

Podcast Series: Forced Labor and Migration



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Forced labor and lack of rule of law: is there a link?

- Good afternoon! First of all, thank you for your agreement to participate in the discussion on the topic of forced labor and the absence of the rule of law: is there any relationship. I would like to ask you, first of all, how do you understand this concept of the rule of law and how the Office of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights contributes to its provision in Ukraine?
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- Thank you! Good afternoon! Thanks for the questions. As for the definition of the fundamental principle of the rule of law, it is the basis of a European democratic country. It provides for the equality of all and everyone before the law and the inevitability of punishment for its violation, and is also the basis for the sustainable development of society and covers almost all aspects of the life of citizens of Ukraine.
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- Article 1 of the Constitution of Ukraine proclaims that Ukraine is a state of law, as well as a social, democratic one. What is an element of the rule of law, observing the principle of the rule of law, in the first part of Article 8 of the Constitution of Ukraine it is enshrined that in Ukraine the principles of the rule of law are determined and the principles of the rule of law are established, the establishment of the rule of law is the main element and criterion for Ukraine's accession to the European Union.
- The rule of law is the rule of law. Society requires the state to implement it in law-making, law-enforcement activities, in particular, in laws, which in their content should be imbued primarily with the ideas of social justice and freedom, equality.
- One of the manifestations of the rule of law is that law is not limited to legislation as one of its forms, but includes other social regulators, in particular the norm of morality, traditions,

customs, legitimized by society and conditioned by the historically achieved cultural level of society.

- All these elements of law are united by a quality corresponding to the ideology of justice, the idea of law, which is largely reflected in the Constitution of Ukraine.
- The Office of the Commissioner, within its competence, brings all these ideas to life.
- For example, in 2022, we received 1,467 reports of violations of the right to work. This applies to all labor rights, not just those related to forced labour. We checked these messages, sent appropriate responses to state authorities and local governments.
- Our Office organized, including the department, which I manage, worked out 229 draft legal acts relating to labor law. Of these, 63 were submitted for approval by the central executive authorities. 31 were considered at meetings of the government and its committees, and 135 were considered at meetings of the Committees of the Verkhovna Rada of Ukraine.
- For example, the draft law "On Labor", which is being developed to replace the current Code of Labor Laws and significantly narrowing the rights of citizens, was not supported.

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- - Thank you very much! You mentioned, among other things, such an issue as forced labor. Do you think the rule of law and forced labor - is there any relationship between them.

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- - Thank you. The definition of the term of forced labor is provided for in Article 2 of the International Organization for the Law of Forced or Compulsory Labor Convention No. 29, namely, that any work or service required from any person under the threat of any punishment and for which this person did not offer voluntarily their services.

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- - The characteristic features of forced labor are the lack of voluntary performance of certain work and the application to such a person in case of refusal of the appropriate punishment, i.e. any work requiring from a person under the threat of punishment of physical and psychological violence, therefore, the greatest danger for persons forced to work is the use of punishment, physical and psychological violence.

- - The establishment of the principle of the rule of law in Ukraine ensures the practical realization of human rights and freedoms, including the right to work. Article 43 of the Constitution of Ukraine guarantees everyone the right to work, including the opportunity to earn a living by work that he freely chooses or agrees to freely. The use of forced labor is prohibited in accordance with the provision of Article 43. Military or alternative non-military service, work or service performed by a person under a sentence or other decisions of a court or in accordance with the Laws on Martial Law and the State of Emergency is not considered forced labor.

- - It seems quite obvious that in the absence of the ability of the state to ensure the implementation of the rule of law entails a number of problems and dangers, including the use of forced labor.

- - Of course, non-observance of the rule of law leads to violation of the rights of citizens, including forced labor.

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- - Thank you. Is the Office of the Commissioner for Combating Forced Labor open? And if so, perhaps there are some examples of such work?

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- - Thank you. During the period of a full-scale military invasion of Ukraine by the Russian Federation, it is necessary to single out the relevant groups of people who may be subjected to forced labor, namely those located in the temporarily occupied territory, in

the territory controlled by Ukraine, especially for internally displaced persons and refugees abroad.

