



January 2012

## **European Social Charter (revised)**

European Committee of Social Rights

Conclusions 2011

(UKRAINE)

Articles 7, 8, 16, 17, 19, 27 and 31  
of the Revised Charter

*This text may be subject to editorial revision.*



## Introduction

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

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

*The Revised European Social Charter was ratified by Ukraine on 21 December 2006. The time limit for submitting the 3rd report on the application of this treaty to the Council of Europe was 31 October 2010 and Ukraine submitted it on 13 October 2010. [On 5 April 2011, a letter was addressed to the Government requesting supplementary information regarding Articles 7§2, 8 and 27. The Government submitted its reply on 10 June 2011.*

*The Committee held a meeting with the Ukrainian authorities on 29 and 30 September 2011 in the framework of the procedure on no-accepted provisions. The report of the meeting is available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).*

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

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

Ukraine has accepted all Articles from this group with the exception of Article 19 and 31§3.

The reference period was 1 February 2007 to 31 December 2009.

The present chapter on Ukraine concerns 23 situations and contains:

- 7 conclusions of conformity: Articles 7§4, 7§6, 7§8, 7§9, 8§3, 8§4 and 27§2
- 5 conclusions of non-conformity: Articles 7§1, 7§10, 16, 31§1 and 32§2

In respect of the other 11 situations concerning Articles 7§2, 7§3, 7§5, 7§7, 8§1, 8§2, 8§5, 17§1, 17§2, 27§1 and 27§3 the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

The next Ukrainian report deals with the accepted provisions of the following articles belonging to the first thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

The deadline for the report was 31 October 2011.

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

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

### *Paragraph 1 - Prohibition of employment under the age of 15*

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

According to Article 188 of the Labour Code, the minimum age for employment is 16 years. As an exception, with the consent of one of the parents or a guardian, children of 15 years of age may be admitted to employment.

The Committee recalls that 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 Committee asks that the next report confirm whether this prohibition applies to all economic sectors, all places of work, all forms of economic activity, as described above.

The effective protection of the rights guaranteed by Article 7§1 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. The Committee takes note of the inspection activity of the State Department for Supervision of Compliance with Labour Legislation during the reference period. It asks what kind of measures are taken in case of violations and what measures are taken to prevent the employment of children below the permitted age.

Article 7§1 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 who are not. Work considered to be light ceases to be so if it is performed for an excessive duration.

The report states that Article 188 of the Labour Code allows for light work for students of secondary schools, vocational and specialized secondary schools, upon reaching age of 14 and with the consent of one parent or a guardian. Light work is defined as work not harmful to health and not interfering with educational process, carried out in free time from studies.

The Committee assesses that the definition of light work provided for in the national legislation is not sufficiently precise because there is no definition of the types of work which may be considered light or a list of those which are not.

Regarding work done at home, States are required to monitor the conditions under which it is performed in practice. The Committee asks what is the situation regarding work done at home for children under 15 years of age: are there certain conditions under which this form of employment may be allowed for children under 15 and how is the monitoring of the situation in practice carried out.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 7§1 of the Charter on the ground that the definition of light work is not sufficiently precise because there is no definition of the types of work which may be considered light or a list of those which are not.

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

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

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

The Committee recalls that in application of Article 7§2 of the Charter, domestic law must set 18 as the minimum age of admission 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.

Article 190 of the Labour Code stipulates that persons under 18 years of age may not be employed in hard work, work with unhealthy or hazardous working conditions, as well as in underground

work. Persons under 18 years of age may not be employed in lifting or moving objects with weight over the approved limits by the Decree of Ministry of Health No. 59, of 22 March 1996. The report states that a list of hard and hazardous forms of work was approved by Decree of Ministry of Health No. 46, of 31 March 1994.

The Committee takes note of the information regarding the draft of new Labour Code regarding prohibition of employment of under-age persons in dangerous or unhealthy work. It asks that next report provide detailed information on the changes it will bring once adopted and in force. The Committee takes note also of the inspections carried out during the reporting period and asks what kind of measures are taken in case of violations.

The Committee recalls that if hazardous work proves absolutely necessary for their vocational training, young workers 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. The Committee asks for detailed information on possible arrangements for performing hazardous work during vocational training and how is the monitoring ensured.

The Appendix to Article 7§2 of the Charter also permits exceptions in cases where young persons under the age of 18 have completed their training for performing dangerous tasks and, thus, received the necessary information. The Committee asks whether there are any exceptions under Ukrainian legislation permitting for employment of young workers in such a case and if so, what are the rules governing the employment in such case.

#### *Conclusion*

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

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

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

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

Article 7§3 guarantees the right of every child to education by safeguarding its capacity to learn. Only light work is permissible for schoolchildren under this provision. The notion of "light work" is the same as under article 7§1.

In the case of states that have set the same age, which is over 15 years, for admission to employment and the end of compulsory education, questions related to light work are examined under Article 7§1. However, since Article 7§3 is concerned with the effective exercise of the right to compulsory education, matters relating thereto are assessed under that article. Adequate safeguards must be in place to allow the authorities (labour inspectorate, social and education services) to protect children from work which could deprive them of the full benefit of their education.

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 Article 7§3. Allowing children aged 15 years still subject to compulsory education to deliver newspapers from 6 a.m. for up 2 hours per day, 5 days per week before school is not in conformity with the Charter.

The Committee notes that the light work (examined in its conclusion on Article 7§1) may be performed by students of secondary schools, vocational and specialized secondary schools, upon reaching age of 14 and with the consent of one parent or a guardian. Light work is defined as work not harmful to health and not interfering with educational process, carried out in free time from studies. The Committee asks that the next report indicates what is intended with "free time from studies". Is such work performed outside the school holiday period, i.e. before or after class or at the weekend?

The Committee refers to its findings regarding light work in its conclusion on Article 7§1, according to which the definition of light work provided for in the national legislation is not sufficiently precise.

To enable it assess the situation concerning Article 7§3, which requires time worked to be limited so as not to interfere with children's school attendance, receptiveness and homework, the Committee asks what daily working hours are permitted during the school year. The Committee wishes to know the number of hours that may be worked per day both during the holidays and in the course of the school year.

Specifically, as regards work during school holidays, the Committee refers to its interpretative statement on Article 7§3 in the General Introduction. It asks the next report to indicate whether the situation in Ukraine complies with the principles set out in this statement. In particular, it asks whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. It also asks what are the rest periods during the other school holidays.

#### *Conclusion*

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

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

#### *Paragraph 4 - Working time for young persons under 18*

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

Under Article 7§4, 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 the article. However, for persons over 16 years of age, the same limits are in conformity with this article.

The report states that for young workers aged 16-18 a maximum of 36 hours per week is established, while for the age group of 15-16 the maximum of working hours allowed is 24 hours per week (Article 51 of the Labour Code). In case of secondary school students that work during the academic year the maximum working time may not exceed half of the working time for the age groups they belong to as described above.

The Committee asks whether all the young workers (under 18) are covered by provisions prescribed by legislation, collective agreements or other measures.

The Committee takes note of the information regarding the activity of the labour inspection. It notes that in 2007, 130 cases of violation of provisions for duration of working time for young workers were found, in 2008, there were 250 cases of violations and in 2009, there were 44 violations. The majority of violations were by private enterprises.

The Committee asks what is the percentage of the enterprises, out of the total number of enterprises, that are inspected annually by the Labour Inspectorate with regard to working time of young workers.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 7§4 of the Charter.

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

#### *Paragraph 5 - Fair pay*

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

In application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances. This right may result from statutory law, collective agreements or other means.

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 (aged 18 or above). In

accordance with the methodology adopted under Article 4§1, wages taken into consideration are those after deduction of taxes and social security contributions.

The Committee takes note of the activity of Labour Inspectorate. It asks what is the percentage of the enterprises, out of the total of the enterprises, that are inspected annually by the Labour Inspectorate with regard to the pay of young workers and apprentices.

### ***Young workers***

The report states that young workers under 18 who work short daily working hours are paid the same wage as the employees of their respective category who work full daily working hours. The Committee asks whether this statement should be understood that the young workers receive "same hourly wage", or "same monthly wage", in comparison to adult workers.

The Committee recalls that 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 15 to 16 year-olds, a wage of 30% lower than the adult starting wage is acceptable. For young workers above 16, the difference may not exceed 20%.

The adult reference wage must in all cases be sufficient to comply with Article 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. There is no assessment of the Committee of the situation in Ukraine regarding Article 4§1, as Ukraine has not accepted this provision. In order to make its assessment, the Committee would need the same indicators as those requested under Article 4§1, i.e. the net average wage and the net minimum wage.

Since the report does not provide this information, the Committee asks that it be included in the next report.

### ***Apprentices***

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.

The report contains no information as to the pay of apprentices. The Committee asks that next report indicates what is the situation regarding the pay of apprentices in relation to the points raised above.

### ***Conclusion***

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

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

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

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

In application of Article 7§6, time spent on vocational training by young people during normal working hours must be treated as 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. 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.

This right also applies to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter.

The report states that, according to Article 201 of the Labour Code, the employer or an organisation authorized by the employer, may organise individual, team, class and other types of industrial training at the expense of the enterprise, with the aim of professional training and professional development training of workers, especially of young workers. Article 202 of the

Labour Code provides for the organisation of such training in parallel with work and the employer or the organisation authorised by the employer must create conditions necessary for combining work and education. Article 204 of the Labour Code stipulates that theoretical studies and industrial training, as part of in-service training for new employees, is conducted during working hours.

Also the report states that, according to Article 122 of the Labour Code, the job position of an employee is preserved for the time of "resident professional development training", with reimbursement stipulated by legislation. The Committee asks what is meant by "resident professional development training" and what are the levels of reimbursement.

