January 2015

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2014

(UKRAINE)

Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29

of the Revised Charter

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.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Ukraine, which ratified the Charter on 21 December 2006. The deadline for submitting the 6th report was 31 October 2013 and Ukraine submitted it on 15 January 2014.

The report concerns the following provisions of the 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).

Ukraine has accepted all provisions from this group except Article 4§1.

The reference period was from 1 January 2009 to 31 December 2012.

The conclusions on Ukraine concern 21 situations and are as follows:

- 10 conclusions of conformity: Articles 2§1, 2§2, 2§4, 2§6, 4§2, 6§1, 6§2, 6§3, 21, 22.
- 8 conclusions of non-conformity: Articles 2§7, 4§4, 4§5, 5, 6§4, 26§1, 26§2, 28.

In respect of the other 3 situations related to Articles 2§5, 4§3 and 29, 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 that situation by providing this information in the next report.

The upcoming report will deal with the following provisions of the thematic group "Children, families and migrants":

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

The deadline for submitting that report was 31 October 2014.

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

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

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

The Committee notes that there have been no amendments to the legislation which it previously found to be in conformity with the Charter (Conclusions 2010). It notes that in the context of the implementation of the Association Agreement between Ukraine and the European Union it is envisaged that the regulations aimed for the implementation of the Directive 2003/88/EC will be developed, approved and implemented.

In reply to the Committee's question the report provides information regarding certain categories of workers (for example medical personnel, teachers, drivers) whose working hours are reduced in view of their special employment situation.

As regards flexible working time arrangements, the Committee observes that where the cumulative record of working hours is applied, daily or weekly working hours may fluctuate during the record period but the total number of working hours cannot exceed the norm, which is determined on the basis of 40-hour working week.

The Committee recalls that in its decision on the merits of 23 June 2010 *Confédération générale du travail (CGT) v. France* (§§ 64-65), Complaint No 55/2009, it held that when an on-call period during which no effective work is undertaken is regarded a period of rest, this violated Article 2§1 of the Charter. The Committee found that the absence of effective work, determined *a posteriori* for a period of time that the employee *a priori* did not have at his or her disposal, cannot constitute an adequate criterion for regarding such a period a rest period. The Committee holds that the equivalisation of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home.

The Committee asks what rules apply to on-call service and whether inactive periods of on-call duty are considered as a rest period in their entirety or in part.

The Committee takes note of the statistics relating to the violations of working time provisions as identified by the State Labour Inspectorate. It notes the numbers of violations, orders issued to eliminated violations and numbers of protocols on administrative offences issued.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 2§1 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

It previously noted that, under Article 73 of the Labour Code, there are eight public holidays, in addition to three non-working religious holidays. When a public holiday falls on a Saturday or Sunday, the public holiday is postponed to the following working day.

Work is authorised exceptionally during public holidays where it is impossible to suspend a production line or for other technical reasons, where a public service has to be provided, or in special cases linked to natural disasters, epidemics, accidents or emergencies (Article 71 of the Labour Code).

Work performed on a public holiday is paid at twice the standard rate. At the employee's request, the increased pay for the work performed on a public holiday may be replaced by a day off in lieu.

In response to the Committee's question, the report confirms that the base salary is maintained for the work carried out on a public holiday: employees remunerated on a monthly basis will receive, at the end of the month their base salary (together with any applicable additional payments, increase, bonus etc.) and, for the work performed on a non working holiday, they will get a supplement at single hourly rate in addition to salary for each hour worked on a holiday, if the work was carried within the monthly working time. The hourly salary rate will be double, in addition to the salary, for each hour worked on a holiday, if the work was carried exceeding the monthly working time. The Committee asks the next report to clarify whether these rules apply to both the public and the private sector and to all category of workers, including those not remunerated on a monthly basis or whose contract provides for the regular performance of work on public holidays. According to the data provided in the report, from 2009 to 2012:

- the number of detected violations of the rules concerning remuneration of labour on holidays and days off decreased by almost 30% (from 4308 to 3024);
- the number of orders issued to eliminate the violations detected decreased by 87% (from 2278 to 296), and
- the number of protocols on administrative offenses issued increased by 24% (from 340 to 421) in the same period.

The Committee takes note of this information, it asks the next report to comment on these data and to provide updated data.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

The Committee points out that the States party to the Charter are required to eliminate risks in inherently dangerous or unhealthy occupations and to apply compensatory measures to workers exposed to risks which cannot be or have not yet been eliminated or sufficiently reduced, either in spite of the effective application of the preventive measures referred to above, or because they have not yet been applied.

Elimination or reduction of risks

The Committee refers to its conclusion of conformity under Article 3§1 of the Charter (Conclusions 2013) for a description of dangerous activities and the preventive measures taken in their respect. It recalls however that it has found that the situation was not in conformity with Articles 3§2, 3§3 and 3§4 (Conclusions 2013). In particular, it has considered under Article 3§2 that the coverage of occupational hazards by specific occupational health and safety legislation and regulations is insufficient, as well as the level of protection against asbestos-related occupational hazards. It furthermore found shortcomings in the system of labour inspection. In light of this, the Committee asks that the next report provide comprehensive and updated information on the effective implementation of measures aimed at eliminating or reducing occupational risks, in particular those related to inherently dangerous or unhealthy sectors and activities, such as mining, quarrying, steel making and shipbuilding and occupations exposing employees to ionising radiation, extreme temperatures and noise. In the meantime it reserves its position on this issue.

Measures in response to residual risks

The Committee previously noted that, under Section 7 of the Occupational Safety Act, persons exposed to residual risks may be granted compensatory measures such as reductions in working hours, additional paid leave, salary increases or other forms of compensation described in the relevant legislation. It notes from the report that the situation has not changed in this respect.

The Committee recalls that the forms of compensation relevant to Article 2§4 are those offering to the workers concerned sufficient and regular time to recover from the stress and fatigue associated to their work, and thus maintain their vigilance. Measures of this type are for example the granting of reduced working hours, additional paid holidays or other measures reducing exposure to risks, to be assessed on a case by case basis. However, neither early retirement or financial compensation can be considered an appropriate response under Article 2§4. In light of this, the Committee asks that the next report provide further details on the type of compensatory measures applied, specifying wherever possible what measures apply to the different categories of workers exposed to residual risks, and what the percentage of such workers covered by these compensatory measures at issue is.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 2§4 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

It previously noted that workers are entitled to two days off per week when working a five day working week and one day off per week when working a six day working week. The rest period generally includes Sunday. If a holiday or non-working day coincides with a rest day, the rest day is carried over to the next day following the holiday.

The Committee also noted that the weekly rest period must last at least 42 uninterrupted hours and that work is in general not allowed on a rest day, save in exceptional cases duly authorised by the trade unions or by legislation. In particular, work on rest days is exceptionally authorised in circumstances linked to natural disasters, epidemics, accidents or emergencies. Furthermore, in companies, institutions and organisations in which work cannot be interrupted on the official rest day in order to ensure the provision of services (including shops, theatres, museums, etc.), rest days are decided upon at local government level. Where work cannot be interrupted on the rest day because a production line cannot be suspended or for other technical reasons or because continuous services or transport facilities need to be provided for the public, rest days are granted to different groups of employees in turn, according to a schedule approved by the employer or by an authorised body.

Work performed on a rest day must be offset, with the consent of both parties, by time off in lieu or by financial compensation amounting to double the usual pay. The Committee points out that under Article 2§5 of the Charter weekly rest periods may not be replaced by financial compensation and that employees may not forfeit their rest. The Committee accordingly asks whether, when a double compensation is granted, the workers forfeit their weekly rest and this is not postponed to a later date. It furthermore asks whether there are circumstances under which a worker may be made to work more than twelve consecutive days before being granted a two day rest period, and what guarantees apply in this respect. In the meantime it reserves its position on this issue.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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

The Committee previously noted (Conclusions 2010) that the law provides for the establishment of an employment contract, mentioning the identity of the parties, the place of work, the occupation or position of the employee in the company, the conditions of work, the amount of pay and, in cases of temporary recruitment, the length of the contract or the relationship. Employment contracts may also contain information on their period of validity, the parties' rights, duties and liabilities (including from the financial point of view), occupational safety, organisation of labour, any collective agreements governing the employee's conditions of work and the rules on termination of the contract, including early termination. The scope of contracts is determined by national legislation.

The Committee noted however that, in Ukraine, it is not always mandatory for the contract to be set down in writing and it asked whether, in the absence of a written contract, there are other written sources available to the employee, containing information on the essential aspects of the employment relationship. More generally, having noted that the relevant provisions were being amended, it asked for confirmation that, under the new legislation, all the aspects of the employment contract or relationship, as required by Article 2§6 of the Charter, would be covered by the contract or another written document.

In response to these questions, the report indicates that the legislation has not changed during the reference period, although some amendments are still being envisaged, which would set, *inter alia*, the obligation for the employer to conclude a written employment contract. The report furthermore confirms that under Article 24 of the Code of Labour Laws of Ukraine, employment contracts are generally concluded in writing and the written form is mandatory in the following cases:

- organised recruitment of employees;
- conclusion of employment contracts for work in areas with special natural geographical and geological conditions and conditions posing increased health risks;
- upon conclusion of contracts;
- when an employee insists on conclusion of an employment contract in writing;
- conclusion of an employment contract with a minor;
- conclusion of an employment contract with an individual;
- in other cases stipulated by the legislation of Ukraine.

Written employment contracts concluded in accordance with the labour legislation should include all aspects of the employment contract relating to the parties of labour relations, place of work, profession or position to which the employee is assigned, working conditions, salary, duration of leave and duration of employment. When an employment contract is not concluded in writing, it is nevertheless formalised by an order or instruction of the employer upon hiring the employee. An integral part of the order on hiring an employee is a place of employment, profession or position to which the employee is assigned, working conditions, salary and duration of employment. The duration of the annual leave is in this case defined in the collective agreement or, if no collective agreement applies, in a separate order of the employer. According to the report, information on basic aspects of the labour relations, in the absence of a written employment contract, can nevertheless be found in other written documents such as the job descriptions, the internal labour regulations and the collective agreements.

The Committee recalls that, under Article 2§6, when starting employment, workers are entitled to written information covering at least the following elements:

- the identities of the parties;
- the place of work;
- the date of commencement of the contract or employment relationship;
- in the case of a temporary contract or employment relationship, the expected duration thereof;
- the amount of paid leave;
- the length of the periods of notice in case of termination of the contract or the employment relationship;
- the remuneration;
- the length of the employee's normal working day or week;
- where appropriate, a reference to the collective agreements governing the employee's conditions of work.

In the light of the information provided, it asks the next report to confirm that all these elements of information, including the length of the periods of notice in case of termination of the contract or the employment relationship, are well available in a written form to all workers entering an employment relationship, whether they are included in a written employment contract, in the pay statement, in the collective agreements or other documents effectively accessible to the worker before starting work.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Ukraine is in conformity with Article 2§6 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

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

The Committee refers to its previous conclusion (Conclusion 2010), where it found that the situation was not in conformity with Article 2§7 of the Charter insofar as that there is no provision in the legislation for a compulsory medical examination for persons about to take up night work. The report confirms that mandatory medical examinations are provided, at the recruitment and during the employment, for certain categories of employees, namely those engaged in heavy work, work under harmful or dangerous conditions, those requiring professional selection as well as for persons under 21 years of age. However, the law does not explicitly and systematically provides yet for such medical visits in respect of employees performing night work. According to the report, in April 2013 (outside the reference period), the Ministry of Social Policy set up an Expert Advisory Council involving the relevant ministries, social partners, NGOs and researchers, mandated to develop proposals in order to bring the situation in conformity with the Charter and possibly joining ILO Convention No. 171 on Night Work (1990) and Recommendation No. 178 on Night Work. The Committee asks the next report to provide any updated information on the adoption and implementation of the envisaged reform.

In response to the Committee's question regarding the possibility for night workers to be transferred to day work, the report indicates that, during shift work, including night work, employees change shifts in the manner prescribed by internal labour regulations. Accordingly, under the shift schedule the employees shall work both night and day shifts. The report indicates that the national legislation does not define as a specific category of employees those working at night. However, it indicates that the shift schedules (work schedules) are approved by the employer in consultation with the trade union of the entreprise.

The Committee recalls that 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.

