AIDS patients and emergency measures in case of epidemics.
13. States must take steps to prevent accidents. The main sorts of accident are road accidents, domestic accidents, accidents at school, accidents during leisure time, including those caused by animals, and accidents at work. Trends in accidents at work are considered from the standpoint of health and safety at work.
14. The European Social Charter in Art. 13 provides that anyone without adequate resources should have a right to social and medical assistance. In order to ensuring the effective exercise of this right, any person who is without adequate resources and who is unable to secure such resources either by her or his own efforts or from other sources, in particular by benefits under a social security scheme, should be granted adequate assistance and, in case of sickness, the care necessitated by her or his condition. Family solidarity cannot be regarded as a suitable 'other source' of income for a person without resources. Family solidarity in such circumstances does not provide persons in need with a clear and precise basis of social support and, in addition, many families may not be in a position to supply the necessary minimum level of assistance.

⁷ ECSR Conclusions XV-2, Greece, pp. 252-253

⁸ ESCR Conclusions XVII-2, Malta, p. 560-561

15. The system of assistance must be universal in the sense that benefits must be payable to “any person” on the sole ground that he/she is in need. The obligation to provide assistance arises as soon as a person is in need, i.e. unable to obtain “adequate resources”. This means the resources needed to live a decent life and “meet basic needs in an adequate manner”. The form of social assistance can be differentiated – it may take the form of benefits in cash or in kind. Assistance must be “appropriate”, i.e. make it possible to live a decent life and to cover the individual’s basic needs. The ultimate aim in any system of social assistance must be to work towards a situation where assistance is no longer required.
16. The right to assistance may not depend solely on the discretion of the administrative authorities: it must constitute an individual right laid down in law and be supported by effective remedies including a right of appeal against decisions regarded by the beneficiary or claimant as unfavourable. The law must lay down objective criteria and phrase them in sufficiently precise terms. So as not to leave the assessment of the state of need and the necessity of assistance entirely in the hands of the competent authority, the law must define the elements taken into account in order to assess the state of need and make the criteria for assessment of that need clear, as well as the procedure for determining whether a person lacks adequate resources, including the methods used to investigate resources and needs.
17. Everyone who lacks adequate resources must be able to obtain free of charge “in the event of sickness the care necessitated by his condition”. In this context, medical assistance includes free or subsidised health care or payments to enable persons to pay for the care required by their condition. The seriousness of the illness cannot be a factor in refusing to grant medical assistance. The right to medical assistance should not be confined to emergency situations.
18. Persons receiving assistance shall not, for that reason, suffer from a diminution of their political or social rights. Any discrimination against persons receiving assistance that might result from an express provision must be eradicated. Confining eligibility for social services in general and assistance in particular to holders of identity documents or certificates of residence in a particular municipality could be incompatible with Article 13§2 ESC as persons without the resources necessary to establish a fixed place of residence might be deprived of assistance.
19. Everyone must be able to receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want. The services must be provided free of charge.

OVERVIEW OF THE FINDINGS (INCLUDING LEGAL FRAMEWORKS)

a) The rights of persons with disabilities (*vis-à-vis* Art. 15 ESC)

1. According to the statistics of the Ministry of Social Policy “Amount of persons with disabilities” there were **2 635 600 persons with disabilities in Ukraine in 2018, including 159 000 children**⁹. There are three categories of disability (I, II and III), pursuant to the Regulation on medical and social expert examination and provisions on the procedure, conditions, and criteria of assigning disability approved by Cabinet of Ministers Resolution No. 1317 of 3 December 2009. The Instruction on disability group assignment was approved by the Order of the Ministry of Health dated 05.09.2011 No. 561¹⁰.
2. Ukraine ratified the United Nations Convention on the Rights of Persons with Disabilities on 4 February 2010, and also accepted the provisions of Art. 15 of the Charter. Since then large scale legislative work has been done with the involvement of the civil society.
3. Pursuant to Article 2 of the (revised) Law No. 4 213 of 22 December 2011 concerning the principles of social protection in Ukraine¹¹, **discrimination on grounds of disability is prohibited**. The Criminal Code of Ukraine envisages criminal liability for violation of the principle of the equality of citizens, based among other things on handicap.
4. Law No. 5207-VI on Principles of Prevention and Combating Discrimination in Ukraine which was enacted on 6 September 2012¹² forbids direct and indirect discrimination, based, among other things, on disability and applies in particular to the field of education, public services and relations between employers and employees.
5. The Law of Ukraine on the Fundamentals of Social Protection of Persons with Disabilities in Ukraine¹³ establishes a prohibition of discrimination against people with disabilities, a definition of reasonable adaptation and a list of authorities.
6. On 5 September 2017, the education reform was launched with the adoption of the Law of Ukraine “On Education” (No. 2145-VIII). This Law gave the parents of the special needs pupils the right to claim for **inclusive education**. Upon request of parents, schools have the obligation to establish inclusive classes.
7. In 2014-2015, 5.000 special needs pupils attended special classes in general educational institutions, while 2.200 of them attended inclusive class-groups in secondary schools of general education. The total number of children with disabilities attending general educational institutions was 59.600. Out of a total of some 168.280 children having disabilities, only a minority appeared to be attending mainstream schools¹⁴.

