

Committee on the Application of Standards

Date: 21 May 2021

Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 20 May 2021.

▶ Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

Ukraine

The Government has provided the following written information.

Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)

The situation with wage arrears

As a result of annexation of the territory of the Autonomous Republic of Crimea by the Russian Federation and seven years of its armed aggression in Eastern Ukraine, where the substantive quantity of industrial enterprises were established, Ukraine's economic potential was significantly cracked. Nevertheless, the Government of Ukraine manages to support the economy of the state from a significant downturn through the use of administrative, organizational measures and consultations with the social partners.

In order to take under control the increasing wage arrears in 2020, the Government established an Interdepartmental Working Group (IWG) on the repayment of wage arrears (Resolution of the Government of Ukraine of 28.10.2020 № 1007), which includes representatives of key Ministries and agencies, including representatives of the Joint Representative Body of Representative All-Ukrainian Trade Union Associations at the national level and the Joint Representative Body of Employers at the national level. The Commissioner for Human Rights is also joining the IWG.

Based on the results of the IWG meeting held on December 17, 2020, ministers, other heads of central executive bodies, heads of regional and Kyiv city state administrations were instructed to take under personal control the repayment of wage arrears and ensure the development, approval and implementation of schedules of arrears repayment for each debtor.

Moreover, IWG found insufficient the efforts taken by central executive bodies in resolving wage arrears repayment at state-owned enterprises under their management. Also, priority is given to settling the issue of wage debt repayment at the largest economically

active enterprises-debtors of the State form of ownership, which accumulate the largest amounts of wage arrears.

In early 2021, wage arrears amounted to UAH 3.1 billion against UAH 3 billion a year earlier. At the same time, the share of arrears in the national payroll for the corresponding period decreased from 0.25% to 0.23%.

Arrears of wages in the coal industry

The amount of current arrears at state-owned enterprises of the coal industry varies depending on the results of their economic activities: the wage arrears are characteristic for the State-owned coal enterprises and not actually observed in private coal enterprises.

In 2020, arrears at the coal enterprises decreased to the lowest level (both in absolute and relative terms) for the last few years. Thus, if at the end of November 2019 the amounts of wage arrears at the coal industry enterprises reached a record UAH 876 million since the beginning of 2018, then as of May 1, 2020, this figure was reduced by more than five times - to UAH 170 million. Over time, the amount of arrears increased slightly, but in early 2021 wage arrears at coal industry enterprises remained significantly lower than in early and mid- 2020: UAH 221.8 million.

Control and supervision over the regular payment of wages

The issue of compliance with the terms of payment of wages at enterprises of all forms of ownership is under the constant control of the State Labour Service (SLS) and its territorial bodies. In order to facilitate the timely payment of wages and increase their levels, temporary commissions have been established at the central and local executive bodies, which include representatives of the SLS.

During 2020, labour inspectors carried out control measures at 639 debtor enterprises, which had accumulated wage arrears in the amount of UAH 14.6 billion owed to 188.1 thousand employees.

As a result of control measures at debtor enterprises, labour inspectors issued and submitted to the court 235 protocols on administrative offenses, of which 70 protocols were ruled by courts, incl. on imposition of penalties on officials found guilty of violating labour legislation in the amount of UAH 27,000. 185 decrees were issued under Art. 188-6 of the Code of Ukraine on Administrative Offenses (CUAO) with imposition of penalties in the amount of UAH 190 thousand. In accordance with Article 265 of the Labour-Code of Ukraine (LCU), 310 resolutions were imposed on the financial sanctions in the total amount of UAH 4.54 million, of which UAH 2.14 million (47.1%) were paid.

At the request of labour inspectors, 398 debtor companies repaid wage arrears in the amount of UAH 590.3 million, i.e. enterprises fully or partially paid off 107.3 thousand employees (57%).

During January-April 2021, labour inspectors carried out control measures at 1,251 debtor companies.

In addition, since the beginning of 2021, temporary commissions have held 499 meetings, at which 1,046 managers were warned about disciplinary liability. Also, the temporary commissions considered the expediency of further holding the positions by top-management of those State-owned enterprises which are subordinated to ministries and

other executive bodies, in case they fail to reduce wage arrears. Contracts with 4 heads of debtor companies have been terminated.

