



**Volodymyr O. HAVRYLYUK, Nataliya V. RYBAK, Volodymyr V.
KUZMENKO, Olha V. LETS, Oleh P. DENEHA**

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Secção I

Investigação Científica*

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The influence of martial law on labour relations in Ukraine

A influência da lei marcial nas relações de trabalho na Ucrânia

Volodymyr O. HAVRYLYUK¹

Nataliya V. RYBAK²

Volodymyr V. KUZMENKO³

Olha V. LETS⁴

Oleh P. DENEHA⁵

ABSTRACT: The realisation of the right to work is an important aspect of human rights, as the right to work not only ensures a normal standard of living from a material point of view, but also ensures the ongoing development of the individual. The right to work is internationally recognised and enforced by states. At the same time, labour law, which regulates the respective relationship between the employee and the employer, is constantly evolving under the influence of various factors, just as society and the State are evolving. The hostilities which began in Ukraine on 24 February 2022 have had a strong impact on all areas of the country. The purpose of this article is to identify the nature of the changes that have taken place in the labour legislation of Ukraine under martial law. Due to new circumstances and challenges of modern times, as well as significant changes in the functioning of the state under martial law, the issue of changes in labour law and restrictions on certain labour rights is very topical.

KEYWORDS: labour law; labour relations; war in Ukraine; martial law; labour rights during Martial Law.

RESUMO: A realização do direito ao trabalho é um aspecto importante dos direitos humanos, pois o direito ao trabalho não só garante um padrão normal de vida do ponto de vista material, mas também garante o desenvolvimento contínuo do indivíduo. O direito ao trabalho é reconhecido internacionalmente e aplicado pelos Estados. Ao mesmo tempo, o direito do trabalho, que regula a respectiva relação entre o empregado e o empregador, está em constante evolução sob a influência de vários fatores, assim como a sociedade e o Estado estão evoluindo. As hostilidades que começaram na Ucrânia em 24 de fevereiro de 2022 tiveram um forte impacto em toda as áreas do país. O objetivo deste artigo é identificar a natureza das mudanças que ocorreram na legislação trabalhista da Ucrânia sob a lei marcial. Devido às novas circunstâncias e desafios dos tempos modernos, bem como mudanças significativas no funcionamento do Estado sob a lei marcial, a questão das mudanças no direito do trabalho e restrições a certos direitos trabalhistas é muito atual.

PALAVRAS-CHAVE: direito do trabalho; relações trabalhistas; guerra na Ucrânia, lei marcial; direitos trabalhistas durante a Lei Marcial.

¹ Prosecutor of the Zakarpattia region, 88000, 2a Kotsyubynskoho Str., Uzhhorod, Ukraine, havrylyuk8260-2@sci-univ.com

² Individual Entrepreneur, 81173, Lany village, Lviv region, Ukraine, Rybak@i.ua

³ Sixth Administrative Court of Appeal, 01010, 8 Moskovska Str., building 30, Kyiv, Ukraine, volodymyr.kuzmenko@edu-knu.com

⁴ Research Institute of Public Law, 03035, 2A G. Kirpy Str., Kyiv, Ukraine, olha.lets@edu.cn.ua

⁵ Interregional Academy of Personnel Management, 03039 2 Frometivska Str., Kyiv, Ukraine, oleh_deneha@acu-edu.cc

Introduction

Before the Russian invasion, Ukraine had a fairly broad legislation on labour relations, which consisted of the Constitution of Ukraine, ratified acts of international law, the Labour Code, laws and regulations. The main task of labour law is to be a regulator of social relations in the field of labour. Despite the large number of legal acts, the issue of reforming national legislation remained unresolved in Ukraine, which was due to several reasons⁶.

The first reason is that some legal acts were outdated and did not meet the requirements of the present conditions. The most striking example is the Labour Code. In fact, Ukraine inherited it from the Soviet Union because it was adopted in 1971. It needed to be updated. As a result, in 2014, a draft of a new Labour Code was prepared. However, this draft received much criticism and has not yet been approved.

