

THE INFLUENCE OF THE LEGAL REGIME OF MARTIAL STATES ON LABOR RELATIONS IN UKRAINE

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Purpose: to determine the prospects for the development and improvement of procedural legislation in the field of labor law after the termination or cancellation of the legal regime of martial law and to reveal the problem of legal regulation of labor relations during the legal regime of martial law. **Research methods:** during the research, general scientific and special legal methods of scientific knowledge were used, in particular: system-structural method, observation method, generalization method, methods of analysis and synthesis. **Results:** it is claimed that the legal regulation of labor relations in the conditions of the legal regime of martial law has certain gaps, which requires additional research by the scientific community with the involvement of state bodies, lawyers and advocates. **Discussion:** the question of ineffective regulation of labor relations during the period of martial law in Ukraine was raised, ways of solving problematic issues in this sphere of legal relations were proposed.

Key words: labor relations; working conditions; legal regulation; martial law; labor contract; labor legislation; hired labor.

Statement of the problem and its relevance.

Labor relations in Ukraine have improved significantly over the current decade. The appearance of enterprises of various organizational and legal forms qualitatively changed the relationship between the employee and the employer. The deterioration of the economic and political situation in our country significantly affected the level of social guarantees, which caused a violation of the labor rights of employees. The increase in the number of labor law violations has led to a sharp increase in the number of labor disputes that are heard by courts of general jurisdiction. The scientific novelty of the study is primarily determined by the insufficient scientific development of the problems that have arisen in the field of legal protection of the labor rights of citizens, especially during the period of martial law. Not many studies are devoted to this problem, and

the available works and publications touch only on certain aspects of the problem under study.

Analysis of research and publications on the problem. Labor relations are one of the central categories of labor law, due to their place in the subject of the specified branch of law. A number of issues related to the outlined problems were highlighted by domestic labor law lawyers in scientific works devoted to the peculiarities of the course of labor relations, however, during the period of martial law, these issues received relatively little attention.

Presentation of the main material. Labor relations are one of the important elements of the system of social relations in any field of activity. Today, specialists in economics and sociology pay a lot of attention to the problems and features of labor relations, because their optimization in modern conditions will ensure a decent level of

quality of life for a person, team and society as a whole.

In modern conditions, the study of legal relations arising in the field of employment is one of the priority directions. The high scientific and practical significance of labor relations is that through and with the help of legal relations, the mechanism of legal regulation begins to move, and it is through these means that legal norms are implemented.

Regarding the definition of the concept of "labor relations", the scientist's opinion is quite interesting, namely: "labor relations are bilateral relations between an employee and an employer regarding the performance of work for remuneration in a certain specialty, qualification or position in accordance with the rules of internal labor regulations, which are a form fixing the subject of work and responsibilities of the participants of these relations" [1].

First of all, P.D. Pylypenko notes that: "labor relations are social relations regulated by the norms of labor law, which arise as a result of concluding an employment contract (properly labor relations), as well as relations regarding the establishment of working conditions at enterprises. Training and re-training at the workplace and relations related to supervision and control of compliance with labor legislation, resolution of labor disputes and employment of citizens" [2, p. 123].

N.V. Verenysh believes that: "employment legal relations are complex, conscious, voluntary, ongoing, compensatory legal relations that arise as a result of an employment contract and contain in their content the interaction of the respective rights and obligations of the employer and the employee in relation to the latter's performance of their employment functions" [3, p. 96].

A rather interesting opinion is expressed by V.I. Prokopenko, labor relations should be understood as: "bilateral relations between the employee and the owner or the enterprise created by him regarding the performance of work for remuneration in a certain specialty, qualification or position in accordance with the rules of internal labor regulations, which are a form of consolidation of subjective labor rights and obligations» [4, p. 163].

Thus, in accordance with the above, the concept of "labor relations" can be considered in a broad

and narrow sense. In a broad sense, this concept covers the entire range of relations that are the subject of labor law, and in a narrow sense - specific relations between an employee and an employer arising on the basis of an employment contract and actual admission to work.

