



January 2010

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

European Committee of Social Rights

Conclusions 2009 (UKRAINE)

Articles 3, 11, 14, 23 and 30  
of the Revised Charter

*This text may be subject to editorial revision.*



## Introduction

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

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

*The Revised European Social Charter was ratified by Ukraine on 21 December 2006. The time limit for submitting the first report on the application of this treaty to the Council of Europe was 31 October 2008 and Ukraine submitted it on 04 November 2008.*

This report concerned the accepted provisions of the following articles belonging to the thematic group "Health, social security and social protection":

- 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).

Ukraine has accepted articles 3, 11, 14, 23 and 30 from this group.

The applicable reference period was:

- 1 February 2007- 31 December 2007.

The present chapter on Ukraine concerns 11 situations and contains:

- 2 conclusions of conformity: Articles 3§1 and 14§2;
- 1 conclusion of non-conformity: Articles 23.

In respect of the 8 other situations concerning Articles 3§2, 3§3, 3§4, 11§1, 11§2 11§3, 14§1 and 30, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the articles in question.

The next Ukrainian report deals with the accepted provisions of the following articles belonging to the third thematic group "Labour rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),

- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

The deadline for the report was 31 October 2009.

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

### **Article 3 - The right to safe and healthy working conditions**

#### *Paragraph 1 - Health and safety and the working environment*

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

#### *General objective of national policy*

The report indicates that the national policy on occupational safety is formulated by the Parliament in accordance with Article 53 of the Constitution. The national policy is based on a number of principles, including the following: workers' life and health as a priority; increasing industrial safety by controlling production conditions and assisting enterprises in providing adequate working conditions; national, sectoral and regional programmes on occupational safety; uniform occupational safety requirements for all enterprises and entrepreneurial entities irrespective of areas of activity; public awareness, training, vocational education and skills improvement for workers concerning occupational safety.

The policy on occupational safety is pursued in various economic sectors by the ministries and other central executive authorities which develop and implement sectoral programmes, provide guidance to enterprises about occupational safety, conclude agreements on the improvement of labour conditions and occupational safety with sectoral trade unions, etc. The Committee asks for more details to be provided on such programmes, notably their scope.

The report specifies that, at regional level, the enforcement of the relevant legislation and implementation of the national policy on occupational safety is carried out by the local state authorities and local governments. At state level, the State Committee of Ukraine for Industrial Safety, Occupational Safety and Mining Supervision (hereafter, *Derzhhirpromnahlyad*) is the central executive authority responsible for occupational safety supervision.

As to the regular assessment and reviewing of the general policy, the report states that the Government Cabinet together with the *Derzhhirpromnahlyad*, the central executive authorities, and social partners determine priorities in the field of occupational safety on an annual basis in the light of the occupational safety state monitoring. The Cabinet then issues an Order to approve an action plan to implement priorities of activity of central executive authorities.

#### *Organisation of occupational risk prevention*

The report states that, at company level, Article 13 of the Law on Occupation Safety requires employers to set up a proper system of safety management. This implies the creation of appropriate services dealing with safety matters and the drafting of collective agreements on safety at work, which are concluded by employers or their representatives and trade unions or workers' representatives. These agreements must secure safeguards enjoyed by workers at a level no lower than what is prescribed by law, and specify the responsibility of the different stakeholders. They should also draw up a list of measures to ensure respect of existing standards of occupational safety, to increase these standards, to prevent occupational diseases, and to identify

resources needed for this purpose. The provisions of these collective agreements apply to all workers of the enterprise concerned.

Employers must, *inter alia*: ensure that preventive measures are geared to changing circumstances; introduce technical and scientific advances improving safety at work; ensure the proper maintenance of the work facilities and production equipment; organise occupational safety audits, research on working conditions, assessment of equipment and facilities, and take measures in the light of the results of these assessments to improve safety; raise awareness of safe working methods. Employers must also submit an annual report on working conditions and occupational safety. The Law on Occupational Safety provides for safeguards of workers' effective enjoyment of the right to occupational safety, which apply as soon as they start work. The following safeguards are among those included: appropriate protective clothes, allowances in case of injury, occupational safety targeting women, minors and people with disabilities. On the other hand, workers have a duty to follow safety rules and undergo regular medical checks, failing which they may be held directly responsible. The Committee notes that assistance is given to employers in setting up safety management systems, in the form of Recommendations on the design of an occupational safety management system at an enterprise issued by *Derzhhirpromnahlyad*. These recommendations explain how to establish and implement such safety management systems, and give a model structure of regulations as well as indications as to their contents.

At state level, the report indicates that the *Derzhhirpromnahlyad* promotes an occupational safety culture through integrated occupational safety management and supervision of occupational safety. When investigating accidents at work, the *Derzhhirpromnahlyad* makes proposals to prevent the re-occurrence of similar accidents. The Committee asks for the next report to indicate in more detail the preventive role of the *Derzhhirpromnahlyad*. The Committee examines the supervisory activities of the *Derzhhirpromnahlyad* under Article 3§3.

The report also indicates that a number of enterprises with adequate expertise and issued with the appropriate authorisation carry out technical assessments of high-risk equipment and projects requiring prior authorisation; inspectors will rely on their assessments when deciding whether to grant authorisation. A procedure of evaluation of those enterprises has been implemented (Order No. 16, 20 December 2006). The report states that, in line with European legislation, the *Derzhhirpromnahlyad* has developed requirements to avoid that expert examinations be undertaken by biased or ill-qualified enterprises. In order to create a regulatory framework to ensure that all authorised enterprises work transparently and produce work of consistent quality, the *Derzhhirpromnahlyad* has established a consulting body, the Council for policy-making in expert organisations of industrial and occupational safety, composed of representatives of the different stakeholders (heads of public and private expert organisations, officials of supervisory bodies, representatives of trade unions and employers). The Committee asks for more information concerning the functioning and action of this Council.

According to Article 23 of the Law on Occupational Safety, the authorities must inform the general public and workers on the realisation of the national policy on occupational safety, on the implementation of national, sectoral or regional programmes in this area, on the rate and reasons of accidents, occupational traumatism and diseases, and on the implementation of their decisions concerning workers' life and health protection. This information is provided at the national, sectoral and regional levels, and is published in a number of specialised magazines.

Articles 28 and 33 of the Law on Occupational Safety provide that the competent central executive authority for occupational safety should develop, with the participation of ministries, other central executive authorities, the Fund on Social Insurance against Accidents, employers' and workers' associations and trade unions, a nationwide programme for improving occupational safety and health and the working environment, as well as to supervise the programme's implementation and the adoption of new regulatory legal acts on occupational safety, together with the review and revocation of existing ones.

*Improvement of occupational health and safety (research and training)*

The report indicates that, pursuant to Article 37 of the Law on Occupational Safety, scientific research on occupational safety and hazards is organised within the framework of a national programme and conducted by research institutes - notably the National Research Institute for Industrial and Occupational Safety (NRIIOS), academic institutions, and other specialised bodies. The report mentions the creation of an Integrated System of Scientific and Technological Support for State Supervision, in which participates the NRIIOS and the *Derzhhirpromnahlyad's* expert technical centres (specialised enterprises situated in all regions of Ukraine which work for the *Derzhhirpromnahlyad*), in order to improve the efficiency of state supervision.