The second reason is the development of legal relations and the emergence of areas not regulated by the code. For example, the quarantine of 2020-2021 due to the rise of COVID-19 has made a new type of employment popular such as remote work. However, labour legislation Ukraine did not regulate this type of employment. Hence, there is a need to revise the laws and amend them with new provisions. There have also been other changes that required legislative regulation: digitalization, creation of an inclusive and barrier-free environment, non-fixed working hours, new forms of employment, etc. All this needed to be properly reflected in the legislation⁷.

The third reason is the adaptation of labour legislation to the EU standards. In 2014, Ukraine signed the Association Agreement with the EU, according to which it had to bring national legislation to a single standard⁸. The very process of adaptation of the Ukrainian legislation to the EU legislation consists in its approximation to the modern norms of European law and gradual

⁶ GNATYUK, S., KINZERYAVYY, V., SAPOZHNIK, T., SOPILKO, I., SEILOVA, N., & HRYTSAK, A. (2020). Modern method and software tool for guaranteed data deletion in advanced big data systems. *Advances in Intelligent Systems and Computing* 902, 581-590. DOI: 10.1007/978-3-030-12082-5_53

⁷ MEDVEDIEVA, M., SOPILKO, I., GULIIEV, A., BILOTSKY, S., NEVARA, L., LOVIN, A., & SIROKHA, D. (2018). Fragmentation and synergies in the international climate-change regime. *Environmental Policy and Law*, 48(3-4), 160-168.

⁸ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. (2014). Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29>

harmonization of the national legal system with the European standards of legislation in all spheres, including labour market. Such adaptation of labour legislation will allow reforming the labour market in Ukraine and, therefore, the legislator should make considerable efforts to bring Ukraine's labour policy closer to the best European practices⁹. Ukraine has ratified less than half of the European conventions binding on the EU member states that regulate labour-related issues. In addition, many international legal acts are not translated into Ukrainian.

Thus, it can be stated that at the beginning of the war some of the provisions of the labour legislation were outdated and did not provide proper regulation of labour relations existing in the market, thus leading to abuses by both employers and employees¹⁰.

Since the beginning of the war in Ukraine on February 24, 2022, almost all spheres of life and activities of society have undergone significant changes and have led to the need for major changes in the legal regulation of labour. In such a difficult period for the state, the adoption of extraordinary measures in the field of labour regulation is a forced measure, which is mainly due to the need to fulfil the tasks of protecting the state and ensuring the functioning of the Ukrainian economy. The implementation of these tasks required, on the one hand, a significant increase in the army, due to which a significant part of the able-bodied population was withdrawn from public production, and on the other hand, a broad deployment of production, which required additional power.

According to the Decree of the President of Ukraine No. 64/2022 "On imposition of martial law in Ukraine", martial law was introduced on the territory of the state, which entails the introduction of a special legal regime provided for by the Ukrainian legislation¹¹. In accordance with the Law of Ukraine "On the legal regime of martial law", the possibility of limiting certain constitutional human rights and freedoms for the period of its validity is provided. It should be

⁹ RUSNAK, A.V., PULIANOVYCH, O.V., KOZAK, Y.H., GRIBINCEA, A., & LYTVYN, N.Y. (2020). Innovative priorities of Ukraine in the context of global economic trends. *Journal of Advanced Research in Law and Economics*, 11(4), 1376-1387. DOI: 10.14505/jarle.v11.4(50).34

¹⁰ TYKHONOVA, O., LYTVYN, N., IVANTSOV, V., CHYSHKO, K., & YAROSH, A. (2019). Electronic banking as a prospective directive for the financial services market development. *Journal of Legal, Ethical and Regulatory*, 22(Special Issue 2).