The introduction of martial law in Ukraine on the basis of the Law of Ukraine "On the Legal Regime of Martial Law" initiated a new stage in the development of labor legislation, which begins after February 24, 2022. It turned out that the sphere of work, in which the vital interests of millions of Ukrainian citizens are intertwined, required an immediate reaction of the legislator to ensure its normal functioning. In this regard, the labor legislation of Ukraine has undergone significant changes, primarily related to the introduction of the legal regime of martial law on the territory of our state. In order to adapt employers and employees to the new realities, temporary rules of labor relations have been established, which will apply only during the war. Therefore, the right to work provided for in Article 43 of the Constitution, like other labor rights, can be limited by a decree on the introduction of a state of emergency or martial law.

The introduction of martial law played a significant role in the regulation of labor relations. It was this area that needed immediate changes and a response from the parliament, which was done, in particular: a special law "On the organization of labor relations under martial law" was adopted. The provisions of the said Law allow more flexible regulation of labor relations, new norms have been introduced (for example, suspension of an employment contract), a number of guarantees are provided for the employee and the employer (possibility of dismissing the employee even during his temporary incapacity, etc.), in view of the fact that the war is ongoing, changes and additions were already made in July, and obviously its provisions need to be improved, including regarding the proper protection of workers' rights under martial law" [5].

In his work, O.O. Kovalenko noted that: "according to the International Labor Organization, as of May of this year, the national economy was extremely affected by the war on the part of the Russian Federation. Since the beginning of the aggression, almost 5 More than 5.2 million Ukrainians

have been lost. The majority of refugees are women with children, large families and people over 60 million people of working age (43.5% or 1.2 million had a job and left it or lost it because of the war. Escalation and disruption could increase the loss jobs up to 7 million. In the event of the end of the war with little.). destruction, it is predicted that 3.4 million jobs will be restored, which will reduce the rate of employment loss by 8.9 percent" [6]. Under the current situation, the Ukrainian territories are freed from the aggressor, but the restoration of jobs requires considerable time and money, because the aggressor is also destroying the infrastructure.

In the context of this issue, the peculiarities of concluding an employment contract in conditions of prolonged martial law, which are enshrined in: "Article 2 of the Law of Ukraine "On the Organization of Labor Relations in Conditions of Martial Law" No. 2136-IX, deserve attention, it is said that the parties to labor relations by agreement, they can independently determine the form of concluding an employment contract, although, as a rule, an employment contract has already been concluded, as a rule, in writing, an equally important condition when concluding an employment contract is the issue of establishing a probationary period for the employee. the condition of employee probation upon hiring may be established for any category of employees" [5].

The procedure for terminating the employment contract at the initiative of the employee deserves special attention from our side. The provisions of Law No. 2136 do not limit: "an employee has the right to resign from work at his own will during wartime. The legislator supplemented the list of reasons when the employer is obliged to dismiss the employee within the period specified in the application. According to Article 4 of Law No. 2136, the employer shall dismiss the employee within the period specified in the application, if the enterprise is located in an area where hostilities are taking place, and there is a threat to the life and health of the employee" [5]. Also, the employer can refuse to dismiss an employee who was forcibly involved in community service under martial law, or if it is about work at a critical infrastructure facility. In all

other cases, the norms of Articles 38 and 39 of the Labor Code of Ukraine must be followed.

Certain additions have also been made to the specifics of terminating the employment contract at the initiative of the employer. Thus, the Law of Ukraine "On the Organization of Labor Relations in Martial Law" No. 2136-IX does not cancel or change the provisions of the Labor Code of Ukraine regarding grounds for dismissal at the initiative of the employer, as well as the procedure for dismissal of employees. But during martial law, the employer: "a) may dismiss the employee during his temporary incapacity for work, as well as during vacation. In this case, the date of dismissal is the first working day following the end of the specified temporary incapacity" in the temporary incapacity letter or in the first working day after the end of the leave cannot be dismissed during pregnancy and childbirth and childcare leave until the child reaches the three-year termination age of workers with a trade union" [5]. During martial law, all other norms of the Labor Code of Ukraine apply in case of dismissal of employees at the initiative of the employer.

Considering the special importance for the economy of human capital and the practice of its implementation within the framework of labor relations, the need to study the issue of trends and prospects for the development of labor relations is growing significantly. After all, the armed aggression of the Russian Federation against Ukraine exacerbated long-overdue demands for structural reforms in the direction of European integration, optimization of the legislator's work.

