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### Modern Features Of The Legal Regulation Of Labor Rights In Ukraine

**Oleksandr Voroniatnikov<sup>1\*</sup>,**  
**Danylo Leschukh<sup>2</sup>,**  
**Valentyna Sloma<sup>3</sup>,**  
**Valentyna Myronenko<sup>4</sup>,**  
**Yuliia Trufanova<sup>5</sup>,**

<sup>1\*</sup>Doctor of Science of Law, Professor at Department of Administrative, Financial and Banking Law in PJSC «Higher education institution «Interregional Academy of Personnel Management», Kyiv, Ukraine. E-mail: voronyatnikov@gmail.com; ORCID ID: 0000-0002-3761-698X

<sup>2</sup>Doctor of Law, Docent of the Department of Social Law in Franko National University of Lviv, Lviv, Ukraine. E-mail: leshchuhdr@gmail.com; ORCID ID: 0000-0003-0635-0143

<sup>3</sup>Doctor of Science of Law, Associate Professor, Professor of the Department of Civil Law and Procedure in West Ukrainian National University, Ternopil, Ukraine. E-mail: slomavm@gmail.com; ORCID ID: 0000-0002-9582-1236

<sup>4</sup>Candidate of legal sciences, Associate Professor, Head of the Department of the Civil and Juridical Disciplines in National Academy of Internal Affairs, Kyiv, Ukraine. E-mail: valyamir10b@gmail.com; ORCID ID:0000-0001-8841-8855

<sup>5</sup>PhD in Law, Associate Professor, Associate Professor of the Department of Civil Law and Procedure in West Ukrainian National University, Ternopil, Ukraine. E-mail: trufanovayuliia@gmail.com; ORCID ID: 0000-0003-4310-3061

**\*Corresponding Author:** Oleksandr Voroniatnikov

<sup>\*</sup>Doctor of Science of Law, Professor at Department of Administrative, Financial and Banking Law in PJSC «Higher education institution «Interregional Academy of Personnel Management», Kyiv, Ukraine. E-mail: voronyatnikov@gmail.com; ORCID ID: 0000-0002-3761-698X

#### Abstract

The relevance of the article lies in the fact that in it the authors considered the problems of regulatory regulation of labor rights under martial law in Ukraine. This research goal was achieved with the help of general scientific and special methods of scientific knowledge, by referring to the regulatory regulation of issues relating to the functioning of the employment sphere, the settlement of some of its non-standard forms, the interests of employees, etc. It was concluded that under martial law, the legislative approach to the adoption of new laws, amendments and additions to existing acts should take place in compliance with international legal standards to ensure appropriate guarantees to persons exercising the right to work, and to enable trade unions to fully perform representative functions. The analysis of the content of normative legal acts adopted under martial law made it possible to single out the key trends in the development of modern labor law in a special period: strengthening the protection of labor rights of workers and guarantees of their implementation; expansion of contractual principles for the regulation of labor relations; introduction of certain restrictions in labor relations with observance of minimum labor guarantees; strengthening the flexibility of legal regulation of labor relations and employee mobility in the exercise of the right to work. Emphasis is placed on the fact that the theoretical developments and conceptual provisions of legal science for the realization of the right to work, developed by the world community and detailed in the requirements of national labor legislation, require a new vision in terms of compliance with the criteria of necessity, reasonableness, expediency and taking into account national peculiarities. At the same time, when adopting new laws, amending existing regulations under martial law, the legislative approach to the regulation of individual and collective labor relations should remain unchanged and aimed at preserving labor law as a separate branch of law with its independent sectoral subject, method, principles of legal regulation, sources and functions.

**Key words:** labor rights, martial law, international labor standards, national labor legislation, public

administration.

