



January 2018

## **European Social Charter**

European Committee of Social Rights

Conclusions 2017

**UKRAINE**

*This text may be subject to editorial revision.*



The following chapter concerns Ukraine, which ratified the Charter on 21 December 2006. The deadline for submitting the 9th report was 31 October 2016 and Ukraine submitted it on 23 March 2017.

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

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

Ukraine has accepted all provisions from the above-mentioned group except Article 12 and Article 13.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Ukraine concern 11 situations and are as follows:

– 1 conclusion of conformity: Article 14§2.

– 8 conclusions of non-conformity: Articles 3§2, 3§3, 3§4, 11§1, 11§2, 11§3, 23 and 30.

In respect of the 2 other situations related to Articles 3§1 and 14§1 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 authorities to remedy this situation by providing the information in the next report.

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

#### **Article 30**

A reform of subsidies was implemented in 2014-2015 aiming at simplifying procedures and strengthening social protection.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information:

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

The Committee examined this information and adopted 5 conclusions of non-conformity relating to these Articles.

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The next report will deal with 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).

The report should also contain information requested by the Committee in conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – policy of full employment (Article 1§1),
- the right to work – freely undertaken work (non-discrimination, prohibition of forced labour, other aspects (Article 1§2 (1<sup>st</sup> ground)),
- the right to work – free placement services (Article 1§3),
- the right to work – vocational guidance, training and rehabilitation (Article 1§4),
- the right to vocational guidance (Article 9),
- the right to vocational training – technical and vocational training; access to higher technical and university education (Article 10§1),
- the right to vocational training – long term unemployed persons (Article 10§4),
- the right to vocational training – full use of facilities available (Article 10§5),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – employment of persons with disabilities (Article 15§2 (1<sup>st</sup> ground)),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – Integration and participation of persons with disabilities in the life of the community (Article 15§3),
- the right to engage in a gainful occupation in the territory of other States Parties – simplifying existing formalities and reducing dues and taxes (Article 18§2),
- the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20 (1<sup>st</sup> ground)).

The deadline for submitting that report was 31 October 2017.

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Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter) as well as in the HUDOC database.

**CONCLUSIONS RELATING TO ARTICLES  
FROM THE THEMATIC GROUP**

**‘Health, social security and social protection’**

### **Article 3 - Right to safe and healthy working conditions**

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

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

#### **General objective of the policy**

The Committee previously noted (Conclusions 2013) that there was a legislative framework which allows a comprehensive approach to occupational health and safety.

In its previous conclusion (Conclusions 2013), the Committee asked whether these policies were regularly reviewed in the light of changing risks. The report does not provide any information on this point. However, the Committee takes note that, according to the information from the comments and direct request raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2016 (105th ILC session) on the Occupational Safety and Health Convention No. 155 (1981), regulations on occupational safety are reviewed no less than once every ten years, in light of scientific and technical advances which can contribute to improvements in workers' protection and in the working environment (Section 34 of the Labour Protection Law).

The report states that the National Social Programme on the Improvement of Occupational Safety and Health and the Working Environment 2014–2018 was approved by Law No. 178-VII of 4 April 2013. The Programme aims to comprehensively tackle occupational safety problems, create a modern healthy and safe working environment, minimise the risk of work-related injuries, cases of occupational disease and accidents in the workplace, and preserve and develop Ukraine's labour potential. The Programme includes, *inter alia*, increasing of the efficiency of the state control over labour protection by various means (bringing the legal and regulatory framework in the field of labour protection in compliance with the modern requirements and EU legislation; monitoring the development, implementation and operation of labour protection management systems at national, industrial and regional levels, etc.). The Committee asks the next report to provide information on the activities implemented and results obtained by the National Programme.

In its previous conclusion (Conclusions 2013), the Committee noted a considerable number of initiatives for developing an occupational health and safety policy which had not reached the implementation stage in the period under review and asked of how these initiatives have helped to create a culture of prevention in respect of occupational health and safety in practice. In reply, the report provides the information only on coal mining sector, notably, on the Programme for improving occupational safety at the coal-mining and mine construction enterprises. This programme, approved by Resolution of the Cabinet of Ministers No. 374 of 29 March 2006, as amended by Resolution No. 521 of 18 May 2011, has been operating since 2011. The Programme has been ordered by the Ministry of Energy and Coal Industry and is aimed at preserving the life and health of miners by means of implementing legal, organisational, technical and socio-economic mechanism to ensure labour protection and safety at coal-mining and mine-construction enterprises. Its main task is to reduce the number of accidents at work, including fatal accidents, at coal-mining and mine-construction enterprises, and the number of miners' occupational diseases. The Committee repeats its request for information of how previously listed initiatives in other sectors than coal mining have helped to create a culture of prevention in respect of occupational health and safety in practice.

The Committee also notes that, according to ILO database NORMLEX, ILO Convention No. 155 on Occupational Safety and Health (1981) was ratified on 4 January 2012.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at

work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

### ***Organisation of occupational risk prevention***

The Committee previously noted (Conclusions 2013) that, while it described certain measures aimed at organising occupational risk prevention, the report did not provide information on how these measures were implemented in sectors other than mining.

In its previous conclusion (Conclusions 2013), the Committee asked for information on the part played by the *Derzhirpromnahlyad* in developing a health and safety culture among employers and workers, and on the requirement for the labour inspectorate to share (practical instruction, prevention measures, advice) knowledge of occupational risks and prevention gained through inspection activities. The report indicates that a new State Labour Service (*Derzpraci*) of Ukraine was established in 2014 by Resolution of the Cabinet of Ministers No. 442 of 10 September 2014 on Optimisation of the Central Executive Authorities System through reorganising and merging the State Inspectorate of Labour and the State Service of Mining Supervision and Industrial Safety. The new State Labour Service (*Derzpraci*) is responsible for, among others, the implementation of state policy in the field of industrial safety, labour protection and occupational health. According to the Law on Labour Protection, the State Labour Service (*Derzpraci*) shall increase the level of industrial safety by ensuring continuous technical control over the state of production, technologies and products. In addition, 25 Expert Technical Centres (state enterprises) which are controlled by the State Labour Service, assess the state of labour protection and industrial safety at enterprises and organisations.

In its previous conclusion (Conclusions 2013), the Committee also asked for information on the assessment of work-related hazards and the adoption of preventive measures geared to the nature of risks, and on the provisions of information and training for workers. In response, the report indicates that the Law on Labour Protection stipulates the general procedure for training on labour protection. Workers at the time of taking up a job and in the course of work must be instructed, trained at the expense of the employer on occupational safety and health issues, on first aid provision to victims of accidents at work and on rules of conduct in the event of an emergency. Officials involved in the organisation of safe works shall undergo training, and their knowledge of labour protection shall be assessed with the participation of trade unions upon hiring and periodically, every three years (or annually — on a special basis). Those employees, including officials, who have not undergone the training, instruction and testing on labour protection, shall not be allowed to work. In addition, the State Labour Service (*Derzpraci*) carrying out state supervision over the compliance with labour protection legislation, including the issues on training organisation (including special training) and assessment of knowledge about labour protection, provides clarification and participates in assessing knowledge of officials and other employees about labour protection.

The report also states that Presidential Decree No. 685 of 18 August 2006 established the Labour Protection Day (28 April). The Organising Committee of the State Labour Service is usually involved in preparing for this even, where an action plan is also approved.

In addition, the report specifies that the State Labour Service and its territorial bodies conducted awareness-raising activities, as well as preventive and consultative work in each region and each enterprise with the purpose to prevent accidents at work.

### ***Improvement of occupational safety and health***

In its previous conclusion (Conclusions 2013), the Committee observed that there was a system which was designed to improve occupational health and safety through research, development and training and asked for information on the resources allocated to the institutions and bodies mentioned and on the materials (recommendations, guides, good practice, advice) aimed at undertakings in the private sector.

Apart from the texts and measures described in the previous conclusions (Conclusions 2013), the Committee notes from the report that several workshops and conferences were held in 2013, particularly in coal mining industry. According to the report, the work conducted contributed to reduction of accident rate, including fatalities, at agro-industrial enterprises, those of social and cultural field, wood and light industry. Furthermore, the active explanatory work was carried out on the creation of the labour protection control system at enterprises during 2012–2015.

Since the report only partially answers its questions, the Committee reiterates all the specific questions concerning improvement of occupational safety and health (Conclusions 2013). The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with Article 3§1 of the Charter in this respect.

### ***Consultation with employers' and workers' organisations***

In its previous conclusion (Conclusions 2013), the Committee noted that there was a system for consulting social partners at public authority level. It also noted that the General Agreement was not truly tripartite as it allied the Cabinet of Ministers and employers' organisations and asked for information on consultation with the competent occupational health and safety bodies within enterprises, in particular enterprises where there are no workers' representatives. The report does not provide any information on these points. The Committee reiterates its request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with Article 3§1 of the Charter in this respect.

The Committee recalls that Article 3§1 requires consultation not only for tripartite co-operation between authorities, employers and workers to seek ways of improving their working conditions and working environment but also for the co-ordination of their activities and co-operation on key safety and prevention issues. Mechanisms and procedures of consultation with employers' and workers' organisations must be set up at national and sectoral level. The right to consultation is satisfied where there are specialised bodies made up of representatives of the government and of employers' and workers' organisations, which are consulted by the public authorities. If these consultations may take place on a permanent or *ad hoc* basis; they must in any case be efficient with regard to powers, procedures, participants, frequency of meetings and matters discussed, in promoting social dialogue in occupational safety and health matters.

### ***Conclusion***

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



### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 2 - Safety and health regulations*

The Committee takes note of the information contained in the report submitted by Ukraine, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§2 of the Charter.

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

The Committee previously examined (Conclusions 2013) the general scope of the regulations and considered that the coverage of occupational hazards by specific occupational health and safety legislation and regulations was insufficient. Nevertheless, the report states that no significant amendments in the national legislation were made during the reference period.

The report indicates that for the purpose of implementation of the Association Agreement between Ukraine and the EU, the plans for implementation of the EU Directives (Council Directives 90/270/EEC of 29 May 1990, 92/57/EEC of 14 June 1992, 92/104/EEC of 3 December 1992, 92/91/EEC of 3 November 1992 and 2009/104/EEC of 16 September 2009) were approved by Order of the Cabinet of Ministers No. 745-r of 17 July 2015.

In addition, the report indicates that Annex XL to Chapter 21 on Cooperation on Employment, Social Policy and Equal Opportunities, Section V of the Association Agreement the European Union (EU) and Ukraine provided for implementation of 27 European directives, including Directives 2002/44/EC of 25 June 2002 and 2003/10/EC of 6 February 2003 (the Directive's provisions shall be implemented within 10 years of the entry into force of this Agreement). However, the Committee notes that this Agreement came into full force in July 2017. It recalls that the fact that national provisions are in conformity with the EU Directive does not automatically render them in conformity with the Charter.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

The Committee therefore considers that the legislation and regulations in force do not meet the general obligation under Article 3§2 of the Charter, which requires that most of the risks listed in the general introduction to Conclusions XIV-2 be specifically covered, in line with the level set by international reference standards.

