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European Social Charter

European Committee of Social Rights

Conclusions 2016

UKRAINE

This text may be subject to editorial revision.

The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

The following chapter concerns Ukraine, which ratified the Charter on 21 December 2006. The deadline for submitting the 8th report was 31 October 2015 and Ukraine submitted it on 5 July 2016. The Committee received on 22 December 2015 observations from the International Organisation of Employers (IOE) expressing its perspective on the application of Article 24.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of the thematic group "Employment, training and equal opportunities":

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

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

The reference period was 1 January 2011 to 31 December 2014.

In addition, the report contains also information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to just conditions of work – night work (Article 2§7),
- the right to organise (Article 5),
- the right to dignity in the workplace – sexual harassment (Article 26§1),
- the right to dignity in the workplace – moral harassment (Article 26§2),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28).

The conclusions relating to Ukraine concern 24 situations and are as follows:

– 2 conclusions of conformity: Articles 18§1 and 24;

– 20 conclusions of non-conformity: Articles 1§1, 1§2, 1§3, 1§4, 2§7, 5, 9, 10§1, 10§2, 10§4, 10§5, 15§1, 15§2, 15§3, 18§2, 18§3, 20, 26§1, 26§2 and 28.

In respect of the other 2 situations related to Articles 10§3 and 18§4, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Ukraine under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

Article 15

- Law No. 5207-VI on Principles of Prevention and Combating Discrimination in Ukraine which was enacted on 6 September 2012 forbids direct and indirect discrimination, based, among other things, on disability and applies in particular to the field of education, public services and relations between employers and employees.

- By its Decision No. 872 of 15 August 2011, the Cabinet of Ministers approved the rules governing the organisation of inclusive education in secondary schools.
- Law No. 1324 of 5 June 2014 on amendments to some of the laws on inclusive education was enacted to ensure continuity and consistency in the integration of children with special needs into general education.

The next report will deal with the following provisions of the thematic group "Health, social security and social protection":

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

The report should also contain information requested by the Committee in Conclusions 2015 in respect of its findings of non-conformity due to a repeated lack of information:

- the right of employed women to protection of maternity – maternity leave (Article 8§1),
- the right of employed women to protection of maternity – prohibition of dangerous, unhealthy or arduous work (Article 8§5),
- the right of the family to social, legal and economic protection (Article 16),
- the right to housing – adequate housing (Article 31§1),
- the right to housing – reduction of homelessness (Article 31§2).

The deadline for submitting that report was 31 October 2016.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

Employment situation

The Committee notes from the World Bank that the GDP growth rate decreased from +5.2% in 2011 to -6.6% in 2014.

According to Eurostat the overall employment rate decreased from 61.9% in 2011 to 59.6% in 2014. The male employment rate remained practically stable (64.8% in 2009; 64.4% in 2014). The female employment rate decreased slightly from 57.6% on 2009 to 55.2% in 2014. The decrease of the employment rate of older workers was important (40.6% in 2009; 33.7% in 2014).

According to the IMF, the unemployment rate increased from 7.9% in 2011 to 9.3% in 2014. The World Bank reports that the youth unemployment rate decreased from 19.0% in 2011 to 16.9% in 2014, whereas the long term unemployment rate (% of total unemployed) increased slightly from 19.6% to 20.9% in 2013.

The Committee notes that the economy declined tremendously during the reference period. The Committee recognises that the employment indicators remained relatively stable despite the overall difficult situation of Ukraine.

Employment policy

The Committee deplores that the report provides little information on the matters to be examined under Article 1§1.

The report does not indicate what active labour market measures are available in general to job seekers. It also fails to provide complete information on the number of beneficiaries in the different types of active measures, and on the overall activation rate, i.e. the average number of participants in active measures as a percentage of total unemployed.

However, the report contains data as regards expenditure on active labour market policies (as a percentage of GDP). According to the report, the figure stood at 0.04% in 2014 which is very low by international comparison.

The Committee recalls that in order to assess the effectiveness of employment policies it requires information on the above indicators. As the report contains no information on these matters, the Committee considers that there is nothing to demonstrate that employment policies have been adequate in tackling unemployment and job creation.

Finally, the Committee recalls that labour market measures should be targeted, effective and regularly monitored. It asks the next report to indicate whether employment policies are monitored and how their effectiveness is evaluated.

Conclusion

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

Article 1 - Right to work

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

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

1. Prohibition of discrimination in employment

The Committee previously deferred its conclusion and asked a number of questions in order to assess the situation, such as: whether discrimination on grounds of age is prohibited; information on exemptions to the rules which are permitted for genuine occupational requirements, examples of the occupations concerned; how the concepts of direct and indirect discrimination have been interpreted by the courts (Conclusions 2012).

The report indicates that Section 11 (1) of the Law No. 5067-VI on Employment adopted in 2012 provides for protection against discrimination in employment on a set of grounds such as race, colour, political, religious or other beliefs, membership of trade unions or other associations, sex, age, ethnic and social origin, place of residence, language or other characteristics.

The Committee takes note from the report of the adoption of the Law No. 5207-VI on Preventing and Combating Discrimination in Ukraine of 6 September 2012, which prohibits both direct and indirect discrimination and covers the grounds of race, colour, political, religious or other beliefs, sex, age, disability, ethnic or social origin, citizenship, marital status, property status, place of residence, linguistic and any other characteristics that may be real or perceived (Sections 1(2), 1(3) and 6(2)). The Committee notes that the Law applies, *inter alia*, to the areas of education, public service and employment relations (Section 4).

With regard to the implementation of the legislation in practice, the Committee previously asked information on the number of cases alleging discrimination brought before the courts, as well as the number of findings of discrimination; information on the procedure to be followed in cases alleging discrimination, for example whether there is shift in the burden of proof; information on remedies i.e. reinstatement or damages that may be awarded to a victim of discrimination and information on any pre-defined limits to the amount of damages that may be awarded; information on a specific independent body to promote equal treatment (Conclusions 2012).

The report does not provide any information with regard to the situation in practice – for example on cases alleging discrimination brought before the courts, or other equality body, and their outcomes as well as on remedies available to victims of discrimination. The Committee reiterates its previous questions. In the absence of any information on the implementation of the relevant legislation in practice, the Committee concludes that the situation is not in conformity with Article 1§2 of the Charter on the ground that it has not been established that the prohibition of discrimination in employment is effectively implemented in practice.

As regards the burden of proof, the report indicates that in accordance with Article 60 (1) of the Civil Procedure Code, “in discrimination cases the plaintiff has to provide evidence confirming that discrimination took place. If such evidence is provided, the burden to prove that the discrimination did not take place lies with the defendant.” The Committee recalls that domestic law should provide for a shift in the burden of proof in favour of the plaintiff in discrimination cases (Conclusions 2002, France). Noting that under the Civil Procedure Code the plaintiff has to prove that discrimination took place, the Committee concludes that the situation in Ukraine is not in conformity with the Article 1§2 of the Charter on the ground that legislation does not provide for a shift in the burden of proof in discrimination cases.

The Committee previously took note of the comments of the International Lesbian and Gay Association (ILGA) indicating that hostility to LGBT people is high in Ukraine, and asked

comprehensive information on the law and practice as to how persons are protected against discrimination in employment on grounds of sexual orientation as well as information on all relevant cases before the courts (Conclusions 2012). The report indicates that on 11 December 2015 the Ukrainian Parliament adopted the Law of Ukraine No. 785-VIII on “Amendments to the Labour Code of Ukraine for the harmonisation of anti-discrimination legislation with the European Union Law” which prohibited discrimination in the workplace, including on grounds of sexual orientation (effective since 25 November 2015, outside the reference period). The report adds that claims of discrimination on grounds of sexual orientation are not reported by courts separately. The Committee asks the next report to provide information on how the above mentioned legislation has been implemented into practice and what measures are being taken to ensure effective protection against discrimination on grounds of sexual orientation in employment.

The Committee reiterates its request for information on concrete positive measures/actions taken or envisaged to promote equality in employment and to combat all forms of discrimination in employment.

With regard to discrimination in employment on grounds of nationality, the Committee asked whether and if so, what categories of employment are closed to foreigners. The report indicates that the Ukrainian citizenship is required for positions in the civil service, in law enforcement agencies, prosecutor’s offices, courts and for positions that need access to the state secrets.

Committee recalls again that under Article 1§2 of the Charter while it is possible for states to make foreign nationals’ access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G; restrictions on the rights guaranteed by the Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority (Conclusions 2006). The Committee asks the next report to specify whether there is a total ban on foreign nationals to be employed in civil service; or otherwise whether only certain categories of positions such as the ones connected with the protection of the public interest or national security and involve the exercise of public authority are prohibited to foreign nationals. Pending receipt of the information requested, the Committee reserves its position on this point.

2. Prohibition of forced labour

Work of prisoners

The Committee examined the legislation on work of prisoners in Ukraine in Conclusions 2012. Referring to its Statement of Interpretation on Article 1§2 with regard to prison work (Conclusions 2012), it asks for up-to-date information in the next report on the arrangements governing the work of prisoners and on their social protection (covering employment injury, unemployment, health care and old age pensions).

Domestic work

In its previous conclusion, the Committee referred to its Statement of Interpretation on Article 1§2 with regard to the existence of forced labour in the domestic environment. As the current report does not provide any information on the legal provisions adopted to combat this type of forced labour as well as on the measures taken to implement them and to monitor their implementation, the Committee reiterates its request that the next report contain the necessary information on this point. The Committee points out that if the information

requested is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 1§2 of the Charter.

3. Other aspects of the right to earn one's living in an occupation freely entered upon

Minimum periods of service in the Armed Forces

In its previous conclusion (Conclusions 2012), the Committee asked for updated information on the actual duration of the alternative service replacing compulsory military service. The report confirms that the duration has not changed since the previous monitoring cycle (1.5 times the length of military service), but does not indicate the actual duration. The Committee therefore reiterates its request to include in the next report relevant information on alternative service, having regard also to its Statement of Interpretation on Article 1§2 (Conclusions 2012). The Committee points out that if the information is not provided in the next report there will be nothing to establish that the situation is in conformity with Article 1§2 of the Charter in this respect.

In its previous conclusion (Conclusions 2012), the Committee pointed out that any minimum period of service in the armed forces had to be of a reasonable duration and in cases of longer minimum periods due to any education or training that an individual had attended, the length had to be proportionate to the duration of the education and training. Likewise, any fees/costs to be repaid on early termination of service must be proportionate. As the current report fails to provide any information on the situation in Ukraine from this point of view, the Committee asks that the next report provide updated information on the minimum periods of service in the armed forces and the impact of studies or training courses followed by military personnel on the duration of their service in the armed forces and on the possible financial repercussions of early termination of service. The Committee points out that if the information requested is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 1§2 of the Charter.

Requirement to accept the offer of a job or training

The Committee notes that the report does not answer the questions it put on the requirement to accept the offer of a job or training in its Statement of Interpretation on Article 1§2 in the General Introduction to Conclusions 2012. Consequently, the Committee repeats its request for relevant information in the next report on the matters raised in the Statement of Interpretation, particularly on the remedies available for the persons concerned to dispute decisions to suspend or withdraw unemployment benefit. The Committee points out that should the next report fail to provide the requested information, there will be nothing to establish that the situation in Ukraine is in conformity with Article 1§2 of the Charter in this respect.

