

ON THE AUTHORIZED HUMAN RIGHTS REPRESENTATIVE OF THE VERKHOVNA RADA OF UKRAINE

CHAPTER I

GENERAL PROVISIONS

Article 1

Parliamentary control over the observance of constitutional human and citizens' rights and freedoms

The Authorised Human Rights Representative (hereinafter referred to as «the Representative»), governed in his or her operation by the Constitution of Ukraine, the laws of Ukraine and effective international agreements that the Verkhovna Rada of Ukraine has agreed to comply with on a mandatory basis, shall permanently exercise his or her parliamentary control over the observance of constitutional human and citizens' rights and freedoms and the protection of every individual's rights on the territory of Ukraine and within its jurisdiction.

Article 2

The scope of application of the Law

The scope of application of the Law shall extend to relations emerging from the implementation of human and citizens' rights and freedoms exclusively between a citizen of Ukraine, irrespective of his or her dwelling place, a foreigner or a stateless person, who are on the territory of Ukraine and bodies of state power and local self-government, their officials and officers.

Article 3

The purpose of exercising parliamentary control over the observance of constitutional human and citizens' rights and freedoms

The parliamentary control exercised by the Representative shall be aimed at:

- 1) protecting human and citizens' rights and freedoms proclaimed by the Constitution of Ukraine, the laws of Ukraine and international agreements of Ukraine;
- 2) observing and respecting human and citizens' rights and freedoms through entities indicated in Article 2 of this Law;
- 3) preventing acts of violation against human and citizens' rights and freedoms or the facilitation of their renewal;
- 4) facilitating the process of bringing legislation of Ukraine on human and citizens' rights and freedoms in accordance with the Constitution of Ukraine and international standards in this area;
- 5) improving and further developing international cooperation in the area of the protection of human and citizens' rights and freedoms;
- 6) preventing any forms of discrimination with regard to a person's implementation of his or her rights and freedoms;
- 7) encouraging legal knowledge among the population and protecting confidential information about each person.

Article 4

Legal status of the Representative

The Representative shall be an official, whose status is determined by the Constitution of Ukraine, this Law and the Law of Ukraine «On State Service».

The Representative shall be independent of other state bodies and officials in the exercise of his or her operation. The activity of the Representative shall be supplementary to the existing measures of protection of constitutional human and citizens' rights and freedoms; it neither repeals them nor results in reviewing the competence of state bodies which ensure the protection and restoration of violated rights and freedoms.

The authority of the Representative cannot be terminated or restricted in the event of expiration of term of the authority of the Verkhovna Rada of Ukraine or its dissolution (self-dissolution), declaration of martial law or the state of emergency in Ukraine or in its separate areas.

The Representative shall have a seal, featuring a Small State Coat of Arms of Ukraine and his or her appellation.

The capital of Ukraine – the City of Kyiv shall be the seat of the Representative.

CHAPTER II

APPOINTMENT TO THE POST, DISMISSAL FROM THE POST AND TERMINATION OF AUTHORITY OF THE AUTHORIZED HUMAN RIGHTS REPRESENTATIVE OF THE VERKHOVNA RADA OF UKRAINE

Article 5

Requirements for the candidate to the post of Representative and appointment to the post of Representative

The Representative shall be appointed to his or her post and shall be dismissed from his or her post by the Verkhovna Rada of Ukraine through a secret ballot vote.

A citizen of Ukraine, who has attained the age of 40 on the day of voting, has a good command of the state language, high moral qualities, experience in human rights protection, and has been residing in Ukraine for the last five years can be appointed to the post of Representative.

A person who has a criminal record for committing a crime cannot be appointed Representative if the record is not cancelled or erased by the procedure established by law.

The Representative shall be appointed for the term of five years, commencing from the day of his or her taking oath at the session of the Verkhovna Rada of Ukraine.

Article 6

The procedure, for nominating a candidate to the post of Representative

Proposals for candidate(s) to the post of Representative shall be made by the Chairman of the Verkhovna Rada of Ukraine or by no fewer National Deputies of Ukraine than one-fourth of the constitutional composition of the Verkhovna Rada of Ukraine. A respective Committee of the Verkhovna Rada of Ukraine shall submit its conclusions to the Verkhovna Rada of Ukraine on each candidate to the post of Representative, on how the candidate meets the requirements envisaged by the Law, and on the absence of reasons which would prevent the candidate from holding this post.