¹¹ Decree of the President of Ukraine No. 64/2022 "On imposition of martial law in Ukraine". (2022). Retrieved from: <https://www.president.gov.ua/documents/642022-41397>

noted that in order to prevent the abuse of such restrictions on human rights, Article 6 of this law notes that such a list must be clear and exhaustive, and the restrictions must be temporary with an indication of the duration of these restrictions¹². Among the restrictions are those that relate to labour relations, in particular, the introduction of labour duty and the use of facilities and labour resources of enterprises, institutions, and organizations of all forms of ownership for defence. With this in mind, it is important to assess the specifics of such innovations and the limits of their application.

Significant changes have occurred in other aspects of labour relations. In general, labour relations deserve special attention. Firstly, the labour market suffered greatly during the war. Secondly, the development of the corresponding branch is very important for Ukraine, since it supports the economic basis of the state, as well as the functioning of many institutions, in particular critical infrastructure, which is important in warfare. Thirdly, labour relations are also important from the point of view of people's realization of the right to work.

Thus, under any conditions labour relations must be developed to maintain the normal functioning of the state. With the imposition of martial law, employers had many questions about the organization of labour relations during this period. After the outbreak of the war, some enterprises stopped working, some female workers went abroad or moved within Ukraine, men became members of the Armed Forces of Ukraine and the terrorist defence, so the issue of registration of labour relations with employees, provision of vacations and declaration of idle time became acute. This is only part of the problems that employers have to solve¹³.

So, new circumstances caused a number of changes in the regulation of labour relations. The Verkhovna Rada of Ukraine adopted the Law "On organization of labour relations under martial law"¹⁴. The law entered into force on March 24, 2022, and will be effective during martial law introduced in

¹² Law of Ukraine No. 389-VIII "On the legal regime of martial law". (2015). Retrieved from: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

¹³ YAKYMENKO, Z. (2022). Labour relations during martial law. Scientific and industrial journal Labour Protection, 4/2022. Retrieved from: <https://ohoronapraci.kiev.ua/article/news/trudovi-vidnosini-v-period-voennogo-stanu>

¹⁴ Law of Ukraine No. 2136-IX "On organization of labour relations under martial law". (2022). Retrieved from: <https://zakon.rada.gov.ua/laws/show/2136-20#Text>

accordance with the Law of Ukraine “On the Legal Regime of Martial Law”¹⁵. Some of its provisions, namely part 3 of article 13 (compensation at the expense of the aggressor state) will be effective until the process of compensation of salaries, guarantees and compensation payments to the employees by the state, which carries out military aggression against Ukraine, is completed¹⁶.

According to official data, more than half of Ukraine's businesses are unable to continue operations due to active hostilities, destruction, and disruption of logistical links. More than 10 million citizens were forced to leave their homes, of which more than 3.5 million left Ukraine. Therefore, the legislator must react urgently and adapt the labour legislation to the most difficult conditions in order to maintain the ability to ensure the operation of enterprises, employment and support the economy, which was done in the framework of the mentioned law¹⁷.

Taking into consideration the circumstances that have emerged in Ukraine and the introduction of significant changes in labour legislation, there is a need for Ukrainian employees to adapt to the new realities of labour relations, which requires a detailed analysis of all recent changes.

Methods

The leading method of research applied in the article is the method of analysis and synthesis. Its application provided an effective analysis of the labour laws of Ukraine before the introduction of martial law, as well as those changes that were made after that. Besides, the method of analysis and synthesis was applied to study the conformity of new norms of labour law, in particular, in such aspects as the introduction of labour conscription; the prohibition of strikes and rallies; restriction of trade unions' work; cancellation of holidays; the restriction of some other labour rights. In addition, the application of this method provided a study of theoretical information and legislation of

¹⁵ Law of Ukraine No. 389-VIII “On the legal regime of martial law”. (2015). Retrieved from: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

¹⁶ KOVALCHUK, V. (2022). Labour relations during the war: an analysis of the norms of emergency labour legislation of Ukraine. Retrieved from: http://fes.kiev.ua/n/cms/fileadmin/upload2/Trudovi_vidnosini_2022.pdf

¹⁷ YAKYMENKO, Z. (2022). Labour relations during martial law. Scientific and industrial journal Labour Protection, 4/2022. Retrieved from: <https://ohoronapraci.kiev.ua/article/news/trudovi-vidnosini-v-period-voennogo-stanu>

Ukraine and on the basis of revealing the current state of labour law in Ukraine and the impact of military actions on the regulation of labour rights in Ukraine.