Privacy at work

The Committee notes from the report that Article 32 of the Constitution of Ukraine guarantees that no one may be subjected to interference with his or her private life, except for situations provided for in the Constitution. The Committee also takes note of the information provided on the protection of personal data. It points out that the emergence of new technologies has made it possible for employees to work for their employers at all times and in all places, including at home, with the result that there is no longer a clear dividing line between work and private life. There is therefore an increased risk of work encroaching on employees' private lives, including outside working hours and the workplace. The Committee considers that the right to earn one's living in an occupation freely entered upon includes the right to be protected against such interference. Again with reference to its Statement of Interpretation on Article 1§2 (Conclusions 2012), it asks for up-to-date information on this point in the next report.

Conclusion

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

- it has not been established that the prohibition of discrimination in employment is effectively implemented in practice;
- legislation does not provide for a shift in the burden of proof in discrimination cases.

Article 1 - Right to work

Paragraph 3 - Free placement services

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

The Act “On Employment of the Population” No. 5067-VI of 5 July 2012 provides the legal basis for the system of employment services in Ukraine. The report indicates that on this basis all citizens who address State Employment Service (SES) have equal rights to obtain free employment services. The Committee asks that the next report confirm that these services are provided free of charge for both job-seekers and employers. In this respect, the Committee considers that fees imposed on employers for the notification of vacancies is contrary to Article 1§3, even where the fees are small and aimed only at covering administrative costs. The existence of fee-charging by private employment agencies is not contrary to Article 1§3 provided that fully-fledged free employment services exist in all occupational sectors and geographical areas. The report adds that information on both labour demand and supply, and other relevant information, is made available also via Internet (www.dcz.gov.ua; www.trud.gov.ua).

In its previous conclusion (Conclusions 2012), the Committee recalled that in order to assess the effectiveness of employment services it looks at a number of performance indicators, such as the number of vacancies notified to employment services, the number of placements made by these services and the average length of time in filling vacancies. As the previous report did not contain any information on these matters, the Committee deferred its conclusion and asked the next report to include such information. The Committee considered that the absence of the information required amounts to a breach of the reporting obligation entered into by Ukraine under the Charter and that the Government consequently has an obligation to provide the requested information in the next report on this provision.

In reply to a Committee’s request, the report provides information on private employment agencies and how they are licensed, operate and co-ordinate their work with SES. However, it does not contain any information on performance indicators. The Committee considers that this lack of information does not allow to assess the effectiveness of employment services in Ukraine. It asks that this information is provided in the next report for the different years of the reference period.

In particular, the Committee asks that the next report contain information on the following points: a) number of job seekers and unemployed persons registered with SES b) number of vacancies notified to SES; c) number of persons placed via SES; d) placement rate (i.e. percentage of placements compared to the number of notified vacancies); e) average time taken by SES to fill a vacancy f) placements by SES as a percentage of total employment in the labour market; g) respective market shares of public and private services. Market share is measured as the number of placements effected as a proportion of total hirings in the labour market.

Furthermore, the Committee asks that the next report provides data on: a) the number of persons working in SES (at central and local level); b) the number of counsellors involved in placement services; c) the ratio of placement staff to registered job seekers.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 1§3 of the Charter on the ground that it has not been established that public employment services operate in an efficient manner.

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

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

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

As regards measures relating to vocational training and retraining of workers (Article 10§3), the Committee deferred its conclusion. It considered that the situation was not in conformity with Article 15§1 of the Charter on the ground that the right of persons with disabilities to mainstream education is not effectively guaranteed. Since this ground does not concern vocational training, it is not relevant under Article 1§4 (Conclusions 2008, Statement of interpretation on Article 1§4).

The Committee furthermore considered that the situation was not in conformity with the Charter as regards measures concerning vocational guidance (Article 9) on the ground that it has not been established that the right to vocational guidance within the labour market is guaranteed. Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 on the same ground.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the right to vocational guidance within the labour market is guaranteed.

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by Ukraine in response to the conclusion that it had not been established that the law provides for possibilities of transfer to daytime work and that continuous consultation is ensured with workers' representatives on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work (Conclusions 2014, Ukraine).

Article 2§7 guarantees compensatory measures for persons performing night work. National law or practice must define "night" within the context of this provision. The measures which take account of the special nature of the work must at least include the following:

- regular medical examinations, including a check prior to employment on night work;
- the provision of possibilities for transfer to daytime work;
- continuous consultation with workers' representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work (see e.g. Conclusions 2014, Ukraine).

As regards possibilities for transfer to daytime work, the report provides no new information, but simply describes the operation of shiftwork which includes night shifts (workers rotate evenly between day and night shifts, usually on a weekly basis). The Committee considers that there must also be possibilities for transfer to daytime work on a more permanent basis and since no such possibilities appear to be provided for, it holds that the situation is in breach of the Charter.

With respect to continuous consultation with workers' representatives on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work, the report states merely that national legislation does not define night workers as a separate category. On this basis the Committee's understands that there is no provision for regular and systematic consultation with workers' representatives on night work-related questions and the situation is therefore in breach of the Charter.

Finally, the Committee notes that Ukraine foresees the ratification of ILO Convention 171 (Night Work). It wishes to be informed of developments in this respect and of any resulting changes to national laws and regulations on conditions of night work.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 2§7 of the Charter on the grounds that

- possibilities of transfer to daytime work are not sufficiently provided for;
- laws and regulations do not provide for continuous consultation with workers' representatives on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.

Article 5 - Right to organise

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by Ukraine in response to the conclusion that it had not been established that the fees charged for the registration of the employers' organisations are reasonable, it has not been established that domestic law provides effective sanctions and remedies in case of discrimination and reprisals based on trade union membership and activities that domestic law provides for compensation that is adequate and proportionate to the harm suffered by the victim in case of discrimination and reprisals based on trade union membership and activities, that the criteria used to determine representativeness are open to judicial review (Conclusions 2014, Ukraine).

Under Article 5 if fees are charged for the registration or establishment of an organisation, they must be reasonable and designed only to cover strictly necessary administrative costs (Conclusions XVI-1 (2000), United Kingdom), further trade union members must be protected from any harmful consequence that their trade union membership or activities may have on their employment, particularly any form of reprisal or discrimination in the areas of recruitment, dismissal or promotion because they belong to a trade union or engage in trade union activities (Conclusions 2010, Moldova) Where such discrimination occurs, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim (Conclusions 2004 Bulgaria). As regards representativeness criteria used to determine representativeness must be reasonable, clear, predetermined, objective, prescribed by law and open to judicial review (Conclusions XVI-1 (2000), France).

The Committee previously requested information regarding the requirements of registration fees, the Committee noted that trade unions are exempted from paying any registration fees. By contrast, it noted that employers' organisations have to pay registration fees amounting to between 2.5 and 10 times the non-taxable minimum personal income (Conclusions 2010). The amount of the fee, and the procedure for collection for state registration was to be established by the Cabinet of Ministers of Ukraine. The Committee recalled that if fees are charged for the registration or establishment of an organisation, they must be reasonable and designed only to cover strictly necessary administrative costs (Conclusions XV-1 (2000), United Kingdom). In the absence of the requested information with regard to the amount of registration fees in the case of employers' organisation, the Committee concluded that the situation is not in conformity on the ground that it has not been established that the fees charged for the registration of employers' organisations are reasonable (Conclusions 2014, Ukraine).

The report states that according to the Law of Ukraine "On State Registration of Legal Entities", an administrative fee of 0.06 of the annual minimum wage is charged for the registration of employer's organisations.

In a previous conclusion (Conclusions 2010, Ukraine), the Committee asked for more details on sanctions foreseen by law against those who hamper the right to join or not join trade unions, and what compensation is offered to victims.

In view of the lack of information, the Committee considered that the situation is not in conformity with the Charter on this point as it has not been established that domestic law provides effective sanctions and remedies in case of discrimination and reprisals based on trade union membership and activities and in particular it has not been established that domestic law provides for compensation that is adequate and proportionate to the harm suffered by the victim (Conclusions 2014, Ukraine).

The Committee recalls in this respect that domestic law must include effective sanctions and remedies where the right to join a trade union is not respected. Trade union members must

be protected from any harmful consequence that their trade union membership or activities may have on their employment, particularly any form of reprisal or discrimination in the areas of recruitment, dismissal or promotion because they belong to a trade union or engage in trade union activities (Conclusions (2010) Republic of Moldova). Where such discrimination occurs, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim (Conclusions 2004, Bulgaria). No information on these issues is provided in the current report therefore the Committee reiterates its previous conclusion.

The Committee recalls that in order for the situation to comply with Article 5 of the Charter, criteria used to determine representativeness must be reasonable, clear, predetermined, objective, prescribed by law and open to judicial review (Conclusions XV-1, Belgium). The criteria for representativeness in Ukraine are assessed by the National Mediation and Conciliation Service and its branches. The previous report did not contain information as to whether a decision on representativeness is open to judicial review. Therefore, the Committee concluded that the situation is not in conformity on the ground that it has not been established that the criteria used to determine representativeness are open to judicial review.

No information on this issue is provided in the current report therefore the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 5 of the Charter on the grounds that:

- it has not been established that domestic law provides effective sanctions and remedies in case of discrimination and reprisals based on trade union membership and activities and in particular it has not been established that domestic law provides for compensation that is adequate and proportionate to the harm suffered by the victim;
- it has not been established that the criteria used to determine representativeness are open to judicial review.

Article 9 - Right to vocational guidance

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

The report states that equal treatment with respect to vocational guidance services is guaranteed to all persons irrespective of their place of residence (registration), work, education, age, gender, and race, ethnic or social origin, political, religious and other beliefs, economic status, etc. The Committee notes from the report that, pursuant to the Law "On Employment of the Population", foreigners and stateless refugees can access information, consulting and vocational guidance services if they apply to the employment centers and/or are registered therein. The Committee recalls that equal treatment with respect to vocational guidance must be guaranteed to everyone, including non-nationals from other Parties, who are lawfully resident or regularly working on the territory of Ukraine. This implies that no length of residence should be required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. To this purpose, length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter (Conclusions XVI-2 (2003), Poland). In view of this, the Committee asks the next report to clarify whether foreign nationals can have free access to vocational guidance services not related to the unemployment status, in particular within the education system.

Dissemination of information on vocational guidance services is ensured by the employment centres through publications and media, as well as through local educational bodies, bodies for youth and sport affairs, other local government bodies, local authorities etc. In particular, vocational information for young people is available through the "*Trud*" (Labor) interactive Internet portal of the state employment service, and through "vocational guidance terminals", namely software and hardware packages for vocational guidance of youth located in many general education institutions. The employment centres also organise vocational guidance events (seminars and presentations of professions, visits to enterprises, job fairs and marathons, debates, discussions, conferences, etc.) in addition to participating to activities organised by youth clubs and centers, through mobile consulting spots, or at the initiative of students. Specific events are organised for internally displaced persons.