The candidate shall be nominated for appointment to the post of Representative within twenty days, commencing from the next day after:

- 1) this Law has entered into force;
- 2) the term of appointment for the Representative has expired, his or her authority has been terminated or in the event of his or her dismissal;
- 3) the results of voting have been announced, in the event that the Representative has not been appointed.

Voting shall be conducted during plenary sessions of the Verkhovna Rada of Ukraine in the form of a secret ballot vote but no earlier than ten days and no later than twenty days upon the expiration of term for the nomination of candidates for participation in elections.

The candidate shall not be deemed appointed until he or she receives the majority of votes from National Deputies of Ukraine making up the constitutional composition of the Verkhovna Rada of Ukraine, with the resolution adopted thereof.

Should more than two candidates be nominated to the post of Representative and none of them are appointed, the Verkhovna Rada of Ukraine shall repeat voting between the two candidates who have received the largest number of votes.

Voting on the appointment of the Representative shall be repeated in accordance with the procedure established by this Article.

Candidates for the appointment to the post of Representative shall be nominated again in the event that none of the candidates received the required number of votes.

Article 7

The oath of the Representative

Before assuming his or her post at the session of the Verkhovna Rada of Ukraine, the Representative shall take the following oath:

«I (first and last name) on assuming the post of Authorised Human Rights Representative of the Verkhovna Rada of Ukraine, solemnly swear to honestly and scrupulously protect human and citizens' rights and freedoms, conscientiously perform my duties, honour the Constitution of Ukraine and laws of Ukraine, and be governed by justice and personal conscience.

I commit myself to act in an independent and unbiased manner, serving human and citizens' interests.»

The authority of the Representative shall be effective from the moment of taking oath.

Article 8

Incompatibility with the post of Representative

The Representative cannot be given a representative mandate, hold any other positions at bodies of state power, perform any other work, paid or unpaid, at bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, except teaching, scholarly or any other creative activity.

The Representative cannot be a member of any political party.

In order to comply with the conditions stipulated in the first and second part of this Article, the Representative should eliminate any encumbrances within a period of ten days following his or her appointment. The Representative cannot take the oath until the aforementioned encumbrances are eliminated.

If the encumbrances noted in the first and second part of this Article emerged during the term of activity of the Representative, they should be eliminated within a period of ten days commencing from the day of disclosure.

Should elimination of these encumbrances be impossible within the period of ten days, the Representative shall be obligated to make, within the established period, a statement on the refusal to follow any instructions or exercise any other authority than that which is given to the Representative.

The authority of the Representative shall be terminated and the Verkhovna Rada of Ukraine shall be obligated to remove him or her from the post, in the event the Representative has not complied with established requirements within the aforesaid period. The new nomination of candidates and appointment of the Representative shall be exercised in accordance with the procedure envisaged by Article 6 of this Law.

Article 9

Termination of authority and dismissal of the Representative from his or her post

The authority of the Representative shall be terminated in the event of:

- 1) the refusal of the Representative to further comply with his or her duties through the submission of a statement of resignation;
- 2) the entry into legal force of a court verdict of guilty against him or her;
- 3) a declaration by the court that the person holding the post of Representative is missing or the pronouncement that he or she is dead has entered legal force;
- 4) the taking of oath by the newly-elected Representative;
- 5) the death of the person holding the post of Representative. The Verkhovna Rada of Ukraine shall adopt the resolution on dismissal from

the post of Representative prior to the expiration of term that he or she has been elected for in the event of:

- 1) violation of the oath;
- 2) incompliance with the requirements on incompatible activities;
- 3) termination of citizenship of Ukraine;
- 4) inability to comply with duties for a period exceeding four months due to unsatisfactory health conditions or the loss of ability to work.

The Temporary Special Commission of the Verkhovna Rada of Ukraine shall conclude whether there are grounds available to dismiss the Representative from his or her post.

Should the aforesaid grounds be available, the Verkhovna Rada of Ukraine shall review the issues and adopt a respective resolution on dismissing the Representative from his or her post following an application "by the Chairman of the Verkhovna Rada of Ukraine or no fewer National Deputies of Ukraine than one-fourth of the constitutional composition of the Verkhovna Rada of Ukraine.

The Representative shall be deemed to be dismissed from his or her post, if the majority of National Deputies of Ukraine, making up the constitutional composition of the Verkhovna Rada of Ukraine, voted in favour thereof.