## CARACTERÍSTICAS MODERNAS DE LA REGULACIÓN LEGAL DE LOS DERECHOS LABORALES EN UCRANIA

### Resumen

La relevancia del artículo radica en el hecho de que en él los autores consideraron los problemas de regulación regulatoria de los derechos laborales bajo la ley marcial en Ucrania. Este objetivo de investigación se logró con la ayuda de métodos científicos generales y especiales de conocimiento científico, haciendo referencia a la regulación regulatoria de cuestiones relacionadas con el funcionamiento de la esfera laboral, la liquidación de algunas de sus formas atípicas, los intereses de los empleados, etc. Se llegó a la conclusión de que, con arreglo a la ley marcial, el enfoque legislativo para la adopción de nuevas leyes, enmiendas y adiciones a las leyes existentes debería llevarse a cabo de conformidad con las normas jurídicas internacionales para garantizar garantías adecuadas a las personas que ejercen el derecho al trabajo y permitir que los sindicatos desempeñen plenamente funciones representativas. El análisis del contenido de los actos jurídicos normativos adoptados en virtud de la ley marcial permitió destacar las tendencias clave en el desarrollo del derecho laboral moderno en un período especial: fortalecimiento de la protección de los derechos laborales de los trabajadores y garantías de su aplicación; ampliación de los principios contractuales para la regulación de las relaciones laborales; introducción de ciertas restricciones en las relaciones laborales con observancia de garantías laborales mínimas; Fortalecer la flexibilidad de la regulación legal de las relaciones laborales y la movilidad de los empleados en el ejercicio del derecho al trabajo. Se hace hincapié en el hecho de que los desarrollos teóricos y las disposiciones conceptuales de la ciencia jurídica para la realización del derecho al trabajo, desarrollados por la comunidad mundial y detallados en los requisitos de la legislación laboral nacional, requieren una nueva visión en términos de cumplimiento de los criterios de necesidad, razonabilidad, conveniencia y teniendo en cuenta las peculiaridades nacionales. Al mismo tiempo, al adoptar nuevas leyes, modificar los reglamentos existentes en virtud de la ley marcial, el enfoque legislativo de la regulación de las relaciones laborales individuales y colectivas debe permanecer sin cambios y dirigido a preservar el derecho laboral como una rama separada del derecho con su tema sectorial independiente, método, principios de regulación legal, fuentes y funciones.

**Palabras clave:** Derechos laborales, ley marcial, normas internacionales del trabajo, legislación laboral nacional, administración pública.

### Introduction

Labor law differs from other branches of law, first of all, in its social orientation, remaining under martial law as a guarantor of ensuring the labor rights of workers and employers and does not change its essence, social significance and social purpose. The main task of modern labor law in a special legal regime remains the development of an effective sectoral mechanism for ensuring labor rights, freedoms and interests of workers and employers. It is referred to as proper legislative regulation of labor relations in accordance with international standards and best foreign practices, the development of mechanisms for ensuring guarantees of the right to work, taking into account national peculiarities.

The right to work takes a priority place in the system of fundamental social rights and freedoms, and complies with the unified democratic and legal principles of the European Union, of which Ukraine aspires to become a full member. The right of a person to work is due to the essence of man and reflects his natural need for work, and the conditions for its implementation determine the content of all norms of labor law as a branch of law and their internal coherence in accordance with the objective needs of the development of social and labor relations. In the doctrine, the realization of the right to work is interpreted as a certain complex, an action procedure aimed at exercising this right and aimed at determining the content of all norms of labor law as a branch of law and internal coherence in accordance with the objective needs of the development of social and labor relations.

Introduction on the basis of the Law "On the Legal Regime of Martial Law"<sup>1</sup> led to a new stage in the development of labor relations. After all, it is the sphere of employment, in which the vital interests of the citizens of the state are intertwined, that required an immediate reaction from the legislator in order to ensure its normal functioning. Conflicts between the interests of employees and employers, which are inevitable even in peacetime, in the conditions of martial law became even more acute, requiring the intervention of the state with the help of appropriate legal regulation in the form of the adoption of new laws, amendments and additions to the current legislative acts.

Given the number of appeals of Ukrainian citizens to the European Court of Human Rights to protect their violated labor rights, it can be stated that the issue of regulation of labor relations requires close attention and resolution at the state level. In today's conditions, the following problems that affect the process of exercising labor rights remain relevant: imperfection of the regulatory and legal support for the right to work; inconsistency of the provisions of the national labor legislation and European legal standards in the field of regulation of hired labor; lack of an existing theoretical and methodological basis for the implementation of adequate legal reforms in this area. The conditions of the special legal regime caused by hostilities in Ukraine, unfortunately, only complicated the legal relationship in this crucial area, bringing to the summons of the day the issues of regulation of remote labor activity, the actions of the parties to the employment contract in case of loss of communication with one of them, their responsibility for non-fulfillment of the terms of the contract, the ability to fulfill labor obligations while in refugee status, legal regulation of the right to leave, etc.

## 1. Analysis of recent research

The fundamental foundations, theoretical, practical and methodological aspects of the study of labor rights, methods of their implementation and protection are devoted to the scientific works of many scientists. However, despite the large number of scientific developments of a theoretical and practical nature in this area, the expediency of a comprehensive study of the issues of further development of state mechanisms for the realization of the right to work, and the related rights and obligations of participants in labor relations, does not become relevant. Among the complex of main problems, the problem of improving the legal regulation of labor relations under special legal regimes is extremely important, which is relevant not only for Ukraine, but also for other countries in which armed conflicts continue.

The purpose of the article is to, based on the study of scientific works on the theory of law and the science of labor law, normative legal acts of Ukraine and judicial practice, to carry out a comprehensive analysis of the most complex forms of exercising the right to work under martial law, to determine the prospects for the improvement of national labor legislation and the practice of its application.