The Committee asks whether these rules apply also to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter. It asks also whether there are any exemptions for certain categories of workers or trainings.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 7§6 of the Charter.

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

#### *Paragraph 7 - Paid annual holidays*

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

In application of Article 7§7, young persons under eighteen years of age must be given at least four weeks' annual holiday with pay. The arrangements which apply are the same as those applicable to annual paid leave for adults (Article 2§3). For example, employed persons of under 18 years of age should not have the option of giving up their annual holiday with pay; in the event of illness or accident during the holidays, they must have the right to take the leave lost at some other time.

The report states that, according to Section 6 of the Law "On Vacations", young workers under 18 are granted an annual leave of 31 calendar days.

In addition, employees obtaining secondary education in secondary evening schools, classes, groups with resident or distant training at secondary schools receive additional paid leave for the period of

- final exams in "main school" – up to 10 calendar days;
- final exams in "higher school" – up to 23 calendar days;
- end-of-year exams in main and higher schools – 4 to 6 calendar days.

Employees taking external examinations for main or high school receive additional paid leave with respective duration of 21 and 28 calendar days.

The Committee asks whether Ukrainian law allows for young workers to relinquish their annual leave in return for paid work and whether in the event of illness or accident during the holidays, they have the right to take the leave lost at some other time.

The report states that inspections by the Labour Inspectorate have not revealed any violations of leave regulations. The Committee asks what is the percentage of the enterprises, out of the total of the enterprises, that are inspected annually by the Labour Inspectorate with regard to the paid annual holidays of young workers.

#### *Conclusion*

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



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

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

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

The Committee recalls that, in application of Article 7§8, domestic law must provide that under 18 year olds are not employed in night work. Laws or regulations must not cover only industrial work. Exceptions can be made as regards certain occupations specified in national laws or regulations. It is up to national laws or regulations to define the period of time considered as being "night".

The report states that, according to Article 192 of the Labor Code, young workers under 18 may not be employed in night work, overtime work and work on days off.

The Committee asks whether there are any exceptions from this rule for certain occupations.

The Committee notes that a draft of new Labor Code is being prepared which sets rules for prohibition of employment of persons under 18 in night works, overtime works, works on days off, days of state and religious holidays with the exception of young workers participating in performing and/or creating art works allowed to work in night time. The Committee wishes to be informed on the future developments in the next report.

The Committee takes note also of the activity of the Labour Inspectorate. It notes that in 2007 there were 134 violations of Article 192 of the Labour Code, and in 2008, there were 204 cases of violation.

### *Conclusion*

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

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

### *Paragraph 9 - Regular medical examination*

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

The Committee recalls that, in application of Article 7§9, 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. They may be carried out by the occupational health services, if these services have the specific training to do so.

The obligation entails a full medical examination on recruitment and regular check-ups thereafter. The intervals between check-ups must not be too long. In this regard, an interval of three years has been considered to be too long by the Committee. The medical check-ups foreseen by Article 7§9 should take into account the skills and risks of the work envisaged.

The report states that, according to Article 191 of the Labour Code, all persons under 18 years are employed only after a medical examination is carried out, and they must undergo mandatory annual medical examination until they reach 21 years of age.

The Committee asks what do the initial and periodic medical check-ups consist in and whether they take into account the specific situation of young workers and the particular risks to which they are exposed. It asks whether the same intervals of one year are applied also in the case of young workers trained in professions involving carrying out of hard works, works in unhealthy or hazardous working conditions.

The Committee takes note of the changes that are planned to be introduced by the draft of new Labour Code which provides for mandatory medical examination prior to practical training or industrial training for under-age persons trained in professions involving carrying out of difficult work or work in unhealthy or hazardous working conditions. It wishes to be informed of the future developments in the next report.

The Committee takes note of the activity of the Labour Inspectorate and it notes that in 2007, there were 372 violations of the obligation of initial medical examination and 35 violations of the obligation of regular medical examinations. Also in 2008, there were 496 violations of initial medical examination and 31 violations of regular medical examinations. Most cases of violation were found in private companies. The Committee asks what is the percentage of the enterprises, out of the total number of enterprises, that are inspected annually by the Labour Inspectorate with regard to medical examinations of young workers.

#### *Conclusion*

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

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

#### *Paragraph 10 - Special protection against physical and moral dangers*

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

#### ***Protection against sexual exploitation***

The Committee notes that according to ECPAT International<sup>1</sup> between 30-40% of persons involved in sex industry in Ukraine are between 11 and 18 years old.

The Committee recalls that in order to comply with Article 7§10, States must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular their involvement in the sex industry. This prohibition shall be accompanied with an adequate supervisory mechanism and sanctions.

An effective policy against commercial sexual exploitation of children should cover the following three primary and interrelated forms for sexual purposes: child prostitution, child pornography and trafficking of children. To implement such a policy, States should adopt legislation, which criminalises all acts of sexual exploitation, and a national action plan combating the three forms of exploitation mentioned above.

#### ***Prostitution***

The Committee notes from the report submitted by Ukraine to the UN Committee on the Rights of the Child (CRC)<sup>2</sup> that procurement for prostitution or involvement of a person in prostitution is defined as a criminal act. The perpetrator of that crime is a person who involves another person in prostitution or forced that person into prostitution by means of deceit, blackmail, exploitation of his or her vulnerable situation or use or threat of violence. A victim's young age is an aggravating circumstance. The crime is punishable by imprisonment of 3-5 years, 5-10 if committed against a minor (under 18 years), and 8-15 years if committed against a child (under 14 years) (Criminal Code Article 303 (3) and (4)). According to the report 19 crimes registered under this article were committed against youngsters in 2007, 17 in 2008 and 17 in 2009.

The Committee notes from the report that the ILO-IPEC Programme "Project of Technical Assistance against Labour and Sexual Exploitation of Children, including Trafficking in Countries of Central and Eastern Europe" was implemented in Ukraine. The report does not precise, however, the period of the implementation of the Programme. According to the report, measures were taken to support protection of children from sexual and economic exploitation, in particular the "Concept for prevention and elimination of worst forms of child labour" was approved and the notion "worst forms of child labour" was introduced in Article 21 of the Law "On Protection of Childhood" in 2005. In March 2009 a Law on "National Action Plan for Implementation of UN Convention on the Rights of the Child until 2016" was passed.

The Committee observes that the report does not provide any examples of specific measures taken with regard to above mentioned action plans. In this connection the Committee notes from the UN CRC Concluding Observation in respect of Ukraine (2007)<sup>3</sup> that the draft Action Plan as it stood in 2006 included no specific plan of action aimed at measures needed to prevent and

suppress crimes of sale of children, child prostitution and child pornography. The Committee wishes to be informed whether such a plan has been established.

The Committee further notes that the Ukrainian law does not contain specific provisions defining child prostitution. The Committee also notes from ECPAT International, with regard to the legal framework, that despite the increase in penalties, there are still some significant gaps in Ukrainian legislation on the prostitution of children as, for example, coercing or enticing a minor into prostitution requires evidence of the use of fraud, blackmail, abuse of power or other such means. Given the relatively low number of criminal proceedings registered, the Committee asks for information regarding number of perpetrators charged and eventually convicted in relation to child prostitution.

Article 156 of the Criminal Code foresees responsibility for performing lecherous acts towards individuals under 16 years old, and Article 155 foresees responsibility for sexual relations with an underage individual. However, the Committee notes from the Council of Europe Commissioner for Human Rights report<sup>4</sup> and from the UNICEF Legal Study<sup>5</sup> that sexual exploitation of children is only criminalised when the victim is under the age of 16 and "using the sexual services of a child over 16 years old or of a child that has reached the age of puberty is not considered a crime".

In this connection the Committee recalls that under Article 7§10 States must criminalise all acts of sexual exploitation with all children under 18 years of age irrespective of lower national ages of sexual consent. Consequently, the Committee holds that all children under 18 years of age are not effectively protected against child prostitution.

### ***Pornography***

According to ECPAT Ukraine is a country of origin for the production of child pornography. Street children in particular are recruited into making pornography in return for financial or other kind of compensation.

The Committee notes from the report that several measures were taken to try to reduce child pornography, especially on the Internet. The Law "on protection of public morals" provides for protection of minors from negative impact of pornography.

The Committee further notes from ECPAT and the UNICEF Legal Study that in the reference period Ukraine lacked specific legislation that defined and addressed child pornography. The Committee acknowledges that in January 2010 Ukrainian legislation in the field of counteraction to child pornography was changed: definition of "child pornography" was introduced, as well as more severe criminal responsibility for producing and disseminating child pornography, use of computer technologies for creation of pornographic materials as aggravating circumstances, introducing responsibility of providers of telecommunications for blocking resources that contain child pornography etc. However, these developments fall outside the reference period.

Furthermore, the Committee notes from the UNICEF Legal Study that there still exist unregulated issues relating to involving a child in pornography production without the use of force, as the Article 301 of Criminal Code assigns responsibility only for coercing children into producing pornographic materials and does not criminalise a violator if he or she can prove that the child was paid for the services or was voluntarily involved in production of pornographic materials. In this connection the Committee recalls that under Article 7§10 all acts relating to child pornography should be criminalised with children under 18 years of age. Therefore, the Committee holds that this situation is contrary to the Charter as all children under 18 years of age are not effectively protected against child pornography.

Furthermore, Article 301 of the Criminal Code criminalises the storage of pornographic products with the aim of selling or distributing them. However, simple possession or producing, importing into Ukraine and exporting child pornography that is not intended for sale or distribution is not criminalised.

In this connection the Committee recalls that under Article 7§10 of the Charter all acts relating to procurement, production, distribution, making available and simple possession of child

pornography must be criminalised. Therefore, it considers that the situation in Ukraine is contrary to the Charter.