⁹ Statistical digest "Social Protection of the Population of Ukraine" prepared by the State Statistics Service of Ukraine http://www.ukrstat.gov.ua/druk/publicat/kat_u/2018/zb/07/zb_szn_2017.pdf

¹⁰ Order of the Ministry of Health on Instruction on disability group assignment No. 561, as of 05.09.2011, registered at the Ministry of Justice on November 14, 2011 under No. 1295/20033

¹¹ Law of Ukraine “On Amendments to Some Laws of Ukraine on the Rights of Persons with Disabilities” on December 22, 2011 No. 4213-VI

¹² Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” on September 6, 2012 No. 5207-VI

¹³ Law of Ukraine “On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine” on March 21, 1991 No. 875-XII

¹⁴ Statistical digest "Social Protection of the Population of Ukraine" prepared by the State Statistics Service of Ukraine http://www.ukrstat.gov.ua/druk/publicat/kat_u/2018/zb/07/zb_szn_2017.pdf

8. In 2017, the total number of children with disabilities attending general educational institutions was 68.700.¹⁵ According to the statistics of the Ministry Of Education in 2016/2017 4.000 special needs pupils attended inclusive class-groups in secondary schools of general education. In 2017/2018 the number increased up to 7.179 and according to non-official data in 2018/2019 11.914 special needs children filed documents to be included in inclusive class-groups in secondary schools of general education. As to other educational institutions – in 2017 the number of 9.447 children with disabilities attended pre-school educational institutions, which is double the number from the previous year. Apart from this, 4.828 young people with disabilities attended vocational and technical educational institutions and 13.216 higher ones. In 2016/2017, 71 children with Down syndrome attended inclusive class-groups in secondary schools of general education, in 2017/2018 the number increased up to 146.
9. In 2017-2018, 30.000 children attended special schools.¹⁶ Under the Law on Education of 2017 parents have the right to choose the school for their children – special one or general one. The Ministry of Education is going to take action of deinstitutionalisation of special schools.
10. National trainers for inclusive education have been trained.
11. Still the society has a problem accepting children with disabilities. According to the data of the Ministry of Education there is still a high proportion of parents who do not want their children to attend general education institutions to hide the special needs of the child. Concerns about special needs children attending general schools are expressed also by parents of other pupils who are afraid about the level of education in such classes. Even the teachers and other school staff are not free from concerns.
12. Decree of the President of Ukraine No 501/2015 On Approval of the National Human Rights Strategy of Ukraine¹⁷, obliges to take measures in order to remove any restrictions of the amount of pension and other social payments to the persons with disabilities, and to review their amount in order to provide for the decent standard of living. (p. 72). The date to introduce the changes was the fourth quarter of 2016. The changes in law were introduced. The Resolution of the Cabinet of Ministers of Ukraine dated 18 November 2015, No. 954 "On Amendments to the Resolution of the Cabinet of Ministers of Ukraine No. 265 of 26 March 2008" regulates the issue of pensions and state social assistance for persons with disabilities. On 03.10.2017 the Law of Ukraine No. 2148-VIII "On Amendments to Certain Legislative Acts of Ukraine Regarding the Increase of Pensions" was adopted, which modernized pensions according to the wage index.
13. The problems that were most often mentioned by Ukrainian stakeholders were: low level of pensions (50 Euro per month) resulting in low standard of life and high poverty

¹⁵ Ibid

¹⁶ Ibid

¹⁷ National Human Rights Strategy of Ukraine approved by the Decree of President nr 501/2015 as of 25.08.2015

rate among persons with disabilities, insufficient support provided to most vulnerable groups of persons with disabilities – children, IDPs and the elderly.

14. The biggest challenge seems to be the situation of persons with mental disability, including children, and the process of involving them in the process of education and vocational training.
15. There are no special programs dedicated to children with disabilities at the pre-school level.
16. The statistics on issues relating to persons with disabilities are incomplete.
17. The social protection of people with disabilities is provided under the Law of Ukraine On Fundamentals of Social Protection of Persons with Disabilities in Ukraine No. 875-XII of 21 March 1991 and Decree of the President of Ukraine on Measures Aimed at Ensuring Observance of the Rights of Persons with Disabilities No. 553/2016 of 13 December 2016. The laws exist, but their effective application is still to be desired.

b) The rights of the elderly (*vis-à-vis* Art. 23 ESC)

1. **According to “The Strategy of the 2018-2022 State Policy for Public Health and Active Longevity” Ukraine is in the top thirty oldest countries of the world:** its nationals over 60 years old were 21.8 per cent of the total population in 2015, while the group over 65 years old was 15.5 per cent. The national demographic forecast suggests that the 60+ group will represent one fourth of the total population in 2025 and the 65+ group 18.4 per cent, while 2030 will see over 26 and 20 per cent in those two groups respectively¹⁸.
2. The most important factors that lead to numerous problems for the elderly are: low levels of economic welfare resulting from poor retirement coverage and an inadequate system of government social standards and benefits; no comprehensive programs for targeted social support that would identify and solve individual and family problems; low public awareness of individual possibilities to participate in social support programs, including the ones managed by non-governmental organizations; and underestimating senior citizen’s capacity to have sustainable and predictable consumer needs which could offer new opportunities for the development of domestic consumer markets.
3. Other most important factors that lead to numerous problems for the elderly are: poor health and poor access to quality medical services resulting from bad health care and prevention throughout their lives; poor awareness of the healthy way of life in old age, ways of reaching healthy and active longevity, and geriatric assistance possibilities; and underdeveloped medical and social infrastructure.

¹⁸ The Strategy of the 2018-2022 State Policy for Public Health and Active Longevity approved by the Cabinet of Ministers resolution 10 as of 11.01.2018

4. The last group of factors that influence the situation of the elderly are: low levels of social and economic activities resulting from poor educational and professional workforce mobility, underdeveloped institutions and traditions of self-education and continuous lifelong learning accompanied by a conservative job structure and rigid labour markets; public stereotypes portraying population ageing as a negative process to be combated, and stereotypes about the elderly people that lead to negative attitudes and various forms of discrimination.
5. **The Strategy of the 2018-2022 State Policy for Public Health and Active Longevity** seeks to address the abovementioned problems and achieve the relevant Sustainable Development Goals approved at the UN General Assembly in September 2015 to create favourable conditions for a healthy and active longevity, adapt the social institutions to further demographic ageing, and build a society of equal opportunities. It was adopted in Resolution No. 10-r of the Cabinet of Ministers of Ukraine of 11 January 2018 together with the action plan for its implementation¹⁹.
6. The pension reform was launched with the adoption of the Law of Ukraine “On Amending Certain Legislative Acts of Ukraine regarding the Increase of Pensions” No. 2148-VIII as of 3 October, 2017²⁰. Four main goals of the pension reform were: recalculation of pension amounts based on current wage averages; setting of a more fair and unified pension system and creating equal conditions for calculating pensions for all employee categories based on duration of eligible work; introducing mandatory annual indexation; and addressing the Pension Fund’s deficit. The main achievement of the pension reform was the introduction of the pension calculations based on duration of pensionable service for all employee categories. According to the statistics of the Ministry of Social Policy **since October 2017, pensions have been raised for 10.2 million pensioners**. The average increase was of 561.17 UAH. As of January 2018, the average pension was 2,480.46 UAH as compared to 1,828.31 UAH in January 2017, reflecting a 35.7% increase. Implementing the reform, the Cabinet of Ministers of Ukraine issued a Decree of 21 February 2018 No.103 on recalculation of military pensions, which became the basis for increasing the pensions of 463,400 pensioners²¹. Furthermore, “The Action Plan for 2017–2018 on the Introduction of the 2nd stage and Improvement of the 3rd stage, of the Pension System” has been adopted²².
7. In 2018 the minimum pension increased by 124 UAH (9%) as compared to the previous year 2017 - from 1.373 UAH to 1.497 UAH. In 2018 it was planned to increase this minimum up to UAH 1.564 from 1 July, and up to UAH 1.638 from 1