The author also applied a comparative method, which provided an opportunity to achieve the objectives of the article. The mentioned method was used for the comparative characterization of the legislation of Ukraine in the field of labour rights with the norms adopted after the introduction of martial law, as well as with the Constitution of Ukraine and the acts of international law. The application of comparative analysis gave the author an opportunity to assert that the norms adopted in connection with martial law, although partially restricting the labour rights of man, are nevertheless constitutional, legitimate, and necessary for the defence of the state and ensuring state security. In addition, the comparative method made it possible to identify a number of areas, which received the most changes in the legislation under martial law.

Results

General description of changes in the labour legislation of Ukraine in connection with martial law

According to the Law “On Organization of Labour Relations under Martial Law”, peculiarities of public service, service of local authorities, peculiarities of labour relations of employees of all enterprises, institutions, organizations in Ukraine regardless of ownership, type of activity and industry, representative offices of foreign economic entities in Ukraine as well as persons working on labour contracts concluded with natural persons (hereinafter – employees), during the effective¹⁸. Having analysed the provisions of the Law, it is possible to identify a number of key changes that it introduces to the regulation of labour relations during martial law, in particular:

1. the right of an employee to terminate an employment contract without a two-week notice period in connection with military operations;
2. the right to defer payment of wages through hostilities, by the time the company's ability to conduct its core business is resumed, is introduced;

¹⁸ Law of Ukraine No. 2136-IX “On organization of labour relations under martial law”. (2022). Retrieved from: <https://zakon.rada.gov.ua/laws/show/2136-20#Text>

3. the right to suspend the employment contract in connection with military aggression, in case of inability to provide the employee with work or inability of the worker to perform it, is enshrined;

4. the simplification of conclusion by the employer of fixed-term labour contracts with new employees for the period of martial law or for the period of substitution of a temporarily absent employee is regulated;

5. the transfer of the employee to another job, not stipulated by the employment contract, without a 2-month notice and his or her consent is allowed;

6. conditions for testing at employment for any category of employees are established;

7. the right of employers to deny leave to employees who are involved in work at critical infrastructure facilities (except maternity and parental leave) is provided;

8. article 44 of the Law of Ukraine “On trade unions, their rights and guarantees of their activities” and the relevant provisions of collective agreements were suspended¹⁹;

9. the working week is increased to 60 hours.

So, the author has identified the main changes envisaged by the Law of Ukraine “On the organization of labour relations under martial law”²⁰. All of them are implemented in order to effectively establish the operation of the state under conditions of military aggression and to maintain its defence capabilities. According to the Constitution of Ukraine, 1996, “Constitutional rights and freedoms shall be guaranteed and may not be abrogated. The content and scope of existing rights and freedoms may not be narrowed in the process adopting new laws or amending existing laws”²¹. On the one hand, the Constitution of Ukraine says that human rights cannot be abolished. Indeed, none of the provisions of the Law of Ukraine “On the legal regime of martial law”

¹⁹ Law of Ukraine No. 1045-XIV “On trade unions, their rights and guarantees of their activities”. (1999). Retrieved from: <https://zakon.rada.gov.ua/laws/show/1045-14#Text>

²⁰ Law of Ukraine No. 2136-IX “On organization of labour relations under martial law”. (2022). Retrieved from: <https://zakon.rada.gov.ua/laws/show/2136-20#Text>

²¹ Constitution of Ukraine. (1996). Retrieved from: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

abolishes human rights²². On the other hand, provisions of the Constitution indicates that human rights (which include the right to work and related rights) “may not be abridged”.

