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CIVIL SOCIETY PARTICIPATION IN PROTECTING AND MONITORING THE CONSTITUTIONAL SOCIAL RIGHTS' OBSERVANCE

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SUMMARY

The article deals with the activities of non-governmental organizations, other representatives of the civil society of the Republic of Moldova in protecting and monitoring the observance of constitutional social human rights. The analysis of the norms of the current legislation of the Republic of Moldova regulating the activities of NGOs that determine the scope of their powers to monitor the implementation of legal norms is conducted. Attention is paid to the People's Advocate (Ombudsman) of the Republic of Moldova as one of the participants in the process of monitoring the observance of social human rights. A classification of civil society institutions involved in the protection of social human rights is proposed, and some proposals are offered concerning amendments and additions of the Republic of Moldova's current legislation.

Key-words: *social constitutional rights, non-profit organizations, people's lawyer, monitoring, protection of social rights.*

In accordance with the Law of the Republic of Moldova No. 837 of 17.05.1996 „On public associations” [10], the purpose of creating non-commercial organizations independent of public authorities is the implementation and protection of civil, economic, social, cultural and other legitimate rights and freedoms, the development of public activity [10, art. 2].

Along with the constitutional provision on the right to unite in parties and other socio-political organizations [12, art. 41], as well as the right to form and

PARTICIPAREA SOCIETĂȚII CIVILE LA PROTECȚIA ȘI MONITORIZAREA RESPECTĂRII DREPTURILOR SOCIALE CONSTITUȚIONALE

SUMAR

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Articolul se referă la activitățile organizațiilor publice, ale altor reprezentanți ai societății civile din Republica Moldova pentru a proteja și monitoriza respectarea drepturilor constituționale sociale ale omului. Se face o analiză a normelor actualei legislații a Republicii Moldova privind reglementarea activităților ONG-urilor care determină întinderea competențelor lor de monitorizare a implementării normelor juridice. Se atrage atenția activității Avocatului Poporului (Ombudsman) al Republicii Moldova, ca unul dintre participanții la procesul de monitorizare a respectării drepturilor sociale ale omului. Se propune o clasificare a instituțiilor societății civile implicate în protecția drepturilor sociale ale omului și se înaintează câteva propuneri de modificare a legislației actuale a Republicii Moldova.

Cuvinte-cheie: *drepturi constituționale sociale, organizații non-profit, avocat al poporului, monitorizare, protecția drepturilor sociale.*

become a member of a trade union [12, art. 42] in the Republic of Moldova there is a legislatively fixed possibility of creating public structures that deal with the protection of human rights, including social rights. To date, non-state mechanisms and ways of such protection are actively developing.

In Article 1 of the Law of the Republic of Moldova „On Public Associations” [10], the concept of „public association” is given, but considering that the activities of public associations are regulated by various branches of law, we should demarcate between the concept



of „public association” and „public organization” [14, p.12]. The definition of the concept of „public association” proposed by V. Lysenko – „a public association is a non-governmental, non-profit formation created on the initiative of persons exercising the right to unite and united on the basis of a community of interests for the implementation of common statutory goals, methods and means that do not contradict the law” [14, p.12]. As the analysis of the norms of the current legislation shows [10], in the constitutional legal sense the term „public association” is used in regulating the relations of the subjects of non-commercial, public character, including when it comes to public control over their observance of human rights.

Speaking about social control over the observance of social human rights, it is necessary to focus on the activities of civil society institutions of the Republic of Moldova, which play an important role in today's environment, carrying out a number of social functions.

Civil society institutions have many means of reaction: active participation in election campaigns and referendums, protests or support of various requirements, and great opportunities in shaping public opinion, especially through independent media and communications.

Institutes and organizations of civil society are called upon to provide real guarantees of human rights, equal access to participation in state and public affairs. In this connection, one should agree with the opinion that „some lawyers refer to the present stage of the mankind development as the” epoch of NGOs-NPOs (non-governmental – non-profit organizations) [3, p.108].

Civil society also performs the function of social control concerning its members. It is independent of the state, has the resources and sanctions to force the individual to comply with social norms, ensure socialization and education of citizens. Civil society also performs a stabilizing function by its institutions and organizations. Being a dynamic system, the main characteristic of which is self-organization and the existence of a constant public debate, civil society needs a constant dialogue between government and society.

Civil society is an inalienable prerequisite for the rule of law. A rule-of-law state can not arise and function without the formation of a civil society within itself [13, p.58].

Considering the problems of public-private partnership Sh. Belikchiu also draws attention to the need for a reasonable combination of administrative measures of influence and the provision of freedom to the subjects and the possibility of solving problems on the basis of methods of equality of parties and dispositiveness [2, p.9].

Speaking about the participation of civil society

institutions in the protection of social human rights, taking into account their diversity and performed functions, it seems possible to combine them into two groups: specialized institutions of civil society (trade unions, disabled people' organizations, employers' associations, etc.) and non-specialized (all NGOs, including international).