The achievement of this goal is subordinated to the solution of the following tasks: to determine the current state and trends of regulatory regulation of labor relations in Ukraine; analyze certain legislative novelties of labor legislation under martial law; outline the main directions for improving the legislation regulating the legal relations of workers and employers.

## 2. Results and discussion

### 2.1. Regulatory regulation of labor relations in Ukraine

Article 43 of the Constitution of Ukraine enshrined for every citizen the right to work, first of all, as an employee. The state provides an opportunity to earn a living by work that is not prohibited by law and which a person freely chooses or to which he freely agrees<sup>2</sup>. When it comes to the right to work as a natural and inalienable right of a person to possess and use his abilities to work (physical, creative and intellectual), the development and provision by the state of mechanisms for the realization of such a right comes to the fore.

<sup>1</sup> *About the legal regime of martial law*: Law of Ukraine. May 12, 2015. No. 389-VIII. <https://zakon.rada.gov.ua/laws/show/389-19#Text>. (Accessed December 15, 2022).

<sup>2</sup> *Constitution of Ukraine*. Law of Ukraine. June 28, 1996. No. 254k/96-VR. <https://www.president.gov.ua/documents/constitution>. (Accessed December 15, 2022).

At the national level, the legal regulation of these activities is carried out on the basis of the Labor Code and the Law of Ukraine "On Employment", according to which everyone has the right to freely choose the place, type of activity and type of occupation, which is provided by the state by creating legal, organizational and economic conditions for such a choice<sup>3</sup>.

In July 2017, the Government of Ukraine approved the State Migration Policy Strategy for the period up to 2025<sup>4</sup>. As rightly noted in the scientific literature, modern developed labor law as such is impossible without a comprehensive regulatory interaction of international and national labor standards, which is carried out through: joint international legal and national-legal regulation of a particular sphere of social relations; the corresponding ratio between the existing systems of norms of international and national labor law within the framework of the integral sectoral legislative basis of a sovereign state; international legal response to violations of international components of this branch of the national system of law<sup>5</sup>.

The content of the activity of an individual state in the field of labor and other related relations should be considered incomplete if such legal relations are considered without analysis and use of positive international experience in this field of human activity. The implementation of labor rights in Ukraine should take place precisely on the basis of the maximum consideration of international standards of normative and legal regulation in this field, because the international treaties in force, the consent of which has been granted by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine<sup>6</sup>.

International legal regulation of labor should be understood as a system of standards established by international treaties for the regulation of labor and related relations, which states that have acceded to the relevant international treaty use in national legislation<sup>7</sup>.

In a broad aspect, the international legal regulation of labor and other related relations is reflected in 70 Conventions and other international legal acts. The basis of international legal regulation of labor is the international labor code, which contains a consolidated list of conventions and recommendations adopted by the International Labor Organization, which enshrines labor issues<sup>8</sup>. Regardless of whether the country has ratified and/or other agreement that has labor regulations, it must comply with them, ensuring the labor rights and social interests of workers.

The main international legal acts include: The Universal Declaration of Human Rights; International Covenant on Economic, Social and Cultural Rights<sup>9</sup>; European Social Charter<sup>10</sup>; Conventions and Recommendations of the International Labor Organization; Community Charter on the Basic Social Rights of Workers; Charter of Fundamental Rights of the European Union and others. According to these acts, ensuring the realization of basic social rights of citizens, including the right to work, is entrusted to the state. By guaranteeing the right to work, the state is obliged to create conditions for its implementation. By granting the right to rest, it is obliged to promote the recreation of workers, their children and the elderly. Enshrining a person's right to an adequate standard of living for himself and his family, the duty of the state is to ensure a standard

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<sup>3</sup> *On employment*. Law of Ukraine. July 5, 2012. No. 5067-VI. <https://zakon.rada.gov.ua/laws/show/5067-17>. (Accessed December 15, 2022).

<sup>4</sup> *On the approval of the Strategy of state migration policy of Ukraine for the period up to 2025*. Order of the Cabinet of Ministers of Ukraine. July 12, 2017. No. 482-p. <http://zakon5.rada.gov.ua/laws/show/482-2017-%D1%80>. (Accessed December 15, 2022).

<sup>5</sup> Klemparsky, Mykola; Nazymko, Olena. "Ways to apply international labor standards and national labor legislation". *Entrepreneurship, economy and law*. Issue 5. 2021. P. 60.

<sup>6</sup> *Constitution of Ukraine*. Law of Ukraine. June 28, 1996. No. 254k/96-VR. <https://www.president.gov.ua/documents/constitution>. (Accessed December 15, 2022).

<sup>7</sup> Semygina, Tetiana. *Dictionary of Social Policy*. Kyiv: View. House of "Kyiv-Mohyla Academy". 2005. P. 109.

<sup>8</sup> Ivanov, Sergiy. *Labor law. Encyclopedic reference book*. Moscow: Soviet Encyclopedia. 1997. P. 221.