According to the report 16 cases falling under Article 301 Criminal Code (import, production, sale and distribution of pornographic material) involving minors were revealed in 2009, compared to 12 in 2008 and 3 in 2007. The Committee notes from above sources, however, that conviction rates of child pornographers are poor.

### ***Trafficking***

The Committee notes that according to IOM<sup>6</sup> Ukraine is a country of origin, transit and increasingly destination for trafficking in men, women and children. It is estimated that more than 110,000 Ukrainians have fallen victim to human trafficking since 1991. The IOM reports that 4% of reported trafficking victims in Ukraine are children, although the number may be higher due to under-reporting. Children were most often forced into prostitution or forced to beg. An increasing number of Ukrainian victims were subjected to forced labour and forced prostitution within the country in 2009.

The Government confirms that in most cases trafficking in children is for the purposes of sexual exploitation. Homeless children or children in orphanages continued to be particularly vulnerable to trafficking in Ukraine.

According to the UNICEF Legal Study Ukrainian legislation does not contain definitions of such terms as "sale of children" or "trafficking in children". The legal basis for combating human trafficking is provided in Article 149 of the Criminal Code. The Committee also notes from the report submitted by Ukraine to the UN CRC that Ukrainian legislation does not contain a separate provision concerning the crime of trafficking in children, however, committing that crime against a child is considered as an aggravating circumstance. Persons convicted of human trafficking may be imprisoned for 5-12 years if the victim is aged 14-18, and for 8-15 years if the victim is under 14. The report provides that in 2007, 41 criminal cases registered under Article 149 were committed against children, compared to 31 cases in 2008, and 42 cases in 2009.

The Committee notes from the report that there are a number of positive examples of coordination between NGOs, international organisations and government agencies and among law enforcement agencies, especially in relation to child trafficking. It notes from IOM<sup>7</sup> that significant efforts have been undertaken in Ukraine to combat human trafficking. The Ministry of Interior has established a separate unit for counter-trafficking. There is a referral system in place among law enforcement bodies, non-governmental organizations (NGOs) dealing with counter-trafficking, and IOM Kiev for victims of trafficking.

The Committee notes that the UN Committee on Economic, Social and Cultural Rights (CESCR) in its Concluding observations in respect of Ukraine (2008)<sup>8</sup> was concerned about the high number of persons trafficked from, through and within Ukraine for purposes of sexual exploitation and forced labour, as well as about the reports on limited access to witness protection programmes and lenient sentences for perpetrators. The Committee asks for full information regarding legislative developments and other measures taken to tackle these problems, as well as their implementation in practice. The Committee also asks what is the incidence of child trafficking.

### ***Child victims***

According to UNICEF, Ukrainian legislation allows to hold a child, who reached 16 years of age, administratively liable for prostitution. Furthermore, the UN CRC in its Concluding Observations (2007) states that child victims of sexual exploitation are often stigmatised, socially marginalized and may be held responsible, tried and placed in detention. In particular, the status of the victim is not well defined in the Criminal Code, and the legislation does not provide clear and sufficient sanctions for physical and psychological pressure during interrogations of child victims, and the sanctions, even where adequate, are not enforced.

The Committee recalls that under Article 7§10, child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation. Therefore the Committee wishes to receive further information on the situation – when criminal liability can be imposed on a child under 18 years old and what precisely administrative liability entails.

The Committee also observes from the UNICEF Legal Study and ECPAT International that Ukrainian legislation does not take into consideration vulnerability of child victims, and lacks adapted procedures to recognize their special needs, in contrast to special considerations established for the juvenile offenders and witnesses. Furthermore, rights of the child to protection and assistance are not properly ensured or implemented in criminal procedure, nor when rendering social assistance to child victims of sexual exploitation and trafficking. In practice, child victims rarely receive any kind of support (such as financial compensation, rehabilitation or access to other support services). The Committee further notes from the above sources that there is lack of specialised facilities for rehabilitation of children, affected by the trafficking in persons, child prostitution and child pornography. The Committee asks for clarification of the situation of child victims in legislation and practice, in particular it wishes to receive information on any developments and measures taken to provide adequate assistance and rehabilitation to child victims.

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

Taking into consideration the spread of sexual exploitation of children through the means of new information technologies, Parties should under Article 7§10 adopt measures in law and in practice to protect children from their misuse.

The report states that law-enforcement agencies monitor the Internet and take measures to establish registration location for web-sites with child pornography and to document persons involved in creation of these web-sites and their contents and call the responsible to account. However, the Committee notes from ECPAT that conviction rates of child pornographers are poor and there are still deficiencies in the law enforcement due to poor equipment, inadequate training and information exchange among the various units, and lack of information technology capacities, often leading to the offenders not being prosecuted.

The Committee asks for full information concerning supervisory mechanisms and sanctions for sexual exploitation of children through the information technologies. It further asks whether legislation or codes of conduct for Internet service providers is foreseen in order to protect children.

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

Under Article 7§10 states must prohibit the use of children in other forms of exploitation following from trafficking or being on the street, such as, among others, domestic exploitation, servitude, begging, pick pocketing, shall take measures to prevent and assist street children.

According to the UN CESCR Concluding observations (2008) more than 400,000 children below the age of 15 worked in the informal and illegal economy, in particular in illegal coalmines, in the sex industry and in street begging rings. The Committee notes that the Criminal Code criminalises exploiting children for labour. In 2009 the parliament adopted amendments to the Criminal Code by introducing Article 150-1 that established criminal liability for forcing children into begging, punishable by restriction of liberty or imprisonment of 3 to 10 years, depending on aggravating factors.

The Committee notes from the study<sup>9</sup> prepared by the Institute for Demography and Social Studies of NAS of Ukraine for UNICEF that according to different estimates, there are anywhere from 30,000 to 100,000 street children in Ukraine (meaning both homeless children and children from dysfunctional families). Recent Ministry of Health calculations used to assess the number of street children and adolescents aged 10–18 who need protection indicate that there are 115,000 children and adolescents. The Committee also notes from the UN CESCR Concluding observations (2008) that children living in the streets are vulnerable to police abuse, sexual exploitation and forced labour, as well as to alcohol or drug addiction and health risks such as HIV/AIDS, and that young persons leaving in the reportedly poorly managed state-run school orphanages are particularly vulnerable to becoming homeless. The report confirms that minor runaways and street children are more likely to become victims of commercial sexual exploitation.

According to the report of the CoE Commissioner for Human Rights the majority of abandoned children have no identification papers. From absence of papers usually stem all the other problems that they encounter such as lack of access to healthcare and education, vulnerability to sexual exploitation etc. The government stated in the report submitted by Ukraine to the UN CRC that

they were working on changing the rules for registering the departure of children abroad and on developing a special identification document with a photograph, certifying a child's citizenship. The Committee asks for information about developments in this matter.

The Committee notes from the report submitted by Ukraine to the UN CRC that despite significant improvements to the system of social and legal protection of children, issues related to the accessibility of remedies to children in the event of violations of their rights remain unresolved as a result of shortages in the number and staff of children's affairs offices and social centres for families, children and young persons, particularly in small towns and villages, the inadequate number of procedures for providing social and legal support to children, and the children's insufficient awareness of their rights and protection mechanisms, especially those at risk.

The Committee asks for full information concerning protection and socio-psychological rehabilitation of street children. In particular it asks what measures have been taken to estimate, prevent and reduce this phenomenon in the best interests of these children, how are they provided protection and assistance, and whether there are any measures taken to strengthen the support and assistance available to families, both as a preventive measure and a measure conducive to the return of children to their families or other settings, as appropriate.

In the meantime, the Committee holds that the measures taken address the problem of street children are insufficient and disproportionate in the circumstances.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 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.

<sup>1</sup>CPAT International, *Profile of Commercial Sexual Exploitation of Children, Ukraine, Update: 29/07/08*

<sup>2</sup>UN Committee on the Rights of the Child (CRC), *Third and fourth periodic reports of States parties due in 2008, Ukraine, 3 March 2010, CRC/C/UKR/3-4*

<sup>3</sup>UN Committee on the Rights of the Child (CRC), *Concluding Observations, Ukraine, 28 June 2007*

<sup>4</sup>Council of Europe: Commissioner for Human Rights, *Report by the Commissioner for Human Rights Mr Thomas Hammarberg on his visit to Ukraine, 10 - 17 December 2006, 26 September 2007, CommDH(2007)15;*

<sup>5</sup>*Legal Study to identify inconsistencies between Ukraine national legislation and provisions of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to the UN Convention on the Rights of the Child, prepared by the International Women Rights Centre «La Strada-Ukraine» for UNICEF, 2010*

<sup>6</sup>International Organization for Migration, <http://www.iom.int/jahia/Jahia/media/press-briefing-notes/pbnEU/cache/offonce/lang/en?entryId=28759>

<sup>7</sup>IOM, *Migration in Ukraine: A Country Profile 2008,*

[http://publications.iom.int/bookstore/index.php?main\\_page=redirect&action=url&goto=publications.iom.int%2Fbookstore%2Ffree%2FUkraine\\_Profile2008.pdf&zenid=8e035a39c31ff8ac25e32d0f65412ba3](http://publications.iom.int/bookstore/index.php?main_page=redirect&action=url&goto=publications.iom.int%2Fbookstore%2Ffree%2FUkraine_Profile2008.pdf&zenid=8e035a39c31ff8ac25e32d0f65412ba3)

<sup>8</sup> *Concluding observations of the UN Committee on Economic, Social and Cultural Rights (CESCR) : Ukraine, 4 January 2008, E/C.12/UKR/CO/5*

<sup>9</sup>*Child Poverty and Disparities in Ukraine, Institute for Demography and Social Studies of NAS of Ukraine, United Nations Children's Fund (UNICEF), Ukrainian Centre for Social Reforms, 2009*

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

### *Paragraph 1 - Maternity leave*

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

#### ***Right to maternity leave***

According to the Labour Code employed women enjoy a maternity leave of 126 days: 70 days before birth and 56 days after birth (increased to 70 days in case of multiple birth or complications at birth). Women are entitled to this period regardless of the number of days used before childbirth. This regime also applies to women employed in the public sector.