Schedules for repayment of wage arrears were composed and approved by 376 enterprises, and 152 (40%) of such schedules were fulfilled.

As a result of control measures, labour inspectors drew up and submitted to the court 112 protocols on administrative offenses, the courts ruled out on 33 protocols, including the imposition of fines on officials guilty of violating labour legislation in the amount of UAH 14,960. The courts issued 54 resolutions under Article 1886 of the CUAO with the imposition of fines in the amount of UAH 50.8 thousand. In accordance with Article 265 of the LCU, the SLS issued 117 resolutions imposing financial sanctions in the amount of UAH 2.1 million (of which UAH 700,000 or 33.3% have been paid so far).

At the request of labour inspectors, 164 debtor companies repaid arrears of wages in the amount of UAH 178.3 million, ie enterprises fully or partially paid off 23.9 thousand employees.

Improving the legislation in order to strengthen the protection of employees' rights to timely payment of wages, including by increasing the amount of compensation for late payment

The Ministry of Economy of Ukraine (MEU) is completing the preparation of a draft law of Ukraine on the protection of workers' rights to timely and full payment of wages, which guarantees this protection, in particular by strengthening the responsibility for violating the terms of payment of wages.

Ensuring the payment of arrears of wages in cases of insolvency of the employer

In accordance with paragraph 1 of the first part of Article 5 of the Law of Ukraine "On Court Fees" when applying to the court in the order of proceedings with a request to recover the accrued but unpaid amount of wages, the complainer is exempted from paying the court fee.

The Law of Ukraine "On Free Legal Aid", enacted in 2011, guarantees free access to information about human rights and freedoms, the procedure for their effective application, recovery in case of violation and the procedure for appealing decisions, and provides for the State obligation to provide free of charge such services as legal information, advice and clarifications on legal issues, drafting applications, complaints and other legal documents (except for procedural documents), as well as assistance in ensuring a person's access to secondary legal aid and mediation.

The Government availed itself of the ILO assistance in bringing Ukraine's legislation and practice on wages in full compliance with the international labour standards. Assisted by the "ILO project on wages: technical assistance on wage arrears, minimum wages and equal pay for Ukraine", the Government and the social partners received a comprehensive evidence base of the nature and main causes of wage arrears in Ukraine and exposure to international practices of wage guarantee institutions. The ILO technical advice had a practical use in the development and tripartite validation of a road map was adopted towards creation of the wage guarantee institution in Ukraine.

The Government agreed with the Parliament a list of priority legislative proposal to be adopted in 2021. Following the Government's Priority Action Plan for 2021 (p. 146 of the

Resolution of the Government of Ukraine of March 24, 2021 № 276-r) and the Parliament's plan of legislative work for 2021 (p. 60 of Resolution of the Parliament of Ukraine of February 2, 2021 № 1165-IX) the MEU has developed legislative proposals to strengthen protection of workers' claims for payment of wage arrears in case of employer's insolvency, in particular with the help of the guarantee institution to be established. These proposals, in particular, provide for ratification of Part III of the ILO Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173).

Measures to eliminate the use of undeclared work.

In 2020, the MEU has developed a draft Law of Ukraine "On Amendments to the Labour-Code and Other Legislative Acts Concerning the Implementation of a Simplified Procedure for Regulating of Labour Relations", which was mentioned above.

In particular, this bill is aimed at eliminating undeclared work and reducing shadow economy while improving the "service function" of labour inspectors to effectively provide employers with information and recommendations on compliance with labour legislation.

Also, labour inspectors provide constant control over the registration of labour relations with employees at enterprises, institutions, organizations of all forms of ownership and activities and individuals (entrepreneurs).

During 2020, according to the results of 10.4 thousand inspection, 6.7 thousand employees were identified as those who worked without an employment contract with 2.1 thousand employers, and 1.4 thousand employees - under civil contracts that had signs of employment, (245 employers). Moreover, 1.8 thousand employees were identified, with whom an employment contract was concluded (executed), but allowed to work without notifying the State Tax Service of Ukraine (STSU).

According to the results of inspection visits, 2,686 instructions were made to eliminate violations. 895 protocols on administrative offenses under part three of Article 41 of the CUAO were drawn up and sent to the courts, 21 resolutions were issued under Art. 188-6 of the Code with imposition of penalties in the amount of UAH 23,4 thousand. 894 resolutions on imposition of fines in accordance with Article 265 of the LCU in the amount of UAH 262.7 million were issued.