<sup>9</sup> *International Covenant on Economic, Social and Cultural Rights*. December 16, 1966. [http://zakon5.rada.gov.ua/laws/show/995\\_042](http://zakon5.rada.gov.ua/laws/show/995_042). (Accessed December 15, 2022).

<sup>10</sup> *European Social Charter (revised)*. May 3, 1996. No. 994\_062. [https://zakon.rada.gov.ua/laws/show/994\\_062#Text](https://zakon.rada.gov.ua/laws/show/994_062#Text). (Accessed December 15, 2022).

of living that is as close as possible to the category of “worthy”<sup>11</sup>.

In art. 23 of the Universal Declaration of Human Rights enshrines the following fundamental labor rights of every person: the right to work, to free choice of work, to fair and favourable working conditions and to protection from unemployment; the right, without any discrimination, to equal pay for equal work; the right to a just and satisfactory reward that ensures a decent existence for a person and his family, and which, if necessary, is supplemented by other means of social security; the right to form trade unions and join trade unions to protect their interests<sup>12</sup>. Today, the first step in the process of reforming labor legislation and implementing the impeccable exercise of the right to work in Ukraine is the adoption of a new Labor Code of Ukraine, the norms of which will comply with international legal acts ratified by Ukraine<sup>13</sup>. The implementation of the most accessible opportunity to exercise the right to work for citizens of Ukraine under martial law remains a priority task of the state, while the expediency of developing an effective sectoral mechanism for ensuring labor rights, freedoms and interests of employees and employers does not lose its relevance.

The problem of realizing the rights of Ukrainian citizens to work in another country requires special attention. If prior to the hostilities on the territory of Ukraine, the reasons for seeking work abroad were mostly due to reasons of an economic nature (differences in the level of economic development of individual countries, in the number of wages, the presence of unemployment, the possibility of professional self-realization, etc.)<sup>14</sup>, then as of 2022 the main determinant of this phenomenon has become namely armed aggression by the Russian Federation.

Concluding this part of the study, it should be noted that the hostilities on the territory of Ukraine actualized the need to increase the level of protection of labor rights of citizens, the need to continue reforming the national labor legislation, which, in turn, indicates the expediency of consolidating the efforts of scientists, practitioners and lawmakers, primarily specialists in the field of labor law and social security law, while identifying best foreign practices and adhering to international legal standards in the field of labor law.

In many ways, the image of the state depends on the implementation of the norms of international legal acts in the field of labor law, which requires systemic transformations in Ukrainian society and purposeful efforts to implement them. Despite the fact that Ukraine has already implemented a significant part of international legal standards for labor regulation of a general nature into national legislation, the issue of introducing supranational specialized standards in the field of labor remains unresolved: in the field of transnational labor relations, nostrification of documents in the field of labor, outsourcing and outstaffing, etc.

## **2.2. Analysis of novelties of labor legislation related to hostilities on the territory of Ukraine**

Under martial law, a new stage began in the reform of the labor legislation of Ukraine. Over a relatively short period of time, legislative activity in the regulation of labor relations has increased significantly<sup>15</sup>. In particular, with the aim of regulating various aspects of labor relations during

<sup>11</sup> Prylypko, Sergii; Yaroshenko, Oleg. “The right to work in the system of rights.” *Law of Ukraine*. 2014. No 6. P. 103.

<sup>12</sup> *Universal Declaration of Human Rights*. December 10, 1948. [https://zakon.rada.gov.ua/laws/show/995\\_015#Text](https://zakon.rada.gov.ua/laws/show/995_015#Text). (Accessed Desember 15, 2022).

<sup>13</sup> Sereda, Olena. “Realization of the right to work in the conditions of Ukraine’s European integration”. In: *Law and Innovation*. 2016. No. 1 (13). P. 75.

<sup>14</sup> Lyashenko, Olena; Champanyuk, Julia. “Peculiarities of labor migration of Ukraine”. In: *Young scientist*. 2016. No 4. P. 121; Oliinyk, Olena; Bilan, Yuriy; Mishchuk, Halyna; Akimov, Oleksandr; Vasa, Laszlo “The impact of migration of highly skilled workers on the country’s competitiveness and economic growth”. *Montenegrin Journal of Economics*. 17(3). 2021. P. 12. DOI:10.14254/1800-5845/2021.17-3.1; Latysheva, Olena; Rovenska, Victoriia; Smyrnova, Iryna; Nitsenko, Vitalii; Balezentis, Tomas; Streimikiene, Dalia. “Management of the sustainable development of machine-building enterprises: A sustainable development space approach”. *Journal of Enterprise Information Management*. 34(1). 2020. P. 336. DOI:10.1108/JEIM-12-2019-0419.