As to vocational guidance for persons with disabilities, whether in the education system or on the labour market, the Committee refers to its assessment on this point under Article 15 of the Charter.

Vocational guidance within the education system

The report states that vocational guidance in the educational system in Ukraine is provided free of charge and consists of the following:

- Provision of information to students about the various types of work, the characteristics of each profession and their development trends in terms of staff demand in the regional labor market;
- Involvement of students in various types of socially useful and productive work to raise their professional interests and allow them to test their abilities in practice;
- Provision of vocational consultation by psychologists and social workers of educational institutions, aimed to assess whether, on the basis of their individual profile, the consulting students are adapted to specific professional requirements.

Employers and community based associations are actively involved in implementation of various vocational guidance activities. Vocational self-determination of secondary schools students is promoted through the organisation of visits to manufacturing facilities; job fairs with the participation of employers and the public. Open Door Days in vocational and higher education institutions are carried out with the participation of graduates, representatives from enterprises, institutions and organisations. International and national exhibitions with

participation of educational institutions, manufacturers and employers organisations also have an important role in vocational guidance.

The Committee takes note of the measures taken to improve and promote vocational guidance in the education system, such as:

- the creation of "educational districts" (Regulation on Educational District, approved by Committee of Ministers' Resolution No. 777 of 27 August 2010) and the introduction of the Concept of profiled education in high school (Ministry of Education and Science Order No. 1456 of 10 October 2013);
- the implementation in the upper school of an optional course "Try your profession", in order to allow students to practice specific professions associated with the profile chosen;
- the organisation in 2014 of 25 regional and 5 nationwide professional skills competitions, involving more than 800 students of vocational schools;
- the setting up of hardware and software packages for vocational guidance of youth (11 500 as of 1 January 2014) in secondary schools, which were used as a support for 16 000 vocational guidance activities organised in 2014 by the specialists of the state employment service for students, teachers and parents, including nearly 10 700 activities involving about 340 000 students; almost 2 300 activities involving over 54 000 parents; and more than 2 900 activities involving 36 000 teachers;
- the organisation in 2014 of field information and educational work with youth in their recreational places – in 2014, in the course of more than 1600 activities organised by the employment centres more than 86 400 students were involved in various forms of vocational guidance;
- the publication of a vocational guidance textbook for students, by the Institute of Pedagogical Education and Adult Education at the National Academy of Pedagogical Sciences of Ukraine (NAPSU);
- the development of a professional standard for "Pedagogues-Vocational Counsellors" and the adoption of rules on the qualification characteristics of pedagogical and teaching staff positions in educational institutions ensuring vocational guidance for the population (Ministry of Education and Science Order No. 665 of 6 January 2013);
- the establishment in June 2014 of the Institute of Professional Qualifications, in cooperation with the Federation of Employers of Ukraine;
- the organisation of specific vocational guidance activities in the educational system within penitentiary institutions – such activities covered in 2014 over 32 000 convicts.

The Committee takes note of the number of beneficiaries of vocational guidance within the education system during the reference period (from 1 887 100 in 2011 to 1 241 400 in 2014 – the latter data do not include however occupied territories). It also takes note that, according to the report, a sufficient number of qualified educators, teachers, psychologists ensure the provision of vocational guidance in general educational institutions and in vocational and higher education institutions. It reiterates nevertheless its request for details on the number of staff involved in the provision of vocational guidance within the education system and the overall expenditure. It holds that, if the next report does not provide information in this respect, there will be nothing to establish that the situation is in conformity with the Charter. It reserves in the meantime its position on this point.

Vocational guidance in the labour market

According to the report, anybody is entitled access to the state employment service to receive free vocational guidance, as regards the selection or change of profession, type of work, place of work, or modality of work. Vocational guidance services are addressed to people needing assistance in finding employment, as well as in preventing unemployment,

including young people and graduates from educational institutions registered in the state employment service and different categories of vulnerable groups (people with disabilities, seniors, former prisoners, rural residents, internally displaced persons etc.). The Committee asks the next report to clarify whether vocational guidance services are only provided to people registered as unemployed or whether they are also accessible, for example, to workers, who seek guidance on how to develop their career (including by undertaking further studies or retraining) or wish to change career. It reserves in the meantime its position on this point.

Vocational guidance services are included in all regional and local employment programs, with the active participation of social partners and community based organisations. These services are provided, through individual or group sessions, by vocational guidance specialists and are funded by Compulsory State Social Unemployment Insurance Fund.

The Committee takes note of the data presented in the report concerning the number of beneficiaries of vocational guidance services in the labour market during the reference period, which went from 4 268 900 people in 2011 to 3 558 600 in 2014 (the 2014 data do not include occupied territories). The report also refers to the vocational guidance services provided to unemployed youth (2 700 000 in 2014), in particular young people below 35 years old (637 000 people) and below 18 years old (800 persons) and to the activities organised in favour of internally displaced persons (some 46 500 internally displaced persons were involved in 2 800 travelling activities between March and end of December 2014 and about 29 000 persons participated in collective and individual guidance offered by the employment centers). The report does not provide however the information requested concerning the estimated expenditure devoted to vocational guidance services in the labour market. It furthermore does not indicate how many counsellors are involved in the provision of vocational guidance.

The Committee recalls that, to comply with Article 9 of the Charter, vocational guidance must be provided:

- free of charge;
- by qualified (counsellors, psychologist and teachers) and sufficient staff;
- to a significant number of persons and by aiming at reaching as many people as possible;
- and with an adequate budget.

The Committee asks for up-to-date information on these items to be systematically provided in all future reports, especially figures on the resources, staff and number of beneficiaries of vocational guidance in the labour market. In the meantime, it does not find it established that the right to vocational guidance within the labour market is guaranteed.

Conclusion

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

Article 10 - Right to vocational training

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

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

Secondary and higher education

The Committee notes from the report that the system of vocational education in Ukraine includes more than 2,000 educational institutions and enterprises of various types and forms of ownership engaged in vocational education and training. The network of vocational institutions includes 188 higher vocational schools, 70 centres of vocational education, 441 vocational lyceums, 113 vocational schools, 33 structural subdivisions of universities and 19 educational institutions of other types.

Training of workers is carried out in 940 state owned vocational schools that enrol more than 325,000 persons in 35 study fields and types of economic activity in almost 500 professions.

The Committee recalls that under Article 10§1 of the Charter the States Parties must:

- ensure general and vocational secondary education, university and non-university higher education and other forms of vocational training;
- build bridges between secondary vocational education and university and non-university higher education;
- introduce mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general, technical and university higher education;
- take measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market.

The States Parties are under the obligation to introduce mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general, technical and university higher education. Moreover, the States are obliged to take measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market.

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

Measures to facilitate access to education and their effectiveness

The Committee recalls that under Article 10§1 facilities other than financial assistance to students (which is dealt with under Article 10§5 of the Charter) shall be granted to ease access to technical or university higher education based solely on individual aptitude. The main indicators of compliance include the existence of the education and training system, the total spending on education and training as a percentage of the GDP, the completion rate of young people enrolled in vocational training courses and of students enrolled in higher vocational education. The Committee asks the next report to provide information regarding these issues. It holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

In reply to the Committee's question in the previous conclusion the report states that nationals of other States Parties, holders of temporary residence permits are entitled to the same access to vocational and higher education in Ukraine as the nationals.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 2 - Apprenticeship

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

The Committee notes from the report that the list of regulations were supplemented with the Resolution of the Cabinet of Ministers On Approval of the Procedure of jobs for apprenticeship and manufacturing practices by students and trainees of vocational schools, as amended in 2013 (the Procedure). The Procedure defines organisational, legal and pedagogical activities aimed at providing jobs for apprenticeship and manufacturing practices by students and trainees of vocational schools in manufacturing or in services.

The enterprises irrespective of their form of ownership shall provide jobs or training production site for apprenticeship and manufacturing practice by students and trainees of vocational schools in accordance with the contracts signed with the vocational schools for curricular practical training.

The Students and trainees can choose (independently, upon permission of vocational schools management) the place of their apprenticeship and manufacturing practices, including prospective employment. The manufacturing practices are carried out to improve acquired knowledge and practical skills to achieve the specified level of skills in appropriate professions, specialities and specialisations, and to ensure social, psychological and professional adaptation of students and trainees in the working environment. Students or trainees are remunerated during the period of apprenticeship and manufacturing practice in accordance with the company's established system of remuneration.

The Committee recalls that in the meaning of Article 10§2 of the Charter apprenticeship is a training based on a contract of employment between the employer and the apprentice that leads to vocational education. It must combine theoretical and practical training and close ties must be maintained between training establishments and the working world.

Apprenticeship is assessed on the basis of the following elements: length of the apprenticeship and division of time between practical and theoretical learning. The main indicators of compliance are the existence of apprenticeship and other training arrangements for young people, the numbers enrolled and the total spending, both public and private.

The Committee notes that the report does not provide information regarding these points. The Committee asks in particular whether an apprenticeship is based on a contract of employment between the employer and the apprentice and what is the division of time between practical and theoretical learning. It also wishes to be informed of the total spending, both public and private. In the meantime, the Committee considers that it has not been established that there is an effective system of apprenticeship.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 3 - Vocational training and retraining of adult workers

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

Employed persons

The Committee recalls that under Article 10§3 of the Charter States must take preventive measures against deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic development. The States should provide information on the types of continuing vocational training and education available for employed persons, percentage of employees participating in vocational training and total expenditure.

The state policy in the area of employees' professional development is geared towards raising their competitiveness through encouraging employers to use labour efficiently and ensure appropriate professional level for their staff.

The Committee takes note of the Law of Ukraine On the Professional development of employees which was adopted in 2012 (the Law No. 4312). Article 6 of this law provides that employers shall ensure vocational training of workers which shall be organised in the manner determined by the central executive body in the field of social policy. Employers can carry out formal and informal training of their employees. As regards formal vocational training, it includes initial vocational training, retraining and skills improvement for workers and may be organised at the employer's site or on a contractual basis in vocational schools, at enterprises in institutions and organisations. Informal vocational training of employees is carried out upon employees' consent at the employer's site.

Vocational training of employees may take the form of either study groups or individual training. It is carried out by lecturers, vocational training masters, tutors engaged under educational service contracts. Employees' professional development activities are funded by employers out of their own funds or other sources. To organise validation of informal vocational training results, the state employment service establishes centres of validation of vocational training results. These centres involve educational institutions of the state employment service and other vocational training institutions, licensed to carry out educational activities. Results of the information vocational training are certified with a document of specified form regarding assigned or improved worker's qualification. The centres for validation of information vocational training results have the right to request and receive information regarding professional experience of employees. The procedure for validation of vocational training results for employees was approved by the Resolution of the Cabinet of Ministers of 15 May 2013 No 340.

The Committee reiterates its request for information about the existence of the legislation on individual leave for training and its characteristics, in particular the length, the remuneration, and the initiative to take it. It also asks what percentage of employees have undertaken training.