¹⁹ *Ibid*

²⁰ Law of Ukraine “On Amending Certain Legislative Acts of Ukraine regarding the Increase of Pensions” No. 2148-VIII as of 3 October, 2017

²¹ Decree of the Cabinet of Ministers of Ukraine “On the recalculation of pensions for persons released from military service, and some other categories of persons” on February 21, 2018, No.103

²² Action Plan for the introduction of a cumulative system of compulsory state pension insurance for 2017-2018 years adopted by the Decree of the Cabinet of Ministers of Ukraine on October 11, 2017 No.723-r

December²³. Although the minimum pension significantly increased in comparison to the previous years, it is still lower than the poverty threshold and even slightly lower than the extreme poverty threshold. According to the United Nations Resident Coordinator and UNDP Resident Representative in Ukraine, in March 2017 about 60% of Ukraine's population was living under the line of poverty.²⁴

8. According to the "Social Report 2017" provided by the Ministry of Social Policy in 2014-2015, the poverty threshold was UAH 1.560 (about €62), whereas the extreme poverty threshold was UAH 1.248 (about €49)²⁵. In 2017 the poverty line was UAH 2.184 per month and exceeded the value of the corresponding period in 2016 by UAH 426 or by 24.2%. The poverty rate in 2017 was 25.4%. The limit on the EU scale of equivalence in 2017 was UAH 2.464, and exceeded the value of the corresponding period in 2016 by UAH 570 or by 30.1%.
9. The situation of pensioners who are considered as internally displaced people (IDPs) is not clear – payment of pensions is the obligation of the state according to the place of living and to register as a resident it is necessary to have the right to live in a particular property. Most IDPs do not have such right.
10. The Law No. 5207-VI of 6 September 2012 on the Principles of Preventing and Combating Discrimination in Ukraine²⁶ (including based on age) ensures equal rights and freedoms, equal treatment and equal opportunities for all individuals and groups of individuals. The law applies to natural and legal persons under public and private law. Victims of discrimination have the right to complain to the relevant government authorities, the Commissioner for Human Rights of the Verkhovna Rada of Ukraine or a court.
11. The Law of Ukraine on Employment of the Population²⁷ prohibits restrictions in vacancy announcements (advertisements) e.g. on the age of candidates, and stipulates the responsibility of the employer for such an announcement and mechanism of appeals against such advertisements.
12. Situation of the elderly is especially difficult in the territories affected by war. According to unofficial statistics provided by Kharkiv Human Rights Protection Group, more than 40.000 houses were destroyed as a result of armed conflict. Most of those affected were the elderly owners of these properties. There is no legal mechanism of compensation for the property destroyed as a result of the armed conflict. It is not clear in practice if Art. 19 of the Law on Combating Terrorism²⁸ apply to the situation of armed conflict. Apart from this there is a difficulty in proving ownership as lots of

²³ Ukraine Reform Conference, Reforms in Ukraine: Progress and Priorities, June 2018. Conference booklet available at:

https://www.kmu.gov.ua/storage/app/media/reform%20office/Ukraine_Reform_Conference_II_web.pdf

²⁴ *Ibid*

²⁵ "Social Report 2017" provided by the Ministry of Social Policy

²⁶ *Supra* note 13

²⁷ Law of Ukraine „On employment of the population” on July 05, 2012 No.5067-VI

²⁸ Law of Ukraine „On Combating Terrorism” on March 20, 2003 No.638-IV

documents have been destroyed or lost. Another difficulty concerns estimating the damage.

c) The rights of children (*vis-à-vis* Art. 7 and 17 ESC)

1. The education reform was launched with the adoption of the Law of Ukraine “On Education” (No. 2145-VIII) on 5 September, 2017²⁹. The six main goals of the education reform were: **nurturing new, high-quality education at all levels, from elementary schools to higher education institutions; introducing new standards of education that will teach 21st Century skills; improving material and the technical base of educational and scientific institutions; attracting the best teaching and scientific staff; building a fair and transparent system of funding in education and the science sector; and improving the occupational prestige of the teaching and scientific professions.** The main achievement of the education reform was the development of special legislation for improving general secondary education, vocational education and changes to higher education financing. Apart from this, the draft law on general secondary education has been developed in the first half of 2018. Implementation of the New Ukrainian School concept has started with primary education, and will continue until 2029 with successive levels of secondary education.
2. There have been no changes in the definition of “**light work**” in the Ukrainian law since the Conclusions 2011 and 2015 of the European Committee of Social Rights, which stated that the situation was not in conformity with Art. 7§1 of the Charter on the ground that the definition of light work was not sufficiently precise because there was no definition of the types of work which may be considered light or a list of those which are not. Light work is still defined in Ukrainian Labour Code as work which is not harmful to health and does not interfere with the educational process, and which is carried out in free time from studies³⁰.
3. So far, the list of light works for children has not been prepared. According to Resolution No. 450-r Ministry of Health, Ministry of Social Policy and State Labour Service were obliged to introduce a legal definition of “light work” and a list of types of children’s light work in partnership with the Ukrainian national labour unions, their associations and Ukrainian national associations of employer organisations. The date to fulfil the duty was 2018.
4. There is provision in the draft Labour Code of Ukraine (para. 5 of Art. 299 “Requirements for the employment of minors”) that prohibits the employment of