The Committee asks whether part of the prenatal leave can be postponed until after childbirth. It asks whether there is a six-week compulsory postnatal. If not, it asks what legal safeguards exist to avoid any undue pressure from employers to shorten their maternity leave. It also asks whether there is an agreement with social partners on the question of postnatal leave which protects the free choice of women, and whether collective agreements offer additional protection. In addition, it asks for information on the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parents can take paid leave at the end of the maternity leave). Until it has all the relevant information, it reserves its position on the matter. Should the information requested not be provided in the next report, there will be nothing to establish that the situation is in conformity on this point.

#### ***Right to maternity benefits***

According to Section 38 of the Act on Mandatory State Social Insurance against Temporary Disability and Expenses Caused by Birth and Burial, benefits are provided during maternity leave to compensate for the loss of wages. Pursuant to Section 39 of the aforementioned Act, benefits represent 100% of the employee's average salary and do not depend on insurance record. This regime also applies to women employed in the public sector.

#### *Conclusion*

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

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

### *Paragraph 2 - Illegality of dismissal*

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

Pursuant to Article 184 of the Labour Code, employers cannot dismiss pregnant women, women with children under the age of three, single mothers with children under 14 years of age or children with a disability. The Committee notes that the same regime also applies to women employed in the public sector.

In cases where the undertaking ceases to operate, dismissal is however possible on the condition that placement on another job be provided. Dismissal that takes place at the end of the period prescribed in the employment contract is also possible, on the condition that the employee's average salary is preserved during job search for a duration of three months after the end of the employment contract.

According to additional information provided by the authorities, victims of illegal dismissals can lodge an appeal with a court. Nonetheless, the Committee underlines that reinstatement of women should be the rule, and that in cases where reinstatement is not possible, adequate compensation must be available. Domestic law must not prevent courts from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal. The Committee asks whether there is a ceiling on the amount that can be awarded as compensation. If so, it asks whether this upper limit covers compensation for both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asks whether both types of compensation are awarded by the same courts, and how long it takes on average for

courts to award compensation. Should the next report not provide the requested information, there will be nothing to establish that the situation is conformity in this respect.

*Conclusion*

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

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

*Paragraph 3 - Time off for nursing mothers*

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

According to Article 183 of the Labour Code, employed women with children under 18 months are granted additional breaks to look after their child. Such breaks are included in the working hours and are paid according to their average salary. The Committee notes that this regime also applies to women employed in the public sector.

The breaks which are granted must not be more than three hours apart and must not last less than 30 minutes each (or no less than 60 minutes in case several children need to be nursed). The schedule and modalities for these breaks are defined by the employer or an organisation authorised by the employer, in cooperation with trade union representatives of the enterprise concerned, and taking into consideration the mother's wishes.

*Conclusion*

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

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

*Paragraph 4 - Regulation of night work*

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

According to Article 176 of the Labour Code, night work is prohibited for pregnant women and women with children less than 3 years' old. The Committee notes that this regime also applies to women employed in the public sector.

In view of the length of the prohibition the Committee asks whether there are any exceptions to it, for example in respect of certain professions.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 8§4 of the Charter.

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

*Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

According to Article 178 of the Labour Code the amount of work ("production rates, service rates") of pregnant women must be reduced or they must be transferred to a post involving lighter work which does not present health risks to them, while at the same time keeping the average salary. Until they are reassigned to lighter work, pregnant women must be relieved from performing their current duties, while keeping their average salary.

The Committee asks more specific information on whether dangerous activities such as those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents are either prohibited or strictly regulated for the group of women concerned (Conclusions 2003, Bulgaria).



When, after birth, women cannot perform the tasks of their post, they must be reassigned to a different one, while preserving their salary, and that until their child reaches the age of three. Should the salary attached to the new post be higher than the average salary of their previous post, they must receive the higher salary.

The Committee has held that women should have the right to return to their previous employment after they no longer need to nurse their child (Conclusions 2005, Lithuania). It therefore asks whether this is guaranteed under Ukrainian law.

The Committee stresses that should the next report not provide the information requested on these various aspects, there will be nothing to establish that the situation is in conformity with Article 8§5.

The Committee notes that the same protection guaranteed by law applies to women employed in the public sector.

*Conclusion*

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

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

The Committee takes note of the information in the Ukrainian report.

As the notion of the "family" is variable according to the different definitions in domestic law, the Committee considers it necessary to know how this notion is defined with a view to verifying that it is not unduly restrictive. According to the report domestic law defines families on grounds of marriage ties, blood relations and adoption and according to other criteria which are not prohibited by law and are not at variance with society's moral standards.

The Committee asks that the next report explain how domestic law defines the "family" concept and describe the legal situation of family types other than those based on marriage, notably in the light of Article 16 of the Charter, such as families with unmarried parents, and single-parent, reconstituted and monoparental families.

### ***Social protection of families***

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

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

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

The Committee notes that as Ukraine has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

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

Families must be able to consult appropriate social services, particularly when they are in difficulty. States are required in particular to set up family counselling services and services providing psychological support for children's education. The Committee asks for information to be included in the next report on family counselling services.

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

To ensure that families' views are catered for when family policies are framed, the authorities must consult associations representing families. The Committee asks for information in the next report on the participation of relevant associations representing families in the framing of family policies.

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

#### ***Rights and obligations of spouses***

Under Article 7 of the Family Code, men and women have equal rights and obligations in their relations within families, between spouses and towards their children. Under Article 141 of the Family Code, divorce does not alter parents' rights and obligations towards their children and parents who no longer live with their children must continue to have regular contact with them. Under Article 157 of the Family Code, in the event of a dispute, the mother or father may ask the child protection services to establish the way in which the parent no longer living with his or her children will contribute to his or her upbringing. Judicial remedies are provided for if one of the parents fails to abide by the child protection services' decision. The courts' tasks also include setting up visiting and holiday arrangements.

#### ***Mediation services***

The Committee points out that states are required to set up family mediation services. The Committee asks for information in the next report on access to such services, whether they are free of charge, how they are distributed across the country and how effective they are.

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

The Committee recalls that Article 16 requires that protection for women exists both in law (through appropriate measures and punishments for perpetrators, including restraining orders, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for

victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (through the collection and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims).

According to the report, the Criminal Code includes penalties for perpetrators of domestic violence. The range of penalties comprises fines, community service and up to three years' imprisonment. The Criminal Code also provides for three to 15 years' imprisonment for sexual violence. Article 126 of the Criminal Code lays down the penalties for insult. Penalties for perpetrators of domestic violence are also set out in the Prevention of Domestic Violence Act. They include formal warnings, entry in a prevention register and victim protection orders. Offenders who are sent a formal warning must sign a receipt, which is sent in turn to a crisis centre, which organises a compulsory remedial programme for the offender. Special protection orders may also be established for victims who have requested the removal of a violent spouse. In 2009, 79 859 families were affected by domestic violence and there were 21 crisis centres and nine medical and social rehabilitation centres providing support for victims.

From another source,<sup>1</sup> the Committee notes that in its 2007 report, the United Nations Committee on Economic, Social and Cultural Rights expressed its concern about the high frequency of domestic violence in Ukraine, particularly against women and children, the absence of any criminal law specifically establishing domestic violence as an offence, the lack of appropriate investigation and sentences under existing criminal laws, the limited room for victims of domestic violence in temporary shelters and social and medical rehabilitation centres, which excluded persons of 35 or over, and the lack of rehabilitation programmes for offenders.

The Committee also notes that one of the aims of a joint Council of Europe and European Union<sup>2</sup> project on strengthening and protecting women's and children's rights in Ukraine is to discuss a study on the compatibility of Ukrainian legislation and European and international standards on the prosecution and prevention of violence against women and children. This study is intended to enable the Ukrainian authorities to take forward the process of revising and reforming the legal framework and the policy and practices available to combat violence against women and children. Bearing in mind the high frequency of domestic violence against women, the Committee considers that the situation is not in conformity in this respect.

### ***Economic protection of families***

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

Act No. 2812-III of 11 November 1992 on social assistance for families provides for a system of family benefits. Family benefits are awarded to families through labour and social protection agencies depending on the parents' place of residence. In 2007, the minimum benefit was 90 Hryvnias (UAH) (€8.72) for people without insurance and UAH 126.80 (€12.29) on average for those with insurance and the maximum benefit was UAH 275 (€26.67) on average for people with insurance. The Act on social assistance for families also provides for maternity benefit, infant health care benefits up to the age of three, childcare benefit, benefits on the adoption of a child, assistance with dependent children with disabilities, support in the event of temporary incapacity to work as the result of a need to look after a sick child and assistance for single mothers.

The Committee considers that, in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of median equivalised income. In 2007, the poverty threshold was estimated at UAH 526 (€49.80) and the minimum wage was UAH 605 (€60.20). According to the report, family benefit amounts to 50% of the minimum subsistence wage per month and per child under 16 years of age, 100% for families with three children under 16 and 200% for families with 4 children or more. The Committee takes note of the data in the report concerning the various amounts of family benefits. The information provided by Ukraine differs from that on which the Committee bases its assessment (family benefits as a percentage of median equivalised income). It therefore defers its conclusion and asks that the next report provide the requested information (median equivalised income).

#### ***Vulnerable families***

Low-income families and single mothers receive a means-tested state welfare benefit. The amount is established by calculating the difference between the minimum subsistence income and the average monthly income, though benefit may not exceed 75% of the minimum subsistence income for a family. In 2007, benefit for low-income families was UAH 187 (€18.13) and single mother benefit was UAH 204 (€19.78).