The criterion for distinguishing between organizations is the presence of so-called special legal personality (for example, protection of labor and social rights of trade union members).

In general, we can talk about the social partnership as a form of demonstration of civil society relations. Despite the individualization of labor relations, the continuing tendency of reduction of trade union members, social partnership in the world of work is the most effective way of representing the interests of workers, as well as an effective mechanism of law-making in regulating social and labor relations. In addition, employers and other business representatives acting as subjects of social and partnership legal relations, in the process of social dialogue, have the opportunity to establish mutually beneficial conditions that increase the efficiency of production and other activities.

The labor legislation of the Republic of Moldova from all the diversity of relations on social partnership (socio-political, economic, legal, etc.) identifies relations in the world of work and legally fixes the definition of the concept of „social partnership” [17, art. 15].

Along with the Labor Code of the Republic of Moldova, the state basically has a legal framework for the activities of social partners – trade unions and representatives of employers. And although the legal equality of the subjects of social partnership is legislated, their economic inequality is often the reason for violating the provisions of social partnership agreements of different levels.

With the aim of smoothing these contradictions, the „weaker” side of social partnerships-employee representatives, has a number of guarantees for their activities. In the Constitution of the Republic of Moldova (Article 42) [12], the Law of the Republic of Moldova on Trade Unions establishes the rights of workers to freely form trade unions and to participate in their activities, to bargain collectively and to conclude collective agreements, monitor compliance with labor legislation and participate in the review collective labor conflicts etc.

The powers of the parties to social partnership to elaborate the terms of collective labor contracts and agreements can be considered as a standard-setting process, and therefore, as V. Balmush has correctly noted „the collective agreement becomes the source of the right to work, and its general provisions are real

legal norms of a normal nature; is an important source of constitutional law for the formation of workers' associations" [1, p.7].

It is also important that the state ratified the fundamental conventions of the International Labor Organization regulating relations in this sphere [11] and, according to the International Trade Union Confederation, the trade union legislation of only four CIS states meets the fullest criteria of the ILO, among which the Republic of Moldova is also mentioned [15].

Therefore, we can say that the prospects for the development of social partnership are largely determined by the functioning of trade union organizations in modern conditions.

The issues of protecting the rights of trade union members in the labor market, and the search for new mechanisms for such protection remain topical for today; the decision to increase the motivation of trade union membership, preserve the number of trade union ranks, involve new members, including private sector workers. It seems that social partnership is the main prerequisite for social cohesion of workers, social responsibility of business, and social stability in the state.

Speaking about social control over the observance of social rights, it is necessary to dwell on the activities of the people's advocate. The People's Advocate was elected and carries out its activities in accordance with the Law on the People's Advocate (Ombudsman) No. 52 of 03/04/2014 as an important extrajudicial mechanism for the protection of human rights in Moldova [16].

The preamble to the Law of the Republic of Moldova No. 52 of 03.04.2014 on the people's advocate (ombudsman) affirms the commitment of the State of the Universal Declaration of Human Rights [7], the European Convention for the Protection of Human Rights and Fundamental Freedoms [8], other international human rights instruments and emphasizes the fact of assistance from the state's observance of human rights and freedoms and ensuring the protection of the rights and freedoms of all individuals on the territory of the Republic of Moldova.

It should be noted that the topic of social protection, for the past 3-5 years, according to statistics, ranks third (following the appeals on the right to free access to justice and the right to health care and medical care), in terms of the number of applications from of the total number of applications sent to the Ombudsman [16].

In 2015, out of 91 applications registered under this category, 37 petitioners complained that they had not been granted social benefits, 24 people complained that their right to a decent life was violated, and in 30 cases the applicants tried to challenge the way

calculation of social benefits. The applicants are mostly unsatisfied with the low level of incomes and social payments that do not reach the level of the subsistence minimum, insufficient public awareness of social benefits and payments to persons from socially vulnerable groups of the population, existing social services etc. [5, p.189]. In 2016, the number of applications sent to the Ombudsman on this topic (74) increased compared to previous years [4, p.197].

The Institute of the Ombudsman is not a controlling body, although it partially performs the control function. In their activities, each ombudsman acts by giving a public character to a particular situation, that is, relies on public opinion. As a social institution of civil society, the Ombudsman assists citizens by encouraging the various institutions of the state to perform duties concerning members of civil society. At the same time, the Ombudsman also defends those rights that have not received constitutional or legislative fixing, including the right to good (good-quality) governance, rightly believing that the laws of civil society in importance, content and influence often „outweigh” positive laws.

The Ombudsman Service is attractive to socially and politically unprotected members of society who can use it. During the year 2015, employees of the Office of the People's Advocate of the Republic of Moldova accepted 2.659 citizens and 943 applications in writing at the reception [5].