Article 18 of the Law on Occupational Safety underlines the need for training in this field. Training on occupational safety is regulated by the Model Regulations on the procedure of training and knowledge tests on occupational safety, as registered with the Ministry of Justice under No. 231/10511 (15 February 2005). The report states that workers undergo training and knowledge tests on occupational safety, failing which they are not permitted to work. It also refers to commissions at enterprise level which are responsible for testing knowledge on occupational safety; they include, *inter alia*, a trade union representative or workers' representative. Training is also provided by the *Derzhhirpromnahlyad* for representatives of central and local executive authorities, managers and executives of enterprises with more than 1 000 workers. Training for state inspectors and specialised staff of the *Derzhhirpromnahlyad* central office is also provided on supervision of occupational safety. The report states that, in 2007, a total of 68 142 persons were trained in the *Derzhhirpromnahlyad's* training centres.

*Consultation with employers' and workers' organisations*

Pursuant to Article 32 of the Law on Occupational Safety, the National Council for the Population's Safe and Vital Activity (hereafter the National Council) has been set up to co-ordinate activities of public administration bodies dealing

with occupational safety. It is chaired by the Vice Prime Minister and is composed, *inter alia*, of the heads of the different state bodies undertaking occupational safety supervision, central executive authorities, scientific and research institutes, and representatives of trade unions and employers. The report specifies that the National Council drafts laws concerning the implementation of the state policy on occupational safety and submits them to the Government Cabinet.

At national and sectoral levels, occupational safety and labour protection are a component of a General Agreement between the Cabinet, employers' and workers' associations and trade unions. The Committee asks for further information on the scope and content of this agreement.

In order to address in a coordinated manner matters within the competence of the *Derzhirpromnahlyad*, an advisory board, composed of representatives of the central executive authorities, the Trade Unions Federation of Ukraine, the Employers' Confederation of Ukraine, and of other public bodies has been established. The Board is meant to ensure trilateral cooperation between the public authorities, employers and workers with a view to finding ways of improving working conditions and coordinating activities on basic matters of occupational safety and prevention of industrial hazards.

In order to raise the awareness of the general public, central and local executive authorities, economic entities, associations of trade unions, employers and workers, events are organised on the occasion of the Occupational Safety Day held every year.

#### *Conclusion*

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

### **Article 3 - The right to safe and healthy working conditions**

#### *Paragraph 2 - Issue of safety and health regulations*

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

#### *Content of the regulations on safety and health at work*

The report indicates that Law on Occupational Safety No. 2694-XII of 14 October 1992 contains the basic provisions on the realisation of workers' right to have their life and health protected at work (Article 43 of the Constitution).

According to Article 3 of the Law on Occupational Safety, the legislative framework on occupational safety includes, in addition to the law itself, the Labour Code, Law on Mandatory State Social Insurance against Accidents at Work and Occupational Health that Causes Loss of Working Capacity No. 1105-XIV of 23 September 1999, and ensuing regulations.



Regulations cover a great number of sectors of activity, including agriculture, fishing, coal and peat production, rubber and plastic industry, metallurgy, conservation of mineral resources. The Committee first asks whether the sectors concerned cover the great majority of workers and whether it is foreseen that regulations apply to all sectors. It also asks that more information be provided on the levels of prevention and protection offered by the Law on Occupational Safety and other relevant instruments. Finally, it asks more details on the "Nationwide Programme for Adapting Ukrainian Legislation to the European Union Legislation", as approved by Law No. 1629-IV of 18 March 2004, insofar as occupational health and safety are concerned.

The Committee notes that Article 21 of the Law on Occupational Safety stipulates that occupational safety requirements must be taken into account in the design of production facilities, the development of new technologies or means of production. Furthermore, the construction of production facilities is not allowed without prior expert assessment of compliance with occupational safety requirements. Imported manufacturing processes, machines, equipment, means of transport, chemical substances and unsafe products may be used only once their compliance with occupational regulations has been assessed.

#### *Protection against dangerous agents and substances*

The use of dangerous substances in production processes is not allowed without prior assessment of their compliance with health regulation and state registration.

The Committee notes that within the framework of the aforementioned Nationwide Programme for Adapting Ukrainian Legislation to the European Union Legislation the preparation of a regulation on requirements for employers to protect workers against the harmful impact of chemical substances is planned, and that the objective is to bring Ukrainian legislation in line with EU Directive 98/24/EC on the protection of the health and safety of workers from risks related to chemical agents at work, as well as Directives 2000/39/EC and 91/322/EEC establishing lists of indicative exposure limit values of harmful chemical substances at work.

#### *Protection of workers against asbestos*

The report describes how state supervision of enterprises using asbestos is organised. Two regulatory acts are mentioned: (i) Cabinet of Ministers Resolution No. 1631 of 15 October 2003 concerning the requirement of an enterprise having obtained authorisation from the central executive authority on occupational safety (*Derzhhirpromnahlyad*) to start (or continue) increased-hazard work or operate increased-hazard facilities, machines, and equipment, and (ii) Regulatory Legal Act on Occupational Safety (NPAOP) 26.15-1.01-82 concerning safety and industrial health standards in the asbestos cement industry. The Committee however asks for information on the application of relevant international standards (such as the ILO Convention on Asbestos, C162).

#### *Protection of workers against ionising radiation*

The report provides no information on this aspect. The Committee therefore asks that the next report specifies how workers are protected against ionising radiation.

*Protection of temporary workers*

The report specifies that the Law on Occupational Safety applies equally to temporary workers and workers on fixed-term contracts. Given the specificity of their employment situation, which is by nature limited in time, the Committee asks for further information on the medical supervision of such workers, especially in high-risk sectors (e.g. mining, construction sectors), and on whether they are entitled to representation at work.

*Personal scope of the regulations*

The report indicates that the Law on Occupational Safety applies to all workers, including the self-employed. The Committee asks for confirmation that relevant occupational safety and health legislation applies to all self-employed workers, home workers and domestic workers.

*Consultation with employers' and workers' organisations*

The Committee has already noted under Article 3§1 the existence of the National Council for the Population's Safe and Vital Activity (hereafter the National Council) which has been established on the basis of Article 32 of the Law on Occupational Safety and aims at co-ordinating the activities of public administration bodies dealing with occupational safety. It is composed of the heads of the different state bodies undertaking occupational safety supervision, central executive authorities, the Fund of Social Insurance against Accidents at Work and Occupational Diseases, the Pension Fund, scientific and research institutes, and representatives of trade unions and employers. The National Council, *inter alia*, submits proposals for the improvement of the occupational safety system to the Government Cabinet for consideration.

*Conclusion*

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

### **Article 3 - The right to safe and healthy working conditions**

#### *Paragraph 3 - Provision for the enforcement of safety and health regulations by measures of supervision*

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

#### *Occupational accidents and diseases*

The report indicates a total of 18 192 persons injured at work in 2007, out of a workforce of 16 790 621. According to the chart included in the report, this number has been decreasing uninterruptedly over the last decade, the figures being 64 775 in 1996. The number of fatal cases mentioned in the report reached 1 176 in 2007, showing a slight increase from that of 2006. However, the chart shows a significant decrease over the last ten years, with 1 900 fatal cases in 1996.

The Committee notes that frequency of occupational accidents (number of persons injured compared to the workforce), including fatal accidents, is far higher in the coal industry than in other sectors of the economy. The Committee examines the special state supervision framework in this sector under 'activities of the labour inspectorate'.

The report did not provide any information regarding occupational diseases. The Committee asks that figures be provided on occupational diseases in the next report.