The Committee notes from the report that, although the legislation provides a definition of "night", as the period comprises between 10 pm and 6 am, no specific definition of "night worker" applies. Furthermore, during the reference period, there has been no change to the situation which it previously found to be not in conformity with Article 2§7 on account of the lack of provision for medical examinations prior to employment on night work and regularly thereafter. In addition, the report does not clarify whether and under what circumstances a worker might be removed – on a temporary or permanent basis – from night work and transferred to a daytime suitable post. Moreover, although some consultation with trade unions is provided for as regards the setting up of shift working schedules, the report does not indicate that continuous consultation with the workers representatives is ensured as regards the night work conditions and the measures taken to reconcile the needs of workers with the special nature of night work. For all these reasons, the Committee considers that the situation is not in conformity with Article 2§7 of the Charter.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 2§7 of the Charter on the ground that the right to just conditions of night work is not guaranteed, that is:

- there is no provision in the legislation for compulsory medical examinations prior to employment on night work and regularly thereafter;
- it is not established that the law provides for possibilities of transfer to daytime work, and
- it is not established 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.

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

The Committee notes that the legislation which it previously (Conclusions 2010) found to be in conformity with the Charter has not changed.

In reply to the Committee's question regarding whether the right to an increased remuneration for overtime work is also guaranteed in collective agreements, the report states that during the conclusion of such agreements the legal provisions are considered. Therefore, the right to an increased remuneration is guaranteed.

The report states that the mandatory provisions on remuneration for overtime do not apply to employees working under irregular working hours, such as civil servants, including high-ranking officials.

The Committee recalls that the right of workers to an increased rate of remuneration for overtime work allows for exceptions in certain specific cases. These "special cases" have been defined by the Committee (Conclusions IX-2 (1986), Ireland), which are:

- State employees: the only acceptable exception is the category of senior officials, such as police commissioners or administrative court judges. Exceptions to a higher rate of overtime pay for all state employees or public officials, irrespective of their level of responsibility, is not in conformity with Article 4§2 (Conclusions XV-2 (2001), Poland).
- Managers: exceptions may be applied to all senior managers. However, the Committee ruled that certain limits must apply, particularly on the number of hours of overtime that are not paid at a higher rate (*Conferedetion Francaise de l'Encadrement CFE-CGC* v. France, Complaint No 9/2000, Decision on the merits of 16 November 2001, paragraph 45).

The Committee asks whether the legislation complies with this standard.

Conclusion

The Committee concludes that the situation in Ukraine is in conformity with Article 4§2 of the Charter.

Article 4 - Right to a fair remuneration

Paragraph 3 - Non-discrimination between women and men with respect to remuneration

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

Legal basis of equal pay

The Committee recalls that under Article 4§3 the right of women and men to equal pay for work of equal value must be expressly provided for in legislation (Conclusions XV-2 (2001), Slovak Republic).

The Committee refers to its conclusion under Article 20 (Conclusions 2012) where it took note of the legal basis for equal pay. The Committee further notes from the report that Article 17 "Ensuring equal rights and opportunities for women and men in labour and pay" 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.

By a Resolution the Cabinet of Ministers of Ukraine approved the salaries which are differentiated depending on the complexity of work, organisational and legal level of positions, the functions of the unit, which employs a particular employee and some other working conditions. The terms of remuneration of labour of employees of institutions and organisations that are funded from the budget are established irrespective of descent, social and property status, race and ethnicity, gender.

Equal pay is ensured through the establishment in sectoral agreements of salary rates by occupation depending on skill level. There is no gender difference in these salary rates. The pay level, thus, does not depend on whether it is a man or a woman who performs the function in question. According to the report this ensures the observance of the principle of equal pay for work of equal value.

Guarantees of enforcement and judicial safeguards

The Committee recalls that under Article 4§3 of the Charter domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination. Employees who claim that they have suffered discrimination must be able to take their case to court. Domestic law should provide for a shift of the burden of proof in favour of the plaintiff in discrimination cases.

Anyone who suffers wage discrimination on grounds of gender must be entitled to adequate compensation, that is, compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender (Conclusions XIII-5, Statement of Interpretation on Article 1 of the Additional Protocol).

The Committee further recalls that when the dismissal is the consequence of a worker's complaint concerning equal wages, the employee should be able to file a claim for unfair dismissal. In this case, the employer must reintegrate him in the same or a similar post. If reinstatement is not possible, the employer has to pay compensation, which must be sufficient to compensate the worker and to deter the employer. Courts should have the competence to fix the amount of this compensation, not the legislator (Conclusions XIX-3, Germany).

According to Article 23 of the law on Ensuring Equal Rights and Opportunities for Women and Men, a person has the right to compensation for pecuniary and non-pecuniary damage caused

by gender discrimination or sexual harassment. The Committee understands from the report that there is no limit to the amount of non-pecuniary damages that may be awarded.

The Committee refers to its conclusion under Article 20 (Conclusion 2012) and asks whether a victim may take his/her case before the courts in addition or alternatively to the Commissioner. It also asks what rules apply as regards the guarantees of enforcement of the equal pay principle, burden of proof and sanctions, as well as domestic case law on equal pay litigations.

Methods of comparison and other measures

In its Conclusions XX-1 (2012) the Committee adopted the following Statement of interpretation on Article 20 (Article 1 of the Additional Protocol of 1988):

Under Article 20, equal treatment between women and men includes the issue of equal pay for work of equal value. 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.

The Committee holds that this interpretation applies, *mutatis mutandis* to Article 4§3.

The Committee asks whether in equal pay litigation it is possible to make comparisons of pay and jobs outside the company directly concerned.

According to the data of the State Statistics Service of Ukraine the pay is higher for men than for women. In 2011, the average monthly salary of women was 33,6% lower than than of men. This unadjusted pay gap made 28,9% in 2012. According to the report, this gap can be explained by the fact that a higher percentage of men work in management positions with higher salaries and a higher number of women are in part-time employment.

The Committee asks what measures are taken to reduce the equal pay gap.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

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

It previously concluded (Conclusions 2010) that the situation in Ukraine was not in conformity with Article 4§4 on the ground that two months' notice is insufficient beyond ten years of service. It asked for information on immediate dismissal and other grounds for termination of employment; the right to time off during notice periods to seek new employment; and notice periods applicable during probationary periods and for part-time, fixed-term or piecework contracts.

The report states that there was no change in the situation during the reference period and that collective agreements stipulate one day of paid leave per week during notice periods to look for new employment. It is planned to include this regulation in the new draft of the Labour Code, together with provision for a two-month notice period and a redundancy payment dependant upon length of service.

Reasonable period of notice

The Committee notes the grounds for dismissal (and early termination of fixed-term or piecework contracts) provided for by Article 40, paragraph 1 of the Labour Code of 10 December 1971, as updated by Law No. 3231-VI of 19 April 2011:

1. Changes in the organisation of production and labour, including liquidation, insolvency, purchase or merger, or reductions in staff numbers;
2. Unfitness for medical reasons, lack of qualification or withdrawal of access to top-secret information;
3. Systematic failure of workers to perform their duties without good reason;
4. Unjustified absences of more than three hours;
5. Periods of sick leave of more than four consecutive months;
6. Reinstatement of the previous post holder;
7. Attending work under the influence of alcoholicl, narcotic or toxic substances;
8. Theft confirmed by a judicial or administrative decision.

Additional grounds for dismissal are set out in Article 41, paragraph 1 of the Code:

1. Serious professional misconduct by a senior manager or manager, an accountant or an auditor;
1. [1] Errors by the employer's representative resulting in a delay in the payment of salaries or the payment of an amount lower than the minimum wage;
2. Errors by an accountant resulting in the loss of the employer's trust;
3. Immoral acts making it impossible for workers to be kept in teaching posts;
4. Breaches of the Corruption Prevention and Combat Act of 7 April 2011 (No. 3206-VI).

Grounds for termination of employment are also listed in Article 36, paragraph 1 of the Code:

1. Consent of the parties;
2. Stipulated end of a fixed-term or piece-work contract;
3. Call-up for military service;
4. Dismissal on grounds provided for by Articles 40, 41 and 45 of the Code;
5. Secondment to another employer or taking up elected office;

6. Refusal to agree to a transfer when the undertaking relocates or to accept essential changes in working conditions (ground provided for in Article 32, paragraph 4 of the Code);
7. Judicial decision sentencing the worker to imprisonment;
8. Grounds set out in the employment contract.

The Committee notes that Article 49^2, paragraph 1 of the Code establishes a standard, predetermined notice period of two months, combined, in accordance with Article 44 of the Code, with a payment equivalent to one month's salary upon termination of employment or dismissal on grounds provided for in Article 36, paragraph 1, No. 6 and Article 40, paragraph 1, Nos. 1, 2 and 6 of the Code.

The Committee notes that there is a plan to revise the Code. It points out, however, that its task is to examine the situation that obtains during the reference period. It also reiterates that in accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being primarily determined in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice. The Committee considers that in the preseent case, the standard notice period provided for in Article 49^2, paragraph 1 of the Code, together with any compensation provided for in Article 44, are reasonable within the meaning of Article 4§4 of the Charter in some circumstances, but inadequate in the following circumstances:

- Termination of employment for refusal to agree to a transfer when the undertaking relocates or refusal to accept essential changes in working conditions (grounds given in Article 36, paragraph 1, number 6 of the Code); dismissal upon changes in the organisation of production or labour or a reduction in staff numbers; on grounds of unfitness for medical reasons, lack of qualification or withdrawal of access to top-secret information; the reinstatement of the previous post holder (grounds given in Article 40, paragraph 1, numbers 1, 2 and 6 of the Code), beyond seven years of service;
- Termination of employment or dismissal on all other grounds, beyond five years of service.

The Committee notes that collective agreements stipulate that one day of paid leave per week should be granted during notice periods to seek new employment. It asks for information in the next report on the right to continued payment of salary and/or assistance benefits paid by the employment office under Article 49^2, paragraph 3 of the Code.

Application to all workers

The report states that under Article 27, paragraphs 1 and 2 of the Code, probationary periods are in general limited to three months, to one month for unskilled or semi-skilled workers and to six months in cases provided for by collective agreements. Under Article 28, paragraph 2 of the Code, dismissal is authorised at any point during the probationary period without notice or compensation.

The Committee points out that protection by means of notice and/or compensation must cover all workers regardless of whether they have a fixed-term or a permanent employment contract (Conclusions XIII-4 (1996), Belgium) and regardless of the reason for the termination of their employment (Conclusions XIV-2 (1998), Spain). This protection includes probationary periods (General Federation of Employees of the National Electric Power Corporation (GENOP-DEI)

and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§26 and 28). The Committee therefore considers that the lack of any notice and/or compensation during probationary periods (under Article 28, paragraph 2 of the Code) is not in conformity with Article 4§4 of the Charter.

The Committee also points out that a serious offence is the sole exception justifying immediate dismissal without notice or severance pay (Conclusions 2010, Albania). It considers that the only grounds for dismissal in the present case which satisfy the criteria of a serious offence are termination of employment following sentencing to prison (ground given in Article 36, paragraph 1, No. 7 of the Code) and dismissal on the following grounds: systematic failure to perform duties without good reason; attending work under the influence of alcoholic, narcotic or toxic substances; theft confirmed by judicial or administrative decision (grounds given in Article 40, paragraph 1, Nos. 3, 7 and 8 of the Code); serious professional misconduct by a manager or senior manager, accountant or auditor; errors by an employer's representative resulting in late payment of salaries or payment of an amount lower than the minimum wage; immoral acts making it impossible for workers to be kept in teaching posts; and breaches of the Corruption Prevention and Combat Act (grounds given in Article 41, paragraph 1, Nos. 1, 1^1, 3 and 4 of the Code). It asks for the next report to list all the other cases of termination of employment or immediate dismissal provided for by the law and, if relevant, notice periods and/or compensation applicable to dismissal for disciplinary reasons (ground given in Article 149, paragraph 1, No. 2 of the Code); dismissal of an employer's representative at the request of a trade union representative for breach of labour law or collective agreements (ground given in Article 45, paragraph 1 of the Code); termination of employment following sentencing to attend a medical centre for occupational rehabilitation (ground given in Article 37 of the Code); and labour agreements in which the conditions for termination of employment are freely negotiated (ground given in Article 21, paragraph 3 of the Code).