<sup>15</sup> Grishina, Julia; Chanysheva, Galyna. “The main trends in the development of labor law under martial law”. *Scientific Bulletin of Uzhhorod National University*. 2022. P. 376.

martial law, the Law of Ukraine "On the Organization of Labor Relations in Martial Law"<sup>16</sup>, was adopted, which will be in effect during the specified special legal regime, and some of its provisions, namely Part 3 of Art. 13 (compensation at the expense of the aggressor state) will be valid until the completion of the process of compensation of wages, guarantee and compensation payments to employees by the state that carries out military aggression against Ukraine.

It is worth noting that this law does not expressly prohibit the provision of "more extended" rights and guarantees to employees, for example, by a voluntary decision of the employer or as a result of agreements concluded between the employer and the trade union. If in this way more efficient work is ensured during martial law and at the same time the rights of the parties to the employment contract are not subject to oppression, then there will be no grounds for applying sanctions for non-compliance with the current rules of law.

As practice shows, social dialogue between public authorities, local governments, employers' organizations and trade unions, which contributes to the formation of common approaches and coordination of directions and measures of public administration, is a proven tool for the effective policy of modern legal democratic states that develop a national socially oriented market economy aimed at real ensuring human rights and improving the efficiency of socio-economic relations. Based on the technology of voluntary multilateral initiatives, social dialogue acts as a catalyst for reforms and institutional innovations in public administration, ensures consensus, transparency, openness, institutional and political responsibility of participants, promotes cooperation between all sectors of society. Such cooperation is of particular importance in the conditions of extraordinary perturbation of social life caused by the war<sup>17</sup>.

Article 14 of the Law defines certain peculiarities of relations between the state, employers and trade unions during martial law<sup>18</sup>. In the explanations of the Ministry of Economy of Ukraine dated 23.03.2022, among other things, it is noted that in conditions of martial law, the expansion of the powers of employers and the moratorium on inspections of the activities of business entities, a special role of supervision over the observance of labor rights of citizens is assigned to trade unions. Thus, trade unions can identify the relevant problem and raise before law enforcement agencies the issue of bringing to criminal liability those guilty of gross violation of labor legislation<sup>19</sup>.

In general, we can state that the analyzed law made significant changes to the regulation of labor relations under martial law. However, the application of new rules that limit the labor rights of employees remains a right, not an obligation of the employer. For example, employers, guided by the new Law, can both increase the standard of working time and reduce time to rest, and continue to work unchanged if possible<sup>20</sup>.

The Laws "On Amendments to Certain Laws of Ukraine on the Functioning of Employment and Compulsory State Social Insurance in Case of Unemployment during Martial Law" were also adopted<sup>21</sup>, "On Amendments to Certain Legislative Acts of Ukraine to Strengthen the Protection

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<sup>16</sup> *On the organization of labor relations under martial law*. Law of Ukraine. March 15, 2022. No. 2136-IX. <https://zakon.rada.gov.ua/laws/show/2136-20#Text>. (Accessed Desember 15, 2022).

<sup>17</sup> Petroe, Olga. *Social dialogue as an institution of public administration: educational and methodological materials*. Kyiv. 2013. P. 24.

<sup>18</sup> *On the organization of labor relations under martial law*. Law of Ukraine. March 15, 2022. No. 2136-IX. <https://zakon.rada.gov.ua/laws/show/2136-20#Text>. (Accessed Desember 15, 2022).

<sup>19</sup> Kovalchuk, Volodymyr. *Labor relations during the war: analysis of the norms of emergency labor legislation of Ukraine*. 2022. [http://fes.kiev.ua/n/cms/fileadmin/upload2/Trudovi\\_vidnosini\\_2022.pdf](http://fes.kiev.ua/n/cms/fileadmin/upload2/Trudovi_vidnosini_2022.pdf). (Accessed Desember 15, 2022). P. 14.

<sup>20</sup> Tsvetkova, Kateryna. *Labor relations during the war: 9 provisions of the new law*. 2022. <https://zib.com.ua/ua/151064.html>. (Accessed Desember 15, 2022).

<sup>21</sup> *On amendments to certain laws of Ukraine on the functioning of employment spheres and compulsory state social insurance in case of unemployment during martial law*. Law of Ukraine. April 21, 2022. No. 2220-IX. <https://zakon.rada.gov.ua/laws/show/2220-IX#Text>. (Accessed Desember 15, 2022).

of Labor Rights of Employees”<sup>22</sup>, “On Amendments to Certain Legislative Acts of Ukraine on Optimization of Labor Relations”<sup>23</sup> “On Amendments to Certain Legislative Acts of Ukraine on Simplification of Regulation of Labor Relations in the Field of Small and Medium Enterprises and Reducing the Administrative Burden on Entrepreneurial Activity”<sup>24</sup>, “On Amendments to Certain Legislative Acts of Ukraine regarding the Settlement of Certain Non-Standard Forms of Employment”<sup>25</sup>, aimed at regulating labor relations, simplifying certain procedures between the worker and the employer, etc.