- - Today, dozens of cases have been recorded and confirmed when the occupying forces send Ukrainians in the temporarily occupied territories for forced labor, applying appropriate punishments, as well as various types of physical and psychological violence.
- - The most vulnerable group of citizens of Ukraine who can force citizens to forced labor in the controlled territory of Ukraine are internally variable persons. According to the data, this is 7 million inhabitants of Ukraine. Of these, a million are children. Since most of these people do not have housing, documents. To provide their family with basic things, they agree to any conditions and any work.
- - Also, citizens who were forced to flee the war abroad, from February 24, 2022 to January 3, 2023, this is more than 7.9 million people. They may be forced to do work, since most Ukrainians abroad do not know the language of their country of residence, do not understand the provisions of national labor legislation and do not know how to legally protect their rights in case of their violation.
- - These examples are the realities faced by millions of Ukrainians.
- - Unfortunately, the Commissioner considers this problem in a broader aspect than is interpreted by international standards. Let me remind you that the definition of what is forced labor. This is any work which is required of any person under the menace of any penalty and for which that person has not offered his services voluntarily.
- - But, unfortunately, in Ukraine there are problems that, according to classical signs, are not related to forced labor, but this does not make them less socially dangerous. For example, payroll arrears. In the state today there is no complete statistical information on the amount of wage arrears.
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- - The Commissioner applied to the Ministry of Economy with a request to resume the activities of the Interdepartmental Working Group, which is a temporary advisory and doctoral body of the Cabinet of Ministers in the field of assistance in ensuring coordination of actions of executive authorities on issues related to the timely payment and repayment of wage arrears.
- - Another problem is undeclared labor, which remains high. Since February 2022, the State Statistics Authority has not conducted labor force surveys, on the basis of which they receive this information on informal employment of the population. From February 24, 2022, the State Labor Service and its territorial bodies do not exercise state supervision and control over compliance with labor legislation by legal entities, regardless of their form of ownership, type of activity, as well as by individuals using hired labor.
- - The negative consequences of undeclared labor are that citizens may be subject to coercion, unreasonable fines, dismissal, non-payment of sick leave or compensation in the event of an accident, insurance experience that gives the right to a pension is not accrued.
- - Одной из причин такой ситуации является то, что Государственная служба труда в 2022 году не осуществляла государственный надзор и контроль за соблюдением законодательства о труде в период действия военного положения в части соблюдения требований положений Закона Украины «Об организации трудовых отношений в условиях военного положения», а также по выявлению неформальных трудовых отношений и законности прекращения трудовых договоров.
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- - Thank you! Thank you very much for the practice of the Office of the Commissioner in this area. What do you think, can any steps be useful in counteracting forced labor and who exactly can be and should be involved? Maybe these are other state bodies, perhaps the public, perhaps international organizations, science or someone else?
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- - - First of all, we need a victory in this war with the aggressor. Secondly, to become a full member of the European Union, because on February 28, 2002, after the Russian invasion, Ukraine applied for membership in the European Union. On June 23, 2022, the European Council granted Ukraine the status of a candidate for accession to the European Union. I note that the principle of the rule of law refers to the general principles of EU law and is one of the fundamental principles of the EU legal system, because the effectiveness of the rule of law, which is in organic combination with respect for human rights, is a prerequisite for the formation of Ukraine as a modern developed country.
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- - If we talk about the possibility of overcoming these problems and dangers in the near future, then first of all it is necessary to highlight the key role in the interaction of the relevant public authorities, for example, state labor, local governments, international organizations at the national and international levels, in working with vulnerable groups population. Such interaction can include conducting awareness-raising campaigns to combat forced labor. These can be webinars, trainings, conferences, development of special information materials in Ukraine and in Ukrainian for refugees from Ukraine abroad, which can help them in finding a job and familiarize them with the basic rules of employment in the respective country, as well as contain useful contacts.
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- - Thank you!