The Committee considers that in order to guarantee that the protection granted by Article 4§4 of the Charter is effective, the notice period and/or compensation in lieu thereof should not be left to the discretion of the parties to the employment contract, but be governed by legal instruments such as legislation, case-law, regulations or collective agreements. It requests therefore for that the next report provide detailed information on the notice period and/or compensation applicable in the event of termination of employment by means of agreement of the parties or under an employment contract (grounds given in Article 36, paragraph 1, Nos. 1 and 8 of the Code).

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 4§4 of the Charter on the grounds that:

- Notice periods are not reasonable in the following circumstances:
    - termination of employment for refusal to agree to a transfer when the undertaking relocates or refusal to accept essential changes in working conditions; dismissal as a result of changes in the organisation of production or labour or a reduction in staff numbers; dismissal for unfitness for medical reasons, lack of qualification or withdrawal of access to top-secret information; or the reinstatement of the previous post holder, beyond seven years of service;
    - termination of employment or dismissal on all other grounds, beyond two years of service;
- No notice is required for dismissal during the probationary period.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to wage deductions

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

It previously concluded (Conclusions 2010) that the situation in Ukraine was not in conformity with Article 4§5 because deductions from wages were not reasonable and could deprive workers and their dependants of their very means of subsistence. It asked for additional information on guarantees to prevent workers from waiving their right to limitation of deductions from wages.

The Committee notes that Article 127 of the Labour Code of 10 December 1971, as amended by Law No. 3231-VI of 19 April 2011, provides the following grounds for deductions from wages:

- Recovery of advances on wages paid in error;
- Recovery of advances to cover travel costs;
- Recovery of family allowances disputed by workers;
- Recovery of leave entitlement which becomes void upon early termination of employment;
- Reparation of damage caused to employers.

Article 128, paragraphs 1 and 2 of the Code also limit deductions from wages to 20% of the wage; to 50% of the wage in certain cases provided for by the law (enforcement of court decisions), this being an absolute upper limit applicable to simultaneous deductions; and to 70% of the wage in the case of a sentence to corrective labour or the recovery of maintenance payments for minor children. These limits are duplicated by Article 70, paragraph 4 of the Enforcement Proceedings Act of 21 April 1999 (No. 606-XIV). According to the report, the limit extension to 70% serves to uphold the principle of the inevitability of enforcement (Article 5 of the Code of Criminal Procedure) and the duty of parents to provide for their children (Article 51 of the Constitution).

The liability of workers for damage caused to employers (Article 130, paragraph 1 of the Code) is limited to the actual, direct damage and the amount of the monthly wage (Article 132, paragraph 1 of the Code) in the case of negligence (Article 133, paragraph 1 of the Code). By contrast, liability is full (Article 132, paragraph 2 of the Code) if stipulated in liability agreements; when offences committed give rise to criminal proceedings; when the damage was caused in a state of drunkenness, intentionally or outside work; in the event of wrongful dismissal or transfer or over a month's delay in the payment of wages (Article 134, paragraph 1 of the Code). Where the amount of the damage is lower than the monthly wage, it is determined by the employer pursuant to the provisions of Article 135^3 of the Code, under court supervision (Article 136, paragraph 1 of the Code). Where the amount of the damage exceeds the monthly wage, unless the worker agrees to pay, that amount is determined by the courts (Article 136, paragraph 2 of the Code).

The Committee, observing that Ukraine has not ratified Article 4§1 of the Charter, notes the concern expressed by the UN Committee on Economic, Social and Cultural Rights (Concluding Observations of 13 June 2014, §§13-14) about the large proportion of workers in the informal sector who are not covered by labour legislation or social protection and the problem of substantial wage arrears. The ILO (Decent Work Country Profile: Ukraine, 2 nd edition, Geneva: ILO 2013, pp. 13-15) confirms the relative decrease in the number of people living below the poverty line, the re-emergence of wage arrears, and the decline in the minimum wage in relation to the average wage.

The Committee points out that the goal of Article 4§5 of the Charter is to guarantee that workers protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland). It considers that, in the instant case, the limits of 20%, 50% and 70% of the wage provided for by Article 128, paragraphs 1 and 2 of the Code and Article 70 of the Enforcement Proceedings Act still allow situations in which workers receive only 50% or even 30% of the minimum wage, an amount that does not allow them to provide for themselves or their dependants. It finds that enforcement of criminal sentences or parents' maintenance obligations to their children should not be implemented at the expense of the protection liable under Article 4§5 of the Charter. It asks for the next report to state whether compensation in connection with the liability of workers for damage they inflict on employers is subject to the limit of 20% of the wage. It also asks for the next report to give the full list of grounds for deduction of up to 50% of the wage provided for by the law. It asks for the next report to complete the list of grounds for deductions from wages, such as for example social security contributions; income tax; manufacturing defects (Article 111 of the Code); reductions in activity (Article 112 of the Code); production stoppages (Article 113, paragraphs 1 and 2 of the Code); and transfers to a less well-paid job (Article 114, paragraph 1 of the Code). It also asks for information on the limitation of deductions from wages applicable to workers governed by the State Civil Service Act of 17 November 2011 (No. 4050-VI), the Merchant Shipping Code of 23 May 1995 and the Mining Resources Act of 6 October 1999 (No. 1127-XIV).

The Committee also points out that, under Article 4§5 of the Charter, workers may not waive the right to limited deductions from wages and the way in which deductions from wages are determined should not be left to the discretion of the parties to the employment contract (Conclusions 2005, Norway). In this connection, it asks for the next report to state whether the law allows workers to agree to forfeit or assign wages to employers or third parties.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 4§5 of the Charter on the ground that, following all authorised deductions, the wages of workers with the lowest pay are not sufficient to enable them to provide for themselves or their dependants.

Article 5 - Right to organise

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

The report indicates that during the reference period new laws have been adopted as follows: the Law on Social Dialogue No. 2862-VI (SDL) was adopted on 23 December 2010; the Law on Employers' Organisations, their Associations, Rights and Guarantees concerning their Activities No. 5026- VI was adopted on 22 June 2012; the Law on Public Associations No. 4572-VI was adopted on 22 March 2012 and came into force on 1 January 2013. The Committee notes that the Law on Public Associations entered into force outside the reference period and therefore its provisions related to the right to organise will be analysed in a future conclusion. To this purpose, the Committee would like to receive full and up to date information on any new developments and on its implementation into practice.

Forming trade unions and employers' organisations

In its previous conclusion (Conclusions 2010), the Commitee noted that restrictions on membership of trade unions are established exclusively by the Constitution and the laws of Ukraine and asked for more specific information on restrictions existing in domestic law.

The report indicates that according to Article 127 of the Constitution of Ukraine professional judges may not belong to political parties or trade unions, or take part in any political activity, hold a representative mandate, hold any other paid offices, perform other remunerated work except for research, teaching, or creative activities. The Committee notes that the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) requested the Government of Ukraine to take measures to ensure the right of judges to establish organisations of their own choosing to further and defend the interests of their members (Observation (CEACR) – adopted 2010, published at the 100th ILC session in 2011, on Convention No. 87 of 1948 of Freedom of Association and Protection of the Right to Organise – Ukraine (ratification 1956)). The Government indicates in the report that by Decree of the President No. 328/2012 dated 17 May 2012, a special body, namely the Constitutional Assembly, has been established with a specific mandate to prepare draft amendments to the Constitution. The Ministry of Social Policy addressed the Constitutional Assembly with a request to consider this issue when preparing the relevant amendments of the Constitution. The Committee would like to receive information on any developments on this matter.

The Committee takes note of the restriction on the right to organise of judges provided by the Constitution of Ukraine. In order to assess if the situation is in conformity with the Charter on this point, the Committee asks whether judges have the right to join professional associations in order to be able to defend and protect their interests. The Committee recalls that it has previously considered that this restriction on the right to organise is in conformity with the Charter, as it has admitted that some restrictions may be imposed on certain categories of civil servants with reference to Article 31 as long as judges have the right to join professional associations (Conclusions XVI-1 volume 2 (2003) Poland and Conclusions XVIII-1 Volume 2 (2006) Spain). Pending receipt of the information requested, the Committee reserves its position on this point.

As regards the registration of trade unions, the Committee noted previously that the procedure of registration of trade unions (known in domestic law as "legalisation") is governed by Section 16 of the Law on Trade Unions, their Rights and Guarantees of Activity (Law on Trade Unions). Legalisation is dealt with by the Ministry of Justice if trade unions operate throughout the country or by the departments of justice of local authorities when their activities are restricted to

a specific part of Ukraine. For the purposes of legalisation, trade unions must submit their statutes to the competent authorities. However, they already acquire legal personality upon adoption of their statutes. On the basis of the documents provided, the legalising authorities will confirm within a month their legal status, as well as include them on the register of associations, and deliver a legalisation certificate. The competent authorities may ask for additional documents necessary for confirming a trade union's status. They may also ask that statutes be brought in line with legal requirements contained in the Law on Trade Unions and the Resolution of the Cabinet of Ministers on the Approval of the Regulations on the Procedure of Legalisation of Citizens' Associations No. 140 of 26/02/1993.

The Committee noted in its previous conclusion (Conclusions 2010) that for the purposes of "legalisation", trade unions must submit their statutes to the competent authorities and it asked for more information on legalisation requirements under the domestic law, such as documents to be produced. The report indicates that according to Article 16 of the Law on Trade Unions, for the "legalisation" of trade unions or trade unions associations, their founders or leaders of the elected bodies should submit "an application and attach to it the charter, Minutes of the congress, conference, constituent or general meeting of members of the union with the decision on its approval, information on the elected bodies, the presence of trade union organisations in the respective administrative-territorial units, information on the founders of associations".

The Committee notes that the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) noted the contradiction between Section 87 of the Civil Code (2003), according to which an organisation acquires its rights of legal personality from the moment of its registration, and Section 16 of the Trade Unions Act which provides that a trade union acquires the rights of a legal person from the moment of the approval of its statute and a legalising authority confirms the status of trade union and no longer has a discretionary power to refuse to legalise a trade union (Observation (CEACR) – adopted 2008, published at the 98th ILC session in 2009, Convention No. 87 of 1948 on Freedom of Association and Protection of the Right to Organise – Ukraine (ratification 1956). The Committee also notes that the ILO - CEACR has repeatedly requested that the Government amend Section 87 of the Civil Code (2003) so as to eliminate the contradiction within national legislation and fully guarantee the right of workers to establish their organisations without previous authorization. The Committee notes from Observation (CEACR) – adopted 2012, published at the 102nd ILC session in 2013, Convention No. 87 of 1948 on Freedom of Association and Protection of the Right to Organise – Ukraine (ratification 1956) that the Government indicated that the Ministry of Social Policy has requested the Ministry of Justice to examine this issue pursuant to the ILO-CEACR request. The Committee wishes to receive information on any new developments in this regard. In the meantime it reserves its position on this point.

As to employers' organisations, the report indicates that according to Article 6 of the new Law No. 5026 on Employers' Organisations, their Associations, Rights and Guarantees concerning their Activities (Law on Employers' Organisations) the employers' organisations and their associations are established and operate based on the principles of freedom of association. Employers shall have the right to associate in organisations of employers, freely join these organisations and withdraw from them, participate in their activities subject to the conditions and in the order specified in their charters. The report also indicates that the employers' organisations may establish associations of employers' organisations, join and withdraw from such associations, participate in their activities subject to the conditions and in the order specified in the charters of associations of employers' organisations (Article 2 of the Law No. 5026). Employers' organisations and their associations shall independently organise their

activities, arrange meetings, conferences, conventions, meetings of bodies established by them and carry out other activities that do not contradict the law.

Moreover, the Law on Employers' Organisations defines the conditions for termination of employers' organisations and their associations. Employers' organisations and their associations that violate the provisions of the Constitution of Ukraine and the legislation of Ukraine, may be discharged only by court order. It is forbidden to terminate employers' organisations or their associations by the decision of any other body. A decision on the compulsory discharge of associations of employers' organisations does not entail the discharge of employers' organisations that are part of this association (Article 17 of the Law No. 5026).