#### *Activities of the labour inspectorate*

According to Article 38 of the Law on Occupational Safety, supervision of compliance with legislation on occupational safety is undertaken mainly by the State Committee of Ukraine for Industrial Safety, Occupational Safety, State Mining Supervision and State Regulation of Safe Handling of Industrial Explosive Material (hereafter, *Derzhhirpromanhlyad*). Three other specialised bodies are also responsible for state supervision in several specific fields: the State Committee for Nuclear Regulation (answerable to the Government Cabinet), the State Department for Fire Safety (a governmental body within the Ministry for Emergencies and Protection of the Population against the Chernobyl Accident Consequences), and the State Sanitary and Epidemiological Service. The latter operates under the Ministry of Health and controls compliance with sanitary legislation, and conducts assessments of risks to health and life. Their activities are governed by the Law on Occupational Safety No. 2694-XII of 14 October 1992, the Law on Usage of Nuclear Energy and Radiation Safety No. 39/95-VR of 8 February 1995, the Law on Securing the Population's Sanitary and Epidemiological Well-being No. 4004-XII of 24 February 1994, as well as other regulations approved by the President and the Government Cabinet. In addition, a central authority answerable to the Ministry of Labour and Social Policy is responsible for controlling the compliance of certification of workplaces with the relevant occupational safety legislation.

The Committee asks for more information on the supervision carried out by the State Committee for Nuclear Regulation, the State Department for Fire Safety, and the State Sanitary Epidemiological Service.

The Committee further notes that, pursuant to Article 41 of the Law on Occupational Safety, trade unions and associations exercise public control on the compliance with occupational safety legislation, the provision of safe working conditions, adequate production and sanitary conditions, provision of protective clothes. In case of danger to the life of workers, trade unions or workers' representative have the right to require the employer to stop work immediately until the threat to life is remedied. Article 20 of the Law on Occupational Safety provides that matters of occupational safety are to be included in collective agreements concluded between the employer or their representatives and the workers' trade unions or representatives.

The report indicates that state supervision by the *Derzhhirpromanhlyad* is exercised in accordance with the Law on the Basic Principles of State Supervision (Control) in Economic Activities No. 877-V of 5 April 2007 or the International Labour Organisation Convention No. 81 on Labour Inspection in Industry and Commerce ratified by Ukraine in 2004. The main functions of the *Derzhhirpromanhlyad* are (i) to exercise state supervision over industrial safety and occupational safety, including the mining sector, the conservation of mineral resources and industrial explosive materials, (ii) to investigate accidents and injuries at work, analyse reasons for their occurrence and make proposals to prevent them, and (iii) to carry out technical investigation into the circumstances surrounding accidents related, for example, to gas. Officials of the *Derzhhirpromanhlyad* are empowered to:

- visit, without hindrance, enterprises which are to be inspected,
- obtain from the employer or executives written or oral explanations, conclusions of expert examinations or audits, reports on preventive activities, reasons for breaches of law and measures taken to eliminate them;
- issue binding orders on the elimination of any breach or shortcoming regarding occupational safety, conservation of mineral resources, and the safe operation of highly dangerous facilities,
- prohibit, stop or restrict activities of enterprises, for example in certain workplaces, buildings, facilities, premises, or the use of certain equipment, means of transport and production, or new hazardous substances, and suspend authorisations and licences, until any breach endangering the lives of workers has been eliminated;
- hold workers administratively liable when they have breached occupation safety legislation;
- submit information to the prosecutor's office with a view to establishing that an enterprise's executives lack competence in the field of occupational safety.

The Committee asks for more information to be provided regarding the conditions for bringing a case to the prosecutor's office, and the following

procedure and sanctions. Given the number of fines imposed on workers, and their sharp increase in recent years (as reflected in the report), the Committee also wishes to have further information on circumstances in which workers may be held responsible of a breach of safety legislation and what fines are incurred.

The report specifies that the *Derzhhirpromnahlyad* has developed a methodology to harmonise the management of state supervision in all sectors: Regulations on the procedure of state supervision (Order No. 92 of 30 March 2004) and methodological recommendations on state supervision over safe conditions of work in enterprises of relevant economic sectors have been drawn up to assist not only labour inspectors in their monitoring work, but also employers in conducting internal assessments of occupational safety in their enterprise as well as workers in having their employer provide a safe working environment.

In sectors where the proportion of occupational accidents is the highest, the *Derzhhirpromnahlyad* may periodically introduce a local special regime of state supervision that assumes daily and hourly supervision. Insofar as the mining sector is concerned, a national policy specifically aimed at improving occupational safety in the mining industry has been developed. In order to ensure its implementation, six specialised inspectorates have been set up in six *oblasts* (provinces), with 331 inspectors to monitor 1 100 enterprises employing 392 400 workers. The *Derzhhirpromnahlyad* has revised its supervision methods and the most hazardous mines have been assigned two to three inspectors each, making it possible to ensure regular monitoring of the most dangerous activities. The Committee considers that it is not clear from the report whether state inspection is carried out in all enterprises of the mining sector and therefore seeks clarification in this respect.

The Committee notes that 2007 was declared Year for the Fight against the Hiding of Accidents at Work by the Trade Union Federation, as a result of which the *Derzhhirpromnahlyad* paid special attention to this in its regular inspections and identified 155 such cases in violation of the Procedure for investigation and registration of accidents at work, occupational diseases, and breakdowns in production, as approved by Cabinet Resolution No. 1112 of 25 August 2004.

According to the description given in the report, state supervision is undertaken by 26 territorial directorates and 114 inspectorates. The total number of staff involved is 2 900, with 115 staff members in the central office and 2 785 in the territorial directorates. In 2007 the number of supervised enterprises was 744 364 and the total workforce was 16 774 574. In 2007, 2 374 comprehensive inspections, 62 targeted inspections, and more than 214 000 operational surveys were carried out by the *Derzhhirpromnahlyad*. According to the report, in 2007, work was suspended on 258 000 occasions. The number of fines imposed on workers, was more than 106 000, including 25 000 imposed on managers. The Committee asks for clarification about the different types of inspections to which the report refers and notably their remit, the proportion of workers covered by the inspections undertaken, and the reasons for such a high number of fines imposed on workers.

### *Conclusion*

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

## **Article 3 - The right to safe and healthy working conditions**

### *Paragraph 4 - Occupational health services*

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

The report refers to Article 15 of the Law on Occupational Safety which governs the establishment of occupational safety services in enterprises. In enterprises with a workforce of 50 or more, employers must set up an occupational safety service. They must develop and approve its regulations in accordance with the Model Regulations approved by the State Committee of Ukraine for Industrial Safety, Occupational Safety, State Mining Supervision and State Regulation of Safe Handling of Industrial Explosive Material (hereafter, *Derzhhirpromanhlyad*) (Order No. 255, 15 November 2004).

When an enterprise has less than 50 workers, the functions of such occupational safety services can be undertaken by trained staff members, in addition to their normal duties. In smaller enterprises of less than 20 workers, external specialists can carry out these functions. In addition, the *Derzhhirpromanhlyad* has issued recommendations concerning the functioning of occupation safety services.

The main tasks of occupational safety services include: elaborating an efficient occupational safety management system; managing the implementation of preventive activities aimed at removing harmful and hazardous production factors, preventing accidents at work, occupational diseases and other threats on workers' life or health; promoting the introduction of technological improvements in working processes; supervision workers' compliance with occupational safety legislation and regulations; informing staff members on occupational health matters.