#### ***Levels of prevention and protection***

The Committee examines the levels of prevention and protection provided for by the legislation and the regulations in relation to certain risks.

#### ***Establishment, alteration and upkeep of workplaces***

The Committee previously examined the prevention and protection levels in relation to the establishment, alteration and upkeep of workplaces (Conclusions 2013 and 2009) and asked for comprehensive information on any regulatory acts to implement the provisions of Act No. 2694-XII. It also asked whether employers are under the duty to assess exposure to occupational risks beyond highly hazardous works and highly hazardous machines, mechanisms and equipment.

The report indicates that the Government will take account of some EU regulations (Directive 92/58/EEC of 24 June 1992, 89/654/EEC of 30 November 1989, 90/270/EEC of 29 May 1990 and 90/269/EEC of 29 May 1990) which have the implementation period from 3 to 10

years from the date of the entry into force of the Association Agreement between Ukraine and the EU. The Committee recalls that the fact that national provisions are in conformity with the EU Directive does not automatically render them in conformity with the Charter.

Given the generality of the information provided, the Committee is not in a position to examine whether the legislation and regulations in force satisfy the obligation under Article 3§2 of the Charter, which requires that levels of prevention and protection required by the legislation and regulations in relation to the establishment, alteration and upkeep of workplaces be in line with the level set by international reference standards. The Committee reiterates its previous requests and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with Article 3§2 of the Charter in this respect.

### ***Protection against hazardous substances and agents***

The Committee asks the next report to provide information on the specific provisions relating to protection against risks of exposure to benzene.

### ***Protection of workers against asbestos***

The Committee previously examined (Conclusions 2009 and 2013) the level of prevention and protection in relation to asbestos. It considered (Conclusions 2013) that the level of prevention and protection against asbestos was not in line with the benchmark international standards. It noted that, during the reference period, the draft regulations on the protection of the health of workers exposed to asbestos and asbestos-containing materials were not yet in force. It therefore requested whether ILO Convention No. 162 was ratified.

The report states that the Action Plan on implementation of the National Programme of Adaptation of the Ukrainian Laws to the EU Laws were approved by Order of the Cabinet of Ministers No. 156-r of 28 March 2012. For the purpose of its implementation, the State Sanitary Rules and Regulations on Safety and Protection of Workers from Harmful Exposure to Asbestos and Asbestos-Containing Materials were approved by Order of the Ministry of Health No. 762 of 1st October 2012 (registered in the Ministry of Justice on 23 October 2012 under No. 1776/22088). According to the report, these rules and regulations include general hygiene requirements for enterprises, institutions and organisations using chrysotile and chrysotile-containing materials and products; sanitary requirements for processes and production equipment; sanitary and hygiene requirements for packaging, storage, transportation and handling operations; requirements for collection, storage, transportation and / or disposal of chrysotile-containing waste; requirements for ventilation, air conditioning and heating of facilities; requirements for providing the employees with individual protective means; requirements for sanitation and housekeeping support of workers; and special requirements for certain industries that use chrysotile and chrysotile-containing materials and products. The Committee asks that the next report provide information on the application of these rules and regulations in practice, as well as on the activities implemented and results obtained by the National Programme regarding the protection of workers against asbestos.

In addition, the report indicates that ILO Convention No. 162 concerning Safety in the Use of Asbestos was not ratified.

The Committee asks whether the authorities have considered drawing up an inventory of all contaminated buildings and materials. Bearing in mind the importance of this question in the light of the right to health of the population (Article 11), the Committee asks the next report to provide specific information on steps taken to this effect. Furthermore, it asks the next report to indicate measures ensuring that in all workplaces where workers are exposed to asbestos, employers take all appropriate measures to prevent, or control, the release of asbestos dust in the air, and that employers comply with the prescribed exposure limits.

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

The Committee previously examined (Conclusions 2009 and 2013) the level of prevention and protection in relation to ionising radiation and asked for information on whether the Radiation safety standards (NRBU-97) and the Principal sanitary regulations for the provision of radiation safety (OSPU-2005) incorporate either ICRP Recommendation (1990) or Council Directive 96/29/EURATOM of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation. It also asked for information on whether obligations had been undertaken under the National Programme or the PCA (Partnership and Co-operation Agreement of 14 June 1994) to incorporate Council Directive 97/43/EURATOM of 30 June 1997 on health protection of individuals against the dangers of ionising radiation in relation to medical exposure, and Council Directive 2003/122/EURATOM of 22 December 2003 on the control of high-activity sealed radioactive sources and orphan sources.

The report does not provide any information on this point. The Committee reiterates its previous requests, in particular whether workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007). It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with this aspect of Article 3§2 of the Charter.

### ***Personal scope of the regulations***

The Committee examines the personal scope of legislation and regulations with regard to workers in atypical employment.

### ***Temporary workers***

In its previous conclusion (Conclusions 2013), the Committee noted that non-permanent and temporary workers employed in heavy works, works with harmful or hazardous working conditions or works requiring professional selection have access to medical surveillance, and asked for information on the representation of these workers at work. It also asked for information and concrete examples of how these types of workers receive training and information in occupational health and safety matters. In addition, it asked for information on whether agency or temporary workers or employees on fixed-term contracts in other sectors of the economy involving exposure to high risks than mining, or at any workplaces, have access to medical surveillance and are represented at work.

The report indicates that the scope of the Law on Labour Protection applies to all legal entities and individuals, who use hired labour according to the legislation, and to all employees (Article 2).

According to the report, the general rule for training in labour protection is determined in Article 18 of the Law on Labour Protection and regulated by Model Regulations on the Procedure for Training and Testing on Labour Protection, approved by Order of the State Committee on Supervision over Labour Protection No. 15 of 26 January 2005 (registered in the Ministry of Justice on 15 February 2005 under No. 231/10511). The Model Regulations establish the procedure for training and testing of public officials and other employees during the work process, as well as students, cadets, attendees and students of educational institutions during the employment and professional education. According to the report, they are aimed at implementation of training system on labour protection of public officials and other employees, medical emergency treatment of accident victims and rules of conduct in case of emergency in Ukraine.

Since the report only partially answers its questions, the Committee reiterates all the specific questions concerning the personal scope of legislation and regulations with regard to workers in atypical employment (Conclusions 2013). The Committee considers that if the

requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with this aspect of Article 3§2 of the Charter.

### ***Other types of workers***

In its previous conclusion (Conclusions 2013), the Committee asked to indicate how information and training on occupational health and safety, and medical surveillance is made available to self-employed, home and domestic workers in practice. It also asked for information on existing arrangements for the representation of these types of workers at work.

The report does not provide any information on this point. The Committee reiterates its previous requests and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with this aspect of Article 3§2 of the Charter.

### ***Consultation with employers' and workers' organisations***

The Committee recalls that regulations must be drawn up in consultation with employers' and workers' organisations. Article 3§2 requires consultation not only for tripartite co-operation between authorities, employers and workers to seek ways of improving their working conditions and working environment but also for the co-ordination of their activities and co-operation in the drafting of laws and regulations at all levels and in all sectors.

In its previous conclusion (Conclusions 2013), the Committee noted that there was a system for consulting social partners at public authority level. It also noted that the General Agreement was not truly tripartite as it allied the Cabinet of Ministers and employers' organisations and asked for information on consultation with the competent occupational health and safety bodies within enterprises, in particular enterprises where there are no workers' representatives.

The report indicates that the representatives of the executive authorities, employers' organisations and trade unions are constantly engaged in comprehensive inspections of enterprises, institutions, organisations for safety and working conditions, are included into the committees on special investigation of each industrial accident, give suggestions for development of law projects and other regulatory legal acts to improve the legal regulation of labour relations and harmonisation of national legislation on labour protection with the rules of the international law, including the International Labour Organisation, participate in meetings of the panels and territorial bodies of the State Labour Service, various preventive activities, meetings, round tables, seminars on labour protection, improvement of industrial safety state.

The Committee reiterates its previous requests and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with this aspect of Article 3§2 of the Charter.

### ***Conclusion***

The Committee concludes that the situation in Ukraine is not in conformity with Article 3§2 of the Charter on the ground that the coverage of occupational hazards by specific occupational health and safety legislation and regulations is insufficient.

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 3 - Enforcement of safety and health regulations*

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

#### **Accidents at work and occupational diseases**

The Committee previously examined (Conclusions 2009) the level of accidents at work and occupational diseases and considered that measures taken to reduce the excessive number of fatal accidents were insufficient.

In its previous conclusion (Conclusions 2013), the Committee asked the next report to explain the disparity between the number of fatal accidents indicated in the report and that published by ILOSTAT. In reply, the report explains it by the difference in the system of collection of relevant information by means of the state statistical observation and the system of collection by means of operational records of accidents at work being subject to special investigation. More specifically, the data published by the ILO are based on the information of the state statistical observation No. 7-tnv (annual) "Report on occupational injuries". While filling the form of the State Statistics Service, enterprises should specify the information on the accident, the investigation of which is completed and the relevant acts are drawn up in the reporting period. The information included in the Report is based on the operational records of accidents at work, that occurred in the reported period, being subject to special investigation and maintained by the State Labour Service (Paragraph 61 of the Procedure for investigation and registration of accidents at work, occupational diseases, and breakdowns in production, approved by Resolution of the Cabinet of Ministers No. 1232 of 30 November 2011).

In its previous conclusion (Conclusions 2013), the Committee requested for detailed information on reporting obligations under Cabinet of Ministers Resolution No. 1112 and on any penalties applicable in case of failure to fulfil these obligations. In response, the report indicates that Resolution of the Cabinet of Ministers No. 1112 of 25 August 2004 became void following a new procedure for investigation and registration of accidents at work, occupational diseases, and breakdowns in production. It was approved by Resolution of the Cabinet of Ministers No. 1232 of 30 November 2011 on some aspects of investigation and registration of accidents at work and occupational diseases. The new procedure requires the employer, when informed by the healthcare establishment and by the employee of the occurrence of an accident at work, to notify the competent authorities and to instruct a commission of inquiry on the facts of the accident if the accident is not the subject of a special investigation within 24 hours. In addition, the legal provisions also provide for penalties for non-communication or late communication by undertakings of information relating to an accident at work. During inspections carried out by the National Employment Service (*Derzpracj*) in the undertakings, measures were taken to identify these accidents and to take the necessary steps to investigate the facts and to responsible for the companies that are responsible for their actions (51 cases of this type were identified in 2015, for which 51 persons had their administrative responsibility established and which resulted in monetary penalties for a total amount of 21 thousand UAH (€689)).