The Law “On the legal regime of martial law” narrows these rights in one way or another, which raises a logical question whether this law can be considered unconstitutional. Thus, in accordance with the provisions of the Constitution of Ukraine, under the conditions of martial law or state of emergency certain restrictions on rights and freedoms may be established with an indication of the duration of these restrictions. So, the Law “On the legal regime of martial law” outlines the specific restrictions and the period of validity of such restrictions. Furthermore, in order to avoid violating fundamental human rights, the same article lists norms that cannot be restricted, namely: equality before the law; right to liberty and security; right to marriage; right to dignity; protection and rights of children; right to be informed of one's rights; right to legal assistance; right not to carry out manifestly criminal orders, and several others. Such a provision is introduced into the Constitution of Ukraine in order to protect human rights, including from the encroachments by the state itself²³.

It is worth emphasizing that among the listed rights there are no norms related to labour relations, which gives us the right to assert that labour rights can be limited during wartime if circumstances require it. From the point of view of provisions stipulated by the Law of Ukraine “On the legal regime of martial law”, such changes, although partially warming the rights of employees, are legitimate and necessary in war conditions and in no way contradicts the Basic Law of the State²⁴.

Certain aspects of labour relations that have undergone changes due to martial law

In addition to the fact that the state can demand additional labour duties from citizens and use the capacities of legal entities for the benefit of the defence sector, there were also a number of changes in labour legislation,

²² Law of Ukraine No. 389-VIII “On the legal regime of martial law”. (2015). Retrieved from: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

²³ Law of Ukraine No. 389-VIII “On the legal regime of martial law”. (2015). Retrieved from: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

²⁴ Law of Ukraine No. 389-VIII “On the legal regime of martial law”. (2015). Retrieved from: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

which regulates the familiar procedures, such as vacations, payments, trade unions and others. Changes have affected many areas, due to the inability of some people to continue working, the occupation of territories, mobilization, etc. In this regard, the author of the article considers it appropriate to consider several main areas in which there were legislative changes related to martial law.

Changes related to the conclusion and termination of an employment contract

First of all, the legislator introduced a number of significant changes in issues related to the conclusion of an employment contract. Thus, the Law stipulates that for the period of martial law the Parties independently determine the form of the employment contract. In practice, the bureaucratic component - an employment contract in writing - has been abolished. It can be assumed that in such a case, a statement, and an order of acceptance via e-mail or other available messengers will be sufficient. Nevertheless, the current provision still requires further clarification from the Ministry of Economy or other competent authority.

In addition, regardless of the category of employee hired, an employee can be hired with a probationary period. Previously, according to Article 26 of the Labour Code, a probationary period could not be set for hiring the following categories of people: persons under the age of 18, young workers after graduation from vocational schools, young professionals after graduation from higher education institutions, persons released from military or alternative (non-military) service, persons with disabilities, referred to work in accordance with the recommendation of medical and social expertise, persons elected to office, winners of the competitive selection to fill a vacancy. The probationary period is also not established when transferring an employee to work at another enterprise, institution, organization, as well as in other cases, if provided for by law²⁵. However, due to martial law, these rules were temporarily abolished.

There are also changes aimed at simplifying the procedure for dismissing an employee, which is connected with military actions and the frequent need of some citizens to change their place of residence. Thus, the Law provides for the

²⁵ Labour Code. (1971). Retrieved from: <https://zakon.rada.gov.ua/laws/show/322-08#Text>

right of an employee to terminate an employment contract without a two-week warning period in connection with combat operations in the areas where the enterprise is located and the threat to his/her life and health, except for his/her involvement in socially useful work under martial law and for work at critical infrastructure facilities. The employee is not obliged to notify in advance about termination of the contract, nor to work two weeks before dismissal. However, this also brings a number of difficulties from a bureaucratic point of view. The law does not provide an answer to the question of what to do in the event that the execution of the employment contract termination and issuance of the work record book to the employee will be complicated due to the military actions. At the same time, one of the innovations of the law is the right of the employer to organize personnel and archive records management at the discretion of the employer, hence a certain discretion is established. All the changes made by the legislator are aimed at simplifying bureaucratic procedures for hiring or firing.