In order to achieve these goals, occupational safety services will, *inter alia*,

- develop action plans aiming at improving working conditions and preventing occupational accidents,
- keep record of and analyse the reasons for occupational traumatism, diseases and accidents,
- compiling lists of professions and positions defining which workers must undergo mandatory preliminary and periodic medical examinations,
- provide guidance and information to workers on occupational safety legislation and regulations,

- conduct, with the assistance of trade union representatives, inspections of workers' compliance with the occupational safety legislation and regulations,
- conduct thematic training,
- set up a library gathering relevant legal texts and other relevant documents.

The aforementioned recommendations of the *Derzhhirpromanhlyad* also serve as a reference for the establishment of sectoral safety offices designed to provide specific assistance to enterprises of a certain sector further to a decision of the competent ministry, other central authorities, or a group of enterprises. There may also be regional occupational safety offices, which specialise in a particular type of activity in the region in question or focus on certain priority areas of activity.

The Committee notes that the occupational safety services mentioned in the report are not specialised in occupational health matters but cover more broadly safety at work. While some preventive measures foreseen as part of the activities of these services meet the requirements of Article 3§4, the Committee underlines the importance of the medical monitoring of all workers. It therefore asks the next report to provide further information on this aspect. It also asks for the next report to indicate the proportion of enterprises which have established occupational safety services.

#### *Conclusion*

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

## **Article 11 - The right to protection of health**

### *Paragraph 1 - Removal of the causes of ill-health*

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

### *State of health of the population – General indicators*

The right to protection of health, medical care and medical insurance is guaranteed to every citizen by Article 49 of the Constitution. The Committee refers to the report for a detailed list of legal texts covering health protection, including the Act on the Basics of Ukrainian Legislation on Health Care. Under section 2 of this Act, if an international treaty to which Ukraine is a party contains rules other than those provided for in Ukrainian health care legislation, the rules of the treaty apply.

Under Article 11§1 of the Charter, health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action, and states must guarantee the best possible results in line with the available knowledge (Conclusions XV-2, Denmark).

To comply with Article 11§1, the main indicators of a country's state of health must reflect an improvement and not be too significantly below the average for all European countries (Conclusions 2005, Lithuania), or between urban and rural areas or between regions.

### *Life expectancy and principal causes of death*

Average life expectancy at birth in 2006 was 61 for men and 73 for women, decreasing since 1990 (65 for men and 74 for women)<sup>1</sup> (the EU 27 average in 2004 was 75,2 for men and 81,5 for women<sup>2</sup>). The Committee, noting that the situation in Ukraine falls significantly behind that in other European countries with regard to life expectancy and that the situation has even deteriorated since 1990, asks whether this situation is linked with the Chernobyl nuclear accident of which Ukraine was a victim.

The Committee asks the next report to include the mortality rate per 1 000 inhabitants based on the method of calculation used by Eurostat (the EU 27 average in 2006 was 6,48 per 1 000 inhabitants<sup>3</sup>). According to the report, the main causes of death are cardio- and cerebrovascular diseases (64% of deaths are caused by blood circulation diseases), cancer, HIV/AIDS and tuberculosis. With regard to deaths caused by tuberculosis, the Committee notes that there is a major disparity in this respect between the situation in Ukraine and that of other European countries (13 deaths per 100 000 inhabitants in 2006<sup>4</sup>). It is planned to set up special co-ordination centres to combat all these diseases. A specific programme has been launched to combat tuberculosis (under Act No. 648-V of 8 February 2007). The Committee asks the next report to contain an overview of measures taken to combat these various causes of mortality.

The Committee requests also that the next report contain up-to-date information, distinguishing between urban and rural areas.

### *Infant and maternal mortality*



Infant and maternal mortality are an avoidable risk which states must deal with if they are to comply with Article 11§1 of the Charter (Conclusions 2005, Moldova). Consequently, indicators related to infant mortality and maternal mortality should be as close as possible to zero (Conclusions 2005, Lithuania), particularly in highly developed health care systems (Conclusions 2003, France).

The infant mortality rate amounted in 2006 to 20 deaths per 1 000 live births<sup>5</sup>, which is one of the highest in Europe (the EU 27 rate in 2006 was 4,7 per 1 000<sup>6</sup>). The Committee asks for information in the next report on the main causes of infant mortality.

As concerns the maternal mortality rate, the Committee notes that it amounted to 18 deaths per 100 000 live births in 2005<sup>7</sup>, which is an equivalent rate to that of other European countries. The Committee asks for information in the next report on the main causes of maternal mortality.

The Committee requests that the next report contain precise data, distinguishing between urban and rural areas.

The Committee finds that infant mortality is too high and invites the Government to provide all the information in its possession on the policy to combat infant and maternal mortality.

#### *Health care system*

##### *Access to health care*

The health care system must be accessible to everyone (Conclusions 2007, Albania). Restrictions on the application of Article 11 may not be interpreted in such a way as to impede disadvantaged groups' exercise of their right to health. This interpretation is the logical consequence of the non-discrimination provision in Article E of the Charter, in conjunction with the substantive rights of the Charter (Conclusions XVII-2 and 2005, Statement of interpretation on Article 11). The Committee has pointed out that this approach calls for a strict interpretation of the way the personal scope of the Charter is applied as regards Article 11 on the right to protection of health, particularly with its first paragraph on access to health care (Conclusions 2007, Albania).

Presidential Decree No. 1694/2004 of 6 December 2005 sets out various measures for the reform of the public health system, to be introduced urgently so as to improve the quality of and access to medical assistance, particularly in rural areas, to create the conditions to guarantee health care for children and mothers and to combat the diseases causing the largest number of deaths. An ambitious National Plan for the Development of the Health Care System was adopted in June 2007 following the Presidential Decree, for a period up to 2010. Its aim is to increase the quality and accessibility of medical services, particularly through improved use of the resources available, better management of the sector, optimisation of the network of state, oblast and municipal health care institutions, improved training and wage conditions for health care professionals and renovation of medical equipment. The Committee refers to the report for a more detailed description of the measures adopted. It asks the next report to describe progress on the reform programme.

According to the report, measures were taken that catered specifically for mothers and children, such as the construction of specialised hospitals (to treat children with heart problems and children suffering from AIDS), a National Children's Oncology Programme for 2006-2010 and the renovation of certain specialist tuberculosis departments for children.

Noting that both the Constitution and the Act on the Basics of Ukrainian Legislation on Health Care refer solely to Ukrainian citizens, the Committee asks if access to health care is guaranteed equally to all foreign nationals residing and working lawfully in Ukraine.

The right of access to health care requires that the cost of health care should be borne, at least in part, by the community as a whole (Conclusions I, Statement of Interpretation on Article 11; Conclusions XV-2, Cyprus). This also requires that the cost of health care must not represent an excessively heavy burden for the individual. Steps must therefore be taken to reduce the financial burden on patients, in particular those from the most disadvantaged sections of the community (Conclusions XVII-2, Portugal). The Committee reiterates that it will examine the conformity of the situation in the light of Parliamentary Assembly Recommendation 1626 (2003) on "the reform of health care systems in Europe: reconciling equity, quality and efficiency", which invites member states to take as their main criterion for judging the success of health system reforms effective access to health care for all, without discrimination, as a basic human right (Conclusions XVII-2 and 2005, Statement of Interpretation on Article 11). The Committee asks for up-to-date information on the situation in law and in practice including detailed facts and figures, on access to health care for disadvantaged persons.