²⁹ Law of Ukraine “On Education” No. 2145-VIII as of 5.09.2017

³⁰ See Conclusions of the European Committee of Social Rights on Article 7.1 in respect to Ukraine:
<http://hudoc.esc.coe.int/eng?i=2015/def/UKR/7/1/EN> &
<http://hudoc.esc.coe.int/eng?i=2011/def/UKR/7/1/EN>

minors in work where they may be subjected to threats of physical, psychological or sexual violence, or the performance of which may harm their health, lead to negative effects on moral development (work in the field of gambling, work on the transportation and sale of alcoholic beverages, tobacco products, medical products etc.). The list of works for which the use of labour of minors is prohibited should be approved by the central executive body, which ensures the formation and implementation of state policy in the spheres of labour and social policy.

5. In accordance with the resolution of the Verkhovna Rada of Ukraine dated 18 September 2018, No. 2543, the draft Labour Code is included in the agenda of the ninth session of the Verkhovna Rada of Ukraine of the eighth convocation and is recommended to be adopted in the second reading.
6. There have been **no changes in the duration of working time for children aged 16-18** who are still subject to compulsory education under Ukrainian law since the Conclusions 2015 of the European Committee of Social Rights, which stated that the situation was not in conformity with Art. 7§1 of the Charter on the ground that the duration of working time for children aged 16-18 who are still subject to compulsory education has to be reduced (from the prevailing maximum of 36 hours per week)³¹.
7. Due to the current Labour Code, Art. 187 "Rights of minors in labour relations", in labour relations, minors (persons under the age of eighteen) are equated with the rights of adolescents, and in the field of labour protection, working hours, holidays and certain other conditions of employment, they enjoy the benefits provided by the legislation of Ukraine. Under Labour Code Art. 51 "Reduced duration of working time", reduced working hours are set to: workers aged 16 to 18 years - 36 hours a week, for people aged 15 to 16 (students aged 14 to 15 working in the period of holidays) - 24 hours a week. The duration of working hours of students who work in their free time during the school year may not exceed half of the maximum working time provided for persons of the corresponding age³².
8. Yet, the Ministry of Social Policy informed that the issue remains on the agenda and it is planned to work on it together with the question of the definition of "light work".
9. The minimum wage has increased through the last four years from 1600 UAH in 2016³³, through 3200 UAH in 2017³⁴ and 3723 UAH in 2018³⁵ up to 4173 UAH in 2019³⁶.
10. According to Art. 155 of the Criminal Code (Sexual intercourse with a sexually immature person), natural or unnatural sexual intercourse with a person under the age of sixteen committed by an adult, shall be punishable by restraint of liberty for a term up to five years or imprisonment for the same term (para. 1). The same actions

³¹ *Ibid*

³² Labour Code of Ukraine № 322-VIII as of 10.12.71

³³ Law of Ukraine „On the State Budget of Ukraine for 2016” December 25, 2015, No. 928-VIII

³⁴ Law of Ukraine „On the State Budget of Ukraine for 2017” December 21, 2016, No. 1801-VIII

³⁵ Law of Ukraine „On the State Budget of Ukraine for 2018” December 07, 2017, No. 2246-VIII

³⁶ Law of Ukraine „On the State Budget of Ukraine for 2019” November 23, 2018, No. 2629-VIII

committed by close relatives or family members, a person assigned responsibility for the upbringing or care of the victim, or if they caused infertility or other grave consequences, shall be punishable by imprisonment for a term of five to eight years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years or without such deprivation (para. 2)³⁷.

11. According to Art. 156 of the Criminal Code (“debauchery” or corruption of minors), this offence committed in relation to a person under 16 years of age, shall be punishable restraint of liberty for a term of up to five years, or imprisonment for the same term (para. 1). The same actions committed in respect of a young child, or by a parent or surrogate parent, step parent, foster parent or guardian, or any person imposed by a duty of upbringing or taking care of a sexually immature person, - shall be punishable with imprisonment for a term of five to eight years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years (para. 2)³⁸.
12. Pursuant to the Resolution of the Plenum of the Supreme Court №5, 30/05/2008, On judicial practice in cases of crimes against sexual freedom and the sexual integrity of the person, corruption of minors are some acts of a sexual nature, capable of causing physical and moral debauchery. Such actions can be both physical and psychological³⁹.
13. Physical - the exposure of the genital organs of the victim, their tingling, other obscene touches that cause sexual arousal, the training of masturbation, performing sexual intercourse in the presence of the victim (minor), the act of masturbation, the satisfaction of sexual passion by unnatural means, the inclination or coercion of the victim to commit certain sexual acts among themselves or with the perpetrator, etc.
14. Psychological actions can be, for example, in cynical conversations with victims of sexual themes, explicit narratives, naturalistic sexual stories, photographing victims in various sexual situations, showing pornographic subjects.
15. Resolution of the Cabinet of Ministers of Ukraine no. 450-r obliged the Ministry of Social Policy, Ministry of Justice, Ministry of Interior, Ministry of Foreign Affairs⁴⁰ to amend certain laws of Ukraine against child prostitution and pornography to prevent sexual exploitation of children. The date to fulfil the duty was 2018, which was not fulfilled. The same Resolution No. 450-r obliged the Ministry of Social Policy, Ministry of Justice, Ministry of Interior, Ministry of Education and Science, and the Ministry of Youth and Sports to take into consideration Recommendation No. R (91) 11 regarding sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults, adopted on 9 September, 1991, and make proposals for its

³⁷ Criminal Code of Ukraine as of 01.09.2001

³⁸ *Ibid*

³⁹ Resolution of the Plenum of the Supreme Court On judicial practice in cases of crimes against sexual freedom and the sexual integrity of the person №5, as of 30.05.2008

⁴⁰ Action Plan to ensure implementation of the provisions of the European Social Charter (Revised) for 2015-2019 adopted by the Resolution Cabinet of Ministers of Ukraine, May 14, 2015, No. 450-r

implementation, if necessary. The date to fulfil the duty was 2015 – 2018. Again the duty was not fulfilled.