States' positive obligations under Article 16 include implementing means to ensure the economic protection of various categories of vulnerable families, including Roma families. The Committee consequently asks what measures are taken to ensure the economic protection of Roma families.

***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

Foreign nationals and stateless persons residing permanently in Ukraine and persons with refugees status have the same rights as Ukrainian citizens with regard to family benefits. The Committee asks whether the granting of permanent residence is subject to a length-of-residence requirement.

*Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 16 of the Charter on the ground that measures implemented to address the problem of domestic violence have not been sufficient.

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<sup>1</sup> <http://www.universalhumanrightsindex.org/documents/827/1279/document/fr/doc/text.doc>

<sup>2</sup> [http://www.coe.int/t/dghl/cooperation/economiccrime/Trafficking/Projects/Tres/tres\\_en.asp](http://www.coe.int/t/dghl/cooperation/economiccrime/Trafficking/Projects/Tres/tres_en.asp)

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

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

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

#### **Status of the Child**

Pursuant to Article 52 of the Constitution of Ukraine children are equal in their rights regardless of their origin or having been born in or out of wedlock. In 2009 Ukraine ratified the European Convention on the Legal Status of Children Born out of Wedlock.

The Committee notes the difference in the minimum legal age of marriage of 18 for men and 17 for women and asks what are the reasons for such differentiation and whether it is envisaged to equalise the minimum age of marriage for women and men.

The Committee notes from the Ukraine report submitted to the UN Committee on the Rights of the Child (CRC)<sup>1</sup> that a child in Ukraine is entitled to information about his or her "absent parents", if such information is not harmful to the child's mental or physical health. However, adopted children have no right to information about birth parents.

The Committee recalls that Article 17 guarantees, in principle, the right of a child to know his or her origins. It asks whether the law concerning adoption has changed or is envisaged to be changed, in view of the recommendations of the Committee on the Rights of the Child contained in its Concluding observations (2002) in respect of Ukraine<sup>2</sup>.

The Committee further recalls that under Article 17§1 the Committee examines the procedures available for the establishment of maternity and paternity, and in particular it examines the situations where the establishment of maternity or paternity is not possible and where the right of a child to know his or her origins is restricted. It therefore asks the next report to provide information on this issue. In particular, the Committee would like to know examples of cases in which a child was refused information on his/her parents on the ground that it was considered harmful.

#### **Education**

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

#### **Children in public care**

The Committee notes from the Ukraine report submitted to the UN CRC that a court may deprive one or both parents of parental rights, for a number of reasons, such as, among others, failure to fulfil their child-rearing obligations. The Committee notes the ECtHR ruling in the case *Saviny v. Ukraine*, judgment of 18 December 2008, concerning taking of the applicants' children in care due to their inability to ensure adequate living conditions. The Court found inadequate the evidence on which the authorities had based their finding that the applicant's children's living conditions had in fact been dangerous to their life and health. The judicial authorities had only examined those difficulties which could have been overcome by targeted financial and social assistance and effective counselling and had not apparently analysed in any depth the applicants' emotional or mental maturity. Furthermore, at no stage of the proceedings had the children been heard by the judges, and after having been separated from their family of origin, they had also been placed in different institutions (the Court found a violation of Article 8 of the ECHR).

In this connection the Committee would like to have more information on any amendments to the procedure for removing children, following the judgment of the ECtHR.

The Committee recalls (Conclusions XV-2, Statement of Interpretation on Article 17§1, p.29) that 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 Committee has held that it should only be possible to take a child into custody in order to be placed outside his/her home if such a measure is based on adequate and reasonable criteria laid down in legislation. The Committee asks what are the criteria for the restriction of custody or parental rights and what is the extent of such restrictions. It also asks what are the procedural safeguards to ensure that children are removed from their families

only in exceptional circumstances. It further asks whether the national law provides for a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family.

The Committee further recalls that, in order to comply with Article 17§1 of the Charter, children placed in institutions should be entitled to the highest possible degree of satisfaction of their developing emotional needs and their physical well-being as well as to special protection and assistance. In order to be considered as adequate, institutions shall provide a life of human dignity for the children placed there and shall provide conditions promoting their growth, physically, mentally and socially. A unit in a child welfare institution shall resemble the home environment and shall not accommodate more than 10 children.

According to the report, the number of orphaned children and children deprived of parental care amounted to 100,8 thousand in 2009 (compared to 102,9 thousand in 2006). There are different kinds of establishments for orphans and children deprived of parental care such as orphanages, special schools and boarding schools. The report states that in the education system there are 192 educational institutions in which 15.9 thousand children are raised and educated, while in another line it mentions 55 boarding schools-orphanages in the system of agencies of labour and social protection, with over 4 thousand children residing there.

The Committee therefore asks for updated information on the total number of institutions caring for children, their nature and object and the number of children placed in them as opposed to those placed in foster care or placed for adoption. The Committee further asks who is responsible for governance and monitoring of these institutions (state or local authorities).

In this respect the Committee notes from the UN CRC Concluding observations (2002) that there are still a great number of orphanages in the country and there is a predominant use of institutional responses to provide assistance to children in difficulty and that children who are cared for in institutions for many years, until the age of 18, are not given the educational and vocational skills necessary for them to make an independent living once they leave the institution. The Committee notes from the same source that the quality of care in some institutions and the condition of these institutions are low, that alternative care, such as foster care, or other forms of family-based alternative care, are not sufficiently developed and available, and that children lack effective mechanisms to communicate concerns and complaints about their placement. It notes from other sources<sup>3</sup> that young persons leaving the reportedly poorly managed state-run school orphanages are particularly vulnerable to becoming homeless.

In this connection the Committee recalls that under Article 17§1 of the Charter long-term care for children should take place primarily in foster families and only if necessary in institutions. The Committee notes from the report that in recent years, considerable efforts have been made to place orphans and children without parental care in family-type settings and the Government programme for reforming the system of institutions has been adopted. The Committee would like to be informed about details and results of this reform.

### ***Protection of children from ill treatment and abuse***

According to the report, legislation prohibits violence against children and corporal punishment. Article 52 of the Constitution states that "any violence against a child or his or her exploitation shall be prosecuted by law". According to Article 28 of the Constitution no person shall be subjected to torture, cruel behaviour or behaviour humiliating dignity, or punishment.

Corporal punishment is prohibited in the home under the *Law on Prevention of Domestic Violence* of 2001. The *Law on Protection of Childhood* of 2001 prohibits all sorts of violence (physical and psychological) and exploitation of children including that inflicted by parents. Article 150 of the Family Code 2003 in force as of 2004 prohibits all corporal punishment of children by parents.

The Committee notes from another source<sup>4</sup> that corporal punishment is also unlawful in schools. Article 51(1) of the Law on Education (1991) states that students and other learners have the right "to the protection from any form of exploitation, physical and psychological violence, actions of pedagogical and other employees who violate the rights or humiliate their honour and dignity". Article 126(1) of the Criminal Code specifically penalises domestic violence against children: this provision does not include psychological violence.

According to the same source, in practice corporal punishment continues to be used. The Committee notes from UNICEF statistics that 70% of children aged 2-14 experienced physical punishment and/or psychological aggression in 2005-2006. The Committee asks for updated information on the scale of the problem and what measures have been taken to eliminate corporal punishment in practice.

### **Young offenders**

Under article 18 of the Criminal Code, a criminal offender is a person with legal capacity, who has committed a crime at an age at which, according to the same code, criminal liability is possible. Under article 22 of the Criminal Code, persons who have reached the age of 16 before committing an offence shall be criminally liable. Those who committed crimes between the ages of 14 and 16 are criminally liable only if they have committed violent or property crimes, such as murder, rape, theft, an exhaustive list of which is set out in paragraph 2 of article 22.

Under Criminal Code article 102(1), persons having committed a crime before the age of 18 may receive a prison sentence ranging from 6 months to 10 years, save for cases, stipulated in article 102(3)(e), when, for a particularly grave crime connected with loss of life, a juvenile may be sentenced to imprisonment for up to 15 years. Imprisonment may not be imposed on a minor who committed a minor offense for the first time. In such cases, the court imposes on the minor measures of an educational character. By court decision, juvenile offenders aged 11-14 are brought up and study in general education schools for social rehabilitation. The court may send offenders aged 14 to 18 to vocational schools for social rehabilitation. Minors sentenced to deprivation of liberty serve their sentence in special correctional institutions.

Persons under 16 years of age may not be detained pending trial nor may limits of liberty of minors be imposed (articles 60 and 61 of the Criminal Code).

The Committee recalls that prison sentences should only exceptionally be imposed on young offenders and be of short duration. It asks the next report to provide information on the number and age of minors imprisoned or placed in disciplinary institutions and what were the offences committed by them.

The Committee asks what is the maximum length of a prison sentence and under which conditions it is carried out, in particular as regards the possibility of visits during this period. The Committee further asks whether it is prohibited to keep children in custody and in prison together with adults.

Cases involving minors are governed by the general rules and section VIII of the Code of Criminal Procedure. If the minor is under 16 or has intellectual/mental disabilities, a teacher or a physician, parents or other legal representatives of the minor may attend the indictment and interrogation at the discretion of the investigator or prosecutor or at the request of the defence counsel.

### *Conclusion*

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

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<sup>1</sup>UN Committee on the Rights of the Child (CRC), *Third and fourth periodic reports of States parties due in 2008, Ukraine*, 3 March 2010, CRC/C/UKR/3-4

<sup>2</sup>UN Committee on the Rights of the Child, *Concluding Observations: Ukraine*, 9 October 2002, CRC/C/15/Add.191

<sup>3</sup>*Concluding observations of the UN Committee on Economic, Social and Cultural Rights: Ukraine*, 4 January 2008, E/C.12/UKR/CO/5; *Report by the CoE Commissioner for Human Rights Mr Thomas Hammarberg on his visit to Ukraine*, 10 - 17 December 2006, 26 September 2007, CommDH(2007)15

<sup>4</sup><http://www.endcorporalpunishment.org/pages/frame.html>

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

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

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

Article 53 of the Constitution of Ukraine guarantees to every person a right to education. Education is free, universal, and compulsory until age 15 (full general secondary education). The duration of compulsory education is 12 years.