In its previous conclusion (Conclusions 2010), the Committee noted that the registration of trade unions and employers' organisations can be denied if the name, statutory documents, or other documents submitted for legalisation or registration (in the case of employers' organisation) are not in conformity with domestic law. The Committee asked whether refusals are subject to appeal before domestic courts. The report indicates that Article 16 of the Law on Trade Unions provides that the legalising authority cannot refuse the legalisation of the trade union or association of trade unions. According to the same Law, should the submitted documents of the trade union or of association of trade unions with the referred status not comply, the legalising body shall propose that the trade union or the association of trade unions provide additional documentation necessary for verification of its status. The report indicates that Article 55 of the Constitution of Ukraine provides that "everyone shall be guaranteed the right to challenge in court the decisions, actions, or inactivity of State power, local self-government bodies, officials and officers". Also, the report indicates that everyone shall have the right to appeal for the protection of his rights to the Verkhovna Rada of Ukraine Commissioner for Human Rights (Ombudsman) and that any decision, action or inaction of the authorities can be appealed against in the administrative courts (Article 2 of the Code of Administrative Proceedings of Ukraine). The Committee asks if appeals against the authorities' refusals to register a trade union or an employers' organisation have occured in practice, and requests information on such cases.

The report indicates that Law No. 5026 on Employers' Organisations creates liability for violation of legislation on employers' organisations. Also, the report mentions that those hindering the exercise by the employers of the right to association, as well as officials and other persons guilty of violating the legislation on employers' organisations, the actions or inactivity of whom hinder the legitimate activities of employers' organisations, shall be held liable under the law. The Committee asks if sanctions are provided by the domestic law in case such violations occur.

The Committee previously requested information regarding the requirements as to the minimum number of members and the registration fees. The report indicates that the Law on Trade Unions does not envisage any requirements with regard to the minimum number of members of a trade union. As regards the 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 report indicates that according to the new Law on Employers' Organisations which was adopted on 22 June 2012, the employers' organisation shall submit the document certifying the payment of the fee for state registration of employers' organisation to the place of state registration for the relevant authority. The amount of the fee, and the procedure for collection for state registration are established by the Cabinet of Ministers of Ukraine. The Committee recalls 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 concludes 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.

Freedom to join or not to join a trade union

In its previous conclusion (Conclusions 2010), 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.

The report indicates that those who interfere with the exercise of the right to organise in trade unions, including state officials and other persons guilty of violating the legislation on trade unions, whose action or inaction hinders the legitimate activities of trade unions and their associations, shall bear disciplinary, administrative or criminal responsibility according to the law (Article 46 of Law on Trade Unions). The report does not indicate any specific sanctions, nor any form of compensation in case of discrimination based on trade union membership or activities in the areas of recruitment, dismissal or promotion.

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). Given the lack of information, the Committee considers 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 it has not been established that domestic law provides for compensation that is adequate and proportionate to the harm suffered by the victim.

The Committee noted in its previous conclusion (Conclusions 2010) that Article 36 of the Constitution also states that no one may be forced to join any trade union or be restricted in his or her rights for not belonging to one, and asked for further information on any specific legislation or regulations in this area and on the situation in practice. The report does not indicate any specific legislation in this area, nor any examples from practice. Therefore the Committee repeats its question.

Trade union activities

As regards trade union activities, the report indicates that members of the elected bodies of trade unions, associations of trade unions, as well as authorized representatives of these bodies have the right to:

(i) free access and inspection of workplaces of trade unions at the enterprise, institution, organisation, where the members of the trade unions work;

(ii) request and receive from the employer or other officials the documents, information and explanations relating to working conditions, implementation of collective agreements, compliance with labour legislation and social and economic rights of workers;

(iii) publish their own information in the premises and on the territory of the enterprise, institution or organisation in the places available to employees. The rights and facilities granted to members of the elected bodies of trade unions or to other workers' representatives are analysed under the conclusion on Article 28.

The report further indicates that any changes to the provisions of the employment contract, remuneration of labour, or disciplinary action against employees that are members of the elected trade union bodies is permitted only with the prior consent of the elected body. The dismissal of members of the elected trade union body of the enterprise, institution or organisation (including structural divisions), its managers, trade union representative (where there is no elected body of the trade unions), in addition to maintenance of the general order, shall be permitted upon the prior consent of the elected body, in which they are members, as well as the higher elected body of this trade union (association of trade unions). From the International Trade Union Confederation (ITUC) (Survey of violations of trade union rights), the Committee notes that employers used various tactics to discriminate and harass trade union activists in 2010 – cases of anti-union discrimination included dismissals of trade union members without the consent of the trade union committee as well as illegal dismissals and disciplinary sanctions imposed on activists and leaders. The Committee invites the Government to comment on these allegations.

The Committee notes that allegations have been made of interference by the authorities with trade union internal affairs (ITUC (Survey of violations of trade union rights)). In its previous conclusion (Conclusions 2010), the Committee asked for the Government's comments on the allegations of interference with trade unions internal affairs. The report does not provide any information in this regard. Therefore, the Committee reiterates its question.

The report indicates that it is prohibited to interfere with the charter activities of employers' organisations and their associations by the state bodies, trade unions, political parties and other public associations (Article 7 of the Law No. 5026). Employers' organisations and their associations shall have the right to perform international activities. The international activities of employers' organisations shall be performed by establishing or joining the international organisations of employers or their associations, as well as in other forms that do not contradict the legislation of Ukraine, or the norms and principles of international law (Article 36 of the Law No. 5026).

Representativeness

In its previous conclusion (Conclusions 2010), the Committee asked whether any criteria of representativeness exist in Ukraine. The report indicates that on 23 December 2010 the "Law on Social Dialogue in Ukraine" No. 2862-VI (SDL) was adopted, which defines the representativeness criteria of trade unions and employers' organisations. Article 5 of the SDL establishes some general criteria of representativeness, namely: legalisation (registration) of any organisation (association) and their status; for trade unions, their organisations and associations – the total number of their members; for employers' organisations and their associations – the total number of employees working at enterprises, members of the relevant employers' organisations; sectoral and territorial distribution.

At national level, the trade union associations and employers' organisations associations shall be representative if:

- they are national associations of trade unions, with not less than 150,000 members;
- they are national associations of employers' organisations at the enterprises where there are at least 200,000 employees.

- they incorporate trade unions, their organisations and associations and employers' organisations associations in the majority of the administrative-territorial units of Ukraine established by paragraph 2 of Article 133 of the Constitution of Ukraine, as well as at least three national trade unions and at least three national associations of employers' organisations.

The report indicates that the following associations of trade unions have the status of representative at national level: the Federation of Trade Unions of Ukraine, Federation of Transport Workers' Trade Union of Ukraine, Confederation of Free Trade Unions of Ukraine, Association of Ukrainian Trade Unions "Ednist".

At sectoral level, in order to participate in collective bargaining on conclusion of sectoral (inter-sectoral) agreements and to delegate the representatives to the social dialogue bodies at the appropriate level, trade unions and their associations, respectively employers' organisations and their associations shall be representative if:

- they are legalised (registered) in accordance with the law;
- trade unions having at least 3% of employees engaged in the relevant sector;
- associations of employers' organisations established by the sector at the enterprises of which at least 5% of employees are engaged in the relevant type of economic activity.

At the territorial level, in order to participate in collective bargaining on conclusion of territorial agreements and to delegate the representatives to the social dialogue bodies, the trade unions and their associations and employers' organisations and their associations shall be representative if:

- they are legalised (registered) in accordance with the law;
- they are regional, local trade unions, their organisations and associations established on a territorial basis, the members of which are not less than 2% of the employed population in the respective administrative-territorial unit;
- they are employers' organisations and their associations operating in the territory of the respective administrative-territorial unit, the enterprises of which employ at least 5% of the employed population in the respective administrative-territorial unit.

At the local level, in order to participate in collective bargaining on conclusion of collective agreements under the law the "representative" are:

- primary trade unions, and in their absence – freely elected representatives of employees;
- the employer and/or authorized representatives of the employer.

Furthermore, the report indicates that the SDL provides that trade unions and their associations as well as employers' organisations and their associations that do not qualify for representativeness can grant authority, by the decision of their elected bodies, to representative organisations and associations of the proper level to represent their interests or to submit proposals to the relevant social dialogue bodies. Such proposals shall be mandatory for consideration by the parties during the development of coherent position and decision-making (Article 5 of the SDL).

The assessment of compliance with the criteria for representativeness of the trade unions and their associations, as well as of the employers' organisations and their associations shall be carried out:

- at the national and sectoral levels – by the National Mediation and Conciliation Service;

- at the territorial level – by the relevant branches of the National Mediation and Conciliation Service.

The confirmation of representativeness of trade unions and employers' organisations shall be conducted every five years by the National Mediation and Conciliation Service and its branches, respectively. The trade unions, their organisations and associations, employers' organisations and their associations, including the newly-established ones, shall have the right to address the National Mediation and Conciliation Service and its relevant branches in order to assess the eligibility for representativeness criteria in the presence of the factual basis, but not more than once a year. The National Mediation and Conciliation Service and its branches based on the results of assessment of the eligibility for representativeness criteria and confirmation of the representativeness shall maintain a register of these organisations (associations). The procedure of assessment of compliance with the criteria for representativeness and confirmation of the representativeness of trade unions and employers' organisations after the approval by the parties of social dialogue at the national level was approved by the National Mediation and Conciliation service on 21 July 2011 No. 73.

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). It results from the report that the criteria for representativeness are assessed by the National Mediation and Conciliation Service and its branches. However the report does not contain any information indicating that the representativeness criteria are open to judicial review. Therefore, the Committee concludes 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.

Personal scope

In its previous conclusion (Conclusions 2010) the Committee recalled that Article 5 applies both to the public and to the private sector (Conclusions I, Statement of Interpretation on Article 5). Under Article 19§4(b) of the Charter, states party must secure for nationals of other parties treatment not less favourable than that of their own nationals in respect of membership of trade unions and enjoyment of the benefits of collective bargaining (Conclusions XIII-3, Article 19§4(b), Turkey). The Committee has asked more information on this point.

The report indicates that according to Article 6 of the "Law on Trade Unions, Rights and Guarantees of their activity" foreign citizens and stateless persons cannot form trade unions but may join them, if it is provided for in their charters. Trade union members may be the individuals that work for an enterprise, institution or organisation irrespective of the form of ownership and type of business, for an individual that uses hired labour, the self-employed, or those who study at educational establishments (Article 7 of the Law on Trade Unions).

The Committee recalls that it considered that membership of a trade union should also cover the right for foreign workers to become a founding member, in the same way as nationals. It considered for example that the restriction contained in Turkish legislation was incompatible with this paragraph in so far as it applied to the nationals of Contracting Parties to the Charter (Conclusions XIII-3, Article 19§4b, Turkey). The Committee concludes that the situation in Ukraine is not in conformity with the Charter on this point as the right of nationals of other Contracting Parties to the Charter to form trade unions is restricted.

The report indicates that foreign nationals can enjoy the benefits of collective agreements on an equal basis with citizens of Ukraine. Article 9 of the "Law On Collective Agreements and

Agreements" and Article 18 of the Labour Code provide that the provisions of the collective agreement apply to all employees of the enterprise, institution, organisation, irrespective of whether they are trade union members, and shall be binding both for the employer and the employees of the enterprise, institution, organisation.

At a more general level, the Committee reiterates that "all classes of employees and workers, including public servants, subject to the exceptions mentioned below, are fully entitled to the right to organise in accordance with the Charter." (Conclusions I (1969), Statement of Interpretation on Article 5). The Committee also reiterates that, apart from the restrictions permissible in respect of police officers and members of the armed forces, any restriction of a right recognised in the Charter must, if it is to be compliant, respect the conditions laid down in Article G. That article provides that a restriction must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society for the achievement of that aim. In the case under consideration here, this means that there must be a reasonable relationship of proportionality between the restrictions imposed on freedom to organise and the legitimate aim of protecting the rights and freedoms of others. The Committee accordingly wishes to know whether the right to form and join a trade union is also guaranteed to domestic workers, pensioners, the unemployed and, more generally, to any persons who exercise rights resulting from work.