Unemployed persons

The Committee takes note of active and passive employment policy measures implemented with a view to finding employment solutions for unemployed persons, such as compensatory payments in the amount of a single fee contribution for obligatory state social insurance paid to an employer who employs a registered unemployed person. According to the report, through this measure, in 2014, 23,6 thousand unemployed persons were employed at new jobs.

The Committee also takes note of other measures, such as promoting self-employment at small entities. It notes that the unemployed persons who wished to carry out entrepreneurial activity may get their unemployment benefits as a lump sum to enable them start an activity.

As a result, according to the report, 18,2 thousand unemployed persons started their business in 2014 using the lump sum unemployment benefits. The Committee also takes note of community work as a temporary employment solution for unemployed persons.

The Committee takes note of statistics regarding the numbers of unemployed persons who found a job as a result of employment policy measures and through the State Employment Service. The Committee considers that these measures pertain to active or passive employment measures and covered by Article 1§1 of the Charter.

Article 10§3 deals with vocational training measures implemented for unemployed persons. In this regard it notes from the report that the system of vouchers for training in educational institutions in high-demanded occupations for persons over 45 years was introduced, to enhance their competitiveness in the labour market. The procedure of issuing the vouchers was approved by the Resolution of the Cabinet of Ministers of Ukraine on 20.03.2013 No. 207.

The voucher is paid out of the Fund of obligatory state insurance of Ukraine against unemployment. The list of professions or areas of training to be covered under the voucher system includes 22 specialities for university graduates and 13 professions. 26,2 thousand persons got their vouchers for education in 2013-2014.

Committee recalls that the indicators of particular interest when it comes to vocational training for the unemployed are the number of participants, the development in national expenditure and the results of the effort, i.e. the employment effect (Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§3). The Committee asks the next report to provide figures on the total number of unemployed persons having participated in a training and in proportion to the total number of unemployed persons, as well as the percentage of those who found a job afterwards.

The Committee notes from the report on Article 10§4 that the total number of unemployed persons who have benefited from vocational training stood at 2,092,000 in 2014, down from 2,156,000 in 2011. The report states that the level of employment after vocational training amounted to 82,1% in 2011 and to 92,1% in 2014. The Committee asks the next report to clarify whether this signifies that 82,1% and 92,1% of all unemployed persons who had participated in vocational training, respectively, found a job afterwards.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 4 - Long term unemployed persons

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

The Act "On Employment of the Population" No. 5067-VI of 5 July 2012 provides the legal basis for the system of employment services in Ukraine, including long-term unemployed persons.

In its previous conclusion (Conclusion 2012), the Committee took note of the vocational training system for long-term unemployed persons and asked what are the types of vocational training provided for this specific category. It also asked what were the reasons for the significant decrease of long-term unemployed individuals that attended vocational training organised by the public employment service during the relevant reference period (2007-2010), and whether there are any data regarding the rate of employment at the end of the training for the attendees. Pending receipt of the requested information, the Committee deferred its conclusion.

The Committee considered that the absence of the information required amounts to a breach of the reporting obligation entered into by Ukraine under the Charter and that the Government consequently has an obligation to provide the requested information in the next report on this provision.

The report does not contain any reference to the information requested, and does not refer to the provision or promotion of any special measures for the retraining and reintegration of the long-term unemployed.

The Committee considers that this lack of information does not allow to assess the conformity of the situation with Article 10§4 of the Charter in practice.

The Committee asks that the next report provides specific information on: a) the types of training and retraining measures available on the labour market for long-term unemployed individuals; b) the number of persons in this type of training; c) the special attention given to young long-term unemployed, and d) the impact of the measures on reducing long-term unemployment. It asks that this information is provided for all the years of the relevant reference period.

In its previous conclusion, the Committee also asked for clarification of which categories of foreigners and in what cases long-term unemployed foreigners do not benefit of equal treatment with Ukrainian nationals in matters of access to vocational training. In this respect, the report refers to the information provided in relation to the implementation of Article 18§1 of the Charter. The Committee notes that this information does not refer, neither to vocational training, nor to long-term unemployed persons. It asks that the next report provide the requested clarification, specifying whether equal treatment with respect to access to training and retraining for long-term unemployed persons is guaranteed to nationals of other States Parties lawfully resident in the national territory on the basis of the conditions mentioned under Article 10§1 of the Charter.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 10§4 of the Charter on the ground that it has not been established that special measures for the retraining and reintegration of the long-term unemployed have been effectively provided or promoted.

Article 10 - Right to vocational training

Paragraph 5 - Full use of facilities available

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

Fees and financial assistance

In its previous conclusion (Conclusions 2012) the Committee asked whether the system of financial assistance for vocational education for those in need was in place. The Committee notes that the report does not provide this information.

The Committee recalls that access to vocational training also covers the granting of financial assistance whose importance is so great that the very existence of the right to vocational training may depend on it. All issues concerning financial assistance for vocational training up to higher education, are dealt with under this paragraph. States must provide financial assistance either universally or subject to a means-test, or awarded on the basis of the merit. In the absence of information regarding the types of financial assistance available as well as scholarships and loans for vocational education, including higher vocational education, the Committee considers that it has not been established that there is a system of financial assistance for vocational education and training.

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

Training during working hours

The Committee recalls that under Article 10§5 of the Charter time spent on supplementary training at the request of the employer must be included in the normal working-hours. Supplementary training means any kind of training that may be helpful in connection with the current occupation of the workers and aimed at increasing their skills. The Committee asks the next report to indicate whether time spent on supplementary training at the request of the employer is included in the normal working hours.

Efficiency of training

The Committee recalls that, under Article 10§5, states must also evaluate their vocational training programmes for young workers, including the apprenticeships. The Committee asks what measures are taken to evaluate vocational training programmes for young workers, including the apprenticeships.

Conclusion

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

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

Paragraph 1 - Vocational training for persons with disabilities

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

According to the report there were 2 663 446 persons with disabilities in Ukraine in 2014, including 168 280 children.

Definition of disability

Ukraine ratified the United Nations Convention on the Rights of Persons with Disabilities on 4 February 2010.

The Committee notes from the report that there are three categories of disability (I, II and III), pursuant to the Regulation on medical and social expert examination and provisions on the procedure, conditions, and criteria of assigning disability approved by Cabinet of Ministers Resolution No. 1317 of 3 December 2009. The Instruction on disability group assignment was approved by the Order of the Ministry of Health dated 05.09.2011 No. 561 (registered at the Ministry of Justice on November 14, 2011 under No. 1295/20033). The Committee takes note of all of these explanations with regard to the different categories of disability set out in the report.

Anti-discrimination legislation

The report states that, pursuant to Article 2 of the (revised) Law No. 4 213 of 22 December 2011 on the principles of social protection in Ukraine discrimination on grounds of disability is prohibited. The Criminal Code of Ukraine envisages criminal liability for violation of the principle of the equality of citizens, based among other things on handicap.

The report also states that Law No. 5207-VI on Principles of Prevention and Combating Discrimination in Ukraine, which was enacted on 6 September 2012, forbids direct and indirect discrimination, based, among other things, on disability and applies in particular to the field of education (Article 4).

The report also states that the Commissioner for Human Rights has the right to bring cases to court (in person or through his/her representative) to protect the rights and freedoms of persons who, because of their disability or restricted abilities, are unable to protect themselves or to initiate court proceedings.

The Committee asks that the next report include information on the measures taken to ensure effective remedies against alleged discrimination in education and training on grounds of disability (including examples of relevant case law and its follow up).

Education

According to the report, the Ministry of Education and Science approved a policy document on the development of inclusive education (Order No. 912 of 1 October 2010) with a view to implementing the national policy on observing the rights of children with special education needs.

By its Decision No. 872 of 15 August 2011, the Cabinet of Ministers approved the rules governing the organisation of inclusive education in secondary schools. According to Ukraine's initial report to the UN Committee on the Rights of Persons with Disabilities (2014), these rules provide for the introduction of posts of specialist disability teacher and speech therapy teacher in general education establishments for all activities aimed at correcting development disorders in children.

The Committee notes from the report that specific conditions had been established to facilitate inclusive education for children with special educational needs in general

educational institutions, in particular unimpeded access to school buildings and premises, provision of necessary training and teaching, audio-visual and information processing material.

Moreover, according to the report, by Decision No. 607 of 21 August 2013, the Cabinet of Ministers approved the State Standard of general elementary education for children with special educational needs, specifying state requirements at that level of education. The Committee notes that the staff lists of schools of general education include some 500 posts for assistant teachers.

According to the report, Law No. 1324 of 5 June 2014 on amendments to some of the laws on inclusive education was enacted to ensure continuity and consistency in the integration of children with special needs into general education.

In its previous conclusion (Conclusions 2012), the Committee requested information on the measures taken to reduce the institutionalisation of children. In the absence of a reply, the Committee reiterates its request.

The Committee notes that in 2014-2015, 5 000 special needs pupils attended special classes in general educational institutions, while 2 200 of them attended inclusive class-groups in secondary schools of general education. The total number of children with disabilities attending general educational institutions was 59 600.

The Committee notes from the report that, out of a total of some 168 280 children reported as having disabilities, only a minority appeared to be attending mainstream schools. The Committee asks clarifications as regards the figures provided. It also asks that the next report state how many children have dropped out of school, how many have no experience of school and the percentage of students with disabilities entering the labour market following mainstream or special education or/and training.

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

Vocational training

According to the report, the State Employment Service provides vocational guidance social services to persons with disabilities, taking into account the recommendations of medical-social expert commissions, and individual vocational rehabilitation programs to accelerate adaptation to the requirements of the labour market, financial independence, self-sufficiency and integration into society. Persons with disabilities are provided with individual and group services on vocational information, consultation and selection. The number of persons with disabilities who received vocational guidance increased from 33 900 in 2011 to 42 000 in 2014.

According to the report, all employment centres have special workplaces for persons with disabilities, with free access to Internet and to information on social protection and information about social protection and rehabilitation, training and employment opportunities and to a national data base of job vacancies.

The Committee notes from the report activities for persons with disabilities (specialised job fairs, round tables, open door days for persons with disabilities are held together with offices of the Fund for social protection of persons with disabilities, employers and NGOs for persons with disabilities).

Pursuant to the joint Order of the Ministry of Social Policy and the Ministry of Education and Science (Order No. 318/615 of 31 May 2013, registered in the Ministry of Justice on 19 June 2013 under No. 1029/23561) the State Employment Service organises vocational training, retraining and skills improvement for registered job seekers, including persons with disabilities registered as job seekers, using money from the Fund of obligatory state social insurance of Ukraine against unemployment. The number of persons with disabilities

receiving vocational training increased from 3 400 in 2011, 2 600 of whom found employment after the training, to 4 300 in 2014, 3 600 of whom found employment.

As regards national vocational rehabilitation, according to the report, vocational rehabilitation centres are answerable to the Ministry of Social Policy and offer free training for persons with disabilities in occupations that correspond to their state of health. The number of persons with disabilities using rehabilitation services increased from 2 056 in 2011 to 1 407 in 2014. In 2014 there were 12 rehabilitation centres.