16. Art. 301 of the Criminal Code criminalises the storage of pornographic products with the aim of selling or distributing them. However, the simple possession or production, importing into Ukraine and exporting child pornography that is not intended for sale or distribution is not criminalised⁴¹.
17. Pursuant to Art. 301 of the Criminal Code, importing into Ukraine for sale or distribution purposes, or making, transporting or other movement for the same purposes, or the sale or distribution of pornographic images or other items, and also compelling others to participate in their making, - shall be punishable by a fine of 50 to 100 tax-free minimum incomes, or arrest for a term up to six months, or restraint of liberty for a term up to three years, with the forfeiture of pornographic images or other items and means for their production and distribution (para. 1). The same actions committed with regard to pornographic motion pictures and video films, or computer programs, also selling pornographic images or other items to minors or disseminating such images and items among them, - shall be punishable by a fine of 100 to 300 tax-free minimum incomes, or restraint of liberty for a term up to five years, or imprisonment for the same term, with the forfeiture of pornographic motion pictures and video films and means for their production and showing (para. 2). Any such acts as provided for by paragraph 1 or 2 of Art. 301, if repeated, or committed by a group of persons upon their prior conspiracy, or aimed at obtaining big profit, - shall be punishable by imprisonment of three to seven years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and forfeiture of the pornographic items, motion pictures, video films, computer programs, and means for their production, dissemination and showing (para. 3). Acts provided for in paragraphs 1 and 2 of the same Article committed with regard to pornographic works, images or other items containing child pornography, or compelling minors to participate in production of pornographic works, images or motion and video films, computer programs, - shall be punishable by imprisonment of five to ten years with the deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years and forfeiture of pornographic items, motion pictures, video films, computer programs, and means for their production, dissemination and showing (para. 4)⁴².
18. "Information on the number of violations regarding the working time for young workers under the age of 18 in 2014-2017"⁴³ shows that in 2014 the number of companies checked for compliance with labour legislation for minors was 5876 and the number of minors whose rights had been violated was 329, out of which 11

⁴¹ Supra note 37

⁴² *Ibid*

⁴³ "Information on the number of violations regarding the working time for young workers under the age of 18 provided by the State Labour Service

worked over a set time. In 2016 the number of companies checked was 5317, the number of violations was 157 out of which 5 worked over a set time. In 2017 the relevant figures were – 3567, 83 and 6 accordingly.

19. In 2018, 71.000 children had no custody of parents (were orphans or temporarily without the support of parents). 8 % of them were staying in institutions such as orphanages and 92 % were in other forms of custody such as foster care or adoptive families⁴⁴. The process of deinstitutionalization of care over children with no custody started in 2017 with the reform of institutional care system and upbringing of children for 2017-2026 approved by the Resolution of the Cabinet of Ministers of Ukraine No.562 9 August 2017⁴⁵. Most children were taken out the institutions and placed in foster care or adoptive families. Those children who remain in institutions usually are severely affected by multiple disability or at the age of 14 to 18 or are members of very large families. The process of deinstitutionalization is still in progress.
20. There are 48,000 Roma living in Ukraine, according to the most recent official census of 2001. However, unofficial estimates suggest that the number of Roma in Ukraine is between 120,000 and 400,000. Roma live dispersed all over Ukraine, and population density varies throughout the country. The largest concentrations live in the following regions (oblasts): Odessa, Poltava, Cherkassy, Donetsk, Dnepropetrovsk, Kharkiv, Chernovtsy and Transcarpathia. In certain areas in Transcarpathia in western Ukraine, Roma officially represent as much as 3% of the population. The problems that were most often highlighted by Ukrainian stakeholders connected with education of Roma children were the problems with lack of the current census, high percentage of children not brought to school and high percentage of children leaving school.

d) The right to protection against poverty and social exclusion (*vis-à-vis* Art. 30 ESC)

1. According to “The Social Report 2017” by The Ministry of Social Policy, the poverty line by relative criterion (i.e. 75% of the median level of per capita equivalent total expenditures) in 2017 was UAH 2.184 per month and exceeded the value of the corresponding period in 2016 by UAH 426 or by 24.2%. The poverty rate by the relative criterion was 25.4%. The depth of poverty rate, which determines how much the average income (expenditure) of the poor population is below the poverty line, was 20.8% relative to 20.3% for the first 9 months of 2016. The limit on the EU scale of equivalence (60% of median level of equivalent per capita income on the EU scale

⁴⁴ Information provided by The Ministry of Education at the meeting during the fact finding mission.

⁴⁵ Resolution of the Cabinet of Ministers of Ukraine No.562, as of 9.08.2017

of equivalence) was UAH 2.464, and exceeded the value of the corresponding period in 2016 by UAH 570 or by 30.1%. The poverty rate in the EU's equivalence scale was 9.1%. Poverty headcount ratio at 3.10 PPP\$ a day in 2017 was 0,10 % of population⁴⁶.