The introduction of a new concept of "suspension of the employment contract" was a novelty in the labor legislation. Previously, such a possibility did not exist in the labor legislation. In accordance with Part 1 of Art. 13 of the Law of Ukraine "On the Organization of Labor Relations in the Conditions of Martial Law": "suspension of an employment contract is a temporary termination by the employer of providing the employee with a job and a temporary termination by the employee of the performance of work under the concluded employment contract in connection with armed aggression against Ukraine, which excludes the possibility both sides of the labor relationship to perform the duties stipulated by the labor contract" [7].

From this definition of the concept, it can be concluded that the suspension of the employment contract will be considered legitimate, only if three conditions are present: first, the employer cannot provide the employee with a job; secondly, the employee does not have the opportunity to perform his work duties; thirdly, armed aggression.

At the stage of development of labor relations in Ukraine, the period of martial law can be perceived as a double phenomenon. On the one hand, all the rapid transformations can become a real engine of the growth of the domestic economy, in particular, the growth of labor productivity, social partnership, quality of products and services, simplification of communication between the person, society and state, increase in the level of labor activity, etc. On the other hand, there are questions about the negative points.

Thus, it is necessary to take measures aimed at the development of a new model of labor relations, which is characterized by non-standard employment, non-standard awareness of working hours, as well as other non-standard elements of labor relations.

Having analyzed this topic, it is possible to highlight the following directions, which are currently a priority for our state: preservation of the population, health and well-being of people; comfortable and safe living conditions; decent, efficient work and successful entrepreneurship; digital transformation; opportunities for self-realization and talent development.

Conclusions. We need to sum up. For example, during the period of martial law on the territory of Ukraine, the issue of effective legal regulation of labor relations becomes especially important. But achieving such a result is possible only through joint efforts of state bodies, officials, civil servants of all levels, as well as society as a whole. The priority is to combat violations of the labor rights of employees in connection with the military aggression of the Russian Federation against Ukraine by forming a reliable legislative framework.

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Максим Дибань

ВПЛИВ ПРАВОВОГО РЕЖИМУ ВОЄННОГО СТАНУ НА ТРУДОВІ ВІДНОСИНИ В УКРАЇНІ

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Мета: визначити перспективи розвитку та вдосконалення процесуального законодавства у сфері трудового права після припинення чи скасування правового режиму воєнного стану та розкрити проблему правового регулювання трудових відносин під час правового режиму воєнного стану. Дослідити вплив правового режиму воєнного стану на перебіг трудових відносин на території України. **Методи дослідження:** під час дослідження використовувалися загальнонаукові та спеціально-юридичні методи наукового пізнання, зокрема: системно-структурний метод (дозволяє вивчати явище у всій різноманітності зв'язків, систем цінностей, пріоритетів); метод спостереження (передбачає збір основної та додаткової інформації про досліджуваній об'єкт шляхом цілеспрямованого, організованого безпосереднього сприйняття та безпосередньої фіксації спостережуваних явищ і процесів); метод узагальнення (при його застосуванні встановлюються загальні властивості та ознаки об'єктів); методи аналізу та синтезу (певні логічні операції, які дають змогу вивчати явище в цілому на основі об'єднання взаємопов'язаних елементів в єдине ціле).

Результати: стверджується, що правове регулювання трудових відносин в умовах правового режиму воєнного стану має певні прогалини, що потребує додаткових досліджень наукової спільноти із залученням державних органів, юристів та адвокатів. У статті досліджено основні тенденції розвитку трудового права в Україні, які зумовлені сучасними вимогами. Визначені проблемні питання, які негативно впливають на реалізацію людиною права на працю. **Обговорення:** порушено питання неефективного регулювання трудових відносин в період дії воєнного стану в Україні, запропоновано шляхи вирішення проблемних питань у цій сфері правовідносин. Зокрема, вдосконалення нормативно-правової бази правового регулювання трудових відносин в період дії правового режиму воєнного стану, необхідності залучення до цього процесу юристів практиків, адвокатів, а також наукової спільноти.

Ключові слова: трудові відносини; умови праці; правове регулювання; воєнний стан; трудовий договір; трудове законодавство; наймана праця.

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