Conclusion

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

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

Paragraph 2 - Employment of persons with disabilities

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

Employment of persons with disabilities

The report states that there are 730 985 persons with disabilities in Ukraine in 2014, 530 668 of whom are of working age (women 18 – 55 years of age, men 18 – 60). The Committee notes from the report that the number of unemployed persons with disabilities benefiting from the activities of the State Employment Service, was 43 200 in 2014, 11 800 of whom found work. The number of persons with disabilities, taking part in community work rose from 4 900 in 2011 to 3 400 in 2014.

The Committee notes that the figures submitted do not tally with the information given under Article 15 §1 and asks the next report to explain this noticeable difference.

Anti-discrimination legislation

According to the report, pursuant to Article 2 of the Law No.4 213 of 22 December 2011 on Principles of Social Protection of Persons with Disabilities”, discrimination on grounds of disability is prohibited. The Criminal Code of Ukraine envisages criminal liability for violation of the principle of the equality of citizens, among other things on grounds of disability. The Committee asks that the next report provide further details on such legislation in relation to the employment of persons with disabilities.

According to the report, it is forbidden to refuse to recruit or promote persons or for the administration to decide to dismiss persons or to transfer them to another post without their consent on grounds of disability, unless, in the opinion of Medical and social examination commission, their health status prevents them from fulfilling their professional duties or threatens the health and safety of others.

According to the report, Law No. 5207-VI on Principles of Prevention and Combating Discrimination in Ukraine, which was enacted on 6 September 2012, forbids direct and indirect discrimination, based, among other things, on disability and applies in particular to the field of public services and employer – employee relations (Article 4).

The report also states that the Commissioner for Human Rights has the right to bring cases to court (in person or through his/her representative) to protect the rights and freedoms of persons who, because of their disability or restricted abilities, are unable to protect themselves or to initiate court proceedings.

The Committee asks that the next report include information on the measures taken to ensure effective remedies against alleged discrimination in employment on grounds of disability (including examples of relevant case law and its follow up).

According to the report, enterprises, institutions and organisations may create posts for people with disabilities and may create special jobs, by making the necessary adjustments to main and additional equipment and are obliged to provide the other social and economic guarantees stipulated in the relevant legislation. The local council decides whether the costs of this are to be covered by the Fund for Social Protection of Disabled Persons or at the company's own expense.

In its previous conclusion (Conclusions 2012), the Committee asked how the reasonable accommodation obligation was implemented. As the report fails to answer this question, the Committee reiterates its request as to how the legal obligation to ensure reasonable accommodation, is implemented in practice, whether the reasonable accommodation obligation has given rise to cases before the courts and whether the said obligation has prompted an increase in employment of persons with disabilities in the open labour market.

In view of the above, the Committee considers that it has not been established that the reasonable accommodation obligation is effectively guaranteed.

Measures to encourage the employment of persons with disabilities

Pursuant to the Law on Principles of Social Protection of Persons with Disabilities (2011), they have the right to work in business enterprises, institutions and organisations, and to carry out entrepreneurial and other work that is not prohibited by law so that they can make use of their creative and production abilities. Account is also taken of individual rehabilitation programmes.

The report states that persons with disabilities can exercise their rights to employment and paid work, including the right to work at home, by directly applying to enterprises, institutions and organizations or to the State Employment Service.

Pursuant to the Law on Employment (No. 5067-VI du 5 July 2012) and the Law on the Principles of Social Protection of Persons with Disabilities (No. 875-XII), the State Employment Service encourages vocational rehabilitation and the placement of persons with disabilities in posts created or reserved for them in business enterprises, taking account or recommendations from medical and social examination bodies and of the skills and knowledge of the person concerned and of his or her wishes. It also helps persons with disabilities who are unable to work in the business enterprise itself to obtain work at home. Persons with disabilities may, with their consent, be recruited to do paid community work. The Committee notes from the report that the national employment service may grant subsidies to employers for the creation of special posts reserved for persons with disabilities who are registered with the service as being unemployed.

According to the report, all persons with disabilities not yet of retirement age who are not working but would like to work have the right to register with the State Employment Service as unemployed.

The Committee notes from the report that, under the Law on employment, some citizens have the right to obtain a “one-off voucher” to maintain their competitiveness in the labour market through retraining, specialisation and skills improvement in professions and specialties intended for top-priority economic activities. In 2013, 480 persons with disabilities aged 45 or more obtained vouchers and 121 in 2014.

The Committee once again asks that the next report state the number or percentage of persons with disabilities employed in the open market and the number of beneficiaries of sheltered employment, as well as the rate of progress of such persons into the open market.

The Committee also points out that people working in sheltered employment facilities where production is the main activity must enjoy the usual benefits of labour law. It asks whether this is the case and whether trade unions play an active role in sheltered facilities.

Conclusion

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

- it has not been established that the reasonable accommodation obligation is effectively respected;
- mainstreaming in employment is not effectively guaranteed in respect of persons with disabilities.

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

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

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

Anti-discrimination legislation and integrated approach

According to the report, pursuant to the Law on the principles of social protection for persons with disabilities (No. 875-XII), people with disabilities enjoy the full range of socio-economic, political and personal rights and freedoms set out in the Constitution and in other legally binding documents.

Moreover, according to the report, Law No. 5207-VI on preventing and combating discrimination in Ukraine, which was enacted on 6 September 2012, forbids direct and indirect discrimination, based, among other things, on disability and applies in particular to the field of education, public services and employer-employee relations (Article 4).

The Committee observes that it is not clear whether anti-discrimination legislation applies to all the fields covered by Article 15§3. It asks that the next report clarify this issue and confirm that effective remedies against discrimination exist throughout the country as regards housing, transport, communications, culture and leisure. Likewise it asks if all the authorities involved in implementing policies for persons with disabilities have integrated planning programmes. In the meantime, the Committee concludes that the situation is not in conformity with Article 15§3 of the Charter on the ground that it has not been established that persons with disabilities enjoy effective protection against discrimination in the fields of housing, transport, communications and culture and leisure activities.

In its Resolution No. 706 of 1 August 2012, the Cabinet of Ministers approved the National Action Plan for the implementation of the United Nations Convention on the Rights of Persons with Disabilities for the period until 2020. The aim of the plan is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms in all spheres of community life by all persons with disabilities. The Committee asks to be informed of the results achieved in implementing the action plan.

The Commissioner for Human Rights has the right to bring cases to court (in person or through his/her representative) to protect the rights and freedoms of persons who, because of their disability or restricted abilities, are unable to protect themselves or to initiate court proceedings.

Consultation

In reply to the Committee's question as to how persons with disabilities are represented and consulted in governmental bodies at national and local level, the report states that there are numerous NGOs which protect persons with disabilities; some of these NGOs receive partial funding for their statutory activities.

Pursuant to Law No. 875-XII, all business bodies have to engage (as consultant) representatives from NGOs when preparing decisions affecting the rights and interests of persons with disabilities. Moreover, pursuant to Resolution No. 837 of 12 December 1994, a Council for Disabled Persons Affairs has been set up within the Cabinet of Ministers. It prepares proposals regarding the content and implementation of state policy to ensure the social protection of persons with disabilities, identifies ways, mechanisms and methods of solving problems regarding the implementation of the national policy in the field of social protection for persons with disabilities, prepares proposals on how to improve the regulatory and judicial framework and the efficiency of central and local government bodies in safeguarding the rights of persons with disabilities and their social protection.

Forms of financial aid to increase the autonomy of persons with disabilities

In its previous conclusion (Conclusions 2012), the Committee asked for details on all benefits and other forms of financial assistance available to persons with disabilities. According to the report, the main component of the social protection system for persons with disabilities is their disability pension, which depends on the disability group (I -100%, II – 90% and III – 50% of appropriate retirement pensions) and/or state social assistance. The Committee takes note of the method for calculating the disability pension set out in the report.

Other forms of assistance are paid in addition to the disability pension: additional monthly allowance for children under 18 years of age: € 5 (150 UAH)) per child per month; additional care allowance for persons with a Group I disability and for single disabled persons of disability Group II who need constant care or have reached retirement age; single disabled persons of disability group III care allowance of € 1.7 (50 UAH) per month); and state social assistance.

According to the report the disability pension cannot be less than the minimum subsistence allowance for persons who have lost their ability to work. Pursuant to the Law on State social assistance to persons disabled from childhood and children with disabilities, state social assistance is paid for the entire period of established disability. The Committee takes note of the method for calculating the disability pension set out in the report.

Measures to overcome obstacles

Technical aids

In reply to the Committee's question concerning technical aid, the report says that central government is responsible for ensuring that persons with disabilities have the technical aids required for their rehabilitation to persons with disabilities are included in the list of protected items.

Pursuant to the Law on the Rehabilitation of Disabled Persons and to the Procedure of delivery technical and other means of rehabilitation to persons with disabilities, children with disabilities and other specific groups (Resolution of the Cabinet of Ministers No. 321 of 5 April 2012), technical and other means of rehabilitation are provided free of charge upon the written request of the person with disabilities and in the form of monetary assistance. Technical means of rehabilitation include prosthetic products, mobility aids (wheelchairs), special care equipment, personal healthcare assistance and ergonomic chairs, personal mobility aids, special tools for orientation, communication and the exchange of information.

The Committee asks what mechanisms are in place to assess the barriers to communication and mobility faced by individual persons with disabilities and to identify the technical aids and support measures that may be required to assist them in overcoming these barriers.

Communication

In its previous conclusion (Conclusions 2012), the Committee asked that the next report explain how telecommunications and new information technology are accessible and what the legal status of sign language was. In reply the report states that, pursuant to Law No. 875-XI, sign language is recognised as the means of communication and studying of deaf and hearing impaired persons and is protected by the state.

The report also states that broadcasting organisations (irrespective of their ownership and subordination) must provide subtitling or the translation into sign language of official communications, films and video, broadcasts and programmes in accordance with the procedure and conditions determined by the Cabinet of Ministers.

Mobility and transport

The report states that enterprises, institutions and organisations are obliged to establish conditions for unhindered access to public sites for persons with disabilities (including persons with disabilities using vehicles and guide-dogs). The owners and manufacturers of transport vehicles and the producers and customers of information, telecommunications operators and providers must ensure that their products and services meet the needs of persons with disabilities.

According to the report, buildings and other sites open to the public must be equipped with signs used internationally to indicate that they are accessible by persons with disabilities and information for the public, and the numbering of floors and offices must be duplicated in relief alphanumeric font or Braille. Public transport (rail, sea, river, road, air, and underground trains) must be equipped with audio information.

According to the report, under Article 27 of the Law on the principles of social protection for persons with disabilities, if existing facilities cannot be fully adapted to the needs of people with disabilities, they should, in consultation with NGOs for persons with disabilities, be reasonably adapted to their needs, using universal design.

At present the Ukrainian railways use 19 passenger carriages adapted for the transportation of passengers with disabilities, and the entrances and exits in airports are equipped with ramps.

The Committee wishes to be kept informed of the progress made in accessibility of transport.