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 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.
- it has not been established 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.
- it has not been established that the criteria used to determine representativeness are open to judicial review.
- the right of nationals of other Parties to the Charter to form trade unions is restricted.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Committee notes that the "Law On Social Dialogue in Ukraine" (SDL) was adopted on 23 December 2010. The report indicates that following the adoption of the SDL, the National Tripartite Social and Economic Council (NTSEC) was formed through the Presidential Decree No. 347 of 2 April 2011 as a permanent body established by the President of Ukraine for social dialogue.

In its previous conclusion (Conclusions 2010), the Committee requested information on the composition and functioning of the NTSEC. The report indicates that the NTSEC is composed of an equal number of authorized representatives of the parties of social dialogue at the national level and consist of 60 members who shall perform their duties on a voluntary basis, namely: 20 members from the trade unions, delegated by representative national trade union associations; 20 members from the employers, delegated by representative national associations of employers; 20 members from the executive authorities, appointed by the Cabinet of Ministers. The Committee refers to its conclusion on Article 5 as regards the representativeness criteria at national level.

The report indicates that the main tasks of the NTSEC consist of: i) formulating a consolidated position of the parties to the social dialogue on the strategy of economic and social development of Ukraine and on the ways of addressing existing challenges in this field, ii) preparing and submitting agreed recommendations and proposals to the President, the Verkhovna Rada of Ukraine and the Cabinet of Ministers on the development and implementation of the state economic and social policy as well as regulation of labour, economic and social relations. Also, the report indicates that the NTSEC performs advisory, consultative and coordinating functions by elaborating a common position and providing recommendations and proposals of the parties to the social dialogue concerning, *inter alia*, the formulation and implementation of the state economic and social policy, the regulation of labour, economic and social relations; the state of social standards and pay levels; setting key economic and social indicators of the draft State Budget of Ukraine for the respective year; the creation of a favourable environment for the development of social dialogue, and the effective operation of economic entities, trade unions, employers' organizations and their interaction with other institutions of civil society.

With regard to the levels of joint consultation, the report indicates that under the new Social Dialogue Law, social dialogue is carried out at the national, sectoral, territorial and local (enterprise, institution, organisation) levels on a tripartite or bipartite basis. The report further indicates that the social dialogue is established between the parties of social dialogue of the relevant level in the form of: (i) information exchange; (ii) consultation; (iii) coordination; (iv) collective bargaining on conclusion of collective agreements.

The exchange of information is carried out in order to determine the position, achieve agreement, find compromise and make joint decisions on economic and social policy issues. The procedure for exchange of information is determined by the parties. Neither party may refuse to provide information, except when such information is classified in accordance with the law.

The consultations are held at the suggestion of the parties to the social dialogue in order to identify and approximate positions of the parties in making decisions within their competence. The initiating party shall send to the other parties a written proposal specifying the subject of consultations and the dates. Parties that receive such a proposal shall take part in the

consultation, jointly agree on its order and timeframe and determine the participants at the consultation.

The coordination procedures shall be carried out in order "to take account of the parties' positions, develop compromise agreed decisions when drafting the regulations". The procedure of coordination shall be defined by bodies of social dialogue of the appropriate level, unless otherwise provided by legislation or collective agreements. The failure to reach a compromise between the parties as a result of the coordination procedure cannot be a ground for interference with the work of social dialogue bodies.

Collective bargaining is carried out with the aim to conclude collective agreements. Based on the results of collective bargaining the collective agreements are concluded:

- at the national level (the general agreement);
- at the sectoral level (sectoral (and inter-sectoral) agreements);
- at the territorial level (territorial agreements);
- at the local level (collective agreements).

At the sectoral level, the report indicates that there are sectoral (and inter-sectoral) bipartite or tripartite Social and Economic Councils, the tasks of which include the elaboration of proposals and recommendations taking into account the interests of parties to the social dialogue of the sector(s) on: the regulation of economic, social and labour relations of the parties of the social dialogue in the given sector; the remuneration of labour of employees in the sector, ensuring decent working conditions and regulation of social and economic issues, productive employment and labour safety in production; the creation of a favourable environment for the efficient operation of enterprises in the sector; other matters that the parties consider important and the addressing of which significantly affects the development of the sector (sectors) and socio-economic status of employees. The Committee notes that according to Article 16 para. 2 "proposals and recommendations approved by a sector (inter-sector) council's resolution shall be mandatory for consideration by public authorities, local governments, trade unions and employers' organisations operating in the sector".

The report indicates that in order to ensure the social dialogue at the territorial level, the Territorial Tripartite Social and Economic Councils shall be established, the tasks of which shall include: consultation of the parties to the social dialogue on elaborating a consolidated position on the development of economic and social spheres, labour capacity, strategy of regional development taking into account the interests of employees, employers and the state; preparation of recommendations for local executive authorities or local governments on: remuneration of labour, ensuring decent working conditions at enterprises, institutions and organizations located in the region; creation of favorable environment for the efficient operation of enterprises, trade unions and employers' organizations in the region.

The report indicates that employers' organisations (and their associations) and trade unions (and their associations) shall also arrange consulations on a bipartite basis. The Committee requests to be provided with such examples of bipartite consultations from practice. It asks if bipartite consultations are taking part in the private sector as well as in the public sector.

As regards the matters for joint consultation, the Committee has previously noted (Conclusions 2010) that joint consultation refers mainly to dialogue between the social partners within the scope of collective negotiations with a view to conclude a collective agreement and has asked if other matters of mutual interest are considered within the joint consultation. The report indicates that within the Social and Economic Council at all levels, matters of mutual interest such as the remuneration of labour of employees, working conditions, productive employment and labour

safety as well as other matters that the parties consider important at the respective level are addressed.

In its previous conclusion (Conclusions 2010), the Committee asked whether issues of interpretation of collective agreements are dealt with in the framework of joint consultation or within other specific mechanisms. The report indicates that the interpretation of provisions of collective agreements, if necessary, shall be performed by the parties of respective collective agreements based on joint consultation. The procedure for such consultation shall be determined by the parties of collective agreements. At present, there has been no need to develop a separate mechanism for addressing this issue.

As regards the public sector, the Committee asked in its previous conclusion (Conclusions 2010) whether there are specific consultative bodies in the public sector and if so what their structure is and how they operate. The report indicates that in the public sector there are separate consultations with employee representatives at the national and sectoral levels such as, for example, the consultative meetings of the Government with representatives of the trade unions from the public sector in May 2011 devoted to the increase of remuneration of the public sector employees. Consequently, a Resolution of the Cabinet of Ministers No. 524 was adopted on 11 May 2011 ‘On increase of the level of remuneration of labour of public sector employees". The report illustrates that another consultation of the representatives of ministries and public sector trade unions on the salary rates in the public sector took place in March 2013.

The report indicates that the consultation with the public sector trade unions takes place in the framework of negotiations on the conclusion of the general agreement (at the national level) for a new term. Also, the public sector trade unions are members of the NTSEC, authorized representatives of trade unions for collective bargaining on the conclusion of sectoral agreements, boards, community councils established at the central and local executive bodies.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 6§1 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

The report indicates that the relevant legal framework has not changed during the reference period. However, the Committee notes from the report on Article 5 that two new laws have been adopted, namely Law No. 2862-VI on Social Dialogue in Ukraine of 23 December 2010 and Law No. 5026-VI on Employers' Organisations, their Associations, Rights and Guarantees concerning their Activities of 22 June 2012.

In its previous conclusion (Conclusions 2010), the Committee noted that according to Section 4 of the Law on Collective Agreements "trade unions, associations of trade unions in the form of their elected bodies or other representative bodies of workers accordingly authorized by work collectives are entitled to engage in bargaining and conclude collective contracts or agreements on behalf of employed workers" and asked for clarifications as regards the notion of "work collectives". The report indicates that Article 252-1 of the Labour Code provides that the "work collective of the enterprise includes all individuals who have an employment agreement (contract) and other forms of employment relations with the enterprise".

Also, the Committee asked for clarification of the various options foreseen by Section 4 of the Law on Collective Agreements in the event that in the enterprise or at the State, sectoral or territorial level, there are several actors entitled to bargain. The report indicates that the right to participate in collective bargaining and conclude collective agreements is ensured for the parties of social dialogue, the composition of which is determined in accordance with the legislation. Moreover, the report indicates that in order to participate in collective bargaining on conclusion of collective agreements, in tripartite or bipartite bodies and in international activities – the composition of trade unions and employers' parties is determined by the criteria of representativeness. The Committee refers to its assessment under Article 5 for more details as regards the representativeness criteria.

The report indicates that according to Section 4 of the Law on Collective Agreements if there are several trade unions or their associations, or other bodies authorized by work collectives at the enterprise, they should set up a "joint representative body" for collective bargaining and conclusion of a collective agreement. If no agreement is reached on the collective agreement in the joint representative body, the general meeting (conference) of the work collective shall adopt the most appropriate draft of the collective agreement and delegate the trade union or other authorized by the work collective body that developed the draft, to carry out the relevant bargaining and conclude the approved collective agreement with the employer on behalf of the work collective. If no agreement is reached in the joint representative body, the agreement shall be considered concluded if signed by representatives of trade unions or their associations, which include the majority of employees of the state, sector, territory.

The Committee has previously requested information on how representativeness of a single trade union or several trade unions which are represented together, is determined. It also asked what the applicable rules are and which trade union prevails if several trade unions submit a request to bargain collectively but do not act jointly. The Committee refers to its conclusion on Article 5 as regards the representativeness criteria for trade unions. The report indicates that in accordance with Article 37 of the Law on Trade Unions, if there are several primary trade unions at the enterprise, the representation of collective interests of employees of the enterprise with regard to the conclusion of collective agreement shall be performed by the joint representative body established by these primary trade unions at the initiative of any of them. In this case, each trade union should decide on its specific obligations under the collective agreement and

the responsibility for failure to fulfill them. The representative body is formed on the basis of proportional representation. Should the primary trade union organisation refuse to participate in the representative body it shall lose its right to represent the interests of employees in signing the collective agreement.

In its previous conclusion (Conclusions 2010), the Committee noted from ILO that on 20 May 2008, the Supreme Council of Ukraine adopted the draft Labour Code submitted by the People's Deputies in the first reading, and that the Confederation of Free Trade Unions of Ukraine, in a communication dated 4 June 2008, alleged that such a code, would have a negative impact on trade union activities. The Committee asked for more information on the legislative framework. The report indicates that the draft Labour Code of Ukraine (No. 1108 of 4 December 2007) which was adopted by the Parliament on 20 May 2008 in the first reading, was not included in the agenda of the eleventh session of the Verkhovna Rada of VI convocation, and is considered withdrawn. The report also indicates that on 22 April 2013 a new draft Labour Code of Ukraine (No. 2902 of 22 April 2013) was registered with the Verkhovna Rada of Ukraine, which was submitted by the peoples' deputies of Ukraine. The Committee wishes to be informed on any developments with regard to this new draft of the Labour Code.

The Committee notes that according to Article 8 of the Law on Social Dialogue, collective bargaining is carried out with the aim of concluding collective agreements. Based on the results of collective bargaining the following collective agreements are concluded:

- at the national level (the general agreement);
- at the sectoral level (sectoral (and inter-sectoral) agreements);
- at the territorial level (territorial agreements);
- at the local level (collective agreements).

The Committee has previously requested updated information on collective agreements concluded in the private and public sector at enterprise, sectoral and national level and on the number of employers and employees covered by these agreements. The report indicates that according to the State Statistics Committee of Ukraine the number of concluded collective agreements increased between 2009 and 2012 (from 94,964 to 101,712). According to the same source, in 2012, 81.4% of the employees were covered by collective agreements in Ukraine.

In its previous conclusion (Conclusions 2010) the Committee has requested information on the procedures governing the possible extension of collective agreements. The report does not provide the requested information. Therefore the Committee reiterates its question.

The Committee has asked whether the same rules on collective bargaining procedures also apply to the public sector or what other regulations allow a participation of employees in the public sector in the determination of their working conditions. The report indicates that the provisions of legislation regulating the conclusion of collective agreements apply to the public sector as well. The legislation of Ukraine does not contain provisions on the prohibition or special application of collective agreement-based regulation concerning the civil servants. The conclusion of collective agreements concerning this category of employees is performed to the extent that it is not contrary to the Law of Ukraine "On Civil Service", or other regulations that define the general principles of activity and the status of civil servants working in the government bodies and their establishment. The Committee invites the Government to provide examples of such collective agreements concluded within the public sector.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 6§2 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

The report indicates that the national legislation has not changed during the reference period.