The analysis of these regulatory documents allows us to identify several main trends in the development of labor law and directions for reforming labor legislation in the conditions of an emergency legal regime caused by the war in Ukraine.

One of the trends is to strengthen the protection of labor rights of workers and guarantees of their implementation under martial law. In particular, the Law of Ukraine No. 2220-IX established a number of additional guarantees in the areas of employment and compulsory state social insurance in case of unemployment in a special period, amendments to the laws of Ukraine “On Employment”, “On Ensuring the Rights and Freedoms of Internally Displaced Persons”, “On Compulsory State Social Insurance in Case of Unemployment”. Also, among the novelties, it is necessary to indicate the introduction of one-time financial assistance for the organization of entrepreneurial activity, simplification of the procedure for assigning unemployment benefits, regulation of the procedure for providing partial unemployment benefits, etc.

To strengthen the protection of labor rights and interests of employees who work for an employer-individual, as well as to strengthen the protection of their labor rights and interests, such acts of social dialogue as collective agreements and collective agreements, the establishment of features of their conclusion and action in wartime conditions, is characterized by the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine to Strengthen the Protection of Labor Rights of Employees”<sup>26</sup>.

It should be noted that collective agreements and collective agreements as acts of social dialogue under martial law are of particular importance, since they are one of the types of collective protection of labor, social and economic rights and interests of workers as a form of protection of their rights and interests, fix the agreements reached, agreed decisions between the parties to social dialogue. It is through these acts that the parties have the opportunity to regulate labor, social, economic relations at different levels of social dialogue, taking into account the interests of each of the parties, during this difficult period<sup>27</sup>.

The amendments introduced by Law No 2352-IX to the Labor Code of Ukraine concern, in particular, the specification of the employer's obligations before the employee starts work under an employment contract, fixing new grounds for terminating an employment contract and the procedure for termination (dismissal of employees) on some of these grounds. Also, the said law

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<sup>22</sup> *On amendments to certain legislative acts of Ukraine to strengthen the protection of labor rights of employees*. Law of Ukraine. May 12, 2022. No. 2253-IX. <https://zakon.rada.gov.ua/laws/show/2253-20#Text>. (Accessed Desember 15, 2022).

<sup>23</sup> *On amendments to certain legislative acts of Ukraine on the optimization of labor relations*. Law of Ukraine. July 1, 2022. No 2352-IX. <https://zakon.rada.gov.ua/laws/show/2352-20#Text>. (Accessed Desember 15, 2022).

<sup>24</sup> *On amendments to certain legislative acts of Ukraine on simplifying the regulation of labor relations in the field of small and medium-sized enterprises and reducing the administrative burden on entrepreneurial activity*. Law of Ukraine. 19 July 2022. No. 5371. <https://pon.org.ua/novyny/9668-zakonoprojektu-suttievo-zachipaie-prava-ta-interesy-naimanykh-pracivnykiv-ta-profspilok.html>. (Accessed Desember 15, 2022).

<sup>25</sup> *On amendments to certain legislative acts of Ukraine regarding the regulation of some non-standard forms of employment*. Law of Ukraine. July 18, 2022. No. 5161. <https://www.rada.gov.ua/news/razom/225699.html№5161>. (Accessed Desember 15, 2022).

<sup>26</sup> *On amendments to certain legislative acts of Ukraine to strengthen the protection of labor rights of employees*. Law of Ukraine. May 12, 2022. No. 2253-IX. <https://zakon.rada.gov.ua/laws/show/2253-20#Text>. (Accessed Desember 15, 2022).

<sup>27</sup> Grishina, Julia; Chanysheva, Galyna. “The main trends in the development of labor law under martial law”. *Scientific Bulletin of Uzhhorod National University*. 2022. P. 378.

amended Art. 1 of the Law of Ukraine "On the Organization of Labor Relations under Martial Law", which today determines not only the peculiarities of labor relations of employees of all enterprises, institutions, organizations in Ukraine, regardless of the form of ownership, type of activity and industry affiliation, as previously envisaged, but also the peculiarities of civil service, service in local governments, peculiarities of labor relations of employees of representative offices of foreign economic entities in Ukraine, as well as persons working under an employment contract concluded with individuals, during the period of martial law. At the same time, some imperative provisions of the Law have been replaced by dispositive ones. For example, in the first paragraph of part one of art. 12 we are already talking about the possibility of limiting the duration of the annual basic leave of an employee by decision of the employer to 24 calendar days, and in Art. Art. 13 of the Law specifies the procedure for suspending the employment contract and its execution and provides for the possibility and procedure for appealing the relevant order of the employer in case of disagreement with the employee<sup>28</sup>.