Termination of authority and dismissal of the Representative from his or her post shall be legalized by a respective resolution of the Verkhovna Rada of Ukraine.

CHAPTER III

ORGANIZATION OF THE ACTIVITY OF THE REPRESENTATIVE

Article 10

The secretariat of the Representative

A secretariat, which is a legal entity and has its own bank account and established seal, shall be formed in order to secure the activity of the Representative.

The structure of the secretariat, distribution of duties and other issues concerning the organization of its activity shall be governed by the Regulations on the Secretariat of the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine (hereinafter referred to as «Regulations»).

The Law of Ukraine «On State Service» shall apply to secretariat staff members. The Regulations and the budget of the secretariat shall be approved by the Representative within the scope of budget ex-

penses allotted for the Representative's activity. The appointment and dismissal of secretariat staff members shall be exercised by the Representative.

A board of advisors (which can also operate on a voluntary basis), made up of persons having practical experience in the area of protection of human and citizens' rights and freedoms, can be formed under the Representative with the aim of offering consultation, conducting scientific investigations as well as examining proposals on how to improve the situation with regard to the protection of human and citizens' rights and freedoms.

Article 11

Delegates of the Representative

The Representative shall be entitled to appoint his or her delegates within the allocated funds approved by the Verkhovna Rada of Ukraine.

The organization of activity and scope of authority for the delegates of the Representative shall be governed by Regulations on Delegates of the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine, which are approved by the Representative.

Article 12

Procedure for financing the activity of the Representative

Financing for the activity of the Representative shall be allocated from the State Budget of Ukraine and will annually receive its own distinction.

The Representative shall elaborate, submit to the Verkhovna Rada of Ukraine for approval and comply with his or her budgetary outlays.

The Representative shall submit his or her financial report in accordance with the procedure established by the legislation of Ukraine.

The Verkhovna Rada of Ukraine and respective bodies of executive power and bodies of local self-government shall form the necessary environment in which the Representative, his or her secretariat and delegates shall operate.

CHAPTER IV

THE AUTHORITY OF THE REPRESENTATIVE

Article 13

The rights of the Representative

The Representative shall be entitled to:

1) be received, without any delay, by the President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine, the Prime Minister of Ukraine, the chairmen of the Constitutional Court of Ukraine, the Supreme Court of Ukraine and higher specialized courts of Ukraine, the Procurator General of Ukraine, the chairmen of other state bodies, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers;

2) attend sessions of the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Constitutional Court of Ukraine, the Supreme Court of Ukraine, and higher specialized courts of Ukraine, the collegiums of procurators' offices of Ukraine and other collegiate bodies;

3) appeal to the Constitutional Court of Ukraine with regard to: the issue of conformity between the Constitution of Ukraine and the laws of Ukraine and other legal acts issued by the Verkhovna Rada of Ukraine, acts issued by the President of Ukraine, acts issued by the Cabinet of Ministers of Ukraine, and legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea concerning human and citizens' rights and freedoms;

the official interpretation of the Constitution of Ukraine and the laws of Ukraine;

4) visit, without hindrance, bodies of state power, bodies of local self-government, enterprises, institutions, organizations, irrespective of their forms of ownership, and be present at their sessions;

5) read documents, including classified (secret) ones and obtain copies from bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, bodies of prosecution, including cases which have been filed in court.

The access to information related to civil, military and state secrets shall be given in accordance with the procedure established by legislative acts of Ukraine;

6) demand from officials and officers of bodies of state power, bodies of local self-government, enterprises, institutions, organizations, irrespective of their forms of ownership, facilitation in conducting acts of inspection regarding the activity of enterprises, institutions and organizations under their control and subordination, and ensure that experts participate in acts of inspection, providing their expertise and respective conclusions;

7) invite officials and officers, citizens of Ukraine, foreigners and stateless persons to submit oral and written explanations with regard to cases under review;

8) visit, at any time, places of detention, holding cells, various types of facilities where convicts are imprisoned and facilities where medical treatment and rehabilitation is forcefully applied, psychiatric hospitals, interview persons who are residing there and obtain information on their living conditions;

9) attend court sessions of all instances, including court sessions held behind closed doors, in the event that the subject of the legal case at hand, in whose interest the judicial proceedings have been ruled to be held behind closed doors, has given consent;

10) appeal to the court about protecting human and citizens' rights and freedoms of persons who cannot do this on their own due to reasons of health or any other appropriate reason, and also attend judicial proceedings personally or through a delegate in accordance with the instances and procedure established by law;

11) submit to respective bodies, documents containing the response of the Representative to instances of violation against human and citizens' rights and freedoms, for use in taking respective measures;

12) supervise the observance of established human and citizens' rights and freedoms by respective bodies of state power, including those that conduct detective and search activity.