In its previous conclusion (Conclusions 2013), the Committee also asked for information on steps taken to reduce the high level of fatal accidents and diseases and to counter potential under-reporting in practice. The report does not provide information requested, but indicates that the number of accidents at work has been decreasing overall during the reference period (from 9 816 in 2012 to 4 260 in 2015), as has the rate of incidence for such accidents (from 70.62 in 2012 to 38.56 in 2015). These figures reflect a persistent downward trend compared to the previous reference period. The number of fatal accidents has been decreasing too (from 623 in 2012 to 375 in 2015), as has the rate of incidence for such accidents (from 4.48 in 2012 to 3.39 in 2015). These figures reflect a steady downward trend compared to the previous reference period. The report repeats its previous questions.

The Committee notes that the report does not provide pertinent figures or statistics on the number of occupational diseases. It therefore considers that during the reference period occupational diseases were not adequately monitored. The Committee asks that the next report provide information on the legal definition of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases); the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged.

### **Activities of the Labour Inspectorate**

The Committee previously concluded (Conclusions 2013) that the labour inspection system was inefficient. It noted that labour inspection services are divided between several public authorities, who lack resources and co-operate only imperfectly, and asked for information on the implementation of joint labour inspections under the Regulations on the interaction between the *Derzhatomrehuliuvannia* and the *Derzhhirpromnahliad* in matters of occupational health and safety in the use of nuclear energy (registered with the Ministry of Justice on 22 March 2010 under No. 234/17529).

The report indicates that according to Resolution of the Cabinet of Ministers No. 442 of 10 September 2014, the State Labour Service, *Derzpraci*, was created by reorganising and merging the State Labour Inspectorate and the State Service of Mining Control and Industrial Safety. The Regulation on the State Labour Service (*Derzpraci*), which sets out its main tasks, has been approved by Resolution of the Cabinet of Ministers No. 96 of 11 February 2015. Its tasks are multiple: implementation of the national policy on industrial safety, protection of workers, occupational health, implementation of supervision of mines on the national territory, supervision and the verification of compliance with labor legislation, employment of the population, compulsory social insurance scheme in terms of the granting, calculation and payment of benefits, compensation, provision of social services and other forms of physical security; etc.

The report also indicates that 25 expert technical centres (ETC, state enterprises) assess the state of labour protection and industrial safety at enterprises and organisations. Assessment is conducted by inspecting the production sites and analysing the documentation. During the inspection, the methodological assistance is provided to employers, and control over works performance and operation of high-risk equipment is carried out. ETC also carry out periodic technical inspections to determine the technical state of the equipment during its functioning; they also draw up a technical diagnosis of high-risk equipment whose lifetime is in principle exceeded, the results of which are then used to determine whether the equipment in question can continue to be used.

In its previous conclusion (Conclusions 2013), the Committee noted that the proportion of workers covered by inspection visits was too low, and asked for statistics on the number of labour inspectors and on administrative measures (fines, suspensions or termination of activity, cases filed with public prosecution) taken. It also asked for statistics on sanctions applied following cases filed with the prosecution authorities. It then asked for information on the fines and penalties applicable under the Code of Administrative Offences and the Criminal Code for violations of Act No. 2694-XII.

The report indicates that the number of the state inspectors on industrial safety and labour protection decreased during the reference period (from 1 387 in 2012 to 1 022 in 2014 and 635 in 2015). The number of persons who were brought to administrative responsibility in the field of industrial safety and labour protection also decreased significantly (from 91 012 in 2012 to 2 310 in 2015). The number of cases which were transferred to law enforcement

bodies in the field of industrial safety and labour protection, according to the results of inspections, further decreased (from 1 466 in 2012 to 33 in 2015). The number of decisions on termination, suspension, restriction of economic activity (court ruling following claims of the State Labour Service) fell from 54 442 in 2012 to 34 in 2015.

The Committee notes, according to figures published by ILOSTAT, that the number of labour inspectors decreased (from 573 in 2012, 582 in 2014 to 441 in 2015), the average number of labour inspectors per 10 000 employed persons remains steadily low (0.3) during the reference period, the number of labour inspection visits to workplaces during the year fell significantly from 39 478 in 2013 to 2 704 in 2015, and the average of labour inspection visits per inspector also fell during the reference period (from 69 in 2012 to 16.3 in 2015). The Committee requests the next report to explain why the numbers of workplace inspections which are stated in the report and those published by ILOSTAT are different.

The report explains that decline of supervisory activity rates is caused by moratorium on inspections introduced between August 2014 and June 2015 by Laws No. 719-VII of 16 January 2014 on State Budget of Ukraine for 2014 and No. 76-VIII of 28 December 2014 on Introducing Amendments and Declaring Some Legislative Acts Invalid, as well as introduction, starting from the second half of 2013, of the rule regarding possibility of suspension, restriction of works performance, services provision under decision of the administrative court (according to Law No. 353-VII of 20 June 2013 on Amendments to Certain Legislative Acts on Removing Restrictions on Business Activities).

The Committee recalls that under Article 3§3 of the Charter, States Parties must implement measures to focus labour inspection on small and medium-sized enterprises (Statement of Interpretation on Article 3§3, Conclusions 2013). Since it cannot find an answer to its question in the report with regard to this point (Conclusions 2013), the Committee requests that the next report contain this information.

The Committee considers that in the reference period, labour inspection structures were not sufficiently developed in practice to establish that there is an efficient labour inspection, and that in absolute terms, the number of fines imposed and the amounts involved remain too low to have a dissuasive effect. The Committee recalls that an efficient inspection system can only be maintained where a minimum of inspections are performed on a regular basis, the aim being to ensure that the right to enshrined in Article 3 is effectively enjoyed by the largest possible number of workers. It requests that the next report contain information concerning the proportion of workers covered by inspection visits actually made during the reference period, and the number of inspection visits made in the civil service.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 3§3 of the Charter on the ground that the labour inspection system, insofar as it concerns occupational health and safety, is inefficient.

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 4 - Occupational health services*

The Committee takes note of the information contained in the report submitted by Ukraine, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§4 of the Charter.

In its previous conclusion (Conclusions 2015, in conformity with the decision adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on findings of non-conformity for repeated lack of information in Conclusions 2013), the Committee found that the situation as regards national occupational health services was not in conformity with the Charter on the ground that it had not been established that there was a strategy to progressively institute access to occupational health services for all workers in all sectors of the economy. The Committee asked that the next report contain a detailed clarification of the situation whether occupational health services were available for all workers in all branches and sectors of the economy, public as well as private, and if not, whether there was a national strategy for bringing about such access. It also asked whether health services were limited to medical examinations or include for example information, advice and counselling in occupational health matters and whether workers participated in organisation and/or management of health services. It asked for information on the content and organisation of occupational health services in enterprises with less than 50 workers. Moreover, the Committee asked for information on the objectives and consequences of the reorganisation of the State Labour Service as far as occupational health services were concerned.

The report indicates that no significant amendments in the national legislation were made during the reference period.

However, the report indicates that a new State Labour Service (*Derzpracj*) was created according to Resolution of the Cabinet of Ministers No. 442 of 10 September 2014 on Optimisation of the Central Executive Authorities System. This occurred through the merge of the State Inspectorate of Labour and the State Service of Mining Supervision and Industrial Safety and the transfer of functions to the newly formed Service on occupational health, radiation control of workplaces, and exposure doses of workers. The Regulations on the State Labour Service were approved by Resolution of the Cabinet of Ministers No. 96 of 11 February 2015.

The Committee considers that there is no strategy to institute access to occupational health services for all workers in all sectors of the economy.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 3§4 of the Charter on the ground that there is no strategy to develop occupational health services for all workers.



## **Article 11 - Right to protection of health**

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

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

### ***Measures to ensure the highest possible standard of health***

The Committee notes from WHO that life expectancy at birth in 2015 (average for both sexes) was 71.3 years (compared to 69.7 in 2009). Despite this upward trend, the life expectancy rate is still low relative to other European countries. For instance, life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

According to the World Bank data, the death rate (deaths/1 000 population) has increased during the reference period from 14.4 in 2012 to 14.9 in 2015. The report provides statistical data on the mortality rate in urban settlements (13.2 in 2015) as well as in urban areas (18.0 in 2015), stating that the mortality rate of rural population exceeds the mortality rate of urban population by 37.1%.

The Committee notes from the report that the main causes of death are cardiovascular diseases (67.3%), cancer (13.3%), external causes (6.3%) and diseases of the digestive system (4%).

In the context of the national targeted social programs which received funding in the reference period 2012-2015, the report mentions cancer control and measures aimed at prevention and treatment of cardiovascular and cerebrovascular diseases. The Committee asks that the next report contain information on the concrete measures taken to address the main causes of death and their outcomes.

The report indicates that the infant mortality decreased since the last reference period – 8.6 in 2012 and 7.9 in 2015 (compared to 9.17 per 1 000 live births in 2010). The Committee notes this decline, but considers that the rate is still high relative to other European countries (according to Eurostat, the average EU-28 rate was of 3.6 per 1,000 live births in 2015).

As regards the maternal mortality rate, the report mentions that during 2012-2015, the measures taken through the State Program “Reproductive Health of the Nation” were aimed at reducing maternal morbidity and mortality. According to the report, the maternal mortality rate reached 12.7 per 100 thousand live births in 2012, followed by its further increase up to 12.9 in 2013, 14.8 in 2014, 14.6 in 2015. The Committee notes that according to the World Bank indicators, the maternal mortality rate stood at: 25 deaths per 100,000 live births in 2012 and at 24 deaths per 100,000 live births in 2013-2015. These rates are also considerably above the average in other European countries.

The Committee considers that the prevailing high infant and maternal mortality rates, examined together with the low life expectancy rate, show that the situation in Ukraine is below the average in other European countries, and point to weaknesses in the health system. It therefore finds that insufficient efforts and progress has been made in respect of such indicators, and therefore maintains its previous conclusion of non-conformity.

### ***Access to health care***

The Committee refers to its previous conclusion for a description of the health system (Conclusions 2013). It takes note of the information provided in the report on the measures taken during the reference period with regard to emergency medical assistance, tuberculosis, hepatitis, HIV/AIDS, drug abuse. The Committee asks to be kept informed on the implementation of these measures/programmes in the next report.

The Committee previously asked to be kept informed on the implementation of reforms, on how these are meeting the health needs of the population, their impact on health care costs, and whether the reforms are translating into decreasing rates of avoidable mortality (Conclusions 2013). The report indicates that the reform concerning primary medical

assistance (PMA) institutions is in progress due to the administrative-territorial reform and creation of new, united communities. The issues of healthcare facilities autonomy, as well as development and introduction of modern, effective indicators of qualitative primary medical assistance, creation of a pool of modern managers for primary healthcare facilities, are being solved/ addressed. The report provides statistical data on the number of institutions of general practice/family medicine as well as doctors involved in primary medical assistance.