Housing

As the report does not contain any information on this point, the Committee reiterates its request that the next report contain information on the progress made in implementing the 2009-2012 'Barrier-Free Ukraine' action plan, approved by Resolution No. 784 of 29 July 2009 of the Cabinet of Ministers. The Committee points out that, should the next report fail to provide the requested information, nothing will prove that the situation in Ukraine is in conformity with Article 15§3 of the Social Charter.

Culture and leisure

According to the report, persons with a Group I or II disability are entitled to free access to cultural establishments one day in the last week of every month. The State also finances festivals, sports competitions, exhibitions of works of art produced by persons with disabilities and other cultural events organised by associations of persons with disabilities, in particular the national "Colours of Life" Festival presenting work by persons with disabilities.

Conclusion

The Committee concludes that the situation of Ukraine is not in conformity with Article 15§3 of the Charter on the grounds that it has not been established that the anti-discrimination legislation covers the fields of housing, transport and communications.

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

Paragraph 1 - Applying existing regulations in a spirit of liberality

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

Work permits

The report indicates that rules governing the employment of foreigners and their family members, are provided by Law “On Employment of the Population” No.5067-VI, of 05 July 2012, Law “On the legal Status of Foreigners and Stateless Persons” No. 3773-VI, of 22 September 2011, and the Resolution of the Cabinet of Ministers, No. 437, of 27 May 2013, on the approval of the procedure for issuance, extension and cancellation of permits to use labour of foreigners and stateless persons.

According to the report, foreigners and stateless persons can be granted a temporary or permanent residence.

The report further indicates that, according to the Law No. 5067, the enterprises, institutions, and organizations are eligible for employing foreigners and stateless persons in Ukraine on the basis of a permit to be issued by the territorial bodies of the central government. The permit is issued for a one year period, renewable every year upon request, under the condition that no national worker is able to perform the defined type of work, or if there is a sufficient ground to employ a non-national. To obtain a work permit, nationals of States Parties must have been accepted to work for a company and many of the required documents can only be provided by the employer. Moreover, according to Ukraine’s WTO commitments (Article II of the General Agreement on Trade in Services), foreigners that belong to the category of “intra corporal cessionary” get their work permit for three years, renewable upon request. The Committee notes that work permit is not required for some special categories of workers as follows: permanent residents, representatives of foreign marine (river) fleet and airlines; staff of accredited foreign media; sports professionals, and artists; emergency service staff; staff of foreign representative offices; staff of international technical assistance projects; professors or researchers. The report states that Ukrainian legislation does not envisage any restrictions to the right to engage in a gainful occupation by nationals of other States Parties.

While taking note of the information submitted in the report, the Committee asks for further information on the conditions and procedures for issuing or renewing each type of work permit.

Relevant statistics

The Committee recalls that the assessment of the degree of liberality, and therefore of conformity with Article 18§1, is based on figures showing the granting and refusal rates for work permits for first-time and for renewal applications by nationals of States Parties. A high percentage of successful applications by nationals of States Parties to the Charter for work permits and for renewal of work permits and a low percentage of refusals has been regarded by the Committee as a clear sign that existing regulations are being applied in a spirit of liberality.

In its previous conclusion, the Committee asked for statistics regarding the number of work permits granted as well as the refusal rate. In reply to this question, the report indicates that in 2011, 6,800 work permits were granted, and 370 were refused or 5,4%; in 2012, 5,800 work permits were granted, and 203 refused or 3,5%; in 2013, 5,800 work permits were granted and 807 refused or 13,9%; in 2014, 3500 work permits were granted and 910 were refused or 26%.

The Committee notes that the report does not distinguish between the number of first-time applications and renewal of work permit and does not provide for the grounds for refusing a

work permit. Therefore, the Committee asks that this information be included in the next report. However, taking into account the high percentage of successful applications by nationals of States Parties to the Charter for work permits and the low percentage of refusals, the Committee considers the situation to be in conformity with Article 18§1.

Conclusion

The Committee concludes that the situation in Ukraine is in conformity with Article 18§1 of the Charter.

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

Paragraph 2 - Simplifying existing formalities and reducing dues and taxes

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

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

The report indicates that to work in Ukraine a foreigner must obtain a temporary residence permit and a work permit. Permanent residents can work without a work permit. The Committee notes in the report that temporary residence permit is issued upon application of a foreigner (Resolution of 28 March 2012 No. 251). The application is submitted to a local agency of the State Migration Service. It is valid for one year, renewable upon request of the applicant. Then, the employer must apply to obtain a work permit to employ a foreign worker by a local agency of the State Employment Service. The permit is issued for a period of one year, renewable upon request (The Act "On Employment of the Population" No. 5067-VI of 5 July 2012).

The Committee understands from the report that there is not a possibility to obtain the residence and work permits at the same time and through a single application in Ukraine. The Committee asks again the next report to clarify whether a residence permit is a precondition for issuing a work permit. It also asks for confirmation whether there are two separate procedures to follow for obtaining residence and work permits. The Committee therefore recalls that with regard to the formalities to be completed, conformity with Article 18§2 presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin and obtaining the residence and work permits at the same time and through a single application.

In its previous conclusion (Conclusions 2012), the Committee asked how long it takes on average to deliver residence and work permits for foreign workers. The report indicates that the resolution of 27 May 2013 No. 437 has simplified the procedure to deliver a work permit to employers as compared with the earlier procedure. The deadline to deliver residence and work permits for foreign workers has been shortened from 30 days to 15 days. Moreover, even if outside the reference period, the Committee notes that the more recent Resolution of 28 January 2015 No. 42 provides that decisions to issue work permits for foreigners are taken by the State Employment Service within 7 working days from the date of registration of the application.

Chancery dues and other charges

The Committee recalls that the chancery dues and other charges for residence and work permits must not be excessive and, in any event, must not exceed the administrative cost incurred in issuing them.

In its previous conclusion, the Committee asked whether there are any fees payable by the foreign worker him/herself. The report does not answer the question and the Committee asks again if there is any fee applicable on the residence permit payable by the foreign worker him/herself.

The report further indicates that the fee for a work permit is four minimum wages, which is paid by the applicant employer to the budget of the Fund of obligatory state social insurance of Ukraine against unemployment. In 2014, the minimum wage was 1218 UAH, and appropriately, the fee for the work permit amounted to 4872 UAH. That is about 230 euros. The Committee asks that the next report provides explanations if the amount of the above mentioned fee is fixed by law or administrative practise.

Taking into account the lack of information, the Committee considers that the situation in Ukraine is not in conformity with Article 18§2 of the Charter on the ground that it is not

established that Ukraine has simplified existing formalities and reduced chancery dues and other charges payable by foreign workers or their employers.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 18§2 of the Charter on the ground that it is not established Ukraine has simplified existing formalities and reduced chancery dues and other charges payable by foreign workers or their employers.

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

Paragraph 3 - Liberalising regulations

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

Access to the national labour market

The Committee recalls that under Article 18§3, States are required to liberalise periodically the regulations governing the employment of foreign workers. Referring to its conclusion under Article 18§1, the Committee recalls that taking into account the high percentage of successful applications by nationals of States Parties to the Charter for work permits and the low percentage of refusals, the Committee considers that existing regulations have been applied in a spirit of liberality.

The report indicates that rules governing employment of foreigners and their family members, are provided the laws “On Employment of the Population” No. 5067-VI, of 05 July 2012, and “On the legal Status of Foreigners and Stateless Persons” No. 3773-VI, of 22 September 2011.

The Committee notes that the permit to use ‘foreign labour’ is issued to the employer by the State Employment Service (SES) if the employer is registered with the employment centre as a payer of insurance contributions to the Fund for General Mandatory State Social Insurance of Ukraine and has no debts to the Fund. To process the documents submitted by the employer, a commission is set up under SES. The decision to issue or extend the work permit is made by the Director of SES. The employer is required to submit a number of documents in support of his application, including those pertaining to his or her situation regarding taxes, payment of the fee for processing of such application, as well as those pertaining to the foreign worker such as education and qualifications.

In its previous conclusion (Conclusions 2012), the Committee asked information on the rules governing self-employment of foreign workers. In reply, the report indicates that in accordance with the Article 50 of the Civil Code of Ukraine the right to work as self-employed is provided to any person with full civil rights under restrictions provided by the Constitution of Ukraine or the law. Any foreigner, who legally resides in Ukraine, has the right to work as self-employed under the same conditions as any national of Ukraine. The Law of Ukraine “On state registration of individual entrepreneurs and legal entities” provides the right to persons who have citizenship of another country than Ukraine, to register themselves as individual entrepreneurs. In this case, the income of the individual entrepreneurs will be taxed in accordance with the rules established by the Tax Code for residents of Ukraine. According to information from the State Fiscal Service of Ukraine, in 2011 there were registered 17,300 individual entrepreneurs who have citizenship of another country than Ukraine, in 2012 – 17,600 thousand, in 2013 – 18,100, in 2014 – 17,500 entrepreneurs. The rules for taxation of income from activities in the territory of other Member Parties are established on the basis of the Double Taxation of Income and Property Avoidance Agreements. As of 12 January 2015 Ukraine signed international treaties on double taxation avoidance with 69 countries.

The Committee takes note of the information, it however asks on which grounds a residence and work permit can be refused to a national of other States Parties wishing to work as self-employed or employees.

The Committee also asks for information on measures taken to liberalise regulations governing the recognition of foreign certifications, professional qualifications and diplomas, necessary to engage in a gainful occupation as employees or self-employed workers. In this respect, the Committee asks for information on the number of recognition of foreign certificates, professional qualifications and diplomas issued to nationals from States Parties to the Charter during the reference period.

Exercise of the right of employment /Consequences of the loss of employment

In its previous conclusion, the Committee asked whether the residence permit will be withdrawn if its holder loses his or her job while such permit is still valid.

The report indicates that pursuant to the paragraph 25 of the Procedure provided in the Resolution of the Cabinet of Ministers of Ukraine of 28 March 2012 No. 251, the work permit is cancelled in case of appropriate employment contract termination with a foreigner or a stateless person. The employer notifies in writing to the local agency that issued the work permit on termination of the employment contract with a foreigner or a stateless person within three working days from the date of the termination. Then, the local agency of the State Employment Service notifies on cancellation of the work permit to the local agency of the State Migration Service and the State Border Service within three working days. Temporary residence permit is cancelled by the agency of the State Migration Service that issued it, in particular in case of the release of the foreigner or stateless persons from the position.

The Committee recalls that loss of employment must not lead to the cancellation of the residence permit, thereby obliging the worker to leave the country as soon as possible. The Committee understands from the report that in case a work permit is revoked before the date of expiry, the worker is deprived from the possibility to reside in Ukraine, therefore it considers the legislation on this point not to be in conformity with Article 18§3 and asks for measures to be taken to remedy this situation.

Conclusion

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

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

Paragraph 4 - Right of nationals to leave the country

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

In its previous conclusion (Conclusion 2012), the Committee noted that everyone lawfully staying in the territory is guaranteed the freedom of movement, free choice of the place of residence and the right to leave the territory of Ukraine. Nationals of Ukraine have the right to engage in labour activities abroad unless such activities are in conflict with existing laws of Ukraine. The Committee asked for more details regarding these laws. The report does not answer.