The materials of 450 visits were sent to law enforcement agencies in connection with the signs of crimes under Articles 172 and 173 of the Criminal Code of Ukraine. According to the results of the visits, 81 criminal proceedings were instituted, 22 proposals were sent to bring the perpetrators to justice.

In accordance with the instructions issued, 1.8 thousand business entities eliminated the identified violations. According to the results of inspection visits, employment contracts were concluded (executed) with 28.8 thousand employees and based on the results of visits of the employer to inform him/her and employees about the most effective ways to comply with labour legislation - with 190.5 thousand employees.

In order to prevent offenses, labour inspectors made 367.2 thousand visits to enterprises to inform employers and their employees about the benefits of official employment.

During January-April 2021, 2.4 thousand inspection visits revealed more than 2 thousand employees who worked without an employment contract with 713 employers and 514 employees - with the replacement of employment contracts with other types of contracts

with 85 employers. Also, 704 employees were identified, with whom an employment contract was concluded (executed), but allowed to work without notifying the STSU.

According to the results of inspection visits, 821 instructions were made to eliminate violations.

299 protocols on administrative offenses under part three of Article 41 of the CUAO were drawn up and sent to the courts, 24 resolutions were issued under Art. 188-6 of the Code with imposition of penalties in the amount of 21,9 thousand UAH. In addition, 188 resolutions were imposed on the imposition of fines in accordance with Article 265 of the LCU in the amount of UAH 50.4 million.

427 business entities eliminated the identified violations in compliance with the instructions. According to the results of inspection visits, employment contracts were concluded (executed) with 7.7 thousand employees and based on the results of visits of the employer to inform him/her and employees about the most effective ways to comply with labour legislation - with 41.3 thousand employees.

In order to prevent offenses, labour inspectors made 49.3 thousand visits to enterprises to inform employers and their employees about the benefits of official employment.

The SLS availed itself of the ILO technical assistance. The "Go to Light Campaign" developed by the SLS with the support of the ILO project "Towards safe, healthy and declared work in Ukraine" reached out to more than 2 million people all over Ukraine through various information channels and helped to formalize almost 50 thousand workers.

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 2006)

The size of the minimum wage

The Law of Ukraine "On the State Budget of Ukraine for 2020" established a minimum wage of UAH 4,723 from 01.01.2020, which is more than twice the official subsistence level for that year.

From September 1, 2020, the minimum wage was further increased to UAH 5,000 (Law of Ukraine of August 25, 2020 № 822-IX), from January 1, 2021 - to UAH 6,000, and from December 1, 2021 - to UAH 6,500 UAH (Law of Ukraine of 15.12.2020 1082-IX).

Thus, as of the date of submission of this information, the minimum wage (UAH 6,000) is 2.6 times higher than the official subsistence level for able-bodied persons (UAH 2,270) set for 2021, and the actual subsistence level in March 2021 prices including mandatory payments (UAH 5,444) - by 10.2%.

Consultations to agree on the size of the minimum wage

The Government availed itself of the ILO development assistance. The ILO study of the minimum wage in Ukraine provided a rich evidence on the mechanism of setting the minimum wage in Ukraine, correlation between the minimum wage and the subsistence minimum (both factual and statistical), the impact of the minimum wage on equal pay and the impact on income disparities "D9/D1".

Pursuant to Article 10 of the Law of Ukraine "On Remuneration of Labour", the amount of the minimum wage is set by the Parliament of Ukraine upon submission of the Government of Ukraine at least once a year in the law on the State Budget of Ukraine, taking into account the proposals made through negotiations (consultations) of the joint representative body of trade unions and the joint representative body of associations of employers' organizations at the national level.

In 2020, the relevant consultations were held on September 3 in the format of a Zoom conference. The consultations scheduled for March 2020 did not take place because of the lockdown introduced – to prevent the spread of acute respiratory disease COVID-19.

Regular consultations of the Joint Working Commission of Plenipotentiaries of the Party of Executive Bodies, the Joint Representative Body of Trade Unions and the Joint Representative Body of the Employers at the national level were held on March 25 and April 27, 2021 in Zoom conference format. The reasoned proposals on the size of the minimum wage in 2022 were expressed by all parties of social dialogue.