The activity of the Ombudsman is individualized, which increases its influence and authority. According to Article 24 of Law No. 52 [9], when establishing the fact of violation of the rights or freedoms of the applicant, the people's lawyer sends the appropriate body or official whose decisions, actions or omissions, in his opinion, violate human rights and freedoms, his opinion, containing recommendations on taking the necessary measures to urgently restore the violated rights of the applicant.

According to paragraph b), Article 25 of the Law of the Republic of Moldova No. 52 „On the People's Advocate”, following the examination of the application, the people's lawyer has the right to apply to the competent authorities for instituting disciplinary or criminal proceedings against an official who committed violations, entailing infringement of rights and freedoms of man [9].

Unlike other institutions for the protection of civil rights and freedoms, the Ombudsman can be guided not only by legal norms but also by legal principles, acting on the basis of moral considerations and ideals of justice.

When considering the application received from a member of the Border Police Department, a legal vacuum was established in the implementation of the



right to social security in the granting of the holiday to care for the child under the age of 3 years. It was found that, as a result of the decision of the Constitutional Court of the Republic of Moldova (Decree of the Constitutional Court No. 12 of 01.11.2012 on the control of the constitutionality of certain provisions of Article 32 part (4) of Law No. 162-XVI of July 22, 2005 on the status of servicemen (Appeal 12a / 2012)) [17] amendments were made to the legislation regulating the activities of the Ministry of Internal Affairs of the Republic of Moldova, the Ministry of Defense of the Republic of Moldova, the National Center for Combating Corruption of the Republic of Moldova, Application to the regulatory framework governing the activities of some subordinated institutions. For this reason, the people's lawyer sent to the Government of the Republic of Moldova a proposal to amend the Law of the Republic of Moldova No. 283 of 28.12.2011 „On Border Police” in order to eliminate the legal flaw and ensure equal and fair treatment of all persons working in institutions of the national system security.

It is also noteworthy that the initiative of the Moldovan people's advocate recommended that the Ministry of Health, Labor and Social Protection of the Republic of Moldova develop an effective strategy for cooperation between NGOs and state institutions on social assistance to socially vulnerable groups of people (people with disabilities, orphans, children at risk, victims of domestic violence, victims of torture etc.) by establishing a clear, fair selection of these organizations. It is also important to establish a mechanism for monitoring the use of these funds allocated by NGOs [17].

Speaking about appeals to the people's advocate on the issue of non-payment of wages, in particular, on the facts of non-execution of writ of execution on payment of wages arrears [5, p.253], it is important to note that the Ombudsmen raised these problems annually in the Reports, especially regarding situations when businesses declared bankruptcy.

In this context, the practice of the European Court of Human Rights is important, which ruled that a „claim” could constitute „ownership” in the interpretation of Article 1 of Protocol No. 1 to the Convention if it is sufficiently realistic to be enforceable [6, § 59]. In its practice, the Court noted that the final judicial decision providing for the payment of wages must be executed as soon as possible.

The conclusions and recommendations of the people's advocate relate to different subjects: providing access for people with disabilities to state bodies of the social sphere, ensuring the right to a decent life, impeding the realization of the right to information,

providing protection for people with disabilities, observing the right to private property, provision of conditions in educational institutions, restoration of the rights of minors, ensuring the right to social protection of the mother and child, as well as the need to take measures to combat domestic violence [5].

So, the main functions of the institution of the Ombudsman are the following: promoting more efficient work of public authorities and management; assistance to residents in the restoration of violated rights; the implementation of the function of an intermediary, a „bridge” between the society and state bodies; implementation of the extrajudicial investigation function.

An integrated approach to solving the problem of the legal base of the ombudsman institution allows to minimize existing problems in the functioning of mechanisms for the protection of human and civil rights and freedoms, as well as to stimulate the activity of state bodies, local self-government bodies and officials [18, p.25].

Concerning the provisions of the Law of the Republic of Moldova No. 52/2014 [9], it should be noted that it needs a number of additions and changes.

It seems necessary to provide higher level of guarantees for the independence of the institution; appointment to the position of a people's advocate (and a national advocate for the rights of the child) must take place in the voting of an absolute parliamentary majority; a decision on early termination of powers must be taken by the parliamentary majority that exceeds 3/5, the decision should be based on clearly specified reasons, it must be preceded by a public hearing and include how to appeal the decision in court.

The competence of the Ombudsman in relation to the private sector and judicial institutions should be reviewed and clearly defined in the law as to the People's Advocate, and for the People's Advocate for Children's Rights. Any person under the jurisdiction of the Republic of Moldova (not only those who live or have lived on its territory), should have the right to complain to the national lawyer and this right should also apply to legal persons.

The effectiveness of this institution, of course, is achieved through the focus on ensuring the protection of human rights and freedoms. However, ombudsmen are required to work closely with other institutions to protect human rights, because the more ways there are in the state of human rights protection, especially given humane society. In this regard, the institution of the Ombudsman should be viewed as an additional remedy in the system of state mechanisms that carry out this activity.

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