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LEGAL REGULATION OF LABOUR RELATIONS IN UKRAINE UNDER CONDITIONS OF MARTIAL LAW: A REVIEW OF CHANGES

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*The purpose of the article is to define the main changes that have taken place in legal regulation of labour relations under the legal regime of martial law in Ukraine. **Research methods:** the methods of comparative and documentary analysis, documentary synthesis and generalization and the cognitive-analytical method are used. **Results:** the authors characterize the main changes in legal regulation of labour relations during the period of martial law in Ukraine. In addition, the author emphasises the urgent need to study the impact of martial law on labour relations in Ukraine, as well as to adapt labour legislation to the new conditions of today. **Discussion:** the provisions of the Law of Ukraine “On Organization of Labour Relations under the Conditions of Martial Law” N 2136-IX dated March 15, 2022, which at present occupies a key position in the sphere of regulation of labour relation were reviewed and analysed.*

Key words: labour relations; a labour agreement; the employer; the employee; termination of the action of a labour agreement; suspension of the action of a labour agreement; a downtown; martial law.

Problem statement and its relevance. History is an indisputable witness to the fact that the armed conflicts are inextricably linked to the complex of political and social transformations that nations are experiencing. This period is marked not only by hostilities and operations, but also by a profound impact on all aspects of life, including the economy, culture and labour market. The conditions of conflict and martial law pose a challenge in the form of unforeseen circumstances that require an immediate reaction and adaptation of society to changes.

Due to the diverse number of effects of martial law, it is important to consider the historical context and the effects of the past armed conflicts on the development of society. We are faced with the task not only to discuss the nowadays problems and troubles, but also to take into account previous historical lessons and past experience, superimpose

them on a modern retrospective and apply them in the context of global digitalization and technological progress.

In addition, it is worth noting that the imposition of martial law in connection with the full-scale russian invasion of the territory of Ukraine left a significant impact not only on the employers and the employees who are directly in zones of active hostilities and occupation, but on the entire Ukrainian labour market and global economic and political processes. Russia's war against Ukraine has already left its mark on international relations, trade, international banking system and other areas of international cooperation.

Analysis of recent research and publications.

This issue has been already researched by such scientists as: O. Dogadina, Z. Yakymenko, T. Kolomiets, Kh. Kmetyk, O. Cheremukhina, Y. Chalyuk, S. Petkov, I. Rafalska and others.

However, it should be noted that researching the impact of martial law on labour relations in Ukraine is only at the initial stage, therefore, despite some progress in researching this issue there is still a need for its comprehensive study.

Presentation of the main material of the research. The war caused the significant shifts in the economy and society, which inevitably affected labour relations. The changes affected both the organization of labour and the legal regulation of labour relations [1]. The war in Ukraine has been going on for more than 10 years, its impact on labour relations will be felt for a long time, as the war creates an atmosphere of constant tension and uncertainty, creates risks for the employers and the employees. The employers face the problems of preserving the business and jobs and the employees face a risk to losing his/her job, wage and social guarantees.

Labour legislation was not ready for the realities of martial law, so there was an urgent need to adapt it to the new conditions.

In connection with the military aggression of the Russian Federation against Ukraine, the martial law was introduced in the territory of Ukraine by the Decree of the President of Ukraine № 64/2022 starting at 05:30 of February 24, 2022 for a period of 30 days [2]. Since that date, the martial law in Ukraine has already been extended several times by the relevant Decrees of the President of Ukraine. In particular, on May 6, 2024 the Verkhovna Rada of Ukraine adopted as a whole the draft Law on the approval of the Decree of the President of Ukraine “On Extending the Period of Martial Law in Ukraine” N 271/2024, according to which the period of martial law in Ukraine was extended from 05:30 of May 14, 2024 for another 90 days [3].

During the period of martial law in Ukraine a number of regulatory and legal acts were adopted, which change the regulation of labour relations operated in peacetime and which set temporary restrictions of the constitutional rights and freedoms of a human and a citizen [4]. Such restrictions, in particular, relate to the right to work (Article 43 of the Constitution of Ukraine) and the right to strike (Article 44 of the Constitution of Ukraine) [5]. Restrictions on the labour rights are also reflected in the Law of Ukraine “On the Legal

Regime of Martial Law” of May 12, 2015 N 389-VIII. In particular, Article 8 of this Law foresees that under martial law in Ukraine, the labour obligation is introduced for the able-bodied persons who are not involved in the defense sector, critical infrastructure protection and are not reserved by the enterprises. This obligation involves the performance of works of a defense nature, the elimination of the consequences of emergencies and the performance of community service for the needs of the Armed Forces of Ukraine, the law enforcement agencies, the national economy and critical infrastructure. It is important that such work does not require special training, and the employees retain their previous place of work, and the procedure for involving the able-bodied persons in community service and the issue of their social protection is regulated by the Cabinet of Ministers of Ukraine [6].