The Committee has previously noted that the Law on the Procedure for Settlement of Collective Labour Disputes No. 137/98 of 3 March 1998 provides for conciliation and mediation procedures in cases of disputes. Also, the National Service of Mediation and Conciliation, which is a permanent body established with the aim to facilitate the settlement of collective labour disputes, has among its competences the registration of conflicts, training of mediators and mediation itself. According to Section 15 of the Law, the rulings of the National Service of Mediation and Conciliation shall be advisory in nature and must be considered by the parties to the collective labour dispute and by the appropriate central or local executive authorities, and bodies of local self-government. The report indicates that during the reference period, the National Service of Mediation and Conciliation registered 326 collective labour disputes (among which 89 at the enterprises of the public sector), as follows: 76 disputes in 2009, 64 disputes in 2010, 84 disputes in 2011 and 102 disputes in 2012.

The report indicates that according to the Law on the Procedure for Settlement of Collective Labour Disputes, a collective labour dispute is the dispute that has arisen between the parties of social and labour relations with regard to the establishment of new or changes to existing working conditions and production environment; the conclusion of or the amendment of a collective agreement; the execution of a collective agreement or of its provisions; and non-compliance with the requirements of labour legislation.

With regard to the conciliation procedure, according to Section 8 of the Law on the Procedure for Settlement of Collective Labour Disputes, a conciliation commission, comprised of an equal number of representatives of the parties, is created on the initiative of one of the parties, within three days of the moment a collective labour dispute commences at the production level, within five days at the branch or territorial level, and within ten days at the national level. The conciliation commission makes its recommendations to the parties within a time frame provided by law, respectively within 5 days by the industrial conciliation commission, within 10 days by the sectoral and territorial conciliation commissions, and within 15 days by the conciliation commission at national level as of the date of the establishment of such commissions. The report indicates that the above mentioned timeframes can be extended by agreement between the parties. The same Law provides that the ruling of a conciliation commission shall be contained in a protocol and shall be binding on the parties and applied in accordance with the procedure and within the time frames established in the ruling. Also, according to Section 16 of the Law, the parties to a collective labour dispute, after observing the conciliation procedures, shall have the right to turn for assistance in settling the dispute to the National Service of Mediation and Conciliation which shall consider all the documents and send its recommendations to the parties within ten days.

If the conciliation commission fails to agree to a ruling on the settlement of a collective labour dispute, the matter may be referred to a labour arbitration board by an independent mediator or by one of the parties. According to Section 11 of the Law on the Procedure for Settlement of Collective Labour Disputes, "the labour arbitration board is a body consisting of specialists, experts and others appointed by the parties which rules on the substance of a labour dispute". The labour arbitration board deals also with disputes concerning the observance of a collective agreement and non-compliance with the requirements of labour legislation. The report indicates that the collective labour dispute is considered by the labour arbitration board, if the decision

was not adopted by the conciliation commission in the above mentioned timeframes established by the Law.

The Committee notes that according to Section 11 of the Law on the Procedure for Settlement of Collective Labour Disputes, the composition of the labour arbitration board shall be defined by agreement between the parties. The labour arbitration board must issue a ruling within ten days of its formation. The period may be extended to twenty days by a majority vote of the members of the labour arbitration board. The rulings of the labour arbitration board shall be adopted by a majority vote of its members, set out in a protocol and signed by all of its members.

In its previous conclusion (Conclusions 2010), the Committee noted that although one party may refer a conflict to the labour arbitration board, the decision of the court is only binding on the parties if they agree in advance that it will be so, and asked for further information on how the system works in practice. The report reiterates that the decision of the labour arbitration board is binding if the parties have previously agreed. The example presented in the report illustrates that in a particular dispute, the parties of the collective labour dispute established through an Agreement on the establishment of labour arbitration made prior to the arbitration meetings that the decision of the arbitration would be binding on the parties. In this way, the parties to the collective labour dispute confirmed their intention to strictly abide by the decision of labour arbitration board.

The Committee has previously asked for information on conciliation, mediation and arbitration facilities for the public sector. The report indicates that the Law on the Procedure for Settlement of Collective Disputes applies on one hand to "hired employees" and the organisations established by them to represent and protect their interests, and on the other hand to employers and their organisations. The report indicates that the provisions of the Law on the Procedure for Settlement of Collective Disputes apply to state – owned enterprises as well. Also, the report provides two examples of collective labour disputes registered within the reference period involving respectively the employees of a public joint-stock company and the Chairman of the Board of the public joint-stock company, and the employees of a coal mine belonging to a state enterprise and the Director General of the state enterprise. The Committee recalls that conciliation and arbitration procedures should also exist for resolving conflicts which may arise between the public administration and its employees (Conclusions III (1973) Denmark, Germany, Norway, Sweden). To this end, the Committee asks if conciliation and arbitration procedures/machinery are provided for the public service, in particular if civil servants can make use of the conciliation and arbitration procedures described above or if other proceedings are available to them for the settlement of collective labour disputes.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 6§3 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

Collective action: definition and permitted objectives

The report indicates that Article 44 of the Constitution guarantees workers the right to strike in order to protect their economic and social interests. The procedure for exercising the right to strike is governed by the provisions of the Law on the Procedure for Settlement of Collective Labour Disputes which provides that a strike may be commenced if conciliation procedures have not brought about settlement of a collective labour dispute, or if an employee or its authorised representative refuses to accept the result of the conciliation procedures, or he does not fulfill the agreement reached in the course of settling the collective labour dispute.

Entitlement to call a collective action.

In its previous conclusion (Conclusions 2010), the Committee requested information on who has the right to call a strike, in particular it wished to know whether this is reserved to a trade union.

The report indicates that according with Article 19 of the Law on the Procedure for Settlement of Collective Labour Disputes, the decision on calling a strike at an enterprise shall be taken at the proposal of the elected body of the primary trade union or other organisation of employees, authorised in accordance with Article 3 of the same Law to represent the interests of the hired employees, by a vote of the general assembly of the employees and shall be considered adopted if a majority of the employees or two thirds of the delegates at the conference vote in its favour. The same Law provides that recommendations on whether to declare or not declare a branch or territorial strike are taken at the branch or territorial level at a conference, assembly, plenum or other elected body of representatives of employees and/or of trade unions, and are sent to the appropriate work forces or trade unions. A strike shall be considered a branch or territorial strike if the number of working people at the enterprises where a strike has been declared exceeds half the total number of people working in the branch or territory in question.

The Committee notes from an Observation concerning Ukraine, that the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation (ILO-CEACR) requested that the Government take the necessary measures to amend Article 19 of the Law on the Procedure for Settlement of Collective Labour Disputes, which provides that a decision to call a strike has to be supported by a majority of the workers or two-thirds of the delegates of a conference. In that context, the Government indicated that the draft Labour Code would lower this requirement so as to set it at the majority of workers (delegates) present at the meeting (conference). The ILO-CEACR noted that the draft Labour Code would also provide that an employer is to be invited to the conference, which would constitute a serious impediment to the exercise of the right to strike (Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Ukraine (Ratification: 1956)). The Committee requests further information on the status of the draft Labour Code and in particular it wishes to receive the Government's comments on the information obtained from the abovementioned source.

Specific restrictions to the right to strike and procedural requirements

As regards restrictions related to essential services/sectors, the Committee has previously noted that there are restrictions on the right to strike of workers in the emergency and rescue services, of workers at nuclear facilities, of workers in underground undertakings and of workers at electric power engineering enterprises. The Committee also noted in its previous conclusion (Conclusions 2010) that strikes in the transport sector may be prohibited, inter alia, if the transportation of passengers is affected and asked the Government to confirm that understanding. In that conclusion, the Committee asked for further information on the extent of the restrictions on the right to strike in these sectors, in particular as regards "underground undertakings". The report does not provide the requested information, but it confirms that strikes in the underground mines are prohibited according to Article 42 of the Mining Law No. 1127-XIV of 6 October 1999.

The Committee takes note of the judgment of the European Court of Human Rights in the case of Veniamin Tymoshenko and Others v. Ukraine where the Court found that the ban on a strike by AeroSvit Airlines cabin crew constituted a violation of the applicants' right under Article 11 of the European Convention on Human Rights. The ECtHR noted that the Transport Act which provides for an unconditional ban on striking for employees of passenger carriers has not been amended so that to be brought into conformity with the Ukrainian Constitution and the Resolution of Labour Disputes Act. (ECtHR, Case of Veniamin Tymoshenko and Others v. Ukraine, Application No. 48408/12, Judgment of 2.10.2014).

The Committee recalls that restricting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health (Conclusions I (1969), Statement of Interpretation on Article 6§4). However, simply banning strikes even in essential sectors, particularly when they are extensively defined, is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4 (Conclusions XVII-1 (2004), Czech Republic). As there is no provision for the introduction of a minimum service, and strikes are simply prohibited for the abovementioned categories of employees, the Committee finds that the situation is not in conformity with the Charter.

With regard to the public servants, in its previous conclusion (Conclusions 2010) the Committee found the situation in Ukraine not to be in conformity with Article 6§4 of the Charter on the ground that all civil servants are denied the right to strike. The report indicates that the legislation has not changed during the reference period. Also, the report indicates that according to Article 24 of the Law on the Procedure for Settlement of Collective Labour Disputes, strikes are prohibited for employees, other than technical and maintenance personnel, of the state prosecutor's office, of the judiciary, of the Armed Forces, of state authorities, of security and of law and order state bodies. Furthermore, according to the Law on Civil Service 3723-XII of 16 December 1993, civil servants cannot take part in strikes and take other actions that interfere with the normal functioning of the state body. Moreover, the report indicates that according to the new Law on Civil Service No. 4050-VI of 17 November 2011 which entered into force on 1 January 2014, a civil servant has no right to call a strike and to take part in it.

The Committee recalls that public officials enjoy the right to strike under Article 6§4 of the Charter. Therefore, prohibiting all public officials from exercising the right to strike is not in conformity with Article 6§4. The right to strike of certain categories of public officials may be restricted. Under Article G, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest etc (Conclusions I (1969), Statement of Interpretation on Article 6§4). Since the Committee takes the view that a denial of the right to strike to public servants as a

whole cannot be regarded as compatible with the Charter, it concludes that the situation is still not in conformity with Article 6§4 of the Charter on the ground that civil servants are denied the right to strike.

As to the procedural requirements, the report reiterates that according to the Law on the Procedure for Settlement of Collective Labour Disputes, a strike should be used as a measure of last resort, after all other possibilities of settling a collective labour dispute (such as conciliation and arbitration procedures described in the Conclusion on Article 6§3) have been exhausted. The Committee has previously asked for information on any other procedural requirements that must be fulfilled before a strike takes place and referred to the case of *Trofimchuk* v. Ukraine in the European Court of Human Rights (Judgment of 28 October 2010). The report does not provide the requested information. Therefore the Committee repeats its question.

The Committee notes from NATLEX (Law on the Procedure for Settlement of Collective Labour Disputes) that according to Article 19 of the Law on the Procedure for Settlement of Collective Labour Disputes, "the body or person leading a strike shall inform the employer or its authorised representative in writing no later than seven days before the commencement of a strike, or no later than fifteen days if the decision to strike concerns a continuous production plant". Also, "the body or person leading a strike shall determine the location of the strike in agreement with the employer or his representative". Finally, "in the event of gatherings, meetings or picketing held outside the boundaries of an enterprise, the body or person leading the strike must advise the local executive authority or the body of local self-government of the event planned no later than three days in advance".

The Committee recalls that the requirement to notify the duration of the strike to the employer prior to strike action is contrary to the Article 6§4 of the Charter, even for essential public services. The Committee asks if the law or the practice requires that the above mentioned prior notice addressed to the employer must contain an indication of the planned duration of the strike (in the view also of paragraph 46 of the Judgment of ECtHR of 28 October 2010 in the case of *Trofimchuk* v. Ukraine).