The right of access to health care also requires that arrangements for access to care must not lead to unnecessary delays in its provision. The management of waiting lists and waiting times in health care are considered in the light of Committee of Ministers Recommendation (99)21 "on criteria for the management of waiting lists and waiting times in health care" (Conclusions 2007, Albania). The Committee asks for information about the management of waiting lists and waiting times in health care.

The state health care budget in 2006 represented 7% of GDP<sup>8</sup>, which is an equivalent rate to that in other European countries. According to the report, the health care budget increased from 5.4 billion Hryvnia (UAH) (about € 0.81 billion) in 2001 to UAH 12.4 billion (about € 1.86 billion) in 2005, UAH 16.9 billion (about € 2.53 billion) in 2006 and UAH 23.1 billion (about € 3.23 billion) in 2007.

#### *Health care professionals and facilities*

The right of access to health care requires that the number of health care professionals and equipment must be adequate (Conclusions 2007, Albania).

There were 8.7 hospital beds per 1 000 inhabitants in 2006<sup>9</sup> (the average number of hospital beds in Europe (EU 27) was 5,90 per 1 000 inhabitants in 2005<sup>10</sup>).

The Committee asks for the next report to include the ratio of beds in psychiatric hospitals per 1 000 inhabitants (the average number of beds in

psychiatric hospitals in Europe (EU 27) was 0,60 per 1 000 inhabitants in 2005<sup>11</sup>).

With regard to physicians, there were 143 728 physicians in 2006, equating to 31 physicians per 10 000 inhabitants<sup>12</sup>. In 2006, there were 19 169 dentists (equating to 4 per 10 000 inhabitants) and 22 257 pharmacists (equating to 5 per 10 000 inhabitants), as well as 388 444 nurses and midwives (equating to 85 per 10 000 inhabitants)<sup>13</sup>, a density comparable to that observed in other European countries. The Committee asks what is the geographical distribution of these professionals.

### *Conclusion*

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

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<sup>1</sup> WHO

<sup>2</sup> Eurostat

<sup>3</sup> Ibid

<sup>4</sup> WHO

<sup>5</sup> Eurostat

<sup>6</sup> Eurostat

<sup>7</sup> WHO

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Eurostat

<sup>11</sup> Ibid

<sup>12</sup> WHO

<sup>13</sup> Ibid

## **Article 11 - The right to protection of health**

### *Paragraph 2 - Advisory and educational facilities*

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

#### *Health education*

##### *Public information and awareness-raising*

National rules must ensure the provision of information to the public, education and participation, with a view to developing a sense of individual responsibility in health matters. States must demonstrate through concrete measures that they implement a public health education policy in favour of the general population and population groups affected by specific problems (Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint n°30/2005, decision on the merits of 6 December 2006, §§ 216 and 219).

The Committee asks for the next report to describe the national legislation on public information, education and participation in the health field.

Informing the public, particularly through awareness-raising campaigns, must be a public health priority (Conclusions 2007, Albania). Measures should be taken to prevent activities that are damaging to health (smoking, alcohol, drugs) and to promote the development of a sense of individual responsibility (healthy eating, sex education, environment) (Conclusions 2005, Moldova). Activities may be more or less developed in accordance with the nature of the public health problems in the countries (Conclusions XV-2, Belgium)

The report states that large-scale activities were organised in Kyiv, including an anti-smoking campaign and competitions designed to promote healthy lifestyles, events which attracted broad media coverage.

The Committee asks if there are also specific information campaigns intended to inform the public about other subjects such as alcohol and illegal drugs, food, sexuality and the environment.

#### *Health education in schools*

Health education must continue throughout school life and form part of school curricula. The Committee considers that, after the family, school is the most appropriate setting for health education because the general purpose of education is to impart the knowledge and skills necessary for life. It refers in particular to Committee of Ministers Recommendation No R(88)7 on school health education and the role and training of teachers. Health education in school shall cover the following subjects: prevention of smoking and alcohol abuse, sexual and reproductive education, in particular with regard to prevention of sexually transmitted diseases and AIDS, road safety and promotion of healthy eating habits (Conclusions XV-2, Belgium).

A new school subject has been introduced under the heading "Basics of Health". It is geared to the age of the children involved and provides, in particular, advice on accident prevention and the importance of health and hygiene standards where it comes to proper lighting, humidity control and ventilation in classrooms. A network of health-promoting schools has been set

up in various regions of Ukraine with the support of WHO, the Ministry of Health and the Ministry of Education and Sciences. The number of physical education lessons has also been increased.

In the 2006-2007 academic year, over 60 000 pupils received training under a programme to combat HIV/AIDS.

A programme intended to make children and young people take responsibility for their health and promote healthy lifestyles was launched as the result of Order No. 947 of the Ministry of Family, Youth and Sport of 30 March 2007. Activities are also organised in co-operation with youth organisations to promote healthy lifestyles among young people gathering in large groups, who are informed about drugs, tobacco, HIV/AIDS and alcohol (through videos, information leaflets, lectures and debates). According to the report, over a million people aged between 14 and 30 took part in such activities in 2007.

The Committee asks whether it is planned for preventive information on smoking and alcoholism, reproductive health and sex education, particularly prevention of sexually transmitted diseases and AIDS, road safety and promotion of healthy eating to be incorporated into school syllabuses and, if so, if all pupils would be concerned by this.

#### *Counselling and screening*

##### *Population at large*

Preventive screening must play an effective role in improving the population's state of health. Consequently, the Committee believes that, in fields where it has proved to be an effective means of prevention, screening must be used to the full (Conclusions XV-2, Belgium). In particular, there should be screening, preferably systematic, for all the diseases that constitute the principal causes of death (Conclusions 2005, Moldova).

The Committee notes that a large-scale programme of preventive medical examinations targeting the rural population was carried out. It covered 7.6 million people or 51.5% of Ukraine's rural population. As a result, 650 000 people were kept under observation and 210 000 were hospitalised, of whom 46 000 were operated on and 1 700 were referred to research institutes or specialised clinics. The Committee asks what types of medical examination were performed, why they were aimed only at the rural population, what type of screening is organised for town and city dwellers and if it is planned for other preventive medical examinations to be carried out regularly.

Since there is no relevant information in the report, the Committee also asks for detailed information on other consultation and screening, particularly in relation to tuberculosis, ischemic heart disease and cancer, because of the high mortality rates owing to these causes identified in its conclusion under Article 11§1.

##### *Pregnant women, children and adolescents*

There must be free and regular consultation and screening for pregnant women and children throughout the country (Conclusions 2005, Moldova).

The Committee requests more information on consultation and screening for pregnant women and children and asks whether they are provided free of charge.

Free medical checks must be carried out throughout the period of schooling. In assessing compliance, the Committee takes account of the frequency of school medical examinations, their objectives, the proportion of pupils concerned and the level of staffing (Conclusions XV-2, France).

The Committee asks for information on the frequency of medical examinations at school and the proportion of pupils involved.

#### *Conclusion*

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

### **Article 11 - The right to protection of health**

#### *Paragraph 3 - Prevention of diseases*

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

#### *Policies on the prevention of avoidable risks*

##### *Reduction of environmental risks*

Air pollution - No information is provided on measures taken to reduce air pollution. The Committee notes that Ukraine has ratified the United Nations Framework Convention on Climate Change in 1997 and the Kyoto Protocol in 2004.

It asks the next report to provide information on progress made in reaching the targets laid down in these texts.