The Committee notes in this connection that the minimum age for employment as defined by the Labour Code is 16 years, and the employment of 15-year-olds is allowed as an exception with the consent of either parent or person in loco parentis.

According to the UNESCO Institute of Statistics the literacy rate (persons aged 15 and above) in Ukraine in 2008 was estimated at 99.7% and apparently is slightly lower for women.

The Committee notes from the report that the average class sizes in primary school amounts to 17,6 students (23,3 and 11,7 in urban and rural areas respectively). The teacher/pupil ratio, according to the report, equals 0.086. According to the UNESCO Institute of Statistics there are 16 pupils per teacher in primary school and 11 in secondary school.

The Committee further notes from the Government's report submitted to the UN CRC Committee<sup>1</sup> that in the period 2002-2006 the number of pupils admitted to the first grade decreased from 497,300 to 387,500 because of the unfavourable demographic situation in the country. As a result, the average fill rate in the general education establishments decreased by 20% and the number of education establishments, particularly in rural areas, declined. In order to prevent the closure of schools with a low fill rate, the Ministry of Education and Science has developed a model of a new type of single-level school, "the family school", which is a low-fill-rate general-education institution set up in rural areas to provide quality education for pupils of elementary school age residing in an area with a difficult demographic situation. The development of the network of pre-school education and general education institutions continues. During the period of five years their number increased by almost 400 units, while the number of pupils attending them increased by 32,100. This process has spread significantly in rural areas, where the number of such establishments and of children attending them has increased by, respectively, 40 and 27.5%.

The Committee further notes from the Concluding observations (2008) of the UN Committee on Economic, Social and Cultural Rights in respect of Ukraine that public education in Ukraine seemingly suffers from inadequate funding and the salaries for teachers are low. In this connection the Government's report for the UN CRC confirms that although expenditure on education under the State budget increases every year and is mainly channelled to general intermediate education, the funding remain inadequate.

The Committee acknowledges the information about the total number of educational establishments in cities and villages; however it wishes to receive statistics on the geographical distribution of schools in urban and rural areas.

In this connection the Committee notes from another source<sup>2</sup> that a lack of schooling remained a significant problem among the rural population and within the Roma community, and that in some regions rural schools were closed due to the small number of school-age children, forcing children to travel long distances, often at personal expense, to attend schools in other villages.

The Committee recalls that under Article 17 states are required to establish and maintain an education system that is both accessible and effective. States also need to ensure a high quality of teaching and equal access to education for all children. The Committee therefore asks for information on measure implemented in order to remedy the shortcomings in the educational system.

The Committee also notes from the Concluding observations (2008) of the UN Committee on Economic, Social and Cultural Rights the high drop-out rate among Roma children in primary and secondary education, the frequent refusal to enrol Roma children in mainstream schools, and their segregation in special classes or placement in special schools for children with mental



disabilities. The Committee asks for exhaustive explanation of the situation of Roma children with regard to access and conditions of education.

The Committee recalls that under Article 17 equal access to education must be ensured for all children, in this respect particular attention should be paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty, etc. Where necessary special measures should be taken to ensure equal access to education for these children. However, the Committee recalls that special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group.

The Committee asks to receive information on measures taken to ensure equal access to education as well as measures taken to ensure that children belonging to these groups are integrated into mainstream educational facilities and ordinary educational schemes. The Committee also wishes to know whether refugee and asylum seeking children may attend school and, if so, are they encouraged to do so in order to avoid their isolation in the society.

The Committee recalls that under Article 17§2 States are required to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism.

According to the Ukrainian report to the UN CRC, measures are being implemented to improve school attendance conditions, like free meals for elementary school pupils and School Bus Programme providing transport for 11% of students in need. Further, the said report provides that very few children do not attend general education establishments. In September 2006, the nationwide "School class" operation led to the identification of 7,050 who had not begun their education (compared to 8,085 in 2005). At the end of December 2006, 1,460 children failed to return to school (compared to 5,168 in December 2005). Of those, 17% were of an early, 33% were of an intermediate and 50% were of an advanced school age. The underlying causes were, inter alia, material and financial family problems (in 11% of cases), irresponsible parenthood (in 40% of cases), conflicts with school mates and teachers (in 16% of cases), expulsion (in 0.7% of cases) and other factors (in 33% of cases). During 2006, thanks to cooperation between local education authorities, children's affairs offices and police units for children, approximately 3,000 children out of school for a long time or with no schooling at all were (re)enrolled in evening schools.

However, the Committee notes from the UNESCO Institute for Statistics reports that in 2008 and 2009 11% of primary school aged children were out of school.

The Committee asks for updated and complete data regarding enrolment rates, absenteeism and drop out rates in compulsory education and measures introduced to improve school attendance, in particular in rural areas, and results obtained. Having regard to the above-mentioned information that children from poor families are most likely to drop out of school, the Committee also asks to be informed about hidden costs of education and their impact on school attendance.

As regards the integration of children with disabilities into mainstream education, the Committee examines their rights under Article 15§1 where a Contracting Party accepted this provision.

#### *Conclusion*

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

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<sup>1</sup>UN Committee on the Rights of the Child (CRC), *Third and fourth periodic reports of States parties due in 2008, Ukraine*, 3 March 2010, CRC/C/UKR/3-4

<sup>2</sup>"*Child Poverty and Disparities in Ukraine*", *Institute for Demography and Social Studies of NAS of Ukraine, UNICEF, Ukrainian Centre for Social Reforms, 2009*

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

### *Paragraph 1 - Participation in working life*

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

### ***Employment, vocational guidance and training***

The Committee recalls that the aim of Article 27 is to promote the reconciliation of professional and family responsibilities. It asks in this respect whether an overall national policy or strategy to enable persons with family responsibilities to exercise employment in a non-discriminatory manner is in place.

The Committee also recalls that Article 27 requires States Parties to take specific measures in the field of vocational guidance and training, so as to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities (Conclusions 2007, Armenia). The report contains no information on this matter. The Committee therefore asks if there exist any placement, counselling, or training programmes for workers with family responsibilities, and if so to describe these in the next report.

### ***Working conditions, social security***

Implementing Article 27§1 may also require the adoption of measures concerning length and organisation of working time. The report indicates in this respect that pursuant to Section 56 of the Labour Code, upon agreement of the employee and the employer part-time work may be agreed to. When requested by a pregnant woman, a woman raising a child under 14 years or a disabled child, or taking care of a sick family member, part-time work must be agreed to by the employer (a man nursing a sick family member is also entitled to work part-time). Part-time work shall not negatively affect the labour rights of workers, and remuneration shall be proportionate to the actual work carried out or depending on the output.

The Committee asks if a man is the parent raising a child or nursing a sick family member if there is also an obligation to grant him part time work when requested or whether this may depend on the employer's discretion.

Article 27§1 requires State Parties to take account of the needs of workers with family responsibilities in terms of social security. The Committee asks in this respect whether such workers are entitled to social security benefits under the different schemes, in particular health care, during periods of parental/childcare leave.

The Committee also wishes to know to what extent periods of leave due to family responsibilities are taken into account for determining the right to pension and for calculating the amount of pension. It recalls in this respect that crediting of periods of childcare leave in pension schemes should be secured equally to men and women.

### ***Child day care services and other childcare arrangements***

The Committee points out that states must ensure that affordable, good quality childcare facilities are available to its citizens (where quality is defined in terms of the number of children under the age of six covered, staff to child ratios, staff qualifications, suitability of the premises and the size of the financial contribution parents are asked to make).

According to the report, all families enjoy equal access to pre-school institutions. Over the period from 2007 to 2009, there was a slight increase in the number of pre-school education institutions in urban and rural areas (from 15 300 in 2007 to 15 500 in 2009). Most institutions were run by the municipalities (14 837 in 2009) while a minority were run by the state or by private concerns (175 and 496 respectively in 2009). The number of children attending pre-school institutions increased during the reference period, from 1 137 488 in 2007 to 1 213 890 in 2009; most of the children concerned lived in towns or cities (971 446) and the remainder (242 444) in rural areas. Because of Ukraine's social and economic circumstances, the decline in many families' material well-being and unemployment among young people, the demand for places in pre-school facilities for children under the age of three remains high. In 2009, 69.8% of all children under the age of five attended

some form of pre-school facility and this figure had increased compared to previous years (65.3% in 2007).

Everyone who is in charge of children in pre-school facilities is required to have had a higher education.

Under section 33 of the Pre-school Education Act, parents receive up to 50% in cities and 30% in rural areas of the total cost of meals taken by their children in state or municipal pre-school facilities. The Committee asks if there is provision for other forms of financial assistance for the parents of children attending childcare facilities.

The Committee takes note of the increase in childcare provision during the reference period. However, in order to determine whether this provision meets family needs, it asks for the next report to contain a detailed list of the number of places in crèches and other childcare institutions broken down by age bracket and the number of rejected applications.

Finally, the Committee notes that workers may be granted leave without pay for family reasons up to 15 days per year.

#### *Conclusion*

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

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

#### *Paragraph 2 - Parental leave*

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

The Committee recalls that the focus of Article 27§2 are parental leave arrangements which are distinct from maternity leave and come into play after the latter. National regulations related to maternity or paternity leave fall under the scope of Article 8§1 and are examined under that provision.

