

СЕКРЕТАРІАТ
УПОВНОВАЖЕНОГО
ВЕРХОВНОЇ РАДИ УКРАЇНИ
З ПРАВ ЛЮДИНИ



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PARLIAMENT COMMISSIONER
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№ 5801.2/5744/1/19/19/22.2

« 30 » 10 20 19 p.

Unofficial translation from Ukrainian language

**Office of the United Nations High
Commissioner for Human Rights**

In response to a letter from a representative of the Office of the United Nations High Commissioner for Human Rights, dated 15.08.19, please find attached information for thematic focus areas of the eleventh session («Right to work and access to the labour market» and «Access to justice») and normative framework for the thematic focus areas discussed at the tenth session («Education, training, life-long learning and capacity building» and «Social protection and social security, including social protection floors»).

Annex: on 8 pages.

**Head of the Secretariat
of Ukrainian Parliament
Commissioner for Human Rights**

Liudmyla Levshun

**Thematic area: «Right to work and access
to the labor market of the elderly»**

According to the Law of Ukraine «On the basic principles of social protection of veterans of work and other elderly citizens in Ukraine» elderly citizens have the right to work on an equal basis with other citizens, which is additionally guaranteed by state targeted programs, territorial and local employment programs; it is forbidden to refuse to hire and dismiss an employee on the initiative of the employer on the grounds of reaching retirement age; discrimination against the elderly in the field of work is prohibited.

All citizens applying to the State Employment Service have equal rights to receive free social services, including regardless of gender, age, ethnic and social background, financial status, place of residence, language or other characteristics.

The Law of Ukraine «On Employment of the Population» provides for stimulation of employers in order to create new jobs and employment of unemployed citizens who are not competitive enough in the labor market. In particular, an employer who employs a newly created workplace under the direction of the State Employment Service, which requires additional guarantees in favor of employment, including those who have 10 or less years remaining before the retirement age of two years, for a period of two years each month actual expenses in the amount of a single contribution to the compulsory state social insurance for the person concerned are compensated for the month for which it was paid.

In addition, the Law of Ukraine «On Employment of the Population» provides additional guarantees for the promotion of employment at the expense of the employment quota for persons who have 10 or less years of age before the retirement age. According to the State Employment Service of Ukraine, in period of January - August 2019 almost 58 thousand people of pre-retirement age were employed for the vacancies declared by employers. With the provision of compensation to employers, 1.6 thousand such persons were employed.

In pursuance of Article 30 of the Law of Ukraine «On Employment of the Population» in order to maintain the competitiveness of persons over 45 years of age and expand their opportunities in the labor market, in January-July 2019, 928 people received a voucher for training and advanced training.

At the same time, it should be noted that in today's conditions it is very difficult for the elderly to find a job, especially officially, despite having qualifications, practical skills, work experience. The problem lies not only in the objectively low competitiveness of the older generation compared to the young, but also in the prejudiced attitude towards older employees.

Age discrimination in the Ukrainian labor market, although forbidden by law, unfortunately remains widespread. There are often cases where employers refuse to hire people because of their age.

The rule on protection against all forms of employment discrimination (including gender and age) is clearly reflected in the Law of Ukraine «On Employment of the Population». It is also prohibited to indicate age restrictions on candidates in job stickers (advertisements), to offer work only to women or only men, with the exception of specific work that can only be performed by persons of

a certain gender, to make demands that prefer one of the articles, and also to demand from individuals being employed, providing personal information.

The Article 2¹ of the Labor Code of Ukraine establishes a prohibition of any discrimination in the field of work, including the violation of the principle of equality of rights and opportunities, direct or indirect limitation of the rights of workers depending on race, color, political, religious and other beliefs, gender, gender identity, sexual orientation, ethnic, social and foreign background, age, health status, disability, etc.

The provisions of the Law of Ukraine “On the Principles of Prevention and Combating Discrimination in Ukraine” are aimed at combating all kinds of discrimination (on the basis of race, color, political, religious and other beliefs, gender, age, disability, ethnic and social origin, citizenship, family and property, place of residence, language or other characteristics). The issue of age discrimination is not properly spelled out in it.