It is worth pointing out the establishment of certain restrictions and features of the organization of labor relations with compliance with the minimum labor guarantees. First of all, we are talking about the provisions of the Law of Ukraine "On the Organization of Labor Relations under Martial Law" of March 15, 2022, which mostly regulate individual labor relations. The legislator's use in various articles of the Law of the wording "has the right...", "may conclude...", "may break...", "may be established..." etc., testifies to the dispositivity of the regulations, which provide for certain restrictions and features of the organization of labor relations under martial law, and therefore the implementation of individual and collective labor rights.

From the analysis of changes to the provisions of labor legislation, there is also a tendency to strengthen the flexibility of legal regulation of labor relations and mobility of an employee in the exercise of the right to work, which is manifested in the normalization of provisions on certain non-standard forms of employment, in particular, the introduction by Law No. 5161 of a new type of employment contract – an employment contract with non-fixed working time. Employees with whom such an agreement has been concluded are called freelancers. At the same time, it should be emphasized that an employment contract with non-fixed working time does not teach a specific time for performing work, the employee is obliged to perform work only if the employer provides it in the absence of guarantees that such work will be permanent. Under an employment contract with non-fixed working time, the employee receives a salary for the actual time worked or for the work actually performed<sup>29</sup>.

Law No. 5371 "On Amendments to Certain Legislative Acts to Simplify the Regulation of Labor Relations in the Field of Small and Medium-Sized Enterprises and Reduce the Administrative Burden on Entrepreneurial Activity" is aimed at expanding the contractual principles of labor relations regulation for the period of martial law, which consists in enabling the employer and the employee, by mutual consent, to include in the written employment contract provisions on the emergence and termination of labor relations, working conditions, rights and guarantees defined by the Labor Code of Ukraine, at its own discretion. At the same time, simplification of the regulation of labor relations provides for the preservation of basic labor rights and guarantees of employees. The contractual regime for regulating labor relations will apply between an employee and an employer who is a small or medium-sized business entity with no more than 250 employees, or between an employer and an employee whose salary is more than eight minimum wages per month. The application of the contractual regime for regulating labor relations by employers who have the right to apply it is voluntary<sup>30</sup>.

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<sup>28</sup> *On amendments to certain legislative acts of Ukraine on the optimization of labor relations.* Law of Ukraine. July 1, 2022. No 2352-IX. <https://zakon.rada.gov.ua/laws/show/2352-20#Text>. (Accessed Desember 15, 2022).

<sup>29</sup> *On amendments to certain legislative acts of Ukraine regarding the regulation of some non-standard forms of employment.* Law of Ukraine. July 18, 2022. No. 5161. <https://www.rada.gov.ua/news/razom/225699.html№5161>. (Accessed Desember 15, 2022).

<sup>30</sup> *On amendments to certain legislative acts of Ukraine on simplifying the regulation of labor relations in the field of small and medium-sized enterprises and reducing the administrative burden on entrepreneurial activity.* Law of Ukraine. 19 July 2022. No. 5371. <https://pon.org.ua/novyny/9668-zakonoproiektu-suttievo-zachipaie-prava-ta-interesy-naimanykh-pracivnykiv-ta-profspilok.html>. (Accessed Desember 15, 2022).



The employer and the employee are offered, at their own discretion, by mutual consent, to settle their relations in terms of the emergence and termination of labor relations, the wage system, labor standards, wages, allowances, surcharges, bonuses, remuneration, norms of working time and rest, etc. In addition, it is allowed to dismiss an employee at the initiative of the employer without explaining the reasons, subject to the payment of compensation, employees are deprived of the right to trade union protection, socially vulnerable categories of persons actually lose guarantees.

Objecting to the adoption of the Law, the Trade Union of Education and Science Workers of Ukraine reasonably drew attention to the violation of the Constitution of Ukraine (Articles 22, 36, 43, 92), international acts ratified by Ukraine: the EU-Ukraine Association Agreement (Articles 296, 419, 420), the European Social Charter (revised) (Article 24), the Convention of the International Labor Organization No. 135 on the protection of the rights of representatives of workers in the enterprise and opportunities, provided to them (Articles 1, 2), the Convention of the International Labor Organization No. 158 on the termination of employment at the initiative of the employer (Articles 1, 4, 13), as well as the EU Council Directives No. 98/59/ EU on approximation of member states' legislation on collective dismissal; No. 2003/88/ EU on some aspects of the organization of working hours; No. 2019/1152 on transparent and predictable working conditions in the European Union and recommendations of the International Labor Organization No. 166 on termination of labor relations at the initiative of the employer and No. 189 on job creation in small and medium-sized enterprises<sup>31</sup>.