As regards local pollution the Committee asks what standards have been adopted in order to reduce pollutants in ambient air; what pollutants are covered and what threshold values are set. It also seeks information on standards set for pollutant emissions from cars, waste incineration plants and combustion plants, for example.

Water - The Committee notes that quality of drinking water is monitored and measures have been adopted to reduce waste. However the Committee asks for further details on the standards set in the field.

Noise - The Committee asks the next report to provide information on legislation and performance indicators if possible in the field of noise pollution.

Asbestos - The report does not provide information on asbestos. The Committee recalls that Article 11 entails a policy that bans the use, production and sale of asbestos and products containing it. There must also be legislation requiring the owners of residential property and public buildings to search for any asbestos and where appropriate remove it, and placing

obligations on enterprises concerning waste disposal. The Committee asks for information to be provided on the rules relating to asbestos in the next report.

Ionising radiation - The Radiation unit of the State Sanitary and Epidemiological Service (SESU) regularly monitors radiation levels in water and in food stuff-raw food materials as well as among the population. As a result of the accident in Chernobyl, dose loads in the population are regularly monitored in 12 regions. According to the report monitoring has demonstrated that radiation levels have been stable during 2000-2007. The Committee asks whether the general principles of radiation protection regulations (dose justification, optimisation, and limitation) conform with the recommendations of the International Commission on Radiological Protection (ICRP).

#### *Food safety*

The SESU of Ukraine is responsible for, *inter alia*, food safety. According to the report, the SESU is permitted to seize unsafe food stuff. The Committee recalls that an integrated approach to food safety requires that states must establish national food hygiene standards with legal force that take account of relevant scientific data, establish and maintain machinery for monitoring compliance with these standards throughout the food chain, develop, implement and regularly update systematic prevention measures. Therefore, the Committee asks for more information on the legal standards in this area.

#### *Measures to combat smoking, alcoholism and drug addiction*

Smoking - According to the report, health problems resulting from tobacco consumption are a serious problem in Ukraine. A Strategy against Tobacco Consumption was adopted in 2005. Further Ukraine has ratified the WHO Framework Convention on Tobacco control. Advertising of tobacco products is prohibited on radio and television and on public transport but is still permitted to a certain extent in print media although Ukraine will eventually prohibit all advertising. The Committee asks whether there is a timeframe for this. The Committee also asks whether smoking is prohibited in public places.

The Committee asks to be kept informed of all trends in tobacco use.

Alcohol - According to the report, alcohol related deaths have decreased over the last few years, but alcohol use among young persons is still a problem. The report provides little other information on measures taken to prevent alcohol abuse, apart from information on a certain number of educational measures aimed at young persons. The Committee asks for the rules on the sale of alcohol and other measures taken to reduce alcohol consumption.

Drug addiction - The number of drug users has increased in recent years. The Committee asks for information on measures taken to prevent drug abuse and trends in this field.

#### *Accidents*

Under Article 11 states must take steps to prevent accidents. The main sorts of accident covered are road accidents, domestic accidents, accidents at school, accidents during leisure time, including those caused by animals. The Committee asks the next report to provide information on accidents.

*Prophylactic measures and Epidemiological monitoring*

The SESU is responsible *inter alia* for epidemiological monitoring. Between 2005 -2007 emphasis was put in harmonising domestic law and standards with that of the EU and WHO.

HIV/AIDS - The Committee notes that Ukraine has a very high rate of HIV infection and refers to the questions asked on prevention in its conclusion under Article 11§2.

*Immunisation*

Ukraine has an immunisation programme against all major diseases, and there is a high coverage rate for most vaccines.

*Conclusion*

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



## **Article 14 - The right to benefit from social welfare services**

### *Paragraph 1 - Provision or promotion of social welfare services*

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

### *Organisation of the social services*

The Constitution entitles all citizens to the benefits of social welfare services. The main legislation on the subject is the Act on Social Services No. 966-IV of 19 July 2003. The report also refers to other important legal instruments, including the Act No. 2558-III of 21 May 2001 on Social Work with Children and Young Persons, the Resolution No. 268 of 9 April 2005 on the regulation of social services charge and the Resolution No. 1126 of 27 August 2007 on measures to improve social work with families, children and young person.

Under the Act on Social Services of 2003, social welfare services may be general in scope, covering all persons in need. This includes in particular information and advice services with regard to social assistance within the meaning of Article 13§3 of the Revised Charter, domiciliary and day care services. Other services, particularly for families, children and young persons, may be more specific, and include child monitoring services, rehabilitation centres, care and temporary residence centres and other institutions offering social support and care. The report also refers to specialist services providing social and occupational rehabilitation and retraining for young offenders, and social and medical care establishments for children and young persons who are HIV-infected.

Social services are primarily a local and regional responsibility, divided between a total of 27 regions, 481 districts and 169 municipalities across the country.

### *Effective and equal access*

The main criterion for access to social services is inadequacy of resources. Charges are levied for certain social services, such as temporary accommodation, particularly for the homeless, and are determined according to individuals' means. Specialist social services for families, children and young persons are mainly free of charge. The Committee asks which services have to be paid for and what are the fees.

The Act on Social Services of 2003 list the categories of person who are entitled to free social services:

- persons who are unable to care for themselves because of their age, state of health or disability and the lack of close family;
- jobseekers, refugees and other persons in difficult circumstances who lack the minimum means of subsistence;
- children and young persons in difficult circumstances because of disability, illness, absence of parents, homelessness or family abuse.

There is particular emphasis on informing users of which social services are available. Users are free to choose their service providers. The Committee

asks how this works in practice, in particular whether there are alternative providers for all sorts of service and covering all geographical areas.

Users may appeal to the relevant local authority if a private agency refuses, restricts or terminates the provision of services, and to the courts if the local authority is the service provider. The Committee asks for more detailed information on these means of appeal.

The Committee also asks whether nationals of other States Parties legally residing and working regularly in Ukraine are entitled to equal treatment.

#### *Quality of services*

Under the Ukrainian legislation on the licensing of certain economic activities, private social services agencies need a licence to operate, whether or not they are working for the state. Local authorities supervise their operation, but the report does not specify how this works.

The Committee recalls that under Article 14 of the Revised Charter, there must be mechanisms for supervising the adequacy of services, public as well as private.

The Committee asks for detailed information on the other procedures to ensure that social services providers do in fact comply with all conditions.

Local authorities, particularly those with special status - the Autonomous Republic of Crimea and the cities of Kiev and Sevastopol – carry out thorough checks on the use of public funds for special programmes for families, children and young persons.

According to the report, the general social services employed 8 912 persons in 2007 (8 048 in 2005), while there were 2 610 employees of special social services in 2007 (2 274 in 2005). The majority of the staff of special social services are educationalists, psychologists, specialist social workers, sociologists and lawyers. A total of 6.3 million persons used social services in 2007. These included 40 556 disabled children and 15 834 disabled young persons who received specialist services. The Committee asks for information on the required qualifications for social services staff.

Total public spending on social services in 2007 was about 130 million Hryvnias (UAH, about € 13.4 million), whereas in 2005 it was only about UAH 65 million (about €6.7 million). The majority of this came from local authority budgets, with lesser amounts from the state and other resources. The Committee asks for confirmation that these figures concern social services within the meaning of Article 14.

There is full respect for data confidentiality and privacy. The Committee asks what the legal basis is for this.