In order to ensure the achievement of the Sustainable Development Goals adapted for Ukraine, approved by the leaders of the countries at the meeting of the UN General Assembly in September 2015, creation of favorable conditions for healthy and active longevity, by the Decree of the Cabinet of Ministers of Ukraine dated 11.01.2018, No. 10-p the State Policy Strategy on healthy and active longevity of the population for the period until 2022 was approved. To achieve the goals of the Strategy, by the Government was approved the Action Plan (dated 26.09. 2018 No. 688-p) for the implementation of this Strategy, among which, in particular, is the implementation of the norms of the International Labor Organization Recommendation No. 162 on older workers in national legislation aimed at expanding the possibilities for continuing work for older workers, ensuring flexible organization labor and working time for such workers; analysis of labor legislation in order to identify standards that may lead to discrimination of older citizens in the labor market and stimulate the termination of work earlier or immediately after reaching retirement age.

Therefore, in order to expand the opportunities for continuing work for older workers, providing flexible organization of work and working time for such workers, national legislation needs to be improved, in particular by implementing the provisions of the International Labor Organization Recommendation No. 162 on older workers and international best practices employment of citizens of pre-retirement age, taking into account gender characteristics.

Thematic area: «Access to justice»

The Ukrainian Parliament Commissioner for Human Rights exercises parliamentary control over the observance of constitutional rights and freedoms of man and citizen is implemented, in particular, by promoting the harmonization of Ukrainian legislation on the rights and freedoms of man and citizen in accordance with the Constitution of Ukraine and international standards in the field of ensuring procedural rights. The specified powers were exercised by the Commissioner in the issue of access to justice.

Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention) guarantees the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in determining the civil rights and obligations of a person or in considering any criminal charge against person.

The key principles of Article 6 of the Convention are the rule of law and the proper administration of justice. These principles are also fundamental elements of the right to a fair trial.

The Constitution of Ukraine does not explicitly provide for the principle of accessibility of justice, but its presence is evident from a number of provisions of the Basic Law of Ukraine. So, according to the third part of Article 8 of the Constitution of Ukraine, recourse to the court to protect the constitutional rights and freedoms of man and citizen is guaranteed directly on the basis of the Constitution of Ukraine. Article 55 stipulates that the rights and freedoms of man and citizen are protected by the court; everyone is guaranteed the right to appeal on court decisions, actions or inaction of state authorities, local authorities, officials.

The Law of Ukraine «On Judiciary and Status of Judges» stipulates that the accessibility of justice for each person is ensured in accordance with the Constitution of Ukraine and in the manner prescribed by the laws of Ukraine (Article 7, part 3).

The European Court of Human Rights in its practice interprets access to justice as one of the fundamental rights of a person and a citizen; it follows from the content of the right to a fair, independent, impartial court formed by law. One of the indicators of the accessibility of justice, which is a component of the right to a fair trial, is considered to be the existence of an optimal system of legal expenses and developed mechanisms for providing legal assistance to the poor.

Monitoring of the state of the procedural legislation of Ukraine, constantly carried out by the Secretariat of the Commissioner on its own initiative and in connection with citizens' appeals, has discovered flaws in the provisions of the Law of Ukraine «On Court Fee» dated 08.07.2011 No. 3674-VI, may lead to violations of the principle of legal certainty and the right of access to justice.

In particular, in the said Law, norms have been found that differently govern the payment of court fees for applying an application with a court to cancel a court order (Articles 3, 4 of the Law), and ambiguous provisions regarding exemption from court fees for combatants, injured participants Revolutions of dignity, Heroes of Ukraine (Article 5 of the Law).

In order to prevent violations of human and civil rights, the representative of the Ombudsman sent a letter to the Committee of the Verkhovna Rada of Ukraine

with a proposal to develop an appropriate draft law on amendments to the Law of Ukraine «On Court Fee» with the subsequent introduction of the Verkhovna Rada of Ukraine.

In addition, the Secretariat of the Commissioner revealed the imperfection of the legal regulation of the Law of Ukraine «On Court Fee» on the issue of payment of court fees by persons who apply to the court for protection of the rights of minors (articles 3, 5, 8 of the Law), study of judicial practice of applying the provisions of the Law on this issue indicates the deprivation of its unity and consistency.

In view of the powers granted by the Law in May 2019, the Commissioner appealed to the Supreme Court about a violation before the Plenum of the Supreme Court regarding the generalization of judicial practice of applying the relevant provisions of the Law of Ukraine «On Court Fee» and providing the courts with advisory clarifications on their application in solving court cases.

Thematic area: « Education, training, life-long learning and capacity building»

Education throughout life in Ukraine is carried out within the limits defined by the Constitution of Ukraine, the Law of Ukraine «On Education», other laws in the field of education («On General Secondary Education», «On Extracurricular Education», «On Vocational Education», «On Higher Education», «On Scientific and Scientific-Technical Activities») and regulatory legal acts.