In addition to the regulatory documents, we have analyzed that regulate certain labor relations in Ukraine and drafts to them, several controversial draft laws are under consideration by the Ukrainian parliament, which propose a significant narrowing of the labor rights of workers, as well as deprivation of trade unions to perform representative functions in accordance with international standards, which contradicts international legal standards in this area.

Special attention should be paid to legislative initiatives to regulate the labor relations of persons involved by the state in its protection in hostilities. In particular, employees who are involved in the performance of duties stipulated by the laws of Ukraine "On military duty and military service", "On mobilization training and mobilization" are provided with guarantees and benefits in accordance with these laws.

For employees conscripted for military service, military service by conscription of officers, military service by conscription during mobilization, for a special period or accepted for military service under a contract during a special period until its end or until the day of actual dismissal, the place of work, position and average earnings at the enterprise, institution, are kept, organization, farm, agricultural production cooperative, regardless of subordination and form of ownership, and individuals - entrepreneurs, in which they worked at the time of conscription. Such employees are paid monetary support at the expense of the State Budget of Ukraine in accordance with the Law of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families".

It should be emphasized that according to part two of Article 24 of the Law of Ukraine "On the Fundamentals of National Resistance", members of volunteer formations of territorial communities during their participation in the training of volunteer formations of territorial communities, as well as their fulfillment of territorial defense tasks, are subject to guarantees of social and legal protection provided for by the Law of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families"<sup>32</sup>.

<sup>31</sup> *On amendments to certain legislative acts of Ukraine on simplifying the regulation of labor relations in the field of small and medium-sized enterprises and reducing the administrative burden on entrepreneurial activity.* Law of Ukraine. 19 July 2022. No. 5371. <https://pon.org.ua/novyny/9668-zakonoproiektu-suttievo-zachipaie-prava-ta-interesy-naimanykh-pracivnykiv-ta-profspilok.html>. (Accessed Desember 15, 2022).

<sup>32</sup> *On social and legal protection of servicemen and members of their families.* Law of Ukraine. 1992. No. 15. <https://zakon.rada.gov.ua/laws/show/2011-12#Text>. (Accessed Desember 15, 2022).

Also, in accordance with part one of Article 119 of the Labor Code for the period of performance of state or public duties, if under the current legislation of Ukraine these duties can be carried out during working hours, employees are guaranteed the preservation of their place of work (position) and average earnings<sup>33</sup>.

In our opinion, taking into account the specifics of the service in the territorial defense, which may provide not permanent, but periodic involvement of the relevant employee in the performance of labor duties, the employer does not need to issue an order to exempt the employee from performing work under an employment contract. In each case, it is necessary to proceed from the level of involvement of the employee in the territorial defense, the amount of working time he spends on this activity and the effectiveness and ability to perform his duties<sup>34</sup>. Finally, it should be noted that in order to preserve the boundaries of the legal regulation of labor relations, which are determined by the sectoral legal mechanism of labor law, it seems extremely important to distinguish labor law from such a related industry as civil law, an employment contract from related civil law contracts related to labor (contracting, provision of services), labor relations from civil legal relations.

Under martial law, the legislative approach to the adoption of new laws, amendments and additions to existing acts should take place in compliance with international legal standards to ensure appropriate guarantees to persons exercising the right to work, and to enable trade unions to perform the function of public control over the observance of workers rights.

### Conclusions

Based on the conducted scientific consideration and analysis of the peculiarities of the legal regulation of labor rights under martial law in Ukraine, certain reasoned conclusions should be drawn.

Under martial law, labor law remains the guarantor of ensuring the labor rights of workers and employers and does not change its essence, social significance and social purpose, and its main task is to properly legislatively consolidate the list of basic labor rights of the employee and employer in accordance with international legal standards and guarantees of their implementation, forms and methods of protection and protection. At the same time, a detailed analysis of the modern legal regulation of labor relations under martial law allows us to point out the following trends in the development of modern labor legislation: strengthening the protection of labor rights of workers and guarantees of their implementation; expansion of contractual principles for the regulation of labor relations; introduction of certain restrictions in labor relations with observance of minimum labor guarantees; strengthening the flexibility of legal regulation of labor relations and employee mobility in the exercise of the right to work.

Theoretical developments and conceptual provisions of legal science on the realization of the right to work, developed by the world community and detailed in the requirements of national labor legislation, require a new vision in terms of compliance with the criteria of necessity, reasonableness, expediency and taking into account national peculiarities. At the same time, when adopting new laws, amending existing regulations under martial law, the legislative approach to regulating individual and collective labor relations should remain unchanged in compliance with international legal standards to ensure appropriate guarantees to persons exercising the right to work, and without limiting the ability of trade unions to perform representative functions.

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<sup>33</sup> *Labor Code*. Law of Ukraine. December 10, 1971. No. 322-VIII. <https://zakon.rada.gov.ua/laws/show/322-08#Text>. (Accessed Desember 15, 2022).

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