The Committee noted previously that health care expenditure in Ukraine was low by regional standards and had not increased significantly as a proportion of gross domestic product (GDP) since the mid 1990s; expenditure could not match the constitutional guarantees of access to unlimited care. Although prepaid schemes such as sickness funds were growing in importance, out-of-pocket payments accounted for 37.4% of total health expenditure (Conclusions 2013).

The Committee notes from the World Bank data that the public health expenditure represented 4.12% of GDP in 2012 and 3.6% of GDP in 2014. The same source indicates that the out-of-pocket health expenditure represented 41.98% of the total health expenditure in 2012 and 46.21% in 2014, therefore showing an increasing trend during the reference period.

With regard to the financing of the health care, the report indicates that during 2012-2015, the sources of health care system financing are the state and local budgets, as the main and mandatory source, as well as social security funds, private funds of households, employers, non-profit organisations serving households, and funds of international donor organisations for health protection system. In 2015, the funding of medical measures of certain state programs from the state budget amounted to UAH 3,696.9 billion – 33.8% of expenditures for health care (in 2014, UAH 3.13 billion were used for these purposes). Taking into account the significant growth in prices for medicines and medical goods, measures provided for by programs combating tuberculosis, HIV/AIDS, hepatitis, programs aimed at immunologic prophylaxis of children, cancer treatment, the health of seriously ill children's, were funded within the scope of expenditures in 2014.

The Committee took note previously of the comments sent by the "All-Ukrainian Council for Patients' Rights and Safety" stating that despite the constitutional provision which guarantees everyone the right to health care, the lack of political will, poor government performance and complicated procedures effectively prevent millions of patients from getting timely access to adequate treatment. The cost of treatment in some therapeutic areas as well as the high prices of medication, which many patients cannot afford, were underlined as major problems. They also claimed that the limited health care budget in Ukraine could have disastrous consequences in ensuring access to health care in particular for haemophilia and hepatitis C patients. The Committee invited the Government to provide comments on these allegations (Conclusions 2013). The Committee notes from the data presented in the report that the funds dedicated to the national targeted social programs related to centralised measures on treatment of children and adults suffering from haemophilia as well as prevention, diagnostics and treatment of hepatitis, have increased during the reference period.

The Committee recalls that arrangements for access to care must not lead to unnecessary delays in its provision. Access to treatment must be based on transparent criteria, agreed at national level, taking into account the risk of deterioration in either clinical condition or quality of life (Conclusions XX-2 (2013), Poland). The Committee asks that the next report provide statistical data on the actual average waiting times for primary and specialised care as well as inpatient and outpatient care, including surgeries.

The Committee notes from the Report Health Systems in Transition Ukraine 2015 of the European Observatory on Health Systems and Policies that three phases of reforms were to be implemented over a four-year period (2010 – 2014) and sought to strengthen primary and emergency care, rationalise hospitals and change the model of health care financing from

one based on inputs to one based on outputs. However, no fundamental reform of the system has yet been implemented, as conflict and political instability have proved the greatest barrier to reform implementation.

The same source indicates that the core challenges for the Ukrainian health system are still the ineffective protection of the population from the risk of heavy health care costs and the structural inefficiency of the health system, which is sustained by an inefficient system of health care financing. Health system weaknesses are also highlighted by increasing rates of avoidable mortality. According to the same Report Health Systems in Transition 2015, concerns about affordability are linked to the prevalence of informal payments and the cost of pharmaceuticals for treatment, and these concerns in themselves constitute a barrier to access. The Committee asks that the next report contain information on measures and steps taken to tackle these issues. It asks in particular that the next report provide information on the share of out-of-pocket expenses attributable to informal payments, the frequency of informal payments and whether the informal payments represent a common practice in Ukraine. In the meantime, recalling that the cost of health care must not represent an excessively heavy burden for the individual and the out-of-pocket payments should not be the main source of funding of the health system, the Committee concludes that the situation is not in conformity with Article 11§1 of the Charter on the ground that insufficient measures have been taken to effectively guarantee the right of access to health care.

The Committee has previously adopted a general question addressed to all States on the availability of rehabilitation facilities for drug addicts, and the range of facilities and treatments (Conclusions 2009). In its previous conclusion, the Committee reiterated its request that such information be included in the next report (Conclusions 2013). The report indicates that the action plan for 2015 on implementation of the state drug policy for the period till 2020 was approved by Resolution of the Cabinet of Ministers of Ukraine No. 514-r of 25 March 2015. The report provides statistical data regarding the network of institutions providing drug treatment in Ukraine. During 2012-2014, 5 regional centres of re-socialization of drug-addicted youth in 5 regions: Donetsk, Zhytomyr, Kyiv, Mykolaiv, Kherson Regions operated in Ukraine.

The Committee asks that the next report on Article 11§1 contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee asks that the next report on Article 11§1 contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

As regards the right to protection of health of transgender persons, the Committee had previously received submissions from the International Lesbian and Gay Association (European Region) (ILGA) stating that "in Ukraine there is a requirement that transgender people undergo sterilisation as a condition of legal gender recognition". In this respect, the Committee asked whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other invasive medical treatment which could impair their health or physical integrity (Conclusions 2013, General Introduction).

The report indicates that a medical certificate is issued to a person who has undergone gender reassignment, on the basis of which it is decided on further changes in legal status. According to the common practice accepted in Ukraine, the main principles of treatment of patients who intend to reassign gender include conservative and surgical treatment which shall be agreed with the patient by signing of the relevant document, so called "informed consent". This document is a legal confirmation of patient's consent to medical intervention. The report adds that the current national legislation in the field of health care on gender reassignment does not require mandatory sterilisation. The decision on removal of reproductive organs is made only upon request and consent of the patient.

The Committee takes note of the comments submitted by Transgender Europe and ILGA-Europe on the implementation of Article 11 of the Charter in the current cycle stating that in Ukraine there have recently been isolated cases where courts have ruled against sterilisation or other invasive medical treatment, although there is no guarantee that these rulings will be repeated consistently across the country. Additionally, the authorities have put forward proposals for changes in procedures which would end such requirements. The Committee asks to be kept informed of any developments regarding the case law of the courts and the legal framework in relation to the procedure of legal gender recognition for transgender persons.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 11§1 of the Charter on the grounds that:

- the measures taken to reduce infant and maternal mortality have been insufficient;
- insufficient measures have been taken to effectively guarantee the right of access to health care.

## **Article 11 - Right to protection of health**

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

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

### ***Education and awareness raising***

In its Conclusions 2013, the Committee had concluded that the situation was not in conformity with Article 11§2 of the Charter on the ground that it has not been established that public information and awareness raising is a public health priority (Conclusions 2013).

In its Conclusions 2015, the Committee took note of the information submitted by Ukraine in response to the conclusion that it had not been established that public information and awareness raising was a public health priority. The Committee considered it established that public information and awareness raising is a public health priority. It nevertheless asked that the next report contain information on the implementation of the different measures (Conclusions 2015).

The report provides information on the measures taken during the reference period such as campaigns to prevent drug abuse among young people, educational events on drug abuse prevention and promotion of healthy life style for children, youth and their parents, mass media campaigns, annual events promoting the protection of environment, harmful habits prevention, balanced diet, HIV/AIDS prevention.

As regards health education in schools, the Committee noted previously of the activities carried out by the network of Youth-Friendly Clinics (YFC) which have been established in co-operation with UNICEF. The report indicates that in 2015, there were 139 YFCs operating in the country. The Committee understands that the YFCs are providing health education in schools and asks that the next report confirm this understanding.

The Committee recalled that health education should be provided through school life and form part of school curricula. It therefore asks whether providing health education at schools is a statutory obligation, how it is included in school curricula (as a separate subject or integrated into other subjects), and the content of health education (Conclusions 2013).

The report indicates that the legislation provides for medical education at schools. The general education of youth is a priority direction of "Hygienic Education of Children, Adolescents and Youth", and the strategy "Health through Education". For this purpose, the integrated course "Fundamentals of Health", being a part of state component of education for pupils of Forms 5-9 was improved. The academic programs of basic secondary education according to the new State Standards for the Basic and Complete Secondary Education have been implemented since 1 September 2013. The program covers 35 hours. It is structured in four sections: (i) human health; (ii) physical component of health (iii) mental and emotional components of health; (iv) social component of health. The subject "Health and Safety" (0.5 hours per week) according to the academic program "Fundamentals of Health and Safety" is studied in Forms 10-11, as in previous years.

The Committee recalls that sexual and reproductive health education is a process aimed at developing the capacity of children and young people to understand their sexuality in its biological, psychological, socio-cultural and reproductive dimensions which will enable them to make responsible decisions with regard to sexual and reproductive health behaviour. It is acknowledged that cultural norms and religion, social structures, school environments and economic factors vary across Europe and affect the content and delivery of sexual and reproductive health education. However, relying on the basic and widely accepted assumption that school-based education can be effective in reducing sexually risky behaviour, States Parties must ensure that sexual and reproductive health education forms part of the ordinary school curriculum; that the education provided is adequate in quantitative terms; that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is

objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health; and that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, Decision on the merits of 30 March 2009, §§46 – 47). The Committee asks for information in the next report on whether and how sexual and reproductive education is provided in schools in Ukraine.

### ***Counselling and screening***

The Committee took note previously that according to the Ministry of Health issued Order No. 417 on 15 July 2011, all pregnant women are entitled to free observation and examination during pregnancy and in the postnatal period. The report does not provide any information on this point. While referring to its Conclusion under Article 11§1 where it noted that the rate of maternal mortality remains high, the Committee asks updated and comprehensive information on the frequency and results of the consultation and screening for pregnant women throughout the country.

With regard to screening, the Committee has repeatedly asked for any any relevant information on counselling and screening for the population at large (Conclusions 2009, 2013 and 2015).

Given the lack of information, the Committee previously concluded that the situation was not in conformity with Article 11§2 of the Charter on the ground that it had not been established that prevention through screening is used as a contribution to the health of the population (Conclusions 2013 and Conclusions 2015).

The report states that during the reference period no preventive programs of screening for diseases which constitute the main cause of death were implemented. Such activities are held by charity funds, public organisations or at the expense of local budgets during campaigns.

The Committee recalls that under Article 11§2 of the Charter there should be screening, preferably systematic, for the diseases which constitute the principal cause of death (Conclusions 2005, Republic of Moldova). The Committee has ruled that “where it has proved to be an effective means of prevention, screening must be used to the full” (Conclusions XV-2 (2001), Belgium). The Committee notes that there are no screening programs available for the population at large. It therefore considers that the situation in Ukraine is not in conformity with Article 11§2 of the Charter on the ground that prevention through screening is not used as a contribution to the health of the population.