The new Law of Ukraine «On Education» (No. 2145-VIII), adopted in September 2017, provides for the realization of the human right to education throughout life, its involvement in professional and public life by providing the necessary literacy level. The provisions of Article 18 of the Law of Ukraine «On Education» stipulate that adult education, which is an integral part of lifelong education, aimed at realizing the right of every adult to lifelong learning, taking into account his personal needs, priorities of social development and the needs of the economy.

The Decree of the President of Ukraine dated on September 30, 2019 No. 722/2019 «On the Sustainable Development Goals of Ukraine for the Period up to 2030» defines comprehensive and fair quality education and encourages lifelong learning opportunities for all.

On the basis of the current legislation, state and local governments create conditions for formal, non-formal and informal adult education.

The components of adult education are postgraduate education; professional training of employees; refresher and/or advanced training courses; continuous professional development; any other elements provided by law, proposed by the educational entity or self-identified.

The legislation states that a person has the right to freely choose an educational institution, institution, organization, other educational entity, types, forms, pace of education and educational program within the framework of adult education.

Postgraduate education involves the acquisition of new and improvement of previously acquired competences on the basis of acquired higher, professional (vocational) or professional advanced education and practical experience.

Postgraduate education includes:

specialization - profile specialized training;

retraining - adult education aimed at vocational training in order to master another (other) profession (s);

professional development - acquisition of a new person and/or improvement of previously acquired competences;

internship - the acquisition of practical experience by a person in fulfilling tasks and responsibilities in a particular professional activity or field of expertise;

Postgraduate education in the field of healthcare also includes internship, medical residency.

Advanced training courses are held to acquire a new competency in the profession or field of expertise.

Continuous professional development - is a continuous process of training and improving the professional competencies of specialists after obtaining higher and/or postgraduate education, which allows a specialist to maintain or improve standards of

professional activity and continues throughout the entire period of his professional activity.

In particular, in order to stimulate teachers to improve teaching skills and confirm the high level of their professional competencies, certification of teachers has been introduced.

At the same time, it should be noted that at nowadays there is a need to define tasks for financial support of adult education, as well as the introduction of an effective management system, quality criteria and other conditions for effective partnership and support in this area.

In order to improve the existing situation in the country, amendments were made to the legislation regarding the peculiarities of training for elderly citizens. The Ministry of Education and Science of Ukraine created a working group to draft the Law of Ukraine «On Adult Education», analyzed the state of the functioning of the adult education system in Ukraine and abroad, determined the conceptual basis of the bill. By the Central Executive Body in the field of Education is scheduled to submit to the Cabinet of Ministers of Ukraine a bill «On Adult Education» in 2020.

In addition, despite the fact that Ukraine is a country with a fairly high level of population aging, the issue of supporting older people in the context of active longevity is of particular relevance.

In practice, the implementation of these goals is carried out by universities of the third age, whose activities were founded by the Institute of Gerontology of the National Academy of Medical Sciences of Ukraine. In recent years, the development of a network of such universities has received further impetus due to the support of this direction by the Ministry of Social Policy of Ukraine and the projects of the UN Population Fund. As innovative projects, universities of the third age are open in many cities of Ukraine. The activity of such universities for more than ten years has been carried out within the framework of the provision of appropriate social and pedagogical services and is provided, as a rule, by the structural unit of the territorial center of social services (provision of social services).

As of 01.01.2019, 381 such universities are functioning, in which approximately 47 thousand elderly people are studying.

The positive aspects in the field of ensuring the rights of older people is the approval by the Cabinet of Ministers of Ukraine dated 11.01.2018 No. 10-p of the State Policy Strategy on healthy and active longevity of the population for the period up to 2022, which provides comprehensive measures to support elderly citizens, ensuring their active participation in social development, improving the quality of life and the order of the Cabinet of Ministers of Ukraine of September 26, 2018 No. 688-p «On approval of the action plan for the implementation of the State Strategy policies on healthy and active longevity of the population until 2022».

Thematic area: «Social protection and social security, including social protection floors»

The right of citizens to social protection, including social security, defined by Article 46 of the Constitution of Ukraine.

The social security system in accordance with the Constitution has a complex structure, the elements of which are pension provision, social insurance, social security, social assistance.

The basic principles of state policy in relation to elderly citizens are still regulated by the Law of Ukraine «On Basic Principles of Social Protection of Veterans of Labor and Other Elderly Citizens in Ukraine». At the same time, the Government is working to improve it.