13) exercise control over the ensuring of equal rights and opportunities for women and men. (Article 13 has been supplemented by paragraph 13 in accordance with the Law No.274-VI of 15 April 2008)

Article 14

The duties of the Representative

The Representative shall be obligated to honour the Constitution of Ukraine and the laws of Ukraine, other legal acts, rights and human and citizens' interests protected by law, ensure the exercise of functions conferred on him or her and fully utilize the rights given him or her.

The Representative shall be obligated to maintain the confidentiality of information. This obligation shall remain effective after the termination of his or her authority.

In the event that the Representative has disclosed this information, he or she shall be liable in accordance with the procedure established by legislation.

The Representative shall not be entitled to disclose information that was obtained concerning the personal life of a petitioner and other persons related to the petition, without their prior consent.

Article 15

Acts of response of the Representative

The acts concerning the response of the Representative to acts of violation against regulations of the Constitution of Ukraine, the laws of Ukraine, international agreements of Ukraine on human and citizens' rights and freedoms shall be constitutional acts of submission of the Representative and acts of submission to bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions and organizations, irrespective of their forms of ownership, and their officials and officers.

Constitutional acts of submission of the Representative shall be acts indicating his or her response directed to the Constitutional Court of Ukraine with regard to deciding on the issue of conformity with the Constitution of Ukraine (constitutionality) and a law of Ukraine or any other legal act issued by the Verkhovna Rada of Ukraine, act issued by the President of Ukraine and the Cabinet of Ministers of Ukraine, legal act issued by the Autonomous Republic of Crimea; the official interpretation of the Constitution of Ukraine and the laws of Ukraine.

The act of submission of the Representative shall be the document which is submitted by the Representative to bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers for the purpose of assuming, within the period of one month, respective measures aimed at the elimination of uncovered acts of violation against human and citizens' rights and freedoms.

Article 16

Grounds to conduct legal proceedings and assign acts of inspection

The Representative shall exercise his or her functions on the basis of information regarding acts of violation against human and citizens' rights and freedoms, which he or she obtains through:

1. the appeal of citizens of Ukraine, foreigners, stateless persons or their representatives;
2. the appeal of National Deputies of Ukraine;
3. his or her own initiative.

Article 17

Consideration of appeals by the Representative

The Representative shall receive and consider appeals of citizens of Ukraine, foreigners, stateless persons or persons acting in their interests, in accordance with the Law of Ukraine «On Citizens' Appeals».

Appeals shall be filed with the Representative in a written form within the period of one year after disclosure of the act of violation against human and citizens' rights and freedoms. In the case of exceptional circumstances, the period can be extended by the Representative but should not exceed two years.

The Representative considering the appeal shall:

1. initiate the case on the act of violation committed against human and citizens' rights and freedoms;
2. explain what measures the person who has filed the appeal with the Representative should take;
3. submit the appeal, as appropriate, to the body which is competent to consider the case, and control the consideration of this appeal;
4. decline consideration of the appeal.

The Representative shall not consider appeals which are under review in courts, shall terminate legal proceedings that have been initiated if the person concerned has filed an appeal, statement or complaint with the court.

Notification to accept the appeal for consideration or refusal to accept the appeal for consideration shall be submitted in a written form to the person who has filed it. There should be cause for refusal to accept an appeal for consideration.

Article 18

Annual and special reports of the Representative

During the first quarter of every year, the Representative shall provide the Verkhovna Rada of Ukraine with an annual report on the issue regarding the observance and protection of human and citizens' rights and freedoms in Ukraine by bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers, whose acts (acts of omission) resulted in the violation of human and citizens' rights and freedoms, and on the drawbacks discovered in legislation concerning human and citizens' rights and freedoms.

The annual report should refer to instances of violation against human and citizens' rights and freedoms in regard to which the Representative has taken necessary measures that resulted in acts of inspection conducted within the period of one year, conclusions and recommendations aimed at improving the situation with regard to securing human and citizens' rights and freedoms.