#### *Conclusion*

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

**Article 14 - The right to benefit from social welfare services***Paragraph 2 - Public participation in the establishment and maintenance of social welfare services*

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

The general legal framework for the provision of social welfare services by voluntary organisations is the Act No. 531/97 of 16 September 1997. Under this Act, local authorities are required to work in co-operation with voluntary organisations to ensure the provision of welfare services.

For example, local authorities work with voluntary organisations to provide young people and children addicted to drugs with advice on AIDS prevention. Similar co-operation has been established for information and advice services with regard to social assistance services within the meaning of Article 13§3 of the Revised Charter for disabled persons, refugees and the homeless, and for social services for former prisoners. During the reference period, 36 establishments set up by charity organisations or religious bodies offered their services to homeless people or former prisoners (providing them with temporary accommodation, finding them a job or a training opportunity, or assisting them with administrative formalities).

Under the Act No. 1775-IV of 1 June 2000 on the Licensing of Certain Economic Activities, both voluntary organisations and private service providers have to obtain an operating licence in advance to be allowed to provide social welfare services. However, local authorities can meet specific user needs by negotiating co-operation agreements with voluntary, including provision for these organisations to receive state subsidies. The Committee asks if there are other sources of funding for voluntary organisations.

In accordance with the Code of Criminal Procedure, special committees have been set up to monitor the social welfare services provided for former prisoners. According to the report, there was a total of 657 committees of this type in 2007.

According to the report, 57% of voluntary organisations are involved in social work with families, 30% in preventing juvenile delinquency and helping disadvantaged young people, 7% in support for young people shortly to be conscripted and 6% in job placement schemes. In 2007 a total of 607 voluntary organisations worked with the local authorities to provide social welfare services. 12 736 people were employed by these organisations, including 1 262 specialists (psychologists, sociologists, lawyers and educationalists) and 9 070 volunteers.

*Conclusion*

The Committee concludes that the situation in Ukraine is in conformity with Article 14§2 of the Revised Charter.

**Article 23 - The right of elderly persons to social protection**

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

*Legislative framework*

The Committee recalls that the focus of Article 23 is on social protection of elderly persons outside the employment field. Questions of age discrimination in employment are primarily examined by the Committee under Articles 1§2 (non-discrimination in employment) and 24 (right to protection in cases of termination of employment).

As regards the protection of elderly persons from discrimination outside employment, the Committee recalls that Article 23 requires States Parties to combat age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services. The European Older People's Platform and other sources point to the existence of pervasive age discrimination in many areas of society throughout Europe (health care, education, services such as insurance and banking products, participation in policy making/civil dialogue, allocation of resources and facilities) which leads the Committee to consider that an adequate legal framework is a fundamental measure to combat age discrimination in these areas. The Committee therefore asks if anti-discrimination legislation (or an equivalent legal framework) to protect elderly persons outside the field of employment exists, or whether the authorities plan to legislate in this area.

The Committee notes that the Ministry of Labour and Social Protection is responsible for coordinating the country's system of social protection, including in respect of the elderly.

The Committee asks for information on the legal framework related to assisted decision making for the elderly, and, in particular, whether there are safeguards to prevent the arbitrary deprivation of autonomous decision making by elderly persons.

*Adequate resources*

The statutory pensionable age for men is 60 years, and 55 years for women. There are 13.3 million persons of pensionable age in Ukraine, nearly 5 million aged over 70 years.

The Committee notes from another source<sup>14</sup> that the main law on old-age pensions is the Law on Mandatory State Pension Insurance No.1058-IV, of 9 July 2004 (amended in 2005 and 2006).

Eligibility for old-age pension requires at least 5 years of covered employment. In all cases, contributions must be paid for periods of covered employment. Covered employment can include years spent in higher education, the armed services, caring for disabled persons or children younger than age 3, or being unemployed and seeking a job, if contributions are paid for these periods. The amount of an old-age pension is 1% of the wage base paid for every full year of covered employment with at least 5 years of covered employment. The pension is paid monthly. The wage base is based on 60 months of earnings before June 1, 2000, regardless of interruptions, plus all covered periods from

June 1, 2000. The minimum pension was 366 Hryvnias<sup>15</sup> (UAH, € 34.4) in January 2007 (corresponding to the minimum subsistence level for a not-able-to-work individual).

Eligibility for an old-age social pension starts at age 63 (men) or age 58 (women). This is a means-tested pension paid to low-income citizens who are not working and not eligible for an old-age pension. The monthly pension varies between 23.30 UAH (€ 2.19) and 59 UAH (€ 5.5).

According to the report, the poverty line in 2007 was 526 UAH (€ 49.8). The Committee notes that the minimum old-age pensions (both contributory and social) are manifestly inadequate because they are considerably lower than the poverty threshold. It therefore finds that the situation is not in conformity with Article 23.

#### *Prevention of elder abuse*

The Committee recalls that elder abuse is defined in the Toronto Declaration on the Global Prevention of Elder Abuse (2002) as 'a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person'. It can take various forms: physical, psychological or emotional, sexual, financial or simply reflect intentional or unintentional neglect. The World Health Organization (WHO) and the International Network of the Prevention of Elder abuse (INPEA) have recognised the abuse of older people as a significant global problem. Hundred thousands of older people in Europe encounter a form of elder abuse each year. They are pressed to change their will, their bank account is plundered, they are pinched or beaten, called names, threatened and insulted and sometimes they are raped or sexually abused otherwise.

The Committee wishes to know what the Government is doing to evaluate the extent of the problem, to raise awareness on the need to eradicate elder abuse and neglect, and if any legislative or other measures have been taken or are envisaged in this area.

#### *Services and facilities*

The report mentions that elderly persons are entitled by law to receive social services with a view to improving or restoring their activity in life. Around 2 million elderly persons receive different types of services provided by State and other institutions.

There are territorial centres throughout the country which provide a number of services to pensioners and single disabled persons. The types of services available for elderly persons include, *inter alia*, purchasing of food, cooking, house cleaning or delivering medicines and assisting in the implementation of a treatment.

The Committee asks whether in general the supply of home help services for the elderly matches the demand for them, how their quality is monitored, and if there is the possibility for elderly persons to complain about services. Furthermore, it wishes to know whether the extent of their provision differs

from one municipality to another, and whether there is a charge for any of these services.

The Committee also asks for information on any services or facilities (such as respite care) for families caring for elderly persons, in particular highly dependent persons, as well as on any particular services for those suffering from dementia or Alzheimer's disease. Finally, it also enquires on the cultural, leisure and educational facilities available to elderly persons.

#### *Housing*

The report provides information on a housing subsidy programme which aims at ensuring, *inter alia*, that elderly persons continue living in their familiar surroundings by granting aid for the payment of housing and utility services (as from 1 January 2007 families with an elderly or disabled member pay 15% of their average monthly income for housing and utility services).

The Committee asks for more information on the Law on Housing Stock of Social Purpose mentioned in the report. Namely, how equal access of elderly persons to social housing is ensured, if these dwellings are specially suited for elderly persons, and on the rental prices of social housing.

The Committee takes note of the obligation of local administrations to establish assisted living accommodation type homes for war veterans, disabled and elderly persons pursuant to Resolution No. 76 of 2007 approved under the above-mentioned law on social housing. It asks for information in the next report on how local administrations are discharging this obligation.

#### *Health care*

The report mentions that elderly persons whom according to medical indications require care may be assisted at home or in specialised facilities.

The Committee asks for information in the next report on:- health care programmes and services (in particular primary health care services) specifically aimed at the elderly;-guidelines on health care for elderly persons if any;-mental health programmes for persons with dementia and related illnesses;-palliative care services for the elderly.

