

Information of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights concerning the best practice in the application of traditional values while promoting and protecting human rights and upholding human dignity

After definition by the Ukrainian Parliament Commissioner for Human Rights of strategic objectives and priorities in the implementation of parliamentary control over the observance of constitutional human rights and freedoms of citizen the positive result became the practice of cooperation of the Commissioner for Human Rights with profile committees of the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine while considering draft laws and other normative legal acts in the field of socio-economic and human rights, as well as initiated by the Commissioner joint work with the central authorities, the parties of social partnership of trade unions and employers at national level NGO representatives in legislative regulation of constitutional human rights.

The mentioned practice allows the Ukrainian Parliament Commissioner for Human Rights realizing cooperation with the Parliament, the Government and the parties of social partnership of trade unions and employers at national level, as well as other human rights organizations, to implement policies to improve the legislation of Ukraine to implement traditional values while promoting and protecting human rights.

Examples of such a practice in a narrower application of the protection of individual rights including guaranteed by the Constitution of Ukraine may be the following.

In particular, while considering by the Committee of the Verkhovna Rada of Ukraine for social policy and labor for the second reading of the draft Law of Ukraine "On employment" (registration № 10497-1 of 22.05.2012 the Commissioner for Human Rights made proposals to ten norms of law, particularly aimed at preventing narrowing of the meaning and scope of existing rights of unemployed people concerning unemployment payments, the principles of compulsory social insurance, as well as settlement mechanisms of the rights of youth, including student, to work and promote their employment in rural areas. These proposals of the Commissioner were generally supported by members of the Committee of the Verkhovna Rada of Ukraine for social policy and labor, as well as the majority of positions taken into consideration in the law adopted by Parliament.

Success of the practice examination and submission of proposals by the Commissioner to draft normative legal acts that were elaborated by the Government and sent on the eve of its meeting to the Office of the Ombudsman.

So, after legal examination by the Commissioner to prevent the violation of the human rights and freedoms of citizen it proposed to the Government to finalize the draft Law of Ukraine "On Amendments to Article 32 of the Law of Ukraine" On Housing and Communal Services" in determining the rights and government guarantees for citizens in implementation procedures for charging and collecting fines for overdue payment of housing and communal services, particularly in view

of the existing outstanding obligations of the State with respect to settlement of arrears of salary and other payments, their non-admission guaranteed by articles 43, 46 of the Constitution of Ukraine. The draft law was sent by the Government for revision to the ministry.

Similarly, after legal examination of the draft Resolution of the Cabinet of Ministers of Ukraine "On approval of the compensation of property damage (loss) suffered by a person as a result of quarantine (quarantine restrictions) animals or in connection with the procedures and work to eliminate quarantine and prevention of disease" it was found out that some provisions of Order, due to imperfect mechanism for compensation of property damage (loss) to the population could lead to human rights violations. The Government took into account Commissioner's suggestions and comments to the draft regulation.

In the presence of objectively existing conflicts of interests of employers and employees, the systematic violation by employer, their labor rights, the non fulfillment of provisions of collective labor agreements (contracts), an important tool in protecting the legitimate rights and interests are guaranteed by Article 44 of the Constitution of Ukraine the right of workers for strike.

Pursuant to paragraph 1 of Article 17 of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" the Commissioner for Human Rights opened proceedings for the protection of the constitutional right for strike of transport workers.

The Commissioner for Human Rights has repeatedly contacted with representatives of trade union (nationwide trade unions of pilots, flight attendants union of "Aerosvit" Airlines ") regarding the unconstitutionality of the Law of Ukraine "On transport" and violation of their legal rights.

Monitoring the Commissioner testified that the provisions of Article 18 of the Law of Ukraine "On Transport" on November 10, 1994 did not meet the Law of Ukraine "On the procedure for settling collective labor disputes (conflicts)", its norms prevails in relation to other legislation in the relevant field of public relations, first and fifth paragraphs of Article 8 of the Law of Ukraine "On Social Dialogue in Ukraine" and Article 7 of the Law of Ukraine "On Collective Agreements and Treaties" norms and standards of the International Labor Organization in the exercise of the right of workers for strike. Unfortunately, after the adoption in 1998 of the Law of Ukraine "On the procedure for settling collective labor disputes (conflicts)" provisions of Art. 18 of the Law of Ukraine "On transport" were not complied with this Law, as foreseen in paragraph 4 of its Final Provisions.

Lack of regulating of issue of transport employees constitutional right for strike made impossible the legal protection of their rights caused ambiguous enforcement of the law in this area and is a real threat on the one hand massive violations of labor rights of the employer, on the other - spontaneous (unexpected) traffic disruptions, transportation services when the recipients of those services previously have not the right for an alternative providing.

Working Group created by the Ukrainian Parliament Commissioner for Human Rights with the participation of Ministry of Social Policy, Ministry of

Infrastructure, Ministry of Economic Development, the National Mediation and Conciliation delegated from joint representation of parties of employers and trade unions, and the Draft Law of Ukraine "On amendments to some legislative acts of Ukraine to ensure the constitutional rights for strike" was elaborated.