The Russian Federation's armed aggression against Ukraine has significantly disrupted the system of regulation of labour relations in the country that had a negative impact on: a) the employment rate. Firstly, a significant number of the enterprises and businesses were destroyed (according to the KSE Institute, as of January 2024, the total amount of damage caused to Ukraine's infrastructure due to the war is \$155 billion, and the losses of industry and enterprises are \$13.1 billion [7]). A destruction of the enterprises and the agro-industrial complex, the damage caused to the spheres of culture, tourism and sports, in turn, led to a significant reduction in jobs. Secondly, the hostilities have caused an increase in the number of internally displaced persons and a significant migration of the able-bodied population abroad; b) the remuneration. Inflation, declining the living standards, rising prices have led to a real drop in wages. The increase in the number of workplace accidents due to shelling and the reduction in production also left a negative impact on income levels; c) stability of labour relations. There are significant changes in the composition of labour collectives related to the relocation of business (relocation to another country, within Ukraine or part of the employees) and the mobilization of some employees into the ranks of the Armed Forces and the Territorial Defense Forces. In addition, a

large number of businesses have been forced to suspend or cease operations altogether, causing the uncertainty for both the employers and the employees.

In addition, the war has led to an increase in informal employment, as many people have lost their official jobs due to hostilities and are forced to look for work in the informal sector of the economy.

The war has caused a significant damage to the Ukrainian labour market, worsening the work conditions, increasing the unemployment and stimulating the spread of informal employment. According to the International Labour Organization (ILO), 4.8 million Ukrainians have lost their jobs since the end of February 2022. The number of vacancies has significantly decreased in almost all areas. The labour market again faced new threats and challenges, as the previous crisis period was associated with the COVID-19 pandemic. The hostilities have led to a decrease in the number of the qualified personnel, not only due to migration abroad, but also due to general mobilization and deaths [8].

Modern trends in the labour market indicate stabilization, but the war has caused significant territorial imbalances. The majority of businesses have moved to the Western regions of the country due to security risks. It is there that the largest number of vacancies is observed. On the other hand, in regions closer to the front line, the problem of unemployment and job search remains very difficult. War is a challenge that forces us to modernize and update the usual rules and quickly adapt to changes. Procedures that used to be standard and effective under normal circumstances are losing their relevance under martial law. This also applies to the organization of labour relations.

In order to adapt labour legislation to new realities, on March 15, 2022 the Law of Ukraine “On Organization of Labour Relations under Martial Law” N 2136-IX was adopted. The conditions for concluding the labour agreement under martial law, are defined in Article 2 of this Law. Thus, the parties could determine a form of the labour agreement by their agreement (oral or written). A probationary period for the employment could be established for any category of the

employees. The employers could enter into the fixed-term labour agreements with the new employees for the period of martial law or for the period of replacement of the temporarily absent employee. This allows to attract quickly the new employees to perform work and to prevent personnel shortages due to the various circumstances, such as evacuation of the employees, vacations, temporary disability, etc [9].

Under normal circumstances, a labour agreement is concluded in writing. Article 24 of the Labour Code of Ukraine defines cases of concluding the labour agreement in writing as mandatory procedure [10]. However, during martial law the Law of Ukraine “On Organization of Labour Relations under Martial Law” gives the employer and the employee the right to choose independently a form of a labour agreement [9]. This innovation increases the flexibility of concluding the labour agreement, simplifies a process of formalizing the labour relations and allows the employers to attract the new employees faster. In addition, the employee could not begin his/her work without concluding the labour agreement, which should be formalized by an order or instruction of the employer (Article 24 of the Labour Code of Ukraine) [10].

The grounds for termination of a labour agreement at the initiative of the employee during martial law is a same as in the period before its imposition. However, due to the hostilities in the territories where the enterprise, institution or organization is located, as well as the presence of a threat to the life and health of the employee, it could terminate a labour agreement on its own initiative within the period specified in its application (with the exception of cases of the forced involvement in community service under martial law and involvement in work at critical infrastructure facilities).

The employer does not have the right to dismiss the employees in connection with the imposition of martial law or the presence of the enterprise in the zone of active hostilities. However, the employer could terminate a labour agreement under paragraph 6 of part 1 of Article 41 of the Labour Code of Ukraine [10].