2. The Decree of the President of Ukraine nr 501/2015 On Approval of **the National Human Rights Strategy of Ukraine** obliged to develop and submit for consideration to the Cabinet of Ministers of Ukraine a draft resolution of the Cabinet of Ministers of Ukraine on approving a Strategy to Overcome Poverty. The deadline was the first quarter of 2016⁴⁷.
3. In March 2016 Resolution on approval of the Poverty Reduction Strategy was adopted by The Cabinet of Ministers of Ukraine (Law No. 161-r)⁴⁸. The goal of the Strategy has been to gradually reduce the extent of poverty, social exclusion and introduce new mechanisms for its prevention in Ukraine. The strategy is expected to be implemented by 2020.
4. According to the Resolution on approval of the Poverty Reduction Strategy, the poverty rates remain stably high in the country. As follows from the surveys, for the first nine months of 2013, 23.8 per cent of the population are below the relative poverty line, where measuring of expenditure is concerned. The deterioration of the labour market was one of the main factors in the aggravation of poverty problems, especially in regions with a large concentration of displaced persons. The existing labour market institutional mechanisms do not meet the present-day requirements and need to be fundamentally revised. New approaches to improve the remuneration system should be introduced, as the poverty rate among the employed remains high. It totalled 18.8 per cent for the first nine months of 2015. Parents' low wages are not enough to ensure proper living conditions for their children (the poverty rate is 17.9 per cent among two-parent working families). In addition, there is a gender wage gap (the remuneration for men exceeds the remuneration for women by 33.5 per cent)⁴⁹.
5. According to the data provided in the Poverty Reduction Strategy, the share of income from entrepreneurial and individual activity remains low in a family budget (for the third quarter of 2015 it amounted to 5.5 per cent of the total aggregate household income). There is no favourable business environment to start one's own business that generates employment and income for a large number of people. The level of shadow economy is also significant, which, according to the different expert estimations, varies between 40 and 60 per cent today⁵⁰.
6. The poverty rate remains high among the retired (21.7 per cent) as a result of the low pension coverage. At the same time, a significant part of retirees remain beyond the boundaries of social integration, and incorporating them into the social structure

⁴⁶ Supra note 25

⁴⁷ Supra note 17

⁴⁸ Poverty Reduction Strategy approved by the resolution of the Cabinet of Ministers N 161-r as of 16.03.2016

⁴⁹ *Ibid*

⁵⁰ *Ibid*

therefore remains a topical issue, thus creating conditions to meet the special needs of the elderly, adapting to their needs in terms of living conditions, workplaces, transport, leisure facilities, etc. Poverty risk increases as the population in a community decrease. At the same time, the rural poverty is almost twice as high as that in large cities (29.7 per cent against 17.1 per cent). A special risk group is rural women.

7. In Ukraine, present infrastructure problems determine the specific nature of poverty in terms of living conditions. **In this context, the rural population is the most vulnerable to poverty and social exclusion:** 45.7 per cent of households suffer from the lack of proper service facilities; 41.8 per cent - from the lack of the timely ambulance services in populated areas; 28.5 per cent - from the lack of health facilities nearby; every fourth household - from the lack of regular public transportation with an area with more developed infrastructure; over 50 per cent - from the impossibility to have basic household amenities.⁵¹
8. The system of social support for the vulnerable segments of the population needs to be improved to enhance its impact on poverty reduction. Social support programmes cover 58.3 per cent of the poor, with only 41 per cent of social programme money (except for housing subsidies) spent to meet their needs. At the same time, only 25 per cent of recipients of social support of all types are people considered as poor.
9. At the same time, the social group most vulnerable to poverty are children under the age of 18 (the poverty rate amounts to 29.9 per cent). The overall poverty rate in families with children is of 29.3 per cent, while in multi-child families it goes up to 50.8 per cent, and in families with children and unemployed adults the rate is of 36 per cent⁵².
10. Registered unemployed in December 2018, according to Ukrstat was 341,700, in which 184,000 were women and 157,700 were men, 183,200 were urban population and 158,500 lived in rural areas. The data exclude the temporarily occupied territory of the Autonomous Republic of Crimea, the city of Sevastopol and temporarily occupied territories in the Donetsk and Luhansk regions⁵³.
11. The groups at high risk of social exclusion include the HIV-positive people, people living with AIDS, people suffering from tuberculosis, persons sentenced to restraint of liberty or imprisonment for a specified period, homeless, IDPs and national minorities.
12. As for national minorities, available data indicates that many Romani communities in Ukraine live in conditions of extreme poverty, often in segregated settlements with little or no access to basic social services such as the education system, health care and other essential services. In general, within these communities there is a low level

⁵¹ *Ibid*

⁵² *Ibid*

⁵³ Supra note 9

of formal education (in particular among women), high level of unemployment, deplorable living conditions and bad health status⁵⁴.

13. One of the problems leading to extreme poverty and social exclusion that was most often highlighted by interlocutors was the **problem of being undocumented**, something that concerned mostly IDPs, but also other individuals e.g. Roma minority. In practice the procedure of acquiring documents is lengthy and troublesome. Although an administrative procedure was introduced in January 2018 to address this shortcoming, it is still not working effectively and people must continue to use the court procedure. Undocumented people have difficulties finding a job, have no access to health services, no electoral rights, no access to social payments e.g. social monetary benefit in case of childbirth, no possibility to get secondary school certificate and start university.
14. As highlighted by most interlocutors, in Ukraine there are considerable differences from region to region. In some places, most services are very difficult to access. There are no medical points, no schools and the post offices are closing. As claimed by some interlocutors, 7.000 post offices in the country will be closed in 2019. Awareness of members of the society about human rights and social rights is very low in the regions, while the level of poverty in the country is the highest.

e) The right to protection of health (*vis-à-vis* Art. 11 and 13 ESC – NB. Ukraine has not ratified Art. 13 ESC)

1. In the health care sector, legislation on “State financial guarantees for the provision of health services and medicines” was adopted in July 2018. Under this regulation, the National Health Care Service of Ukraine will launch initial services for primary care. Full implementation of healthcare reform for primary care will occur in 2019. Currently the test registration of hospitals and doctors in the electronic system has begun, with 1,200 hospitals, 20,799 doctors and 5,116,774 patients registered. In February 2018, eHealth software was rolled out for the state system administrator. Apart from this, the Government adopted Decree No. 1101 dated 27.12.2017 on the “Creation of the National Health Service of Ukraine”.
2. The main goals of the health care reform are: introduction of the State Guaranteed Benefits Package; setting up a national insurer, the National Health Service of Ukraine (NHSU); introducing the “money-follows-the-patient” funding model; providing hospital autonomy; introducing an online eHealth system and “Affordable Medicine” Program; introducing simple and transparent medicine procurement procedures; creating an enabling environment for the exercise of healthcare powers by local authorities.