Based on the above, – the final size of this indicator will be approved in August-September this year at the next round of consultations after the Government approves the budget declaration and updates the forecast of socio-economic development of Ukraine for 2022, 2023 and 2024.

In pursuance of p. 147 of the Government's Priority Action Plan for 2021 and p. 59 of the Parliament's plan of legislative work for 2021, the Ministry of Economy of Ukraine (MEU) has developed a draft Law of Ukraine "On modification of some legislative acts of Ukraine concerning payment for work" will be submitted to the Government of Ukraine and the Parliament of Ukraine in accordance with the established procedure.

The draft-law is designed to improve the procedure for determining the size of the basic state social guarantee, aimed at strengthening minimum wage guarantees, approximation of national legislation to Ukraine's international obligations under ILO Convention 131, as well as further deregulation of labour relations while strengthening collective bargaining certain issues of remuneration. The MEU requested ILO to give technical comments thereon in light of the international labour standards .

Carrying out inspections. Conventions No. 81 and No. 129.

From mid-March 2020 to mid-June 2020, inspections of the State Labour Service (SLS) at enterprises were not carried out due to the establishment of national quarantine and the restrictive anti-epidemic measures to prevent the spread of acute respiratory disease COVID-19 in Ukraine, caused by the coronavirus SARS-CoV-2.

Prior to the establishing in March and after the abolition of national quarantine in June 2020, inspection visits were and are being carried out regularly, in accordance with current legislation.

In the field of compliance with labour legislation, the supervisory activities of the SLS are regulated by the Law of Ukraine "On the basic principles of state supervision (control) in the field of economic activity."

In accordance with the requirements of this Law, unscheduled measures of state supervision in this area are carried out only on the grounds specified in Article 6 of this Law. Thus, checks on wage arrears are possible in the case of an appeal to the labour

inspectorate of an employee in respect of whom the law has been violated, with a notification of the wage arrears.

With this in mind, in order to improve the legislation on labour inspection and bring it to the provisions of the ILO Conventions № 81 and № 129, in 2020, the MEU developed a draft Law of Ukraine "On Amendments to Certain Legislative Acts on State Supervision (Control) of compliance with labour legislation".

The draft provides for legal definition of tasks and functions of the SLS, establishes a mechanism for inspection visits and the application of corrective measures in case of violations of labour legislation; rights and responsibilities of labour inspectors and objects of visits, etc. in accordance with the provisions of the Conventions № 81 and № 129. The draft law is currently being prepared for submission to the Government of Ukraine.

Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) (ratification: 2006)

Article 2 (4) of the Bankruptcy Code of Ukraine stipulates that bankruptcy proceedings against debtors of fully-state-owned enterprises and budgetary institutions, as well as the financial clean-up of such debtors prior to the opening of bankruptcy proceedings are not allowed.

Thus, the order of satisfaction of creditors' claims provided by Article 64 of the said Code does not apply only to institutions and bodies of the state in which the state is the sole owner and holder (at the expense of the state budget). In all other cases, including state-owned enterprises that do not fall under this definition, Article 64 of the Code applies (taking into account the features provided for in Article 96).

In addition to certain bankruptcy procedures designed to ensure the maximum fulfillment of wage obligations to employees-creditors, various types of penalties for such violations are provided as a motivation to comply with the law. Thus, delayed payment of wages, incomplete payment, unjustified intentional non-payment of wages or other statutory payments to citizens entails, depending on the conditions, financial (Article 265 of the Labour-Code of Ukraine), administrative (Article 41 of the Code of Administrative Offenses) and criminal (Article 175 of the Criminal Code of Ukraine) liability.

At the same time, pursuant to p. 146 of the Plan of Priority Actions of the Government for 2021 and p. 60 of the Parliament's plan of legislative work for 2021 the Ministry of Economy of Ukraine has developed legislative proposals to strengthen the protection of employees' claims for payment of wage arrears in the event of insolvency of the employer, in particular with the help of the guarantee institution to be established.

These proposals, in particular, determine the state body that will be entrusted with the function of the guarantee institution, the procedure for debt repayment, the category of recipients, the amount and sources of compensation. Simultaneously with the implementation of these changes, the completely ratification of Part III of the ILO Convention No. 173 will be provided.