### ***Conclusion***

The Committee concludes that the situation in Ukraine is not in conformity with Article 11§2 of the Charter on the ground that prevention through screening is not used as a contribution to improving the health of the population.

## **Article 11 - Right to protection of health**

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

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

#### ***Healthy environment***

In its previous conclusion, the Committee took note of the different pieces of legislation and regulations adopted by Ukraine during the reference period for the reduction of environmental risks, in particular in the field of air quality, water management, waste management, environmental noise, ionising radiation and food safety. It asked for information on environmental indicators, namely the trends in respect of air pollution, contamination of drinking water and food intoxication during the reference period (Conclusions 2013).

The report provides statistical data with regard to air pollution in urban and rural settlements. For example, in 2015, 3.6% of samples taken in urban settlements contained pollutants in concentrations exceeding maximum permissible level (as compared to 3.3% in 2014, 5.4% in 2013 and 5.8% in 2012), in rural area – 1.0% (as compared to 1.0% in 2014, 0.6% in 2013; 1.1% in 2012).

With regard to drinking water, the report indicates that during the last years, up to 5% of water-pipes did not meet the sanitary standards (3.2% in 2015, 3.1% in 2014, 3.8% in 2013, 4.5% in 2012). Concerning rural population water supply, the report indicates that 5.3% of the rural water-pipes do not comply with sanitary rules and regulations (5.4% in 2014, 6.3% in 2013).

As regards food safety, according to statistic data for 2015, the percentage of samples not complying with standards under microbiological indices is 3.4% (3.2% in 2014, 3.1% in 2013, 2.9% in 2012), under sanitary and chemical indices in 2015 – 0.8% (0.9% in 2014, 1% in 2013, 1% in 2012). The State Sanitary Epidemic Service carries is responsible of finding and removal of defective and dangerous products from circulation.

The Committee wishes to be kept informed on any measures taken to reduce environmental risks as well as trends in respect of air pollution, asbestos, contamination of drinking water and food intoxication during the reference period.

#### ***Tobacco, alcohol and drugs***

The Committee noted previously that advertisement of tobacco on television, radio, outdoor advertising media and in printed media is prohibited. Moreover in May 2012, the Parliament passed a law which completely prohibited smoking of tobacco products in public places, transport, enterprises, institutions and organisations (Conclusions 2013).

The report indicates that according to the data of national surveys conducted by the Kiev International Institute of Sociology, the spread of daily smoking among the population in Ukraine aged 18 and older was 9.0% among women and 42.4% among men in December 2015. The report adds that according to the survey of the State Statistics Service of Ukraine, the prevalence of smoking among population in Ukraine aged 12 and older was 18.4% in 2015. In general, the prevalence of smoking decreased from 21.8% to 18.4% during three years (2012-2015). The most significant reduction of heart diseases prevalence was observed in 2013 when it decreased by 9% during a year. The report adds that smoking was prohibited in catering and other places in 2013. The Committee notes from the WHO Report on the global tobacco epidemic, country profile Ukraine 2017, that indoor offices and workplaces are not smoke-free environments in Ukraine. It asks whether measures are taken to address this issue.

With regard to alcohol consumption, the report indicates that in 2013, amendments were brought to Article 130 of Code of Ukraine on Administrative Offences in order to strengthen

the responsibility for driving vehicles in a state of alcohol, drug or other intoxication. Moreover, on 1 July 2015 amendments were brought to the Tax Code in the sense that all drinks containing ethyl alcohol in quantity exceeding 0.5% by volume belong to the category of alcohol drinks, including beer. That meant in fact that all legislative regulations governing alcoholic industry will apply to beer (e.g. restrictions in respect of advertising, sponsorship).

Concerning drugs, the report indicates that the action plan for 2015 on implementation of the state drug policy for the period till 2020 was approved by Resolution of the Cabinet of Ministers of Ukraine No. 514-r of 25 March 2015. Preventive and awareness-raising activities on combating drug abuse, promotion of healthy lifestyle and habits to resist harmful influence of drug abuse in last years were carried out together with more than 100 NGOs. These NGOs provide services to young people who have mental and behavioural disorders as a result of use of psychoactive substances. The Committee asks to be kept informed on the implementation of this policy, namely on its impact concerning trends in drug consumption.

The Committee asks that the next report contain updated figures on the levels and trends with regard to tobacco, alcohol and drugs consumption, as well as the measures taken to reduce and prevent the consumption.

### ***Immunisation and epidemiological monitoring***

The Committee noted previously that an external review of Ukraine's National Immunisation showed that programme performance in Ukraine had declined in recent years due to vaccine stock-outs, excessive medicalisation of vaccine delivery, and the loss of public confidence in immunisation. The Committee took note of the low vaccination coverage rate of infants in 2011 (e.g. poliomyelitis – 54.3%; pertussis, diphtheria, tetanus – 45.9%; hemophilic infection – 26.2%; measles, parotitis, rubella – 67.0%; hepatitis B – 21.6%). The Committee invited the Government to submit comments on this matter and reserved its position on this point (Conclusions 2013).

The report indicates that for the last years, it could be noted "an instability of epidemic situation in respect of infectious diseases controlled by means of specific immunological prophylaxis." The situation is connected with the decrease of volumes of preventive injections due to substantial lack of financing of the State Immunological Prophylaxis Program for 2009-2015 and delayed supply of immuno-biological medicines to the regions. The report does not provide data on the coverage rate corresponding to the reference period under monitoring. The Committee requests that the next report contain data on the vaccination coverage rate for the vaccines included in the National Immunisation Programme.

The Committee notes from the WHO that on 1 September 2015, Ukraine's Minister of Health announced that polio had been identified as the cause of paralysis in 2 children, aged 10 months and 4 years, who lived in Zakarpatska oblast in south-western Ukraine. The country conducted three rounds of supplemental immunisation to protect the children of Ukraine against the crippling disease. The same source indicates that a team of technical experts assessed Ukraine's response to a polio outbreak and concluded that transmission of poliovirus has been interrupted. Nevertheless, the team remained concerned about significant gaps in immunisation and surveillance that put Ukraine at high risk for new outbreaks. Owing to low coverage, immunisation gaps accumulated in Ukraine.

According to WHO, in April 2016 a worldwide the "OPV Switch" took place replacing the trivalent OPV (tOPV) vaccine to bivalent OPV (bOPV) vaccine, removing the type 2 component (OPV2) from immunisation programmes. Trivalent vaccines must be destroyed to prevent any chance of transmission. The Committee asks whether this has been done in Ukraine and whether the new vaccine is being used. The Committee notes the WHO recommendation with regard to poliovirus, that if enough people in a community are immunised, the virus will be deprived of susceptible hosts and will die out. High levels of



vaccination coverage must be maintained to stop transmission and prevent outbreaks occurring.

The Committee recalls that States Parties must operate widely accessible immunisation programmes. They must maintain high coverage rates not only to reduce the incidence of these diseases, but also to neutralise the reservoir of the virus and thus achieve the goals set by WHO to eradicate several infectious diseases (Conclusions XV-2 (2001), Belgium). Countries must demonstrate their ability to cope with infectious diseases, such as arrangements for reporting and notifying diseases, special treatment for AIDS patients and emergency measures in case of epidemics (Conclusions XVII-2 (2005), Latvia). In light of the above, the Committee considers that the situation in Ukraine is not in conformity with Article 11§3 of the Charter on the ground that efficient immunisation and epidemiological monitoring programmes are not in place.

### ***Accidents***

The report does not provide any information on this point. The Committee recalls that under Article 11§3 of the Charter, States Parties must take steps to prevent accidents. The main sorts of accidents covered are road accidents, domestic accidents, accidents at school and accidents during leisure time (Conclusions 2005, Republic of Moldova).

The Committee asks for information on measures/policies taken to reduce and prevent the number of the above mentioned types of accidents and trends in this field (whether the number of accidents increased or decreased).

### ***Conclusion***

The Committee concludes that the situation in Ukraine is not in conformity with Article 11§3 of the Charter on the ground that efficient immunisation and epidemiological monitoring programmes are not in place.

## **Article 14 - Right to benefit from social services**

### *Paragraph 1 - Promotion or provision of social services*

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

### **Organisation of the social services**

The report underlines that a number of regulatory legal acts aimed at reforming the system of social services provision was approved during the reference period. The Strategy for Reforming Social Services Provision (hereinafter “the Strategy”) was approved by Resolution of the Cabinet of Ministers of Ukraine No. 556 of August 08, 2012. The purpose of the Strategy is to ensure that social services are available to all people and also to increase their efficiency and quality. In order to achieve these objectives the Strategy set up areas of intervention, principles and criteria to be developed. The report indicates that, in this respect, for the purpose of implementing the Strategy, an Action Plan for 2013-2016 was approved by Resolution of the Cabinet of Ministers of Ukraine No. 208 of March 13, 2013. With the reform of the system of social services an organizational model for the provision of social services at the local level has been created. In this respect the Committee asks to know the impact of the Strategy for Reforming Social Services and the effect of the Action Plan 2013-2016 on social services beneficiaries.

The report indicates that to implement the reform of social services during 2012-2015, 40 regulatory legal acts were adopted providing for: a basic list of social services; criteria for activity of the entities providing social services; the procedure for providing social services with establishment of differentiated fees according to the income of the beneficiaries; the procedure for ordering social services and methods of assessing bids; methodical recommendations on monitoring and assessment of the quality of social services, on informing people/users on their rights and on the determination of the cost of social services. Moreover, a new revision of the Law of Ukraine *On Social Services* was developed to ensure the realisation of a specific system for providing social services and for the purpose of eliminating legislative and technological problems due to the decentralization of social services,

### **Effective and equal access**

In its previous conclusion (Conclusions 2013) the Committee requested confirmation that entitlement to general social welfare services applies to the whole population.

The report indicates that in accordance with the Law of Ukraine *On Social Services*, every person and separate groups of persons being in difficult life circumstances are entitled to social services provisions. The report underlines that the methodical recommendations on informing the population about access to social services were approved by Order of the Ministry of Social Policy No. 828 of October 28, 2014.

In its previous conclusion (Conclusions 2013) the Committee requested the next report to provide clarification on whether social welfare services are only available to persons in need who have no relatives to help them, the type of assistance which relatives are required to provide and the consequences for the relatives if they refuse.

The report indicates that the territorial centres provide social services to all citizens, irrespective of the fact whether they have relatives or not.

In its previous conclusion (Conclusions 2013) the Committee requested to know the average fee charged to users. While acknowledging the list of categories of individuals entitled to free access to social services, the Committee asked whether these services are available free of charge for persons who are not on this list but do not have the means to pay for the social services they need.