The Committee recalls that Article 27§2 requires States to provide the possibility for either parent to obtain parental leave. Consultations between social partners throughout Europe show that an important element for the reconciliation of professional, private and family life are parental leave arrangements for taking care of a child. Whilst recognising that the duration and conditions of parental leave should be determined by States Parties, the Committee considers important that national regulations should entitle men and women to an *individual right* to parental leave on the grounds of the birth or adoption of a child. With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided on a non-transferable basis to each parent.

The Committee notes from the report that at the request of a woman employee, leave for childcare may be granted until the child reaches the age of three. During this period aid is provided in accordance with relevant national legislation. This leave may also be taken by the father of the child, grandparents or other relatives taking care of the child (Article 179 of the Labour Code).

The Committee asks for information on the financial aspects of the childcare leave under Article 179, as the reference in the report to the granting of "aid" during this period is too vague. It would like to know what financial compensation or benefits are provided during the period of parental leave. The Committee considers in this respect that remuneration of parental leave (be it continuation of pay or via social assistance/social security benefits) plays a vital role in the take up of childcare leave, in particular for fathers or lone parents.

The Committee also asks for a clarification on the ground indicated in the report on which leave can be refused, that is, when the child is supported by the state.

Article 179 of the Labour Code also authorises other types of leave, which can be prolonged beyond the child reaching three years. One of such case is when the child requires nursing, in which case an unpaid leave for the period of time indicated in a medical certificate can be obtained, until the child reaches six years.

The report states that childcare leave until the child reaches three years and unpaid leave are not included in the work records which give entitlement to annual leave.

The Committee asks if at the end of the parental leave workers have the right to return to the same job.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 27§2 of the Revised Charter.

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

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

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

#### ***Protection against dismissal***

The employer is prohibited under Article 184 of the Labour Code from dismissing a woman employee for reasons related to having a child under the age of three, or the age of six when the child requires nursing, as well as when a mother is single and has a child under fourteen years or a disabled child. An exception to this prohibition is the closing down of a company or institution, in which case the dismissal is allowed subject to an obligatory job placement. The Committee asks if this protection applies also to male employees.

Since the notion of "family responsibilities" in the Appendix of the Revised Charter is understood as obligations in relation to dependent children as well as other members of the immediate family who need care and support, the Committee asks if the above-mentioned Section 184 also extends to the protection of employees against dismissal because of obligations with respect to other members of the immediate family (elderly parents, for example) that require care.

#### ***Effective remedies***

The Committee recalls that Article 27§3 of the Revised Charter requires that courts or other competent bodies are able to order reinstatement of an employee unlawfully dismissed, or in cases when the employee prefers not to continue or re-enter employment, order compensation that is sufficient both to deter the employer and proportionate to the damage suffered by the victim. When compensation is granted it should not be subject to pre-defined upper limits, as this may preclude damages from being awarded which are commensurate with the actual loss suffered and not sufficiently dissuasive (Conclusions 2005, Estonia).

The report states that an employee that has been unlawfully dismissed has the right to demand reinstatement in his/her position. If the reinstatement does not take place, the labour dispute body will order payment of the employee's average wages for the period of the forced absence.

The Committee asks whether there is a ceiling to the amount that can be awarded as compensation. If so, it asks whether this upper limit covers compensation for both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asks whether both types of compensation are awarded by the same courts, and how long it takes on average for courts to award compensation. Should the next report not provide the requested information, there will be nothing to establish that the situation is in conformity in this respect.

#### *Conclusion*

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

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

### *Paragraph 1 - Adequate housing*

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

Under Article 31§1 of the Charter, the Committee considers that the States Parties shall guarantee to everyone the right to housing and shall promote access to adequate housing. States must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question. They enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources (*European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 31/2005, decision on the merits of 18 October 2006, § 35).

More particularly, in connection with means of ensuring steady progress towards achieving the goals laid down by the Charter with regard to the right to housing, the Committee has emphasised that implementation of the Charter requires State Parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein (*International Movement ATD Fourth World (ATD) v. France*, Complaint No 33/2006, decision on the merits of 5 December 2007, § 61).

### ***Criteria for adequate housing***

The report indicates that, in the Ukrainian legal system, the right to housing is guaranteed through the Constitution (Articles 47 and 48) and by several pieces of legislation, in particular the Housing Code, which is being amended to include provisions regulating access to adequate housing. The report also refers to a draft Law of March 2009 on "Provision of Affordable Housing to Citizens", which includes a number of standards. The latter are however not referred to in detail in the report. It is also not clear from the report whether the notion of adequate housing is defined in law and whether non citizens also enjoy the right to housing and under which conditions.

The Committee notes that the information provided is not sufficient for it to assess the situation in the light of the principles it has laid down.

Firstly, the Committee recalls that the right to housing must not be subject to any kind of discrimination on any of the grounds mentioned by Article E of the Charter and asks whether equal treatment is guaranteed to non-nationals who are lawfully resident or regularly working in Ukraine with respect to access to adequate housing.

Secondly, it recalls that the notion of adequate housing must be defined in law. It must be applied not only to new constructions, but also gradually to the existing housing stock. It must also be applied to housing available for rent as well as to owner occupied housing (*Conclusions 2003, France*).

Thirdly, the Committee recalls that under Article 31§1, "adequate housing" means a dwelling which is safe from a sanitary and health point of view, i.e. it must possess all basic amenities, such as water, heating, waste disposal, sanitation facilities and electricity and must also be structurally secure, not overcrowded and with secure tenure supported by the law (see *Conclusions 2003, France and Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 43).

To enable it to assess whether the situation is in conformity with Article 31§1 of the Charter as regards access to adequate housing, the Committee asks for information in the next report on all the aforementioned points.

### ***Responsibility for adequate housing***

It is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also limit against the interruption of essential services such as water, electricity and telephone (*Conclusions 2003, France*).

Since there is no information in the report in this regard, the Committee asks how adequacy of housing is monitored. It also asks whether rules exist imposing obligations on landlords to ensure that dwellings they let are of an adequate standard and to maintain them and how public authorities supervise such rules.

### ***Legal protection***

The Committee underlines that it attaches particular importance to legal protection of the right to housing. The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial legal and non-legal remedies. Any appeal procedure must be effective (Conclusions 2003 France).

Given the lack of information in this regard, the Committee asks for detailed information in the next report on all the above mentioned points.

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

The Committee reiterates that States Parties shall guarantee equal treatment with respect to housing on the grounds of Article E of the Charter. Article E prohibits discrimination and therefore establishes an obligation to ensure that, in the absence of objective and reasonable justifications, any individual or groups with particular characteristics enjoys in practice the rights secured in the Charter. Moreover, Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Discrimination may also arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all (International Association Autism-Europe (Autisme) v. France, Complaint No. 13/2002 and Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, § 35).

As regards the right to housing the Committee has held that equal treatment must be assured to the different groups of vulnerable persons, particularly low-income persons, unemployed, single parent households, minors, persons with disabilities including mental health problems, persons internally displaced due to wars or natural disasters, etc. (Conclusions 2003, France). Furthermore, in its Conclusions 2006, it also drew particular attention on the situation of Roma and Travellers and “asked for national reports to provide comprehensive information on any measures introduced to take account of the fact that certain groups of the population, such as nomads, are particularly vulnerable and to secure for them the effective enjoyment of the rights enshrined in the Charter.”

Moreover, with regard to Roma in particular, the Committee has held that as a result of their history, the Roma have become a specific type of disadvantaged group and vulnerable minority. They therefore require special protection. Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community (COHRE v. Italy, §§ 39-40).

The report does not include any information with regard to the groups of vulnerable persons mentioned above.

The Committee however notes from other sources that:

- Roma live in desperately poor conditions with many facing severe safety and health hazards. Many Roma have no access to running water, electricity, roads, transportation and communication facilities, and every tenth Roma lives in unsanitary housing. Studies have also indicated that many Roma dwellings have half the water supply available to the rest of society (ECRI Third report on Ukraine, § 83 of document CRI(2008)4, 29 June 2007);
- Many Roma live in informal settlements and camps which lack basic infrastructure and services such as safe water, electricity, gas, heating, sewage, garbage disposal and roads, without security of tenure and under constant threat of eviction (Concluding observations of the UN Committee on Economic, Social and Cultural Rights, § 25 of document E/C.12/UKR/CO/5 of 4 January 2008);

- Many Crimean Tatars live in settlements lacking basic infrastructures (Concluding observations of the UN Committee on Economic, Social and Cultural Rights, § 24 of document E/C.12/UKR/CO/5 of 4 January 2008).

The Committee requests the next report to supply detailed information on the steps taken to improve this situation. Meanwhile, it holds that the housing conditions of many Roma and Crimean Tatars fall short from being respectful of the requirements of Article 31§1.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 31§1 of the Charter on the grounds that

- it has not been established that the right to adequate housing is effectively guaranteed;
- insufficient measures were taken by public authorities to improve the substandard housing conditions of many Roma and Crimean Tatars.

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

#### *Paragraph 2 - Reduction of homelessness*

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

Homeless persons are those persons who legally do not have at their disposal a dwelling or another form of adequate housing in the terms of Article 31§1 (Conclusions 2003, France).

Article 31§2 of the Charter is directed at the prevention of homelessness with its adverse consequences on individuals' personal security and well being (Conclusions 2005, Norway). States Parties must therefore take action to prevent categories of vulnerable people from becoming homeless (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18/10/2006, § 54).

- This implies that they shall implement a housing policy for all disadvantaged groups of people to ensure access to social housing and housing allowances (this is more specifically related to Article 31§3, which Ukraine has not yet accepted) and that they shall encourage the long term re-integration of homeless persons such as, for example, measures aiming at raising the employment rate, increasing the stock of social and non-profit housing, allocating social benefits to those in urgent needs, developing social security programmes and supporting NGOs' activities (see section on "preventing homelessness" below).
- It also requires that procedures be put in place to limit the risk of evictions and to ensure that when these do take place, they are carried out under conditions which respect the dignity of the persons concerned (see section on "forced evictions" below).