The Committee recalls that under Article 18§4, States should undertake not to restrict the right of their nationals to leave the country to engage in a gainful employment in other Parties to the Charter. The only permitted restrictions are those provided for in Article G of the Charter, i.e. those which " are prescribed by law, pursue a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals". The Committee asks again the next report to clarify the legal grounds of restricting the rights of nationals to leave the country.

Conclusion

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

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

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

Equal rights

The Committee noted previously that Section 2-1 of the Code of Labour Laws of Ukraine provides for “equality of labour rights of all citizens regardless of their, *inter alia*, sex” (Conclusions 2012). The Committee refers to its conclusions under Article 20 (Conclusions 2012) and under Article 4.3 (Conclusions 2014) where it took note of the legal basis for equal pay. It noted that Section 17 of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" provides that the employer shall, in particular, ensure equal pay for women and men given the same qualification and working conditions.

The Committee previously asked for clarifications on the legislation on equal pay for work of equal value (Conclusions 2012 on Article 20) as it noted the concerns expressed by ILO-CEACR that the principle provided by Section 17 of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" is “more restrictive than the principle of equal remuneration for work of equal value” and “jobs performed by a man and a woman may involve different skills and working conditions, but may nevertheless be jobs which are of equal value and thus would have to be remunerated at an equal level”.

Noting that the report does not provide any information on this point and that according to an Observation of ILO-CEACR the Labour Code is being amended (Observation (CEACR) – adopted 2014, published 104th ILC session (2015), Equal Remuneration Convention, 1951 (No. 100), the Committee asks the next report whether there are any new legislative amendments with respect to the principle of equal remuneration for men and women for work of equal value in the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men or in the draft Labour Code, and to indicate any progress made in this regard. It also asks information on the implementation and enforcement of current Section 17 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men, including the number and outcome of any relevant cases brought before the competent authorities.

The report indicates that Section 24-1 on “Advertising employment services” of the Law of Ukraine “On Advertising”, it is prohibited to prescribe (in jobs/employment advertisements) the age of the candidates, to offer the job only to women or only to men, except for some specific jobs that can be performed only by persons of a particular sex, to make demands that prefer female or male employees, or to require persons employed to provide information on personal life.

The Committee previously asked whether there are certain exceptions to the prohibition on discrimination on grounds of sex in respect of certain occupations and if so what these are. Since the report does not provide the information requested, the Committee reiterates its question.

The report adds that an advisory board was established at the Ministry of Social Policy, namely the Expert Council, in order to deal with complaints of gender discrimination concerning government bodies, local authorities, non-governmental organizations and individuals to provide expert opinion and take appropriate actions. During 2010 – 2013 the Expert Council received 26 requests for expert evaluation of the presence of discrimination, where 33 violations were recorded. Analysis shows that most complaints are related to advertisements promoting negative stereotypes about social and gender roles of women and men. In 2014, the Advisory Board received three complaints related to gender discrimination in the advertising production.

The report further indicates that in accordance with Section 14 of the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" every person who believes that she/he is a victim of sexual discrimination or became an object of sexual

harassment has the right to submit a complaint to the Commissioner for Human Rights of Ukraine and/ or to court.

In its previous conclusion, the Committee asked whether the Commissioner for Human Rights may award compensation or whether it is the courts. It also asked whether a victim may take his/her case before the courts in addition to or alternatively to the Commissioner, what is the procedure for taking a sex discrimination case before the courts, and whether there is a shift in the burden of proof. It further asked for information on the number of sex discrimination cases brought before the Human Rights Commissioner and the courts (Conclusions 2012).

With regard to the burden of proof, the report indicates that that in accordance with Article 60 (1) of the Civil Procedure Code “in cases of discrimination the claimant must provide evidence proving that discrimination took place. If such evidences are provided, proving their absence relies on the defendant.” The Committee recalls that the burden of proof must be shifted. The shift in the burden of proof consists in ensuring that where a person believes he or she has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of equal treatment (Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol). Noting that under the Civil Procedure Code the claimant has to prove that the discrimination took place, the Committee concludes that the situation in Ukraine is not in conformity with Article 20 of the Charter on the ground that legislation does not provide for a shift in the burden of proof in sex discrimination cases.

The report further mentions that the Commissioner for Human Rights has the right to file (in person or through his/her representative) cases to court to protect the rights and freedoms of persons who, because of their physical condition, young age, old age, disability or restricted abilities are unable to protect their rights and freedoms for themselves or participate in court proceedings. However, the report states that during the reference period 2011-2014, the Commissioner did not apply to court for any gender discrimination cases related to employment.

The report refers to cases of violations of equal rights and freedoms irrespective of sex, which were submitted to the Commissioner for Human Rights during the reference period. However, it is not specified whether any of these cases concerned gender discrimination in the labour environment. The report also indicates that the Commissioner for Human Rights cannot award compensation to victims of discrimination and only a court decision may establish an obligation to pay compensation to victims of discrimination.

The report does not provide any examples of sex discrimination cases in employment brought before the Human Rights Commissioner or the courts. The Committee takes note of the absence of cases of gender discrimination in employment which is likely to indicate a lack of awareness of rights, lack of confidence in or absence of practical access to procedures, or fear of reprisals. It asks information in the next report on the measures taken to raise awareness of the relevant legislation, to enhance the capacity of the competent authorities, including judges, labour inspectors and other public officials, to identify and address cases of sex discrimination in employment and unequal pay, and also to examine whether the applicable substantive and procedural provisions, in practice, allow claims to be brought successfully. It asks that the next report provide information on the number, nature and outcome of complaints of sex discrimination, including equal remuneration addressed by the judicial and administrative bodies. Meanwhile, the Committee considers that the situation is not in conformity with Article 20 of the Charter on the ground that it has not been established that the right to equal treatment in employment without discrimination on grounds of sex is guaranteed in practice.

In its previous conclusion, the Committee asked whether domestic law makes provision for comparisons of pay and jobs to extend outside the company directly concerned where this is

necessary for an appropriate comparison (Conclusions 2012). The report does not address the Committee's question. It only states that at the legislative level it was discussed how to include provisions ensuring equal rights and opportunities for women and men to the general, sectoral and regional agreements and collective agreements in the case of collective contractual regulation of social and labour relations.

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter, and does so therefore every two years (under thematic group 1 "Employment, training and equal opportunities", and thematic group 3 "Labour rights"). Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful, this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies. It notes that at the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding (company) or conglomerate (Conclusions 2012, Statement of Interpretation on Article 20).

The Committee recalls that in equal pay litigation cases the legislation should allow pay comparisons across companies only where the differences in pay can be attributed to a single source. For example, the Committee has considered that the situation complied with this principle when in equal pay cases comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source (Conclusions 2012, Netherlands, Article 20) or when pay comparison is possible for employees working in a unit composed of persons who are in legally different situations if the remuneration is fixed by a collective agreement applicable to all entities of the unit (Conclusions 2014, France, Article 4§3).

The Committee reiterates its question whether in equal pay litigation cases, pay comparisons are possible across companies. It underlines that if the necessary information is not provided in the next report there will be nothing to show that the situation in Ukraine is in conformity with the Charter on this point.

Equal opportunities

The Committee takes note of the measures implemented to promote gender equality described in the report. It notes that the State Programme to Ensure Equal Rights and Opportunities for Women and Men, 2013 – 2016, includes activities aimed at reducing the gender gap in wages between men and women and to ensure a better balance of work-family relation for employees. Some projects were focused on the re-integration of parents to professional life after the maternity/parental leave.

The Committee notes from an Observation of ILO –CEACR that according to the information provided by the Government and the State Statistics Service of Ukraine on average monthly wages and salaries of women and men, the gender wage gap was 22.8% in 2013 and 24% in the first quarter of 2014 (compared to 23% in 2009). Data from 2013 also show a significant gap in the monthly wages of women and men in certain sectors of the economy, particularly in manufacturing (30.3%), postal and courier services (35.4%) and sports, entertainment and recreation (37.8%). The Government indicated that differences in wages are largely due to the system of the gender division of labour, with women being concentrated in sectors with relatively high educational requirements, but lower wages,

primarily in the public sector (Observation (CEACR) – adopted 2014, published 104th ILC session (2015), Equal Remuneration Convention, 1951 (No. 100).

The Committee asks the next report to provide information on the situation of women in employment (by comparison with men overall and in different occupations/sectors of economy) and the wage gap between the sexes over the reference period.

The Committee asks the next report to provide comprehensive information on all measures taken to eliminate *de facto* inequalities between men and women, including positive actions/ measures taken. It asks in particular information on their implementation and impact on combating occupational sex segregation in employment, increase women's participation in a wider range of jobs and occupations, including decision-making positions, and to reduce the gender pay gap.

Conclusion

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

- the legislation does not provide for a shift in the burden of proof in sex discrimination cases;
- it has not been established that the right to equal treatment in employment without discrimination on grounds of sex is guaranteed in practice.

Article 24 - Right to protection in case of dismissal

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

The Committee notes that there were no changes to the national legislation within the reporting period.

Scope

The Committee recalls that under Article 24 of the Charter all workers who have signed an employment contract are entitled to protection in the event of termination of employment. According to the Appendix to the Charter, certain categories of workers can be excluded, among them workers undergoing a period of probation. However, exclusion of employees from protection against dismissal for six months or 26 weeks in view of probationary period is not reasonable if applied indiscriminately, regardless of the employee's qualification (Conclusions 2005, Cyprus).

In reply to its question on whether any categories of workers can be excluded from protection against dismissal, the Committee notes from the report that:

- paragraph 6 of the part 1 of Article 41 of the Labour Code aims at dismissals by the employer of officials at management positions of business partnerships, with the purpose to improve the investment climate in Ukraine. The dismissal on this ground requires from the employer to pay the employee a dismissal pay in the amount of at least six months average earnings;
- in accordance with Article 26 of the Labour Code an employment contract may include an agreement based probation period, whose duration shall not exceed three months, and during the probation period workers are protected in accordance with the labour legislation. In some cases, as agreed with appropriate elected body of primary trade union organisation, the probation period shall not exceed six months unless otherwise provided by law. If during the probation period the inconsistency of the employee with the job is revealed, the owner or his/her authorized authority is entitled to terminate the employment contract within this period. Termination of employment contract on the above grounds may be challenged by the employee in accordance with the procedure established for consideration of labour disputes regarding dismissal. The dismissal, even on the basis of the probation period must be reasoned. That is, if during the probation period the employer determines that the worker skills do not correspond to the position he/she was hired, he/she may fire the employee as having failed the probation period;
- the groundless dismissal of other categories of employees is not envisaged by the Labour Code.

Obligation to provide valid reasons for termination of employment

The Committee recalls that under Article 24 the following are regarded as valid reason for termination of an employment contract:

- *reasons connected with the capacity or conduct of the employee;*
- *certain economic reasons.*

The Committee notes from the report that the Labour Code of Ukraine contains an exhaustive list of grounds for termination of the employment at the initiative of the employer. Article 36 of the Labour Code lists the grounds for termination of the employment contract, on agreed basis.