The legislator allows for the possibility of transferring an employee to a distant form of work, if the specifics of his/her activity allow for it. According to the first part of Article 60 Labour Code, remote work is a form of labour organization in which the work is performed by the employee outside the working premises or territory of the owner, or the body authorized by him, in any place chosen by the employee and using information and communication technologies²⁶. Transferring an employee to telecommuting does not require two months' notice of any change in the material conditions of employment. In the conditions of military operations there may be disconnections of communications permitting remote work - electricity and the Internet. In our opinion, an employee's inability to perform distant work due to a lack of appropriate communications cannot be regarded as a violation of labour discipline.

Remuneration during martial law

Employers should take all possible measures to ensure timely payment of wages (for example, by transferring accountants to remote work and providing

²⁶ Labour Code. (1971). Retrieved from: <https://zakon.rada.gov.ua/laws/show/322-08#Text>

software and hardware for accounting, financial reporting and making payments). At the same time, in the absence of an objective possibility for the accurate payment of wages, the employer and its relevant officials cannot be held liable for late/unpaid wages due to the absence of their guilt in this violation²⁷. For such violations, it is advisable for the employer to document the fact that it is objectively impossible to pay wages in order to prove its case in the future.

Peculiarities of the length of the working day, the right to rest and vacation in view of martial law

Due to the martial law, the norms of working hours and rest time were also significantly changed. The weekly working time was increased to 60 hours, the possibility was introduced for the employer to establish a six-day workweek (by agreement with the military administration), and the rest time was reduced to 24 hours per week. The working day may last 10 hours, 6 days a week, with one day off provided. The employer should consider the provisions, according to which overtime is work in excess of the established duration of the working day, i.e., more than 60 hours. At the same time, if the employment contract provides for hourly wages, the increase in working hours will result in an increase in the amount of money paid to the employee.

The procedure for granting annual leaves was also changed. According to the Law “On Organization of Labour Relations under Martial Law” during the period of martial law, the annual leave may be limited to 24 calendar days for the current working year by decision of the employer. If the duration of an employee's annual leave is more than 24 calendar days, the provision of unused days of such leave during the period of martial law shall be transferred to the period after the termination or cancellation of martial law. During the period of martial law, the employer may deny the employee unused annual leave days²⁸.

The norms of the labour Code and the Law of Ukraine “On Vacations” do not apply during the period of martial law. In case of dismissal of an employee

²⁷ Labour Code. (1971). Retrieved from: <https://zakon.rada.gov.ua/laws/show/322-08#Text>

²⁸ Law of Ukraine No. 2136-IX “On organization of labour relations under martial law”. (2022). Retrieved from: <https://zakon.rada.gov.ua/laws/show/2136-20#Text>

during the period of martial law, monetary compensation is paid to him/her in accordance with Article 24 of the Law of Ukraine “On Vacations”²⁹. If the employee is involved in the performance of work at critical infrastructure facilities, the employer has the right to deny him/her annual or other leave during martial law, except for maternity leave until a child reaches the age of three.

For the period of martial law, restrictions on the 15-day period of leave without pay are cancelled upon agreement between the employee and the employer. If an employee wishes to go on leave without pay for more than 15 calendar days, such leave may be granted both in connection with the introduction of martial law and in connection with quarantine. The mere fact that an employee submits an application for leave without pay does not constitute proof of approval of such an application by the employer and does not oblige the owner to issue a corresponding order. Both parties must agree³⁰.