#### *Institutional care*

The report mentions the trend is now towards the strengthening of outpatient establishments and services for the elderly to avoid a rupture of family and social ties. There is nevertheless a network of inpatient institutions in the country: a total of 321 nursing homes, of which 86 are for elderly and disabled persons (where 20 000 people are living).

Residential institutions for elderly persons guarantee decent living conditions. The Committee asks how these facilities are licensed and inspected, and whether procedures exist for complaining about the standard of care and services or about ill treatment in this type of institution. It also asks whether places available in institutional care match the demand.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 23 of the Revised Charter on the ground that the level of minimum old-age pensions – both contributory and social – are manifestly inadequate.

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<sup>1</sup> *International Social Security Association, <http://www.issa.int/aiss/Observatory/Country-Profiles/Regions/Europe/Ukraine>*

<sup>2</sup> *Data from the MISSCEO comparative tables, [http://www.coe.int/t/dg3/socialpolicies/socialsecurity/MISSCEO/tables\\_en.asp](http://www.coe.int/t/dg3/socialpolicies/socialsecurity/MISSCEO/tables_en.asp)*

### **Article 30 - The right to protection against poverty and social exclusion**

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

#### *Measuring poverty and social exclusion*

According to the report, the system for assessing poverty levels is based on an integrated poverty assessment methodology. The two main indicators are the poverty threshold (referred to in the report as the poverty “line”) and the poverty rate. The former is calculated as a fixed proportion of per capita income – 75% of the median cumulative income per adult. The latter is the proportion of households in which the income per person is lower than the poverty threshold. The indicators show that the poverty rate remained relatively stable between 2005 and 2007 and that the situation even improved towards the end of the period. The poverty rate in 2007 was 27.3%, which was a decrease in 0.8% compared to the previous year. The poverty threshold came to a per capita monthly average of about € 53, which was 22.3% higher than in 2006. In 2005 it was € 33, or 73% of the subsistence minimum, while in 2007 it had increased to € 46, or 81% of the subsistence minimum. The Committee notes that according to Eurostat figures, the average monthly wage was about € 107 in 2006. According to the report, about 12.3 million of the total population of over 46 million are regarded as poor.

The Committee points out that the percentage of the population at risk of poverty before and after social transfers is used as a comparative value to assess national situations. Persons with incomes between 50 and 60% of the median income are considered to be at risk of poverty (Conclusions 2005, Norway). A person is considered income poor if his/her household’s disposable yearly income per consumption unit is lower than 50 or 60% of the median income of all households (i.e. the median of the disposable yearly income per consumption unit) (Conclusions 2007, Finland).

The Committee notes that the statistics and figures provided are not enough to properly assess the standard of living of the persons who live or risk living in a situation of poverty. The Committee asks for the next report to state what percentage of the population is at risk of poverty after social transfers, i.e. what proportion of the inhabitants have a disposable income below an at-risk-of-poverty threshold of 60% of the median national income after social transfers.

The report provides no information on social exclusion. The Committee asks the next report to state what percentage of the population is socially excluded. It also asks for the next report to outline the indicators used to measure social exclusion, along with any other relevant statistics.

#### *Approach to combating poverty and social exclusion*

The Committee points out that Governments must adopt a global, co-ordinated approach, which must comprise an analytical framework, and take measures promoting access to social rights, in particular employment, housing, training, education, culture and social and medical assistance for persons in, or at risk of finding themselves in, a situation of poverty or social exclusion.



The Cabinet of Ministers adopted a Strategy to Combat Poverty during the reference period. Decree No. 637 of 15 August 2001 contains the first ever comprehensive assessment by the President's office of poverty in Ukraine, evaluating the intensity of the problem and proposing various solutions.

The Strategy divided the process of eradicating poverty into three stages up to 2010. Initially (in 2001 and 2002), measures were taken to:

- increase the income and the economic activity of people of working age through stimulation of employment and the labour market;
- develop social insurance as a form of preventive protection in the event of loss of income;
- foster social assistance for the most vulnerable categories of the population through the implementation of a consolidated system of social assistance and services designed for people unable to work because of incapacity as well as people with disabilities, families with children and children deprived of parental care.

Secondly (in 2003 and 2004), measures were taken to increase income and optimise employment rates. Thirdly (in the period from 2005 to 2009) measures were taken to improve economic growth.

At the same time, action plans for the implementation of the strategy are adopted every year, within the limits of the state's financial capacity and local authority budgets, to increase employment rates and income, improve the social security and social assistance systems and introduce specific measures to promote access to housing, education, culture and health care.

According to the report, measures were taken to promote employment, create jobs, prevent unemployment and provide social protection for the unemployed. The employment rate increased from 57.7% in 2005 to 58.7% in 2007. Over the same period, the unemployment rate decreased from 7.2% to 6.4% and jobs were created for 3.4 million people. Progress was made on increasing the minimum wage. In 2005 it was € 33, or 73% of the subsistence minimum, while in 2007 it had increased to € 46, or 81% of the subsistence minimum. The report states that measures are being taken to promote employment but it contains little information on specific measures in the labour market policy field. The Committee asks for further information in this respect.

Measures were also taken to increase the amount of further training on offer. 1.4 million workers took part in continuing training in 2007, which was 89 000 more than in 2005. The Committee asks how many poor and disadvantaged people benefit from training and education measures.

The report also states that the social insurance system plays an important part in combating poverty. An increase in social security contributions has made it possible to enhance social protection for unemployment, temporary incapacity, maternity, employment injury and occupational disease. There is a social assistance system which is aimed primarily at low income families with children, orphans, children deprived of parental care, adoptive parents and disabled children. The social assistance programme also provides housing grants for over three million families and individuals every month.

The Committee emphasises that this is not an exhaustive list of areas in which measures must be taken, as poverty and exclusion relate to so many different aspects. These measures should strengthen entitlement to social rights and their monitoring and enforcement, improve benefit and service procedures and management, enhance information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and, where necessary, specifically target the poorest and most socially disadvantaged groups. As long as poverty and social exclusion persist, the measures should also represent an increase in the resources deployed to secure social rights. The Committee asks what measures have been taken to target the poorest and most socially disadvantaged groups more specifically

Particular attention should be paid to ensuring that policies, measures and actions are effective. Lastly, measures should be of the right quality and quantity to deal with the type and extent of poverty and social exclusion in the country concerned. In this connection, the Committee systematically reviews the definitions and measurement methods used at national level and the main data made available. The Committee asks for the next report to provide more information on the impact, practical consequences and results of all the measures described in terms of reducing poverty and social exclusion. It asks what has been done to integrate the various benefits and services across the policy areas referred to in Article 30, such as employment, housing, training, education and culture, and asks for the report to provide, where possible, quantified indicators of the means deployed and the results achieved for each of the measures concerned.

#### *Supervision and evaluation*

Consultations and working meetings involving employers' organisations, workers' representatives, academics and representatives of public bodies are held at national and local level and help to take appropriate measures to combat poverty. Poverty indicators are regularly reviewed to keep abreast of poverty trends.

The report contains very few details, however, on how activities to combat poverty and social exclusion are monitored and assessed and ways in which civil society (including employers' and workers' representatives, NGOs and private citizens) are involved in these processes. The Committee asks that the next report contain more detailed information on how individuals and organisations are involved in reviewing anti-poverty measures, including specific examples.

#### *Conclusion*

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