The report indicates that rates for chargeable social services are established by a territorial centre in accordance with Resolution of the Cabinet of Ministers of Ukraine No. 268 of April 9, 2005 *On Approval of the Procedure of Regulation of Rates for Chargeable Social Services*. The report provides a detailed list of the average cost of different social services at territorial centres. In order to give services also to people unable to pay it has been established a differentiated fee amounting to not more than 12% of the person's income. In this respect the Committee asks that the next report provides information on the maximum amount charged to beneficiaries. The report underlines that according to the Law *On Local Self-Government of Ukraine*, the local self-government authorities may, at their own expense establish to guarantee social services provision to the people in need, in addition to those established by the legislation. The report states that, according to the Law approved by Decree of the Cabinet of Ministers of Ukraine No. 1417 of December 29, 2009, citizens having relatives who are obliged to provide care and assistance to them, in some exceptional cases, may be released from payment for social services if they have a low-income and receive state social support in the manner prescribed by the legislation, or if they are addicted to psycho-active substances, alcohol, are imprisoned etc.

In its previous conclusion (Conclusions 2013) the Committee reiterated its question about the geographical distribution of social services in order to be able to assess whether it is broad enough for social services to be available in practice for persons who need them regardless of where they live.

The report provides statistical data from the State Statistics Service of Ukraine "Social Protection of Population" indicating the geographical distribution of territorial centres of social servicing, residential facilities for elderly people and disabled persons (adults, children and youth) social services for family, children and youth. According to a Research of Caritas Ukraine ordered by the Ministry of Social Policy it is also indicated the Regional indices of the level of satisfaction of users of social services in every region. *The Procedure for Determination of Needs of Population of an Administrative Territorial Unit in Social Services* was approved by Order of the Ministry of Social Policy of Ukraine No. 28 of January 20, 2014.

In its previous conclusion (Conclusions 2013) the Committee requested clarification whether the authority to which the beneficiaries of social services may appeal in urgent cases of discrimination and infringements of human dignity is an independent body.

The report indicates that the authority (Prosecutor's Office) to which the beneficiaries of social services may appeal in urgent cases of discrimination and infringements of human dignity is an independent body. The legal aspects of independence of the Prosecutor's Office are determined by Law of Ukraine No. 1697-VII October 14, 2014 *On the Prosecutor's Office*.

In its previous conclusions (2013), as there is no exception in the 2003 Act on Social Services regarding its application to foreigners, the Committee asked to confirm that equal treatment between nationals and non-nationals from states parties to the Charter is ensured.

The report confirms that the right to access to social services is available to the citizens of Ukraine, as well as to foreigners and stateless persons who live in Ukraine in a regular situation and are found themselves in difficult life circumstances, including persons covered by the Law of Ukraine *On Refugees and Persons Requiring Additional or Temporary Protection*.

### **Quality of services**

In its previous conclusion (Conclusions 2013), the Committee concluded that the situation was not in conformity with Article 14§1 of the Charter on the ground that there are no mechanisms for supervising the sufficiency of social welfare services.

The report indicates that the Methodical Recommendations for Monitoring and Assessment of Quality of Social Services were approved by Order of the Ministry of Social Policy No. 904 of December 27, 2012. In it a number of different stages of assessment of social services quality are recommended. Moreover the recommendations include, indices of quality of social services and criteria of compliance for internal and external assessment of quality of social services. In this respect the Committee asks that the next report provides information on the effective implementation of the quality assessment and of the impact on the quality of social services since the introduction of the Methodical Recommendations for Monitoring and Assessment of Quality of Social Services.

In its previous conclusion (Conclusions 2013), the Committee reiterated its question concerning the amount of public spending on *social services and the legal basis for data confidentiality and respect for privacy*.

The report indicates that the confidentiality of personal data is guaranteed by Law of Ukraine No. 2297-VI of June 01, 2010 *On Protection of Personal Data*.

The report indicates that in 2014 the financing of institutions and organizations providing social services was decentralized to regional budgets, budgets of regional cities, district budgets, budgets of united territorial communities. The total amount of funds of local budgets allocated for providing social services by different institutions and individuals exceeded UAH 4.7 billion in 2015. According to statistical reports, as of the end of 2015, in Ukraine operates: – 657 territorial centres of social servicing (providing social services), which provide services to more than 1.43 million persons); – 289 residential facilities for elderly persons and disabled persons (46.400 people); – 105 facilities for homeless persons, centres of social adaptation of persons who served their sentences of restriction of liberty or imprisonment (more than 27.200 people).

#### *Conclusion*

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

## **Article 14 - Right to benefit from social services**

### *Paragraph 2 - Public participation in the establishment and maintenance of social services*

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

The legal framework governing relations concerning voluntary activities is Law No. 3236-VII of 19 April 2011 on volunteer activities (Conclusions 2013).

In its previous conclusion (Conclusions 2013) the Committee pointed out that a supervisory machinery must be put in place to monitor the quality of the services provided by individuals and voluntary organisations, while safeguarding users' rights and ensuring respect for human dignity and fundamental freedoms, therefore it asked to clarify the situation in this respect.

The report indicates that a number of regulatory legal acts aimed at reforming the system of social services provision was approved in the reported period. (see the information on Article 14 § 1 regarding the methodological recommendations of monitoring and assessment of social services quality)

In its previous conclusion (Conclusions 2013) the Committee asked that the next report provided statistical data on subsidies paid by the central government and local authorities to voluntary organisations which provide social services. It also requested that the next report described any other types of support that may exist for voluntary organisations, such as, for example, tax incentives.

The report indicates that the organisations and institutions engaged in voluntary activities are entitled to receive specific funds or properties to develop their work also in the sector of provision of social services (e.g. by participating to bids or public private partnership). The report indicates that in 2015, 9 regional advisory bodies have been created ( responsible for coordination of work regarding the voluntary and charitable assistance). The promotion of voluntary sector resulted in an active involvement of the young and elderly people in volunteering with organization of charity fundraising and providing voluntary assistance to socially vulnerable groups of the population.

The report indicates that in 2015, social services were commissioned in accordance with Resolution of the Cabinet of Ministers of Ukraine No. 324 of April 29, 2013 *On Approval of the Procedure for Commissioning of Social Services at the Expense of the Budget Funds in two regions* ) for total amount of approximately UAH 200,000 ( in 2014 social services were commissioned in one region for total amount of UAH 95,000). The report indicates that in order to involve non-governmental organizations to the provision of social services, the local authorities can use also other mechanisms to support them (e.g. funds for social projects, allocation of funds from the local budgets within the framework of social and economic development of the regions).

### *Conclusion*

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

## **Article 23 - Right of the elderly to social protection**

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

### ***Legislative framework***

The Committee points out that the main aim of Article 23 of the Charter is to enable elderly persons to remain full members of society and, it consequently invites the States Parties to make sure that they have appropriate legislation to, firstly, combat age discrimination outside employment and to, secondly, provide for a procedure of assisted decision making.

With regard to the fight against age discrimination, the Committee asked in its previous conclusions (Conclusions 2013), if the prohibition of discrimination enshrined in Law No. 3712-XII of 16 December 1993 applied both to the public sector and to the private, and what remedies were available to victims of discrimination. The report does not answer the first part of the question but does state that Law No. 5207-VI of 6 September 2012 on the Principles of Preventing and Combating Discrimination in Ukraine applies to natural and legal persons under public and private law. The law ensures equal rights and freedoms, equal treatment and equal opportunities for all individuals and groups of individuals. The Committee wishes to know whether there is a case-law on age discrimination outside employment which would protect elderly persons from such a form of discrimination.

The report also states that victims of discrimination have the right to complain to the relevant government authorities, the Commissioner for Human Rights of the Verkhovna Rada of Ukraine or a court. The Committee asks whether there is any relevant case-law or whether statistics can be provided on the number of complaints registered or cases dealt with in relation to age discrimination.

With regard to assisted decision making for elderly persons, the Committee previously asked (Conclusions 2009 and 2013) whether there were safeguards to prevent elderly persons from being arbitrarily deprived of the right to take autonomous decisions. The report states, in this respect, that persons who are recognised as being fully or partly incapacitated have the right to be placed under guardianship or wardship after a court decision. All persons who are aware of a situation which may be of interest to the guardianship or wardship authorities are required to notify it thereof. Persons with legal capacity whose state of health does not enable them to exercise their rights or meet their obligations are entitled to be assisted by a third party of their choice. At the request of the person concerned, the name of his or her de facto representative is initially registered then confirmed by the guardianship or wardship authority.

### ***Adequate resources***

When examining the adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures provided for elderly persons, aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources are then compared with median equivalised income. However, the Committee points out that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The Committee notes that the statutory retirement age for women has been raised: it is now 60 years and 30 years of contributions. There has been no change in the age of entitlement to old-age benefits for men.

The report states that Law No. 3668 of 8 July 2011 on measures to ensure the legislative reform of the pension system made it possible both to adjust pensions in line with monthly

wages from 1 May 2012 onwards and to increase pensions for war veterans. The report also states that the conflicts in Ukraine in 2014-2015 resulted in increased inflation and economic decline. However, the Committee notes that despite the austerity measures adopted in 2014, Ukraine raised the minimum amount of social assistance pension from UAH 949 during the previous reference period to UAH 1 074 (about €43) from 1 September 2015 onwards.

The Committee notes that in 2014-2015, the poverty threshold was UAH 1 560 (about €62), whereas the extreme poverty threshold (as per the relative criterion) was UAH 1 248 (about €49). It acknowledges the efforts made by Ukraine but notes nonetheless that, although the minimum pension significantly increased in comparison to the previous reference period, by at least 13%, it is still lower than the poverty threshold and even slightly lower than the extreme poverty threshold. It also notes that the relative-criterion-based poverty rate was 23.8% in 2014-2015 while the extreme poverty level was 10.3%.

The Committee asked in its previous conclusion (Conclusions 2013) whether any additional cash benefits/allowances were available for recipients of minimum old age pension (or guarantee pension for low income elderly persons, where this applied). The report does not provide any information on this subject, so the Committee repeats its question.

For these reasons, the Committee considers that the minimum level of pension is inadequate. Therefore, the situation is not in conformity with the Charter in this respect.

### ***Prevention of elder abuse***

In its previous conclusions (Conclusions 2009 and 2013), the Committee asked, *inter alia*, what had been done to assess the extent of the problem and raise awareness on the need to eradicate elder abuse and neglect, and if any legislative or other measures had been taken or were planned in this area. The report states that the non-profit organisation Care for Elderly People in Ukraine launched a campaign to prevent elder abuse with the support of the European Union. The results of this campaign have been published and a conference on the subject was held in Kyiv in February 2014. The Committee asks for further information on the outcome of this campaign in the next report. The report also states that Commissions to help victims of abuse have been established in co-operation with local authorities. The Committee asks for more information on this subject. Lastly, the report states that a methodological guide on identifying signs of abuse has been translated and published and that 300 volunteers have attended training courses on how to detect cases of elder abuse and help victims.