The Law defines the following regulatory elements of the right to social protection of older people:

- the right to an old-age pension (the procedure and conditions for pension provision are established by the Law of Ukraine «On Compulsory State Pension Insurance» and other laws);

- the right to receive state social assistance to persons without a pension right (Law of Ukraine «On state social assistance to persons without a pension right and to persons with disabilities»);

- the right on state social assistance for the care of persons who, at the conclusion of medical institutions, need constant external care (Law of Ukraine «On State Social Assistance to Persons Not Eligible for Pensions and Persons with Disabilities»);

- the right to receive social services at home and in special institutions (the Law of Ukraine «On Social Services» and a number of by-laws adopted for its implementation). On January 1, 2020, the new Law of Ukraine «On Social Services» of January 17, 2019 No. 2671-VIII, which contains a number of advantages compared to the current Law, will come into force;

- the right on guardianship and trusteeship (The Civil Code of Ukraine and by-laws), etc.

According to the above mentioned Law, the state also guarantees the creation of conditions for maintaining health and active longevity in accordance with modern scientific achievements.

The Association of elderly citizens with the aim of participating in the development of decisions of public authorities and administrations that directly relate to their interests are part of the coordination, public and other councils created by the central executive bodies that formulate the state policy in the field of social protection and ensure its implementation and local authorities.

The current legislation establishes certain benefits for the payment of mandatory contributions and taxes for the elderly¹.

¹ Individuals-entrepreneurs, including those who have chosen a simplified taxation system, members of a farm, if they receive an old-age pension or are persons with disabilities, or have reached retirement age and receive a pension or social benefits in accordance with the law, are exempted from paying a single contribution for themselves compulsory state social insurance. Such persons may voluntarily participate in the system of compulsory state social insurance (part

The government is taking separate measures to gradually bring the pension and social security system to a higher level, but they do not provide for the satisfaction of the actual social needs of older people and do not allow for a full-fledged lifestyle, and especially those belonging to vulnerable categories of the population.

The conditions defined by law and the mechanism for calculating pensions do not stimulate citizens to pay insurance premiums during the course of work².

Taking into account the low pension, a significant part of the people who receive it are forced to continue to work after retirement. Persons to whom a pension is assigned are subject to compulsory state pension insurance on an equal basis with other working persons. However, the introduction of additional insurance experience after reaching retirement age does not significantly affect the size of the pension.

The right to an adequate standard of living and adequate social protection are violated due to a biased definition of the basic state standard of “living wage”, on which the majority of social and pension payments depend (the size of this indicator is confirmed to be almost half the actual). Therefore, this state standard is subject to revision.

Despite the adoption by the Constitutional Court of Ukraine of the decision of October 7, 2009 No. 25-пп/2009, the problem of the realization of the right of Ukrainian citizens to receive a pension in case of going abroad for permanent residence to countries with which Ukraine has not concluded an international agreement remains unresolved pension issues.

In the context of the decentralization reform, the realization of certain rights in the field of social protection guaranteed at the national level by the elderly depends on how financially viable the community in which the person lives.

Involvement in the provision of private sector social services is not large-scale and mainly focused on meeting the specific needs of their recipients.

The measures defined by law to prevent homelessness and identify the homeless, as well as ensuring their social protection, are not fully implemented.

For the homeless, local self-government bodies, in cooperation with public organizations, are provided mainly with social services (providing clothing, food).

As a result of recent amendments to the legislation on the provision of housing subsidies to the population to cover part of the costs of housing and communal services, a significant part of elderly citizens have lost the right to receive them. This leads to an increase in arrears in payment of relevant services, further worsening their financial situation.

The state policy of social protection of the population, primarily social support of vulnerable segments of the population, requires improvement in terms of enhancing their impact on poverty alleviation. By the Commissioner was reiterated the need to address these and other issues, reduce inequalities, improve living standards and ensure access to basic services for all senior citizens.

four of Article 4 of the Law of Ukraine “On the collection and accounting of a single contribution to compulsory state social insurance”).

Pensioners are exempted from paying land tax by age (Article 281 of the Tax Code of Ukraine).

² Based on the data of the Pension Fund of Ukraine, a pension in the amount of below / at the level of the poverty line determined by the UN for the countries of Central and Eastern Europe (the cost of daily consumption is at the level of 5 US dollars) as of 01.01.2019 in Ukraine, about 83% of pensioners received.