Should the need arise, the Representative shall provide the Verkhovna Rada of Ukraine with a special report (reports) on separate issues regarding the observance of human and citizens' rights and freedoms in Ukraine.

The Verkhovna Rada of Ukraine shall adopt a resolution based on the annual and special report (reports) delivered by the Representative.

The annual and special reports, along with the resolution adopted by the Verkhovna Rada of Ukraine, shall be published in official publications of the Verkhovna Rada of Ukraine.

Article 19

Participation of the Representative in international cooperation

The Representative shall participate in the preparation of reports on human rights which will be submitted by Ukraine to international organizations in accordance with effective international agreements that the Verkhovna Rada of Ukraine has given consent to comply with on a mandatory basis.

CHAPTER V

GUARANTEES OF SECURING THE ACTIVITY OF THE REPRESENTATIVE

Article 20

General guarantees of the activity of the Representative

Interference from bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers into the activity of the Representative shall be prohibited.

The Representative shall not be obligated to provide explanations on details of cases that he or she has settled or cases that he or she is involved in settling.

The Representative shall enjoy the rights to immunity during the entire period of his or her authority. He or she cannot be held criminally liable, without consent from the Verkhovna Rada of Ukraine, or be subject to administrative punishment imposed in accordance with judicial procedure, be detained, arrested, searched as well as be subject to personal examination. No one except the Procurator General of Ukraine can initiate criminal proceedings against the Representative. Should the legislation on guarantees of activity of the Representative, his or her delegates and secretariat staff members be violated, the offending persons shall be held responsible in accordance with effective legislation.

Upon the expiration of the term of authority for which the person has been elected to the post of Representative, he or she shall be provided with the job (post) previously held before the appointment and which is safeguarded for him or her during the period that he or she performs the duties of Representative, or he or she shall be provided with another equivalent job (post) at the same enterprise or, if this should prove impossible, with his or her consent, at another enterprise, institution, organization.

In the event of death, trauma, disability or illness developed during the performance of official duties, the life and health of the Representative, his or her delegates employed on a permanent basis, shall be indemnified in the form of a mandatory state insurance. Procedure and terms of insurance shall be established by the Cabinet of Ministers of Ukraine.

Article 21

Guarantees of protection of human and civil rights during the process of petitioning the Representative

Everyone can petition the Representative, without any restriction and hindrance, in accordance with the procedure envisaged by effective legislation.

There can be neither privileges nor restrictions related to race, skin colour, religious or other convictions, sex, ethnic and social origin, financial status, place of residence, language and other such factors during the process of petitioning the Representative.

The person who has lost his or her personal freedom, can petition the Representative or his or her delegates in writing. In this instance, restrictions related to correspondence shall not apply to this individual. Correspondence from this individual shall be dispatched to the Representative within the period of twenty-four hours.

Correspondence meant for the Representative and his or her delegates from those persons who are detained, arrested, in custody, or in various types of prison facilities and facilities where medical treatment is forcefully applied, as well as from other citizens of Ukraine, foreigners and stateless persons, irrespective of their dwelling place, shall not be subject to any censorship and inspection.

Those persons who have committed acts prohibited by this Article shall be held accountable in accordance with effective legislation.

Article 22

Obligation to cooperate with the Representative

Bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, officials and officers approached by the Representative shall be obligated to cooperate with him or her and assist him or her, as appropriate, in:

- 1) ensuring access to materials and documents, in that respect, on the basis of established normative acts with regard to the protection of state, military and civil secrets;
- 2) providing information and explanations with regard to the factual and legal basis of their acts and decisions.

Any refusal of cooperation by bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers as well as deliberate concealment or the providing of false information, illegal interference into the activity of the Representative with the purpose of counteraction shall incur liability in accordance with effective legislation.

CHAPTER VI

CONCLUDING PROVISIONS

1. This Law shall become effective on the day of its publication.
2. The Cabinet of Ministers of Ukraine shall, by 1 February 1998:

provide the Verkhovna Rada of Ukraine with proposals on bringing legislative documents of Ukraine in conformity with the Law of Ukraine on the «Authorised Human Rights Representative of the Verkhovna Rada of Ukraine»; bring resolutions of the Government of Ukraine in conformity with this Law; ensure that ministries and other central bodies of executive power of Ukraine review and repeal normative acts which contradict this Law.

President of Ukraine L. KUCHMA

Kyiv, 23 December 1997 №776/97 – BP