### ***Services and facilities***

The Committee points out that, although Article 23 makes reference only to information about services and facilities, it presupposes that such services and facilities exist.

With regard to the services and facilities themselves, the Committee asked, firstly, in its previous conclusion (Conclusions 2013) for clarification on the services available, and their scope and cost. The report states that the Strategy for Reforming the System of Social Services, adopted by Resolution No. 556 of the Ukraine Cabinet of 8 August 2012, is intended to ensure that social services are available, improve their quality and make them more efficient. The report specifies that, to implement this strategy, the Cabinet adopted an Action Plan for 2013-2016, approved by Resolution No. 208 of 13 March 2013, in addition to over 40 regulatory instruments.

In 2014, Ukraine had 658 social service centres providing services for 1,430,016 persons. The Committee notes that the number of centres has been steadily decreasing since its initial conclusion (Conclusions 2009) and, asks for the next report to explain why there has been this decrease and what impact it has had on the elderly. It also asks what is the proportion of the elderly on the Ukrainian population.

The report provides an exhaustive list of social services provided by social service centres. To determine the content and scope of social services, the means of providing them and the indices of their quality, the Ministry of Social Policy has issued a number of orders. The report adds, moreover, that unemployed persons may provide assistance for elderly persons or persons with disabilities who require constant physical assistance at home in exchange for financial compensation. Over 71 000 elderly citizens and disabled people have received this type of service. Some regions, particularly Volyn, Odessa, Kharkiv, Poltava, Kirovograd and Kyiv, have set up special transport services for the elderly and the disabled. Over 86 000 people benefited from these services in 2015. More than 36 800 elderly persons have benefited from the courses provided at some 300 Universities of the Third Age operating at social service centres.

Persons who are unable to care for themselves because of their old age, their state of health or their disability have free access to the social services under the Law of 2003 on the social services (see Conclusions 2009 and 2013, Article 14§1). A fee may, however, be charged. The amount of the fees to be covered by the beneficiaries is set by the social service centres. To facilitate access to services for persons with low incomes, these fees, which may be deferred, may not exceed 12% of the income of the person concerned. Furthermore, in accordance with the Law on Local Self-Government in Ukraine, local authorities may adopt more generous rules on social security for their inhabitants. The Committee asks for information in the next report on the number of elderly people who benefit from these services and, among these, what proportion must pay for them.

Secondly, the Committee asked whether in general, supply matches demand and how the quality of services is monitored. In general, most regions' coverage rate is higher than 80%. The regions with the lowest figures for the coverage of people in need are Zaporizhia (79%), Kharkiv (72%), Cherkasy (67%), Kherson (67%), Odessa (65%), Sumy (62%) and Zakarpattia (59%). The Committee asks what measures are planned to improve this low rate.

Thirdly, it asked how the participation of elderly persons in cultural and leisure facilities was ensured and encouraged. The report does not provide any information on this subject so the Committee repeats its question.

With regard to measures to inform people about the existence of services and facilities, the Committee previously asked for information on how elderly people were informed about the services on offer and any differences between the municipalities in this respect. The report states that methodological recommendations on monitoring and assessment of the quality of social services were approved by Order No. 828 of the Ministry of Social Policy of 28 October 2014. As a result, the people must be informed by all existing means about available services and service providers. The Committee asks the next report to indicate what measures were implemented to inform elderly persons.

### ***Housing***

In its previous conclusion (Conclusions 2013), the Committee asked for more information about how the right to suitable social accommodation for the elderly is implemented in practice. The report does not provide any information on this subject. However, the Committee notes from the Governmental Committee report on the 2013 Conclusions that a new law had been adopted to regulate housing benefits. It also notes that a new programme of grants is also being drawn up. It asks for further information in the next report on this law and programme, particularly their aims and their impact on elderly people's living conditions. It also asks what proportion of the elderly live in their own homes.

### ***Health care***

According to Law No. 3712-XII of 16 December 1993 on the basic principles of social protection of retirees and other elderly persons in Ukraine, elderly persons are guaranteed



free medical care in geriatric centres, hospitals for the elderly and outpatient services and through home-help.

In its previous conclusion (Conclusions 2013), the Committee firstly asked for further information on the implementation of the Intersectoral Integrated Programme for 2002-2011, particularly how it addresses issues of improving elderly people's health and increased average life expectancy. The Committee takes note of the information provided in the report but notes that it does not answer the question, so repeats it. It also notes that a new national action plan is being drawn up, namely the Social Programme on Population Ageing in Ukraine for the period 2017-202, drawing on the UN's Madrid International Plan of Action on Ageing, and requests further information on this in the next report.

Secondly, the Committee asked whether specialised centres were sufficient to meet the needs of elderly persons in all regions of the country, taking into account their capacity and geographical location. The Committee notes that elderly persons' healthcare needs are generally only partly met. It notes in this respect that there was a reduction in hospitals in activity during the reference period, particularly in the regions of Donetsk (2) and Luhansk (1) and in the Autonomous Republic of Crimea (1). The Committee asks the next report to indicate what is the impact of such reduction on the health of elderly persons.

Furthermore, the report states that highly specialised care is provided for the elderly, whether or not they are suffering from dementia or Alzheimer's disease, by the network of research institutions and clinics of the Ministry of Health and National Medical Academy of Ukraine (cardiology, orthopaedics, neurology, oncology, psychiatry, etc.). The report also points out that some psychiatric hospitals run geriatric departments for elderly people suffering from cognitive diseases. The Committee asks whether these services make it possible to cover the entire country. The Committee points out that some NGOs provide care for elderly people who are dependent or suffer from neurological disorders. The Committee asks for more detailed information on this subject in the next report.

Thirdly, the Committee asked whether it was possible to receive primary health care services at home, including domiciliary nursing services. The report states that elderly people may receive primary health care at home and that this is provided by GPs, clinics and emergency and ambulance services. It also points out that this type of care is constantly on the increase, particularly among people aged 80 to 85.

### ***Institutional care***

In its previous conclusion (Conclusions 2013), the Committee asked what kinds of service were offered in large boarding facilities on the one hand and smaller residential homes on the other. It also asked whether there were enough places for elderly persons in institutional facilities and whether they were affordable. The report states that the network of residential establishments, which consisted with 289 nursing facilities and 332 smaller accommodation facilities at the end of 2015, meets the needs of the elderly people taken care of. The Committee notes that the report does not answer the question, so that it reiterates its question as to whether there are enough places in institutional facilities.

The report points out that institutions provide residential care services, palliative care, adapted accommodation, consulting, etc. Services are provided either free of charge or for a fee, in accordance with the legislation in force. The Committee asks for more detailed information in the next report on the rules concerning payment or non-payment of fees.

The report also points out that national social policy is being reframed to take account of the growing number of elderly people in Ukraine every year. It should seek, in particular, to strengthen their legal protection, provide them with a decent standard of living, increase the role of families in caring for them, organise effective care and psychological support and ensure that they have access to information. The Committee asks for more information on

this subject in the next report, particularly on the practical measures that the Government intends to implement to achieve the aims of the policy.

The Committee also asked (Conclusions 2009 and 2013) whether these facilities are licensed and inspected, and whether there are procedures to complain about the standard of care and services or about ill treatment in this type of institution. Lastly it has asked for information regarding staff qualifications and the use of physical restraints. The report states that Ukraine has adopted a number of measures to monitor respect for residents' rights. A telephone helpline has been set up and bodies charged with supervising the activities of residential institutions have been established. Representatives of the Commissioner for Human Rights also carry out inspection visits. The Committee asks whether reports or records are published following these visits. It also asks how many breaches of the legislation are recorded by these supervisory bodies every year and what powers and/or resources they have to remedy them.

The Committee reiterates its questions whether these residential establishments are covered by a licensing system.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with the Charter on the ground that the level of the minimum pension is manifestly inadequate.

## **Article 30 - Right to be protected against poverty and social exclusion**

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

### ***Measuring poverty and social exclusion***

The main indicator used by the Committee to measure poverty is the relative poverty rate. This corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income.

The Committee notes that, according to the report, relative or absolute indicators are used in Ukraine to assess poverty: relative criteria (75% of the median total costs), relative criteria of extreme poverty (60% median total costs) or absolute criteria (costs below the minimum subsistence level). It takes note in the report of the detailed explanation on the indicators and that the main information base for measuring poverty indicators is household budget surveys.

The Committee observes from the report that the main poverty indicators for the period 2012-2015 indicate that in 2015 the relative poverty rate increased (23.8%) from 2014 (23.4%) as well as the extreme poverty rate (10.3% against 10.1% in 2014). The poverty rate decreased in households with one child (23.4%) but increased in household with three and more children (by 2.3% points). The poverty rate among children under 18 slightly decreased to 29.9% (31.1% in 2014). The poverty rate for persons of retirement age decreased to 29.2% in 2015 (31.3% in 2014).

The Committee notes that the absolute poverty rate decreased to 9.1% in 2015 (19.6% in 2012 and 17.6 in 2014) and asks the reason for this very significant decrease in an extremely short period of time.

The poverty depth coefficient, which reflects the share of the extremely poor population in the poor population decreased very slightly to 19.8% (19.9% in 2014). In the previous reference period it was 20.6% (Conclusion 2013).

As regards the indicators concerning the population that is socially excluded, the Committee notes from the report that no social exclusion indicator is stipulated, but that the Methodology for Comprehensive Poverty Assessment, which should be improved in 2017, should include indicators for social exclusion measurement.

The Committee recalls that Article 30 does not only cover poverty but also social exclusion and the risk of social exclusion and asks that the next report contains detailed information in this respect, including any statistics relating to social exclusion.

**The Committee notes** that, though measures were put in place during the reference period, the overall poverty rates increased in 2015.

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

The Committee recalls that with a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30 requires States Parties to adopt an overall and coordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access fundamental social rights. The overall and coordinated approach must link and integrate policies in a consistent way, moving beyond a purely sectoral or target group approach and coordinating mechanisms, including at the level of delivery of assistance and services to those living in or at risk of poverty, should exist.

The Committee notes that the National Programme for Overcoming and Preventing Poverty included measures for its implementation without specific expenditures for each measure. The Programme is funded at the expense of state and local budgets (determined annually based on the specific challenges and opportunities of the budget) and the expense of other

sources. Under the budget programmes, managed by the Ministry of Social Policy, the amount of funding for implementation of the program as a whole (provided for from the state budget and other sources) constituted UAH 11.3 billion (350387055 €), and the actual amount of funding is UAH 10.9 billion (338257589 €). In addition, during the examination of the Programme, the objectives and activities were agreed upon by the public organisations, and their suggestions and comments were taken into account.