States Parties must also take measures to reduce homelessness with a view to eliminating it. Reducing homelessness requires the introduction of emergency measures, such as the provision of immediate shelter (see section of "the right to shelter" below).

In the light of the above, for the situation to be in conformity with Article 31§2, States Parties must:

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

The requirement to maintain statistics is particularly important in the case of the right to housing because of the range of policy responses involved, the interaction between them and the unwanted

side-effects that may occur as a result of this complexity. However statistics are only useful if resources made available and results achieved or progress made can be compared with identified needs. The authorities must also pay particular attention to the impact of their policy choices on the most vulnerable groups (International Movement ATD Fourth World (ATD) v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, § 63).

### ***Preventing homelessness***

The Committee refers to its conclusion under Article 7§10 as regards street children.

The report indicates that during the reference period the number of homeless persons increased from 6,3 thousand persons in 2008 to over 10 thousand persons in 2009. The Committee asks that the next report to indicate what measures were taken to offset this negative trend in the light of the principles recalled above.

The report also indicates that in accordance with the Law on "Housing Fund for Social Purposes" (Law No. 3334-IV) of January 2006 and other legislative acts, the State budget does not allocate any funds to resolve the situation of homeless persons as social services are financed through local budget funds, charitable donations and other sources.

The Committee recalls that even if under domestic law, local or regional authorities, trade unions or professional organisations are responsible for exercising a particular function, States Parties to the Charter are responsible, under their international obligations to ensure that such responsibilities are properly exercised. Thus, ultimate responsibility for policy implementation, involving at a minimum supervision and regulation of local action, lies with the Government which must be able to show that both local authorities and itself have taken practical steps to ensure that local action is effective (ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, § 26). Moreover, when the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for other persons affected (International Association Autism-Europe (Autisme) v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 53).

In the light of the above, the Committee requests the next report to indicate whether the demand for emergency solutions corresponds to the offer and if not, what measures are envisaged, including to face problems of funding of such measures. Meanwhile, it reserves its position in this regard.

The Committee notes that prevention and reduction of homelessness is regulated by the Law on "Basic Social Protection of Homeless Persons and Homeless Children" (Law No. 2623-IV) which entered into force at the beginning of 2006.

The Committee also understands from the report that a Cabinet of Ministers Resolution of April 2008 indicated ways and means to deal with homelessness. Amongst these, special attention is drawn to the need to amend relevant legislation with a view to preserve housing rights for the categories of persons likely to become homeless. The report indicates that an action plan to this effect was adopted in November 2008 (Resolution No. 1402-p) and that it includes measures to be taken until 2012. The Committee requests the next report to indicate what measures were adopted and what results were achieved in enhancing protection of the right to housing, including that of vulnerable categories of persons.

Meanwhile, the Committee takes note from the report of the following initiatives aimed at preventing that specific categories of vulnerable persons become homeless:

- Street children:

The Committee notes from information submitted by Ukraine to the UN Committee on the Rights of the Child<sup>1</sup> that the improvement of the legal framework for preventing homelessness among minors was among the key actions to be introduced into Government policy in order to prevent and solve the problems of child neglect and abandonment.



The Committee asks whether the measures adopted to reduce the phenomenon of street children were effective and expects that more detailed information on this subject be included in the next report. Meanwhile, it reserves its position in this regard.

- Dormitory residents (a particular category of persons which are at risk of becoming homeless in Ukraine):

Since 2009 their situation is regulated by the Law on “Support to the Realization of the Housing Rights of Dormitory Dwellers” (Law No. 500-VI). The Committee understands from the report that this law establishes the general principle that eviction from the dormitories is prohibited unless a number of specific conditions are fulfilled. Moreover, to prevent illegal deprivation of housing for these persons, the law provides that appropriate rehousing be made available in case of eviction from the dormitories. The Law also includes a moratorium of three years to avoid the alienation of the dormitories to private entities. The Committee further notes that in December 2010, the President of Ukraine instructed the Prime Minister to take immediate steps to make sure citizens’ right to privatise the occupied housing is protected and that cases of illegal eviction, relocation and resettlement of such people from dormitories without giving them or their families another dwelling, suitable for permanent residence, be prevented.<sup>2</sup>

The Committee asks that the next report include figures concerning the situation of dormitory residents, the average number of residents having been rehoused following privatisation of the residences or following eviction from them. It also asks whether the measures to guarantee the right to housing of the dormitory residents were effective.

- Persons released from prison:

According to data of the State Department for the Execution of Sentences, in 2009, out of the 39,9 thousand persons released from places of detention, 400 persons did not have housing. The majority were sent to centres for social adaptation and the others were sent to specialised boarding houses.

The Committee asks for how long these solutions are possible and whether these persons will eventually benefit from social housing.

Finally, the Committee asks if measures exist or are planned to encourage the long term re-integration of homeless persons such as, for example, measures aiming at increasing the stock of social and non-profit housing, allocating social benefits to those in urgent needs, developing social security programmes and supporting NGOs’ activities. It also requests that the next report provide figures about the demand for social housing, the average waiting-time for being allocated social housing, and the rate of satisfaction ensured through the combined public and private social housing supply.

### **Forced eviction**

Forced eviction is the deprivation of housing which a person occupied due to insolvency or wrongful occupation (Conclusions 2003, France). Under Article 31§2 States Parties must set up procedures to limit the risk of eviction (Conclusions 2005, Sweden).

In view of the importance of the right to housing, which is an aspect of individuals’ personal security and well-being, the Committee attaches great importance to the relevant procedural safeguards (see Conclusions 2005, Sweden; see *mutatis mutandis* Eur. Court HR, *Connors v. United Kingdom*, judgment of 27 May 2004, §92). The Committee recalls that in order to comply with Article 31§2 of the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- a prohibition to carry out evictions at night or during winter;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction.

Furthermore, when evictions do take place, they must be:

- carried out under conditions which respect the dignity of the persons concerned;
- governed by rules of procedure sufficiently protective of the rights of the persons.

The Committee also recalls that when an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.

Illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However, the criteria of illegal occupation must not be unduly wide. The eviction should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 51). Furthermore, the Committee observes that a person or a group of persons, who cannot effectively benefit from the rights provided by the legislation, may be forced to adopt reprehensible behaviour in order to satisfy their needs. However, this circumstance can neither be held to justify any sanction or measure towards these persons, nor be held to continue depriving them of benefiting from their rights (ERRC v. Bulgaria, § 53).

In the absence of specific information in the report concerning the legal protection of persons threatened by eviction as well as of the rules governing the procedures of eviction, the Committee asks that this be included in the next report bearing in mind the requirements recalled above. The Committee also asks that the next report include figures concerning evictions, rehousing or financial assistance provided following eviction. Reference to any measures taken with particular regard to Roma as well as any relevant case law should also be included in the next report.

If the necessary information is not forthcoming there will be nothing to show that Ukraine is in conformity with Article 31§2 of the Charter in this regard.

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

According to Article 31§2, homeless persons must be offered shelter as an emergency solution.

The Committee recalls that to ensure that the dignity of the persons sheltered is respected, shelters must meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to water and heating and sufficient lighting. Another basic requirement is the security of the immediate surroundings (Defence the Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 62).

Since the right to shelter is closely connected to the right to life and is crucial for the respect of every person's human dignity, under Article 31§2 of the Charter, States Parties are required to provide adequate shelter also to children unlawfully present in their territory for as long as they are in their jurisdiction. (DCI v. the Netherlands, §§ 47 and 64).

The temporary provision of shelter, however adequate, cannot however be considered a lasting solution.

- As regards, persons lawfully resident or regularly working within the territory of the Party concerned accommodated in emergency shelters, they must, within a reasonable time, be offered either long-term accommodation suited to their circumstances or housing of an adequate standard as provided by Article 31§1.
- As regards persons unlawfully present within the territory, since no alternative accommodation may be required by States for them, eviction from shelter should be banned as it would place the persons concerned, particularly children, in a situation of extreme helplessness which is contrary to the respect for their human dignity (DCI v. the Netherlands, § 63).

The Committee asks for the next report to clarify whether:

- shelters/emergency accommodation satisfy security requirements (including in the immediate surroundings) and health and hygiene standards (in particular whether they are equipped with basic amenities such as access to water and heating and sufficient lighting);
- the law prohibits eviction from shelters or emergency accommodation.

As regards those entitled to a shelter, the Committee notes from the report that access to a temporary shelter is subject to the presentation of a series of documents, including a medical certificate. The Committee asks that the next report contain more detailed information in this regard. Meanwhile it also notes that the Law on "Basic Social Protection of Homeless Persons and Homeless Children" specifies that a shelter is to be provided to the "homeless citizens of Ukraine and persons without citizenship residing permanently on legal grounds in Ukraine and who continue to reside in Ukraine after having lost housing".

From this information, the Committee infers that there is no legal requirement to provide an adequate shelter to persons unlawfully present in Ukraine. The Committee has held, as recalled above, that under Article 31§2 of the Charter States Parties are required to provide adequate shelter to children unlawfully present in their territory for as long as they are in its jurisdiction. Any other solution would run counter to the respect for their human dignity and would not take due account of the particularly vulnerable situation of children (*DCI v. the Netherlands*, §§ 47 and 64). The situation is thus not in conformity with Article 31§2 in this regard.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 31§2 of the Charter on the ground that the right to shelter is not guaranteed to persons unlawfully present in Ukraine, including children, for as long as they are in its jurisdiction.

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<sup>1</sup>*Document CRC/C/UKR/3-4 of 3 March 2010*

<sup>2</sup>*News published on the website of the President of Ukraine (<http://www.president.gov.ua/en/news/18887.html>).*