⁵⁴ A report by the European Roma Rights Centre. Country Profile 2011-2012. Available at: http://www.errc.org/uploads/upload_en/file/ukraine-country-profile-2011-2012.pdf

3. On April 2018, the Cabinet of Ministers of Ukraine adopted 4 key Decrees foreseen in Law No. 2168, regarding the implementation of primary care reform beginning in the second half of 2018: “On Issues of Contracts of Medical Care for the population under the Program of Medical Guarantees”; “On Approval of the Procedure for Implementation of State Guarantees for Medical Care of the Population under the Program of Medical Guarantees for Primary Healthcare in 2018”; “On Approval of the Procedure for the Provision of Medical Assistance to Foreigners and Stateless Persons Who Are Permanent Residents or Temporarily Stay on the Territory of Ukraine ”; and “Addressing issues of the eHealth system”. The decree on “Approval of the procedure for the provision of medical assistance to foreigners and stateless persons who are Permanent residents or temporarily stay in Ukraine” is applied to those persons who have applied for the status of refugee or persons requiring additional protection and in respect of whom a relevant decision has been made.
4. Emergency care is a real challenge, first of all due to lack of qualified staff. In 2019 new training courses are to be launched – for medical respondents and paramedics.
5. The reform of specialised care begins in 2019. In 2020 the reform of the financing of hospitals will be launched and the system of hospital care will be remodelled.
6. Mental health is a real challenge. In December 2017 a Concept was adopted on the development of mental health in Ukraine for the period up to 2030.
7. The vaccination rate was very low up to 2016, but from 2017 it is growing gradually. According to the World Health Organization, in 2018 more than 54.000 cases of measles were reported in Ukraine (out of 83.000 reported in the whole of Europe). According to the World Bank, immunisation rates for children 12-23 months fell below 50% in Ukraine during 2016. These numbers decreased the following year, but the country is still feeling the effects of consecutive years with low coverage⁵⁵.
8. The health care of prisoners falls under the responsibility of other authorities. There is also a separate medical system for some ministries. There is no cooperation between those systems and the general health care system.
9. According to the WHO the life expectancy for Ukraine at birth in 2016 (average for both sexes) was 72.3 years and in 2015 – 71.3 years (compared to 69.7 in 2009). Despite this upward trend, the life expectancy rate is still low compared to other European countries. For instance, life expectancy at birth in the EU-28 was estimated at 81 years in 2016 and at 80.6 in 2015.

CONCLUSIONS

⁵⁵ Data available at: <https://data.worldbank.org/indicator/SH.IMM.MEAS?locations=UA>, <http://www.euro.who.int/en/countries/ukraine/news/news/2018/05/ukraine-restores-immunization-coverage-in-momentous-effort-to-stop-measles-outbreak-that-has-affected-more-than-12-000-this-year>.

1. Ukraine still needs support in adjusting its legal system and practice to the standards of the Council of Europe, especially demanded under the European Social Charter. Although over the last few years a lot of work has been done, especially in terms of legal frameworks, there are still areas in which the situation in Ukraine does not comply with the European standards and obligations undertaken under the European Social Charter are not fulfilled. The reforms which have been introduced through last few years have been going at a fast pace, and it is necessary to monitor their effects.
2. Within the field of social rights, the areas most needing additional support from the Council of Europe are: **the rights of persons with disabilities, the rights of the elderly, the rights of children, the right to protection against poverty and social exclusion, and the right to proper health care.** In the above mentioned areas, Ukrainian regulations do not fully meet European requirements and the exercise in practice of those rights is even farther from European standards. All those areas were identified as most needing further support from the Council of Europe by both the group of consultants on the basis of the desk research and by all the stakeholders, including line ministries, Ombudsperson's office, civil society representatives, other international interlocutors, as well as academia during the fact finding mission and stakeholders conference in Kyiv.
3. The level of awareness of social rights provided under the European Social Charter and awareness about the Charter itself are very low, not only among the members of society, but also among representatives of professions involved in social matters. Even the judges and lawyers do not seem to be familiar with the Charter and do not turn to its provisions in court judgments and any statements of cases. The case law of the Committee of Social Rights is not known either.
4. The situation in Ukraine has not changed since the last Conclusions of the ECSR (on art. 7 ESC) and is still not in conformity with Art. 7§3 of the Charter on the ground that the definition of light work is not sufficiently precise and the duration of working time for children aged 16-18 who are still subject to compulsory education is excessive and therefore cannot be qualified as light work.
5. The situation in Ukraine has not changed since the last Conclusions of the ECSR (on art. 15 ESC) and is still not in conformity with Art. 15§2 of the Charter on the grounds that it has not been established that the obligation to ensure a reasonable accommodation is effectively respected and that mainstreaming in employment is not effectively guaranteed in respect of persons with disabilities.
6. The situation in Ukraine has not changed since the last Conclusions of the ECSR (on art. 7 ESC) and is still not in conformity with Art. 7§10 of the Charter on the grounds that using sexual services of a child is not criminalised over the age of 16 (up to 18).
7. The situation in Ukraine has not changed since the last Conclusions of the ECSR (on art. 7 ESC) and is still not in conformity with Art. 7§10 of the Charter on the grounds that all children under 18 are not effectively protected against child prostitution; all children under 18 are not effectively protected against child pornography; simple

possession or production of child pornography is not a criminal offence; measures taken to address the problem of street children are insufficient and disproportionate in the circumstances.

8. The situation in Ukraine has not changed since the last Conclusions of the ECSR (on art. 23 ESC) and is still not in conformity with Article 23 of the Charter on the grounds that the minimum level of pension is inadequate.
9. The situation in Ukraine does not appear to be in line with Art. 13§1 of the Charter (not ratified by Ukraine) as the access to medical care is not provided in case of undocumented people.
10. The situation in Ukraine has not changed since the last Conclusions of the ECSR (on art. 30 ESC) and is not in conformity with Art. 30 of the Charter on the ground that there is no adequate overall and coordinated approach to combating poverty and social exclusion.