The Committee further notes that a reform of subsidies was implemented in 2014-2015 aiming at simplifying procedures and strengthening social protection and that the 2016 Poverty Overcoming Strategy, which is expected to be implemented by 2020, aims at a gradual reduction of poverty and social exclusion in Ukraine and at new prevention mechanisms. It observes, in this respect, from Eurostat data that the total social benefit expenditure in 2015 of 29.3% of GDP surpassed the EU-28 average of 27.5% .

While noting the information on various measures the Committee does not see clear evidence or indication of how they add up to an overall and coordinated approach to combating poverty and social exclusion. The Committee therefore asks that the next report contain detailed information/data/figures demonstrating that the budgetary resources allocated to combating poverty and social exclusion are sufficient in view of the scale of the problem/the challenge at hand.

The Committee further recalls that the measures taken to combat poverty and social exclusion must promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance (Conclusions 2003, France).

The Committee refers to its conclusions on non-conformity under other provisions of the Charter which are relevant to its assessment of compliance with Article 30 (see Conclusions 2013, Statement of interpretation on Article 30). It refers in particular to Article 1§1 and its conclusion that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation (Conclusions 2016); Article 7§5 and its conclusions that the young workers' wages are not fair (Conclusions 2015); Article 15§1 and its conclusion that the right of persons with disabilities to mainstream education is not effectively guaranteed and Article 15§2 and its conclusion that mainstreaming in employment is not effectively guaranteed in respect of persons with disabilities (Conclusions 2016); Article 16 of the Charter and its conclusion that it has not been established that equal treatment of nationals of other States Parties and stateless persons with regard to family benefits is guaranteed (Conclusions 2017); Article 23 and its conclusion that the level of the minimum pension is manifestly inadequate (Conclusions 2017); Article 31§2 and its conclusion that it has not been established that the right to shelter is guaranteed (Conclusions 2017).

Taking into account all of the above, in particular the increase in overall poverty rates, especially in households with three or more children and the extreme poverty rate, the Committee considers that the situation remains in breach of Article 30 as there is no adequate overall and coordinated approach to combating poverty and social exclusion.

### ***Monitoring and Evaluation***

The Committee notes that a Methodology for Monitoring and Assessment of Effectiveness of Social Support Programme was approved in 2013 in order to increase the efficiency and improve the management of the social support system. It provides for the system of indicators that are based on statistical and administrative data and on public survey results on the effectiveness of social support programs.

The Committee takes note of the National Programme for Overcoming and Preventing Poverty for the period until 2015 aiming at improving methodological approaches with a multidimensional assessment of poverty by criteria for monitoring the poverty situation.

During the period 2012-2015, a comprehensive poverty assessment based on the monitoring of indicators considering the effects of the measures aimed at poverty reduction was conducted quarterly according to specified parameters to ensure a systematic analysis of the tasks in certain directions of the Programme.

The Committee notes that the Ministry of Social Policy ensures the coordination of central and local executive authorities. The general information on the implementation of measures was prepared quarterly and was submitted to the Cabinet of Ministers of Ukraine, and at special requests – to the Verkhovna Rada (Parliament) of Ukraine. The information was also provided at the request of public organisations and individual citizens.

However, the Committee recalls that Article 30 of the Charter requires the existence of monitoring mechanisms for reviewing and adapting the efforts in all areas and sectors, at all levels, national, regional, local, to combat poverty and social exclusion; mechanisms which should involve all relevant actors, including civil society and persons directly affected by poverty and exclusion (see Conclusions 2003, France, Article 30). It therefore asks that the next report contain comprehensive information on such mechanisms covering all sectors and areas of the combat against poverty and social exclusion.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 30 of the Charter on the ground that there is no adequate overall and coordinated approach to combating poverty and social exclusion.

**CONCLUSIONS RELATING TO CONCLUSIONS OF NON-  
CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN  
CONCLUSIONS 2015**

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

### *Paragraph 1 - Maternity leave*

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Ukraine in response to the conclusion that it had not been established that there are in law and in practice adequate safeguards to protect employees from undue pressure to take less than six weeks postnatal leave.

In this respect, the Committee had noted that the authorities had not provided evidence that there was a six-week compulsory postnatal leave that could not be shortened, not even at the employee's request, or that there were in law and in practice adequate safeguards to protect employees from pressures to take less than six weeks postnatal leave.

It is once more recalled in the report that Article 179 of the Labour Code provides for up to 126 days of maternity leave, of which up to 70 days (10 weeks) can be used before birth and 56 days (8 weeks) after birth. The authorities underline that the 8 weeks post-natal leave shall be granted in full irrespective of the number of days actually used before birth.

The report does not clarify, however, whether the worker must compulsorily use her full period of post-natal leave or whether she can take a shorter period, as it is explicitly the case for the maternity leave prior to the birth. The Committee accordingly reiterates its request for explicit information on this point. In addition, it asks the next report to provide any relevant data concerning the average length of maternity leave effectively taken.

As regards the other Committee's question (Conclusions 2015) concerning the existing safeguards, the report refers to Article 2§1 of the Labour Code, which prohibits any discrimination at work, including as regards the respect of equal rights and opportunities and direct or indirect restrictions of the workers' rights based on gender identity and family responsibilities. However, the report does not provide any evidence that this provision can be applied and is actually applied to avoid the shortening of the maternity leave period. The Committee accordingly asks the next report to clarify this issue, in the light of any existing example of relevant case-law. It considers in the meantime that it has not been established that there are in law and in practice adequate safeguards to protect employees from undue pressure to take less than six weeks postnatal leave.

The Committee recalls that the situation concerning other aspects covered by Article 8§1 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 8§1 of the Charter on the ground that it has not been established that there are in law and in practice adequate safeguards to protect employees from undue pressure to take less than six weeks postnatal leave.

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

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

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Ukraine in response to the conclusion that it had not been established:

- that pregnant women as well as women who have recently given birth or are nursing their child are adequately protected in respect of dangerous, unhealthy and arduous work, and
- that, in case of reassignment to a different post, they retain the right to return to their initial employment at the end of the protected period.

As regards the protection in respect of dangerous, unhealthy and arduous work, the Committee had repeatedly asked (Conclusions 2011 and 2015) whether and how activities involving exposure to benzene, ionizing radiation, high temperatures, vibration or viral agents were prohibited or strictly regulated for pregnant women as well as women who have recently given birth and/or are nursing their infant. It had furthermore asked whether underground work in mining was prohibited for these categories of women.

In response to this question, the report confirms that the Order of the Ministry of Health No. 256 of 29 December 1993, registered with the Ministry of Justice on 30 March 1994 (No. 51/260) prohibits the activities at issue for all women. In the light of this information, the Committee considers that the situation is in conformity with the Charter on this point.

As to the second ground of non conformity, the report reiterates the information already noted by the Committee (Conclusions 2011 and 2015) concerning the employee's right to be transferred to another post, without loss of salary, until her child reaches the age of three. However, the report does not clarify, as repeatedly requested, whether at the end of the protected period – i.e. when the child turns three years old, under the Ukrainian law – the reassigned employee has a statutory right to return to the post she occupied before the maternity-related reassignment. Given the repeated absence of information on this point, the Committee considers that, in case of reassignment to a different post, Ukrainian law does not guarantee the employees' right to return to their initial employment at the end of their maternity/nursing period.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 8§5 of the Charter on the ground that in case of reassignment to a different post, Ukrainian law does not guarantee the employees' right to return to their initial employment at the end of their maternity/nursing period.



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

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Ukraine in response to the conclusion that it had not been established that there is an adequate legislation on domestic violence against women and equal treatment of nationals of other States Parties and stateless persons with regard to family benefits is guaranteed.

With regard to domestic violence against women, the report states that the project on preventing and combating violence against women and domestic violence was implemented within the framework of the "Action Plan of the Council of Europe for Ukraine 2015-2017". The Committee asks the next report to provide further information on actions and measures implemented, in particular whether the Council of Europe Convention on preventing and combating violence against women and domestic violence has been ratified.

Furthermore, the report states that the draft law on preventing and combating domestic violence was adopted by the Parliament of Ukraine in the first reading on 17 November 2016. The Committee notes the efforts made by Ukraine but notes, nevertheless, that the draft law has not been yet ratified, so that there is still no appropriate measure to ensure an adequate protection with respect to women in law. It therefore considers the situation not to be in conformity with the Charter on this point.

In respect of equal treatment of foreign nationals and stateless persons with regard to family benefits, the Committee previously asked what are the criteria foreign nationals, stateless persons and refugees must fulfill to be granted with family benefits and, if relevant, the criteria to get permanent residence. The report provides no information in this regard, so that the Committee reiterates its questions and considers the situation not to be in conformity with the Charter on the ground that it has not been established that there is equal treatment of nationals of other States Parties and stateless persons with regard to family benefits.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 16 of the Charter on the grounds that:

- there is no adequate legislation on domestic violence against women;
- it has not been established that equal treatment of nationals of other States Parties and stateless persons with regard to family benefits is guaranteed.

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

### *Paragraph 1 - Adequate housing*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the fact that Ukraine has submitted no information in response to the conclusion that it had not been established that the supervision of housing standards was adequate and that measures were taken by public authorities to improve the substandard housing conditions of Roma.

The Committee recalls that it is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also take measures to avoid the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France). Once again, the report does not provide information in this regard and does not answer the Committee's questions as to how adequacy of housing is monitored; whether rules exist imposing obligations on landlords to ensure that dwellings they let are of an adequate standard and to maintain them and how public authorities supervise such rules. The Committee considers accordingly that it has not been established that the supervision of housing standards is adequate.

Concerning Roma, the Committee had asked for information on implementation of the Strategy of Roma national minority protection and integration into Ukrainian society. As the report does not provide any information in this respect, the Committee maintains its finding of non-conformity with Article 31§1 of the Charter on this point.

The Committee recalls that the situation concerning other aspects covered by Article 31§1 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

### *Conclusion*

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

- it has not been established that the supervision of housing standards is adequate;
- it has not been established that measures are taken by public authorities to improve the substandard housing conditions of Roma.

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

### *Paragraph 2 - Reduction of homelessness*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the fact that Ukraine has submitted no information in response to the conclusion that it had not been established that it had not been established that the right to shelter was adequately guaranteed.

The Committee had asked clarifications in particular on whether shelters/emergency accommodation satisfied security requirements (including in the immediate surroundings) and health and hygiene standards (in particular whether they were equipped with basic amenities such as access to water and heating and sufficient lighting) and whether the law prohibited eviction from shelters or emergency accommodation, unless an alternative accommodation was provided.

As the report provides no information on these points, the Committee maintains its finding of non-conformity.

The Committee recalls that the situation concerning other aspects covered by Article 31§2 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 31§2 of the Charter on the grounds that it has not been established that the right to shelter is guaranteed.