Consequences of a strike

The report indicates that according to Article 27 of the Law on the Procedure for Settlement of Collective Labour Disputes, the participation of workers in a strike, with the exception of strikes ruled illegal by a court, shall not be considered a breach of labour discipline and cannot constitute grounds for disciplinary proceedings. The employees or trade union may decide to create a strike fund made up of voluntary contributions and donations. The report states that the workers who did not participate in a strike, but because of the strike were not able to perform their duties, shall be paid in an amount not less than that established by legislation and the collective agreement concluded at the given enterprise for idle time that is not the fault of those workers. Keeping a record of such workers is the responsibility of the employer or its authorised representative.

The Committee recalls that a strike should not be considered a violation of the contractual obligations of the striking employees entailing a breach of their employment contract. It should be accompanied by a prohibition of dismissal (Conclusions I (1969), Statement of Interpretation on Article 6§4). The Committee asks if the domestic courts have dealt with cases where employees have been dismissed based on their participation in a strike and if so, what were the outcomes.

The report mentions that in accordance with Article 28 of the Law on the Procedure for Settlement of Collective Labour Disputes, organising or participating in a strike that has been ruled illegal by a court constitutes a breach of the labour discipline. Employees shall not be remunerated for the time during which they take part in a strike and the employees' time spent participating in a strike declared unlawful by a court shall not be included in the period of his total and uninterrupted length of service.

The Committee takes note from the ITUC (Survey of Violations of Trade Unions Rights, Ukraine) that there are excessive civil or penal sanctions for workers and unions involved in non-authorised strike actions. In particular workers who strike in prohibited sectors may receive prison terms of up to three years. Also the Committee notes from Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Ukraine (Ratification: 1956) that Section 293 of the Criminal Code provides that organized group actions that seriously disturb public order, or significantly disrupt operations of public transport, any enterprise, institution or organization and active participation therein, are punishable by a fine of up to 50 times the monthly minimum wage, or imprisonment for a term of up to six months. The Committee invites the Government to provide further information and to comment on the information obtained from the above sources.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 6§4 of the Charter on the grounds that:

- the restrictions on the right to strike for employees working in the emergency and rescue services, at nuclear facilities, in underground undertakings as well as at electric power engineering enterprises do not comply with the conditions established by Article G of the Charter;
- the restrictions on the right to strike for employees working in the transport sector do not comply with the conditions established by Article G of the Charter;
- civil servants are denied the right to strike.

Article 21 - Right of workers to be informed and consulted

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

Legal framework

The Committee previously noted that Law No. 905-IV of 5 June 2003 (on trade unions, their rights and their activities) grants the right to information and consultation to the employees, which is implemented through collective agreements.

Personal scope

The Committee noted that employees' right to information and consultation is mainly exercised through their enterprise-based trade union representatives. In this sense, the Committee asked what the rules and procedures are governing the activities of trade union representatives in connection with Article 21 of the Charter. The report indicates that according to Article 40 of the Law on Trade Unions, the members of the elected trade union bodies, trade union associations and the authorised representatives of these bodies shall have the right to request and receive from the employer the documents, information and explanations relating to working conditions, implementation of collective agreements, compliance with labour legislation and the social and economic rights of workers.

The Committee considers that this provision must apply to all undertakings, public or private. It is not applicable to public servants (Conclusions XIII-3, Finland). It recalls that according to the Appendix, for the purpose of the application of Article 21, "the term 'undertaking' is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or services for financial gain and with power to determine its own market policy". States may exclude from the scope of Article 21 those undertakings employing less than a certain number of workers, to be determined by national legislation or practice. For example, the thresholds established by Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002: undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state are in conformity with this provision (cf. Conclusions XIX-3 (2010), Croatia).

The Committee has asked for information on the situation in Ukraine and whether there is a minimum number of employees to which this provision applies. The report indicates that there is not a minimum threshold for undertakings in relation to the right to information and consultation. The Committee understands that all undertakings are considered (no matter of the number of employees) when calculating the number of employees who benefit from the right to information and consultation and asks the Government to confirm this understanding.

Furthermore, when assessing compliance with Article 21 of the Charter, the Committee considers that all categories of employees (in other words all employees with an employment contract with an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation (Judgments of the European Court of Justice, *Confédération générale du travail (CGT)* and Others, Case C-385/05 of 18 January 2007 and *Association de médiation sociale,* Case No. C-176/12 of 15 January 2014)). Therefore the Committee asks what categories of workers (for example full -time workers, part-time workers, temporary workers, trainees) are taken into account when calculating the number of employees who enjoy the right to information and consultation.

The Committee has previously asked what proportion of the total number of private and public sector employees benefit in practice from the right of trade unions or elected representatives to receive such information and be consulted. The report does not provide the requested information. Therefore the Committee reiterates its question.

Material scope

The Committee has previously noted that as a general rule, trade union representatives may ask employers for any information relating to working conditions and employees' pay, work or other legitimate interests, the enterprise's economic development and the application of collective agreements. The employers are required to answer within a week in connection with working conditions, pay, employees' legitimate interests and the enterprise's economic development, and five days in connection with the application of collective agreements.

The Committee asks how employers' obligations in this regard are put into effect, and in particular whether they are required to reply in writing. The Committee also asks if the employer has the obligation to regularly inform the employees in the absence of the prior request of the trade union representatives in this sense.

Remedies

The Committee has previously asked whether employees or their representatives are empowered to appeal to the relevant courts in respect of alleged breaches of the rights covered by Article 21 of the Charter and whether employees or their representatives are entitled to claim damages.

The report mentions the general right provided by the Constitution that "everyone shall be guaranteed the right to challenge in court the decisions, actions, or inactivity of state power, local self -government bodies, officials and officers", and that "everyone shall have the right to appeal for the protection of his rights to the the Verkhovna Rada of Ukraine Commissioner for Human Rights (Ombudsman)"

The Committee recalls that the right to information and consultation must be effectively guaranteed. In particular, workers must have legal remedies when these rights are not respected (Conclusions 2003, Romania). There must also be sanctions for employers which fail to fulfil their obligations under this Article (Conclusions 2005, Lithuania).

The Committee requests that the next report contain detailed information on the administrative and/or judicial procedures available to employees, or their representatives, who consider that their right to information and consultation within the undertaking has not been respected. In this framework, the Committee wishes to be informed whether the employees, or their representatives, are entitled to damages. The next report should also contain updated information on decisions taken by competent judicial bodies with respect to the implementation of the right to information and consultation.

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

Supervision

The Committee previously asked whether penalties may be imposed on employers who fail to fulfill their obligations under this article.

The report indicates that the responsibility of the employer for failure to provide information shall be included in the provisions of the respective collective agreement. In the case of exercising

control of execution of collective agreements the parties are obliged to provide the necessary available information. The signatories of collective agreements shall report annually, within the timeframe stipulated by the collective agreement, on the execution thereof. According to Article 19 of the Law "On Collective Agreements", the "persons that represent the employer or trade unions or other bodies authorized by the labour collective which are responsible of failure to provide the information necessary for collective bargaining and control over the execution of collective agreements shall be subject to disciplinary action or a fine in the amount of up to five minimum wages". According to Article 20 of the same Law "the order and timeframe of penalties, envisaged by this Law shall be regulated by the Code on Administrative Offences". The relevant cases shall be considered by the court upon application of one of the parties of the collective agreement, respective commissions or on the initiative of the Prosecutor. The Committee asks whether in practice collective agreements contain information as regards the responsibility of the employer for failure to ensure the right of employees to be informed and consulted.

The report indicates that articles 41, 41^2 and 41^3 of the Code on Administrative Offences envisage the responsibility for breach of labour legislation and occupational safety legislation, breach or non-fulfillment of collective agreements, failure to provide information for collective bargaining and monitoring the implementation of collective agreements. The Committee requests more detailed and specific information on these penalties, in particular on whether they can be imposed on employers who fail to fulfill their obligation regarding the implementation of the right to information and consultation within the undertaking.

The Committee requests that the next report contain information on the administrative body responsible for monitoring the respect of the right of workers to be informed and consulted within the undertaking. In particular, it wishes to know what are the powers and operational means of this body, as well as receive updated information on its decisions.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 21 of the Charter.

Article 22 - Right of workers to take part in the determination and improvement of working conditions and working environment

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

Working conditions, work organisation and working environment

The Committee previously noted that the Labour Code and Law No. 905-IV of 5 June 2003 entitle employees to participate in determining and improving their working conditions and environment. This right is applied through collective agreements and enforced by the trade union representatives or elected representatives. Representative trade unions are entitled to request from employers any relevant documentation, data or explanations about working conditions or the application of collective agreements. The Committee asks how the employees take part in the determination and improvement of working conditions and working environment if there are no trade union representatives or elected representatives whatsoever in the undertaking.

Protection of health and safety

The Committee previously noted that the Occupational Health and Safety Act No. 2694-XII of 14 October 1992 entitles employees to be consulted about the health and safety conditions in their place of work. It also noted that undertakings with at least 50 employees shall establish "specialist committees" and asked for confirmation of whether this is a requirement or simply a possibility.

The report indicates that according to the Order of the State Committee of Ukraine for Industrial Safety, Labour Protection and Mountain Supervision "On Approval of the Standard Regulation on the Commission on Occupational Health and Safety at the Enterprise" (No. 55 of 21 March 2007), a Commission shall be set up as a permanent advisory body. The purpose of establishment of the Commission at the enterprise is to provide for the proportional participation of employees in addressing any issues relating to safety, occupational health and working environment. The decision on the establishment of the Commission, its quantitative and personal composition shall be adopted by the "labour collective" at a general meeting (conference) based on submissions of the employer and of the trade union. According to Article 16 of the Law of "On Labour Protection" the decision of the Commission shall be of advisory nature.

Also, the report indicates that according to the Order of the State Committee of Ukraine on Labour Protection "On Approval of Standard Regulations on Labour Protection Service" No. 255 of 15 November 2004, based on the Standard Regulation on Labour Protection Service and taking into account the specifics of production and types of activity, number of employees, working conditions and other factors, the employer shall develop and approve the Regulation on the Labour Protection Service of the respective enterprise, define the structure of the Labour Protection Service, its size, main tasks, functions and rights of its employees in accordance with the legislation. The Labour Protection Service shall be directly subordinated to the employer. The Committee asks if the workers or their representatives are involved or take part in the activity of the Labour Protection Service at the enterprise.

In addressing the Committee’s question, the report indicates that the Labour Protection Service shall be established at enterprises with at least 50 employees. At enterprises with less than 50 employees, the functions of the Labour Protection Service can be performed based on a contract for services by persons with appropriate qualification. The functions of the Labour

Protection Service at enterprises with less than 20 employees can be performed by external specialists on a contractual basis, with work experience of at least three years and which have been trained in occupational safety and health.

Organisation of social and socio-cultural services and facilities

In its previous conclusion (Conclusions 2010), the Committee noted that the organisation of social and socio-cultural services and facilities is covered by collective agreements. Employers are required to finance such activities. The Committee asked how employees are involved in the organisation of social and socio-cultural services and, more specifically, how decisions are taken and who should have access to such facilities and services. The report does not provide the requested information. Therefore the Committee reiterates its questions.

Enforcement

In its previous conclusion (Conclusions 2010), the Committee asked whether employees or employees' representatives are entitled to appeal to the relevant courts in respect of alleged breaches of their right to take part in the determination and improvement of working conditions. It also asked what penalties employers are liable to if they fail to fulfil their obligations as regards the right of workers to take part in the determination and improvement of working conditions and the work environment.

The report mentions in broad terms that in accordance with Article 124 of the Constitution the jurisdiction of the courts shall extend to all legal relations that arise in the state and that in accordance with Article 3 of the Civil Procedure Code everyone is entitled to apply to the court in the manner prescribed by the Code for the protection of their rights, freedoms and legitimate interests. In accordance with Article 15 of the Code, the courts deal with civil cases concerning the protection of violated, unrecognized or disputed rights, freedoms or interests arising from, in particular, labour relations. The Committee asks more specifically whether employees or employees' representatives may challenge any violation of the workers' right to take part in the determination and improvement of working conditions and working environment before competent courts or administrative bodies (for example the Labour Inspectorate), what are the competent courts or administrative bodies in this respect, which is the procedure and what are the remedies available.

The report indicates that Article 44 of the Law "On Labour Protection" provides that in cases of violations of the laws and other regulations on labour protection, the obstruction of activity of officials of bodies of state supervision over occupational safety, or of the representatives of trade unions, their organizations and associations, those responsible shall incur disciplinary, administrative, financial and/or criminal sanctions according to the law. The report does not indicate what the specific penalties are in cases of the employers' failure to fulfil their obligations under Article 22. Therefore, the Committee invites the Government to provide examples of such penalties.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 22 of the Charter.