Taking into consideration that the Ministry of Social Policy, Ministry of Economic Development, Ministry of Infrastructure, the Secretariat of the National Security and Defense Council, a representative body of trade union parties agreed on the draft law without observations, the Commissioner appealed to the Prime Minister of Ukraine to support the draft law and submit it in order established by law to the Verkhovna Rada of Ukraine. Prime Minister of Ukraine entrusted with instructions central authorities concerning the elaboration of the draft law.

Bringing of national system of sources of law in Ukraine in conformity with international legal standards is done, primarily due to the legal unification. Thus, article 9 of the Constitution of Ukraine stipulates that international treaties ratified by the Verkhovna Rada of Ukraine become part of the national legislation.

Currently Ukraine has ratified many conventions of the Council of Europe, mainly in the humanitarian and law enforcement spheres, including the European Convention on the Suppression of Terrorism, the European Convention on the International Validity of Criminal Judgments, the European Convention on Mutual Assistance in Criminal Matters and others. Ukraine ratified the European Convention on Protection of Human Rights and Fundamental Freedoms of 1950, which defines the jurisdictional mechanism to protect human rights. Judgments of the European Court of Human Rights are also means of legal unification because they ensure uniform interpretation and application of the Convention to comply with the legal standards of human rights by all contracting parties. In order to ensure the implementation of the provisions of the Convention adopted the Law of Ukraine "On fulfillment of judgments and application of practice of the European Court of Human Rights» № 3477-IV of 23.02.2006. All contributes to regulation within the sources of law of the Council of Europe.

With regard to the legislation of Ukraine to the legal standards of the European Union, the Law of Ukraine 1629-IV of 18.03.2004 approved the State Program Adaptation of Ukraine to the EU legislation, which envisioned a complex organizational and legal measures aimed at unification of Ukraine and EU legislation.

Each year, the Cabinet of Ministers of Ukraine approved the action plan, including legal, aimed at amending the existing and adopt new regulations that meet European Union legislation.

Ukraine also joined many conventions concluded within the framework of other international organizations such as the International Chamber of Commerce, the World Intellectual Property Organization, FATF, Universal Postal Union, the Hague Conference on Private International Law, the United Nations, the International Labor Organization, the CIS etc.

Laws of Ukraine are amended, particularly under the influence of European legal standards - standards and principles enshrined in the European sources of international law and are binding legal requirements for member states. Such

regulations and mandatory standards significantly influence on amendments in the content of the laws in national legal systems.

An important step in the transformation laws of Ukraine was the adoption of the Law of Ukraine "On the National Program adaptation of Ukraine's legislation to the European Union legislation" in 2004. At the first stage of the program approved by this law, priority spheres for adaptation have been determined: customs law, company law, banking law, company accounts and taxes, intellectual property, labor protection, financial services, rules on competition, public procurement, health care and life of people, animals and plants, the environment, consumer protection, technical rules and standards, energy (including nuclear), transportation.

An example of the formation of regulatory requirements in accordance with European legal standards are provisions of the Family Code of Ukraine regulating the parentage of a child whose parents are not married. These notions correspond to the Convention on the legal status of children born out of wedlock. In 2009, the Convention has been ratified by the Law of Ukraine "On Ratification of the European Convention on the Legal Status of Children born out of wedlock."

Analysis of changes in the laws of Ukraine shows a significant imbueing of their content by legal provisions that meet equivalents formed in the sources of European international law. This is positive tendency with a view of European identity, effectiveness in the European legal space.

The right for legal protection guaranteed by Article 55 of the Constitution of Ukraine, except recourse to international judicial institutions, whose jurisdiction is recognized by Ukraine foresees the right of everybody to apply to the relevant international organizations, where Ukraine is member or participant.

Acceded in 1990 to the Optional Protocol of the International Covenant on Civil and Political Rights 1966 (Resolution of the Supreme Soviet of the Ukrainian SSR "On joining of the Ukrainian Soviet Socialist Republic to the Optional Protocol of the International Covenant on Civil and Political Rights" of December 25, 1990) Ukraine recognized competence UN Committee on Human Rights (hereinafter - the Committee) to review individual complaints of citizens of Ukraine concerning the violation of their rights and freedoms set forth in the International Covenant on Civil and Political Rights.

However, the right for protection in the statement of the Committee of Ukraine's violation of human rights and freedoms has not found practical realization in criminal proceedings of Ukraine.

Taking into consideration the importance of the issues raised the Ukrainian Parliament Commissioner for Human Rights suggested the Cabinet of Ministers of Ukraine jointly elaborate and submit to the Verkhovna Rada of Ukraine the draft law to entrench in the Criminal Procedure Code of Ukraine the requirements of paragraph four of Article 55 of the Constitution of Ukraine in order to implement decisions (reasons) of the UN Committee on Human Rights .

It should be added that the UN Office in Ukraine supported the initiative of the Ukrainian Parliament Commissioner for Human Rights and proposed to expand the scope of this initiative. In the letter to the UN Office in Ukraine it stipulates that

"the amendment to Article 445 Code of Ukraine, which would review the decisions of UN treaty bodies whose authority to review individual complaints were taken by Ukraine could provide a practical implementation of Article 55 of the Constitution of Ukraine, which provides that person may appeal "to the relevant bodies of international organizations where Ukraine is a member in order to protect their rights and freedoms".