According to Article 40 an employment contract can be terminated at the initiative of the employer, on grounds such as changing in production and labour structure, restructuring or changing of the company profile; inadequate performance of duties by the employee due to inadequate training or health conditions; systematic failure of an employee without a good

cause to carry out duties assigned to him or her by an employment agreement or internal regulations, absence from work for more than three hours during a day without a good reason.

In its previous 2012 conclusions the Committee asked (1) about the national courts' interpretation of the law and their leading decisions and judgements as regards the extent to which reasons are regarded in practice as justifying dismissal and (2) whether the courts have the competence to review a dismissal case on its facts and not only on points of law. In reply to these questions, the Committee notes from the report that in accordance with Article 232 of Labour Code, labour disputes on restoring workers employment irrespective of grounds for termination, modification date and the wording of the reasons for dismissal, pay during the forced absence, or performance of lower paid work are considered immediately by the courts on the basis of applications from laid-off workers. When deciding disputes related to illegal dismissal of employees, the courts are guided by the resolution of the Supreme Court of Ukraine "On the practice of labour disputes consideration by courts" dated 11/06/92. According to paragraph 18 of the said resolution, when considering cases on employees' reinstatement the courts have to find out reasons for dismissal in accordance with the dismissal order and to verify their compliance with the law. The court has no right to recognise the dismissal as correct based on circumstances that the owner or authorized body do not link with the dismissal. If the circumstances used as a ground for dismissal have incorrect legal qualification in the dismissal order, the court may amend causes of dismissal and bring it into compliance with current labour laws.

In the event that an employee was dismissed without legal grounds or in violation of the established procedure but his/her reinstatement is impossible because of liquidation of the enterprise, institution, or organization, the court shall recognise the dismissal wrong and require the liquidation commission or the owner (the authority empowered to manage assets of the liquidated company, institution, organisation, and where appropriate – the successor) to pay this employee his/her wages for the period of forced absence. At the same time the court shall determine if the employee was dismissed in accordance with the clause 1 of Article 40 of the Labour Code in connection with the liquidation of the company, institution, or organisation.

According to the first paragraph of Article 11 of the Civil Procedure Code the court shall hear civil cases only upon address from individuals or legal entities, submitted pursuant to this Code, within the stated requirements and based on the evidences provided by the parties and other persons involved in the case. A person who is involved in the case may use his/her rights on the subject of the dispute on his/her own. This right is provided also to persons (except for those who do not have civil procedural capacity) who benefit from the claimed requirements.

The Committee recalls that according to the Appendix to the Charter, for the purposes of Article 24 the term 'termination of employment' means termination of employment at the initiative of the employer. Therefore, situations where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, do not fall within the scope of this provision. Nevertheless, under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter. The Committee notes that the Labour Code does not contain provisions providing the employer with right to dismiss an employee on the grounds of reaching the retirement age.

Prohibited dismissals

The Committee recalls that a series of Charter provisions require increased protection against termination of employment. Most of these grounds are also listed in the Appendix to

Article 24 as non-valid reasons for termination of employment. However, the Committee will consider national situations' conformity with the Charter with regard to these reasons for dismissal in connection with the relevant provisions. Its examination of the increased protection against termination of employment for reasons stipulated in the Appendix to Article 24 will thus be confined to ones not covered elsewhere in the Charter, namely "filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities" and "temporary absence from work due to illness or injury".

As regards the first ground, the Committee considers (Conclusions 2003, Statement of Interpretation on Article 24) that national legislation should include explicit safeguards against termination of employment on this grounds. Safeguarding persons who resort to the courts or other competent authorities to enforce their rights against reprisals is essential in any situation in which a worker alleges a violation of the law. In the absence of any explicit statutory ban, States must be able to show how national legislation conforms to the requirement of the Charter. The Committee asked in the previous conclusions what rules apply to protect employees from dismissal in the event they file a complaint or participate in proceedings against an employer.

In the report the Committee notes that the dismissal of the employee at the employer's initiative on the grounds not envisaged by labour laws is a violation of employee's rights guaranteed by the Constitution of Ukraine. The employers found guilty of violating labour legislation, are responsible in accordance with the current law.

As regards temporary absence from work due to illness or injury, the Committee recalls that under Article 24 a time limit can be placed on protection against dismissal in such cases. Absence from work can constitute a valid reason for dismissal if it severely disrupts the smooth running of the undertaking and a genuine, permanent replacement must be provided for the absent employee. Additional protection must be offered, where necessary, for victims of employment injuries or occupational diseases. The Committee notes from the report that according to Article 40 of the Labour Code absence from work for more than four consecutive months due to sick leave (temporary incapacity to work), excluding maternity and birth, is considered as a valid ground for dismissal, unless the legislation provides for a longer term of authorised absence for certain diseases.

In reply to its question on the time limit placed on protection against dismissal in such cases, the Committee notes that for employees who are incapacitated due to industrial injury or occupational disease, position is retained until their rehabilitation or until a disability is established. Article 2(1) of the Labour Code provides equal employment rights for all citizens irrespective of their origin, social status, race, nationality, sex, language, political opinion, religion, occupation, place of residence and other circumstances. In case of failure to attend work for more than four consecutive months due to temporary disability, not taking into account the leave on pregnancy and childbirth, the employer may dismiss the employee in accordance with paragraph 5 of Article 40 of the Labour Code. The presence at work for at least one day interrupts that period and new four months period shall be calculated again. The employees who have lost their work capacity due to job injury or occupational disease can not be dismissed under the clause 5, Art. 40 of Labour Code. There is such court practice in Ukraine that allows dismissal on the basis of item 5, Article 40 of the Labour Code, only if the owner has production need for the release.

Remedies and sanctions

The Committee recalls that Article 24 of the Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief. In order to be considered appropriate, compensation should include reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on

the lawfulness of the dismissal, the possibility of reinstatement and/or compensation sufficient both to deter the employer and proportionate to the damage suffered by the victim.

The Committee further recalls that (Statement of Interpretation on Article 24, Conclusions 2008) in proceedings relating to dismissal, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment between employee and employer. It asks the next report to specify whether the law provides for such an adjustment.

The Committee notes that, according to Article 10 of the Civil Procedure Code of Ukraine, civil proceedings shall be based on the adversarial principle. The parties and other persons involved in the case have equal rights in submitting evidences, their consideration, and proving their credibility in the court. Each party has to prove the circumstances to which it refers as the basis of their claims or objections, except for cases established by this Code. In accordance with the Article 9 of the International Labour Organisation Convention No. 158 "On termination of the employment at the initiative of the employer" (1982) (Ratified on 15.05.1994) the burden of proving the presence of legitimate grounds for dismissal rests on the employer. Provisions of the Civil Code of Ukraine and the Code of Administrative Procedure of Ukraine stipulates that if an international treaty ratified by the Verkhovna Rada of Ukraine, provides other rules than those established by the codes, rules of international treaty shall govern. The compensation of other financial expenses is not subject of regulation by the Labour Code of Ukraine.

The Committee further notes that, in accordance with the Article 11 of the Code of Administrative Court Procedure of Ukraine, consideration and resolution of cases in administrative courts are made on the adversarial principle competition and freedom to provide evidences to the court and to prove their credibility. Every person who asked for judicial protection manages their requirements at their discretion, except for cases established by this Code. The right is provided also to persons in whose interests the administrative action was filed, except for those who have no administrative procedural capacity.

Conclusion

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

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by Ukraine in response to the conclusion that it had not been established that employees are given appropriate and effective protection against sexual harassment in the workplace or in relation to work (Conclusions 2014, Ukraine).

Under Article 26.1 workers must be afforded an effective protection against harassment by domestic law, irrespective of whether this is a general anti-discrimination act or a specific law against harassment (Conclusions 2003, Bulgaria, Conclusions 2005, Republic of Moldova).

This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights (Conclusions 2007, Statement of Interpretation on Article 26)

Victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer (Conclusions 2003, Bulgaria, Conclusions 2005, Republic of Moldova).

In addition, the right to reinstatement should be guaranteed to employees who have been unfairly dismissed or have been pressured to resign for reasons related to sexual harassment (Conclusions 2003, Bulgaria).

The Committee previously noted that victims of sexual harassment were entitled to compensation for financial loss and moral damage, the latter being compensated irrespective of financial loss. The Committee asked whether there was a right to reinstatement for employees unfairly dismissed or pressured to resign for reasons related to sexual harassment. It also asked for information on the kinds and amount of compensation provided in cases of sexual harassment (Conclusions 2014, Ukraine).

The current report states that new provisions on dignity at work are currently being examined by the Parliament, however no information is provided on the issues requested. Therefore the Committee is obliged to reiterate its previous conclusion.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 26§1 of the Charter on the ground that it has not been established that employees are given appropriate and effective protection against sexual harassment in the workplace or in relation to work.

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by Ukraine in response to the conclusion that it had not been established that employees are given appropriate and effective protection against moral (psychological) harassment in the workplace or in relation to work. (Conclusions 2014, Ukraine).

Under Article 26.2 victims of harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer.

In addition, the persons concerned must have a right to be reinstated in their post when they have been unfairly dismissed or pressured to resign for reasons linked to harassment (Conclusions 2003, Bulgaria, Conclusions 2005, Republic of Moldova).

The current report states that new provisions on dignity at work are currently being examined by the Parliament, however no information is provided on the issues requested. Therefore the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 26§2 of the Charter on the ground that it has not been established that employees are given appropriate and effective protection against moral (psychological) harassment in the workplace or in relation to work.

Article 28 - Right of workers' representatives to protection in the undertaking and facilities to be accorded to them

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by Ukraine in response to the conclusion that it had not been established that workers' representatives, other than trade union representatives, are granted adequate protection; and appropriate facilities are granted to workers' representatives (Conclusions 2014, Ukraine).

Under Article 28 of the Charter protection should cover the prohibition of dismissal on the ground of being a workers' representative and the protection against detriment in employment other than dismissal (Conclusions 2003, France).

The facilities to be provided may include for example those mentioned in the R143 Recommendation concerning protection and facilities to be afforded to workers representatives within the undertaking adopted by the ILO General Conference of 23 June 1971 (support in terms of benefits and other welfare benefits because of the time off to perform their functions, access for workers representatives or other elected representatives to all premises, where necessary, the access without any delay to the undertaking's management board if necessary, the authorisation to regularly collect subscriptions in the undertaking, the authorization to post bills or notices in one or several places to be determined with the management board, the authorization to distribute information sheets, factsheets and other documents on general trade unions' activities), as well as other facilities such as financial contribution to the workers' council and the use of premises and materials for the operation of the workers' council (Conclusions 2010, Statement of Interpretation on Article 28)

The report states that new legislation is currently being adopted. No further details on the above-mentioned issues are provided. Therefore the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 28 of the Charter as it has not been established that:

- workers' representatives, other than trade union representatives, are granted adequate protection;
- appropriate facilities are granted to workers' representatives.