During the period of martial law the employer could dismiss the employee in cases of his/her temporary disability or vacation (except for maternity leave or leave to care for a child under the age of three), indicating the date of dismissal, which is the first working day after the end of the temporary disability specified in the temporary disability document, or the first working day after the end of the vacation. In addition, during the period of martial law, the termination of a labour agreement at the initiative of the employer occurs without the prior consent of the elected body of the primary trade union organization (trade union representative), except for cases of dismissal of the employees elected to the trade union bodies at the enterprises, institutions or organizations.

An introduction of martial law does not limit the grounds for dismissal that are usually in force. In other words, the legislation continues to allow the termination of labour relations by the mutual consent of the parties, due to a reduction in the number of the employees or staff, etc. The Law of Ukraine “On Organization of Labour Relations under Martial Law” only simplifies certain procedures related to dismissal for the period of martial law. Thus, we could say that this Law does not provide additional grounds for dismissal, but simply adapts the process of termination of the employment to the modern conditions.

In addition, during the period of martial law, certain peculiarities are established on the duration of the working hours and the rest time of the employees. Normal working hours should not exceed 60 hours per week, and for the employees with the reduced working hours – 40 hours. The regime of a five- or six-day week is set by the employer. During martial law, the provisions of the Labour Code do not apply in the following aspects: reduction of the working hours by one hour before holidays and non-working days; restrictions on maximum hours of overtime; transfer of days off to the next day after a holiday or non-working day in accordance with the recommendations of the Cabinet of Ministers of Ukraine; prohibition of the employment on weekends, holidays and non-working days, as well as compensation for such work [9].

In our opinion, the employers should pay attention to the fact that increasing the working hours and reducing the rest time during martial law is the right, not the obligation. Such measures could be applied only in exceptional cases, when longer work is justified by a need (for example, ensuring the effective operation of the relevant enterprise in the defense sector or ensuring the normal process of life of the population). A decision to increase the working hours and/or to reduce the rest time should be made taking into account the real needs and capabilities of the enterprise. At the same time, the employer is obliged to comply with all norms of labour legislation, since such changes in the work of an enterprise, institution or organization should not adversely affect the health and performance of the employees.

During martial law, persons who belong to special categories could not be involved in the night work without their consent, including the pregnant women, mothers of infants under one year of age and persons with disabilities for whom this form of work is medically contraindicated. Also, during martial law, some provisions of the Labour Code, in particular regarding the night work, do not apply. The night work duration could be equalized to the day work if it is necessary for production needs, in particular in continuous production or variable work schedules in a six-day week with one day off. Also, during martial law, women could be employed in heavy or dangerous jobs with their consent, provided that they are not pregnant or mothers of children under one year of age [9].

It is also worth noting that since February 24, 2022 the remote work has gained wide popularity. However, the Law of Ukraine “On the Organization of Labour Relations under Martial Law” does not establish special rules to regulate the remote work, so the legislative regulation that has been in force since 2021 remains relevant.

A transfer to the remote work during threat of the armed aggression or other emergency could be carried out by order (instruction) of the employer without prior conclusion of the written labour agreement. The law does not provide for the employee’s obligation to notify the employer of his/her whereabouts or restrictions on the remote work from abroad. In other words, no additional

written documentation is required to perform work from abroad. In the case of a long-term stay of the employees abroad, in our opinion, it is necessary to pay attention to the issue of tax residency, taking into account the provisions of international conventions in order to avoid double taxation.

The provision on remuneration is also quite important. The law does not exempt the employer from the obligation to pay wages, even in the event of hostilities at the location of the employer, but only allows to postpone the fulfillment of this obligation until the resumption of the company's activities. Also, the employer is exempt from liability for violation of the obligation regarding the terms of remuneration, if it proves that this violation occurred as a result of hostilities or other force majeure circumstances [9].

However, the exemption of the employer from liability for late payment of wages does not exempt it from the obligation to pay wages. In turn, if the above circumstances are not proven, the employer will be liable in accordance with the law. As of today, such liability includes financial fines, administrative and criminal liability. If it is impossible to pay wages to the employer, the possibility to introduce the downtime should be considered. If it is not possible to pay wages in a smaller amount, it is advisable to consider the use of unpaid leave or suspension of a labour agreement.