RECOMMENDATIONS

General:

1. Activities that should be taken to adjust the situation in Ukraine in the area of social rights to the standards of the Council of Europe, especially demanded under the European Social Charter, should go into two directions: changes in law and changes in practice to bring the reality into line with the legal standards.
2. **In the area of changes in the legal system** the work on adjusting the standards of protection to the European ones should be continued and those shortcomings which still exist should be eliminated – wherever possible – in the process of amending existing regulations. For example, one could suggest **reviewing the Labour Code** in the light of the Council of Europe standards. The review should, for example, aim at amending the **definition of light work** in such a way for it to be precise. The other amendment should be the **shortening of the duration of working time for children aged 16-18** who are still subject to compulsory education. New laws should be introduced in those areas where existing acts do not cover the issues that need regulation. An example could be **regulating the situation of disabled people in one act**, providing them with clear, legible and structured catalogue of rights and benefits. The rights to be effective should be followed by sanctions in case of violation.
3. It is advisable **to increase the involvement of civil society representatives in the process of law-making**. The minimum standard should be involvement in the form of consulting draft laws in the area of social rights. In case of acts concerning labour relations, social partners should also be involved in the process.

4. **In the area of practice** there is even more that can and should be done to adjust the standards of protection of social rights in Ukraine to European ones. The most important objective should be **ensuring compliance of practice with the law**, which can be done by **raising awareness and knowledge about the protection of social rights, assuring the enforcement of court judgments and decisions, promoting social dialogue and monitoring the area of social protection** regularly.
5. **Raising awareness and knowledge** about the protection of social rights should be done **at all levels and among different groups of people**.
6. **Trainings for representatives of professions** involved in social protection matters and candidates for these professions (lawyers and judges, teachers, social workers, employees of public institutions, etc.) should be one of the priority interventions. In the process of training, special attention should be paid to proper use of existing programs and measures that can be used (e.g. promotion of HELP Courses) and acquisition of new ones. New measures should include providing the representatives of professions involved in social protection matters with different kinds of courses **promoting the standards of the European Social Charter and the case law of the European Committee of Social Rights** and with different kinds of publications that show the practice and experiences of other countries (both positive and negative).
7. It is advisable to add into the curriculum for law students – if not more, as a non-obligatory subject –**social rights from a Council of Europe perspective, especially the European Social Charter**.
8. There should be increased awareness in the society of social rights as guaranteed under the European Social Charter. In order to achieve this goal it is advisable to organise **awareness rising and communication campaigns** (in media and other means).

Specific

1. Work on the **draft “Law on prevention on moral harassment in the workplace”** (No. 4997) dated 3rd June 2014 should be pursued in the Parliament. Depending on the work done to date, the draft law should be revised and adopted or voted. Before adoption, an expertise in light of Council of Europe / European Social Charter standards would be desirable.
2. The Criminal Code will need to be reviewed and amended in light of the standards of the Council of Europe. Work on amendments proposed in September 2018 and registered in Parliament should be continued. Especially **Art. 301 of the Criminal Code that criminalises the storage of pornographic products with the aim of selling or distributing them should be changed** (or a new article should be added) in such a way to criminalise also the possession or producing, importing into Ukraine and exporting child pornography that is not intended for sale or distribution.

3. **Using sexual services of a child should be criminalised** over the age of 16 up to the age of 18.
4. The Labour Code will need to be reviewed and amended in the light of the standards of the Council of Europe. Work on the draft Labour Code should be continued. Particularly:
5. The **types of work which may be considered light should be defined** in the Labour Code or in another act regulating Labour Law in accordance with the requirement of the European Social Charter (Revised). In case such definition is not possible, at least a list of types of work which are not considered to be light should be drawn up.
6. The duration of **working time for children aged 16-18 who are still subject to compulsory education should be reduced** below 36 hours – up to maximum of 30 hours, as 36 hours per week is excessive working-time for school children and therefore cannot be qualified as light work.
7. It is advisable to create **supporting strategies for children who are leaving orphanages**. They should be well informed about their rights and opportunities.
8. Changes in the education system must be continued. **The number of children with disabilities attending inclusive classes in general schools should be increased**. At the same time the number of children in special schools should be reduced with the effect of increasing the level of service provided in such schools.
9. **Awareness-raising action in the society** at large is needed to eliminate historically grown stereotypes about persons with disabilities, and especially children, and to highlight the importance of inclusive education and its positive effects both on the special needs children and on society.
10. Further **training of teachers is needed** to reduce the fears connected with teaching special needs children and provide teachers with well-established theoretical and practical knowledge enabling them to work effectively with children with disabilities.
11. **The right to education must be effectively guaranteed for all children from the temporarily occupied and uncontrolled territories of Ukraine. Special attention should be paid to children with disabilities**. Homeschooling where exams can be taken without attending classes at school, home lessons and patronage, where the teachers go to the place where the pupil lives should be effectively guaranteed for all these children. To assure the effectiveness of homeschooling in practice, a reporting system should be introduced to monitor the situation and the real effects of this form of education.
12. The **codes of good practices** connected with inclusive education, vocational training for persons with disabilities and creating work places for the disabled should be prepared both in paper and online and should be distributed among teachers, social workers and representatives of the local authorities.
13. **Strategies to provide proper vocational training to persons with disabilities and create work places** for them should be developed. Dialogue between social partners

should be encouraged in order to reach the highest possible number of workplaces for persons with disabilities.

14. The problem of persons with mental disability must be confronted and solved. There should be proper vocational training provided for persons with mental disability wherever possible to reduce the number of people totally depended on social assistance.
15. It is advisable to create strategies directed at increasing the **minimum level of pensions above the poverty threshold**.
16. The problem of undocumented people must be dealt with. A **simple and reasonably expedited procedure** should be in place **allowing people to obtain personal identification documents so as to prevent the** loss of rights, e.g. childbirth benefit. The duration of the relevant cases at the courts should be reported and monitored.
17. The issue of uneven development of the regions must be confronted and solutions should be suggested. It is advisable to provide capacity enhancement activities (including trainings) **to local authorities to develop their knowledge and understanding of social rights guaranteed under the European Social Charter**.