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

Prevention

The Committee notes from the report that, from 2009 to 2011, a joint project was implemented in cooperation with the International Labour Office and the European Union, aimed at, inter alia, promoting and protecting women's rights in the workplace. In the framework of this project, a "hotline" was set up, which provides legal assistance to workers and employees who believe their employment rights have been violated. The project also supported the employers' organisations through a series of workshops on equal opportunity in the workplace, which also concerned the prevention of discrimination and sexual harassment in the workplace, as well as a series of seminars that provide economic justification for employers, including maintaining a healthy working environment and combating sexual harassment. The report furthermore refers to a State Programme for Equal Rights and Opportunities for Women and Men by 2016, which was adopted in 2013, outside the reference period, and to plans under way aimed at establishing a general framework for equal treatment in employment and occupation.

The Committee recalls that Article 26§1 requires States parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat sexual harassment. In particular, in consultation with social partners, they should inform workers about the nature of the behaviour in question and the available remedies. The Committee takes note of the information provided and wishes to be kept informed on the preventive measures implemented with the aim of raising awareness of the problem of sexual harassment.

Liability of employers and remedies

The Committee previously noted (Conclusion 2010) that Section 17 of the Law on Securing Equal Rights and Opportunities for Women and Men No 2866-IV of 08 September 2005, obliges the employer to take measures "to make impossible" any cases of sexual harassment, that is, harassment of a sexual nature expressed verbally or physically that humiliates or offends persons being in relations of labour, official, financial or other subordination.

The Committee recalls that it must be possible for employers to be held liable in cases of sexual harassment involving their staff or occurring on premises under their responsibilities, also when such cases concern people not employed by them, either as victims or perpetrators (independent contractors, self-employed workers, visitors, clients, etc.). It asked whether the employer could be held liable towards the above-mentioned categories of persons and asked for a detailed description of the liability of employers in the above-mentioned cases. The report refers in this respect to Article 154 of the Criminal Code, according to which "compulsion of a female or male to natural or unnatural sexual intercourse by a person on whom such female or male is financially or officially dependent, shall be punishable by fine of up to 50 tax-free minimum incomes, or arrest for a term of up to six months". The Committee takes note of this information, but asks the next report to clarify whether the employer's liability apply also in cases not falling under the Criminal Code, for example if the employer fails to take adequate measures to prevent sexual harassment from occurring or to bring it to an end.

The Committee noted (Conclusion 2010) that, under the abovementioned Law, a person may file a complaint with the Commissioner for Human Rights of the Verkhovna Rada of Ukraine, as

the authority whose function is to secure equal rights and opportunities for women or men in executive authorities and local governments, state law-enforcement bodies or courts. It notes however that, according to the report, no appeals concerning sexual harassment were filed during the reference period. According to the report, the Commissioner is an independent authority. In response to the Committee's questions as the whether the decisions of the Commissioner can be appealed and what means of redress exist for people belonging to employing sectors not falling under the competence of the Commissioner, the report points out that, in accordance with Article 55 of the Constitution, everyone is entitled to challenge in court the decisions, actions or omissions of bodies of state power, bodies of local self-government, officials and officers.

Burden of proof

The report explains the rules concerning the burden of proof under criminal procedure, where no shift of the burden of proof applies (Article 62 of the Constitution, Articles 9, 91, 92 and 94 of the Code of Criminal Procedure).

The Committee recalls that, in order to allow for effective protection of victims, civil law procedures require a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges. It asks that next report provide information on the rules applying to the burden of proof in cases concerning sexual harassment under civil, administrative and/or labour law. It holds that if such information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this issue.

Redress

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. The report does not provide any information in this respect, but refers to the relevant provisions concerning civil action for damages under the Code of Criminal Procedure (Article 128), without providing any relevant examples of their application in respect of sexual harassment. The Committee asks for examples of case law and awards of damages under civil, administrative or labour law.

The Committee points out that 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. In addition, the right to reinstatement should be guaranteed to employees who have been unfairly dismissed or pressured to resign for reasons related to sexual harassment. In the light of the information provided, the Committee reiterates its questions and in the meantime it considers 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.

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

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

The Committee recalls that Article 26§2 of the Charter establishes a right to protection of human dignity against harassment creating a hostile working environment related to a specific characteristic of a person. States Parties are required to take all necessary preventive and compensatory measures to protect individual workers against recurrent reprehensible or distinctly negative and offensive actions directed against them at the workplace or in relation to their work, since these acts constitute humiliating behaviour. Irrespective of admitted or perceived grounds, harassment creating a hostile working environment characterized by the adoption towards one or more persons of persistent behaviours which may undermine their dignity or harm their career shall be prohibited and repressed in the same way as acts of discrimination. This shall be so independently of the fact that not all harassment behaviours are acts of discrimination, except when this is presumed by law.

Prevention

The Committee notes that the report refers to a State Programme for Equal Rights and Opportunities for Women and Men by 2016, which was adopted in 2013, outside the reference period, and to plans under way, aimed at establishing a general framework for equal treatment in employment and occupation. The report furthermore refers to the drafting of a Strategy in response to HIV/AIDS in the world of work for 2012-2017.

The Committee recalls that States parties are required to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral (psychological) harassment, as referred to above. In particular, in consultation with social partners, they should inform workers about the nature and behaviour in question and the available remedies. It asks that the next report provide relevant, comprehensive and updated information on the preventive measures enacted to this effect, in consultation with social partners.

Liability of employers and remedies

The Committee points out that workers must be afforded effective protection against harassment. 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. It must be possible for employers to be held liable towards persons employed or not employed by them who have suffered harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc.

The Committee notes that the report does not contain any information on laws, administrative acts or case law which guarantee the right of persons to effective protection against moral (psychological) harassment in the workplace or in relation to work. It furthermore does not provide any answer as regards the liability of employers, if any, in cases of moral (psychological) harassment or as regards the effective judicial remedies available, comprising the right to appeal to an independent body in the event of harassment. The Committee accordingly finds it not to have been established that the right to protection from moral (psychological)harassment in the workplace or in connection with work is guaranteed.

Burden of proof

The Committee recalls that, in order to allow an effective protection of victims, civil law procedures require a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges. It notes that the report refers in this respect to the general rules under the code of criminal procedure, where no shift of the burden of proof applies (Article 62 of the Constitution, Articles 9, 91, 92 and 94 of the Code of Criminal Procedure). It asks that the next report provide information on the rules applying to the burden of proof in cases concerning moral (psychological) harassment under civil, administrative and/or labour law.

Redress

The report does not provide any information in respect of redress, but refers to the relevant provisions concerning civil action for damages under the Code of Criminal Procedure (Article 128), without providing any relevant examples of their application in respect of moral harassment. The Committee asks for examples of case law and awards of damages under civil, administrative or labour law.

The Committee points out that victims of moral (psychological) 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 right to reinstatement should be guaranteed to employees who have been unfairly dismissed or pressured to resign for reasons related to moral (psychological) harassment. The Committee reiterates its request for information on these aspects, and in the meantime it finds 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.

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

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

Article 28 of the Charter guarantees the right of workers' representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognises, *inter alia*, a similar right in respect of trade union representatives (Conclusions 2003, Bulgaria).

According to the Appendix of Article 28, the term "workers' representatives" means persons who are recognised as such under national legislation or practice. States may therefore establish different kind of workers' representatives other than trade union representatives, or both.

Protection granted to workers' representatives

In its previous conclusion (Conclusions 2010), the Committee noted that the main form of employee representation in Ukraine is trade union representation and asked for information on any workers' representatives other than trade union representatives. Also, the Committee asked what protection is available to elected representatives (who are not trade union representatives).

The report indicates that Article 3 of the Law on Collective Agreements provides that the collective agreement is concluded between the employer or its representatives on the one hand, and one or more trade unions or other bodies authorized by the work collective to represent it, and in the absence of such bodies, by workers' representatives elected and authorised by the work collective on the other side. The same Law provides that elected representatives of the employees are given guarantees and compensation for the period of negotiations. The persons involved in the negotiations as representatives of the parties and experts invited to attend the commission for a period of negotiation and drafting are exempt from their main work while maintaining average pay and including this time with work experience.

The Committee asks if the elected representatives are granted protection against dismissal on the ground of being workers' representatives or against any detriment in employment other than dismissal.

The Committee recalls that protection afforded to workers' representatives shall be extended for a reasonable period after the effective end of period of their office (Conclusions (2010), Statement of Interpretation on Article 28). In its previous conclusion (Conclusions 2010), the Committee noted that as regards trade union representatives, the protection is granted for the entire period of office and for one year after it ends. The Committee asks if protection is extended for a period beyond the mandate in the case of elected representatives, other than trade union representatives. Given the lack of information, the Committee concludes that the situation is not in conformity as it has not been established that workers' representatives, other than trade union representatives, are granted adequate protection.

The Committee further recalls that remedies shall be available to workers' representatives to allow them to contest their dismissal (Conclusions 2010, Norway). In this regard, the Committee asks the next report to provide information on the remedies available to workers' representatives contesting their dismissal.

Moreover, the Committee points out that where a dismissal based on trade union membership has occurred, there must be adequate compensation proportionate to the damage suffered by the victim. The compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement

(Conclusions 2007, Bulgaria). The Committee asks the next report to indicate whether an adequate compensation is granted which is proportionate to the damage suffered by the trade union member who is dismissed.

Facilities granted to workers' representatives

The Committee has previously asked for information with regard to facilities granted to workers' representatives.

The Committee recalls that facilities 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 authorization 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 Committee notes from the ITUC-Survey of Violations of Trade Unions Rights (Ukraine) that in some cases, the management refused to provide premises for trade union activities and that trade union leaders do not get time off for trade union activities. The Committee wishes for the Government to comment on these allegations.

Given the lack of information regarding facilities granted to workers' representatives in the report, the Committee concludes that the situation is not in conformity with the Charter on the ground that it has not been established that facilities are provided to workers' representatives.

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.

Article 29 - Right to information and consultation in procedures of collective redundancy

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

The Committee notes that law Law of Ukraine on Employment of Population was adopted in 2012 but entered into force in 2013, that is, outside the reference period. Therefore, the Committee cannot take it into account in its assessment of the situation during the reference period (2009-2012).

Définition et champ d'application

The Committee notes that during the reference period there were no changes to the definition and scope of collective redundancies.

Prior information and consultation

In its previous conclusion (Conclusions 2010) the Committee took note of Article 22 of Law of Ukraine on Trade Unions (No. 905-IV of 05.06.2003) according to which employers are obliged to inform trade union organisations about the planned redundancies.

The Committee further notes from the report that the General Agreement of social partners provides for the obligation of the parties to the social dialogue to develop common measures to provide employment to those subject to collective redundancy. Trade unions are required to submit proposals for postponement, suspension or cancellation of measures for collective redundancy to relevant public authorities and employers.

Under Article 29 of the Charter the employers are obliged to provide employees' representatives with all relevant information necessary to conduct the information and consultation process. In principle, all relevant information shall be delivered prior to the consultation, but also during the consultation at the request of workers' representatives or without it (Statement of Interpretation on Article 29, General Introduction to Conclusions 2014).

The Committee asks the next report to indicate whether the domestic law (such as the Law of Ukraine on the Employment of Population) guarantees the right to information and consultation, including provision of relevant documents before and during the consultations. It also asks whether employers cooperate with public authorities responsible for the policy counteracting unemployment.

Preventive measures and sanctions

In reply to the Committee's question in its previous conclusion (Conclusions 2010), the report provides statistics relating to the detected violations in cancellations of the employment contract by the employer. The Committee notes, for example, that 45 orders were issued in 2012 to eliminate the detected violations and 32 protocols were issued on administrative offences.

The Committee recalls that consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met. Provision must be made for sanctions after the event, and these must be effective, that is, sufficiently deterrent for employers (Statement of Interpretation on Article 29, Conclusions 2003).

The Committee asks what sanctions exist if the employer fails to notify the workers' representatives about the planned redundancies. It also asks what preventive measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers' representatives has not been fulfilled. The Committee 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.

Conclusion

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