During the period of martial law, the duration of the employee's annual basic leave could be limited to 24 calendar days for the current working year. If the duration of annual leave exceeds 24 days, the unused vacation days are carried over to the period after the end of martial law. During the same period, the employer could refuse to grant the employee unused days of annual leave. If the employee resigns during martial law, he/she is accrued monetary compensation for used but ungranted leave, in accordance with Article 24 of the Law of Ukraine "On Leave" of November 15, 1996 N 504/96-BP. During martial law, the employer could deny the employee any type of leave, with the exception of maternity leave and leave to care for a child under the age of three, if the employee is involved in work at critical infrastructure facilities [9; 11].

During two years of martial law, the employers have been actively using the new tool of labour relations – the suspension of a labour agreement [4].

Since the beginning of the Russian aggression, a new concept, "suspension of a labour agreement", has been introduced into the terminology of labour law, which necessitates substantiation of the mechanism of its application, distinguishing it from the concept of "termination of labour agreement", and especially in the modern economic environment, when the most employees are forced to leave their jobs, go abroad or to another region and when it is impossible to provide or perform work [12].

An important condition for such suspension is the inability of the employer to provide work and perform it by the employee. However, this does not mean the termination of labour relation, because the initiator could be both the employer and the employee. This procedure is regulated in detail in Article 13 of the Law of Ukraine "On the Organisation of Labour Relations under Martial Law" [8].

The research compares suspension of a labour agreement with downtime, emphasising the common features, in particular, suspension of work due to circumstances beyond the employee's control. Differences are also mentioned. Thus, the grounds for the introduction of downtime could be any circumstances that led to the termination of work, as for suspension, the grounds for the introduction of this state are the absence of work that the employee would have performed due to martial law in the country. In terms of time: downtime could last for any period of time as long as the circumstances that made it impossible to perform work exist. In case of suspension, it could last no longer than the period of martial law [13].

Considering the choice between the unpaid leave and suspension of a labour agreement, it is important to consider that the suspension of a labour agreement could have certain compensation payments. The law stipulates that the payment of wages, guarantees and compensations for the employees during the suspension of a labour agreement is fully entrusted to the state carrying out the military aggression against Ukraine. However,

at the moment, the mechanism of this compensation is not regulated by the law.

If the parties decide to suspend a labour agreement, they should notify each other in any available way. The law does not prescribe a specific form of such notification, but it could be sent in writing or electronically [9].

At the same time, it should be noted that the dialectic of labour relations during martial law leads to arising the new problematic issues and, accordingly, the search for ways to resolve them. Thus, one of the most important issues is the documentation of labour relations, which has very important legal consequences, in particular, employment records as documents confirming the employment/insurance record. Of course, since 2011, due to the introduction of electronic databases, it has been possible to restore insurance periods in most cases, but for employees who lost their employment records, it has become virtually impossible to restore their employment periods before 2011, which certainly requires an appropriate legal mechanism with maximum consideration of the interests of employees [13].

Conclusions. Thus, in the result of the research, it was determined that in time of war, the basis of legal regulation of labour relations is the Law of Ukraine “On Organization of Labour Relations under Martial Law” of March 15, 2022 N 2136-IX which defines the main aspects of legal regulation of the processes of concluding and terminating the labour agreement, determining and recording the etc. Summing up the results of the study, it should be noted that significant labour relations under martial law have undergone significant innovations. Despite the difficult economic situation in the country and on the labour market, the country is helping to reduce labour conflicts and improve working conditions by taking all possible measures to regulate labour relations between the employers and the employees in accordance with the law.

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ПРАВОВЕ РЕГУЛЮВАННЯ ТРУДОВИХ ВІДНОСИН В УКРАЇНІ В УМОВАХ ВОЄННОГО СТАНУ: ОГЛЯД ЗМІН

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Метою статті є визначення основних змін, що відбулися у правовому регулюванні трудових відносин в Україні в умовах правового режиму воєнного стану. **Методи дослідження:** використано методи порівняльного та документального аналізу, документального синтезу та узагальнення, а також когнітивно-аналітичний метод. **Результати:** охарактеризовано основні зміни, що відбулись в правовому регулюванні трудових відносин в Україні у період дії воєнного стану. Крім того, наголошується на гострій потребі в дослідженні впливу воєнного стану на трудові відносини в Україні, а також на адаптації законодавства про працю до нових умов сьогодення. **Обговорення:** розглянуто та проаналізовано положення Закону України «Про особливості регулювання трудових відносин в умовах воєнного стану» № 2136-IX від 15 березня 2022 року, який наразі займає ключову позицію у сфері регулювання трудових відносин.

Ключові слова: трудові відносини; трудовий договір; роботодавець; працівник; припинення дії трудового договору; зупинення дії трудового договору; простій; воєнний стан.

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