An employee can submit an application for leave to the employer by any means of communication: e-mail, Viber, Telegram, etc. Current legislation allows the exchange of documents through electronic means of communication. We believe that such restrictions are also related to the need to keep businesses operational during wartime, and especially that critical infrastructure.

Influence of provisions of the Law of Ukraine “On the legal regime of martial law on labour rights”

As mentioned above, the Law of Ukraine “On the legal regime of martial law” provides for the possibility of limiting certain constitutional rights and freedoms of an individual for the duration of martial law. According to it, the legal regime of martial law for labour relations directly provides for two key elements: labour duty for able-bodied persons; use of capacities and labour resources of enterprises, institutions, and organizations of all forms of ownership for the needs of defence³¹. Such changes are quite logical and are aimed at ensuring the defence of the state against the aggressor, so the given

²⁹ Law of Ukraine No. 504/96-BP “On vacations”. (1997). Retrieved from: <https://zakon.rada.gov.ua/laws/show/504/96-%D0%B2%D1%80#Text>

³⁰ Law of Ukraine No. 2136-IX “On organization of labour relations under martial law”. (2022). Retrieved from: <https://zakon.rada.gov.ua/laws/show/2136-20#Text>

³¹ Law of Ukraine No. 389-VIII “On the legal regime of martial law”. (2015). Retrieved from: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

elements require more detailed consideration. Thus, according to the Resolution of the Cabinet of Ministers of Ukraine No. 753 “On Approval of the Procedure for engagement of able-bodied persons in socially useful work under martial law”, labour duty is a short-term labour obligation during martial law to perform work of defensive nature, as well as liquidation of emergency situations of man-made, natural and military nature that arose during martial law and their consequences, which does not require mandatory consent of the person in respect of whom it is imposed³².

The definition of the concept of labour conscription provides clear conditions under which labour conscription can be applied. Thus, the legislator additionally limited the cases of irrational application of labour duty in order to protect the rights and freedoms of citizens. Despite the fact that such norms contradict the Constitution of Ukraine, which states that everyone has the right to work, including the possibility to earn his living by work, which he freely chooses or to which he freely agrees³³. Its application is possible only for a certain category of people, among which are: able-bodied persons, i.e., those who are not contraindicated to perform certain work; persons not involved in work in the defence and life support sphere of the population; persons not booked by enterprises, institutions, and organizations during martial law.

It is worth considering the correlation of the issue of labour duty with the legal norm on the prohibition of forced labour. It should be noted that the relevant norm is contained both in national law and in international legal documents. Thus, in accordance with Article 6 International Covenant on Economic, Social and Cultural Rights, 1966: “... recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts...”³⁴. Moreover, Article 4(2) of the European

³² Resolution of the Cabinet of Ministers of Ukraine No. 753 “On Approval of the procedure of engaging able-bodied persons in socially useful work under martial law”. (2011). Retrieved from: <https://zakon.rada.gov.ua/laws/show/753-2011-%D0%BF#Text>

³³ Constitution of Ukraine. (1996). Retrieved from: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

³⁴ International Covenant on Economic, Social and Cultural Rights. (1966). Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

Convention on Human Rights, 1950 states that “No one shall be required to perform forced or compulsory labour”³⁵.

Similar norms are also enshrined in the Abolition of Forced Labour Convention (No. 105)³⁶. In addition, the Constitution of Ukraine in article 43 contains a norm which states the following: “Everyone has the right to work, which includes the possibility of earning a living by work which he freely chooses or accepts. ... The use of forced labour is prohibited”. At first view, it seems that this right is inviolable and cannot be limited. However, at the same time, it is important to note that in the mentioned article 43 of the Constitution of Ukraine: “Military or alternative (non-military) service, as well as work or service performed by a person under a sentence or other court decision or in accordance with martial law and emergency laws, is not considered forced labour”³⁷. Thus, the introduction of labour conscription during martial law in Ukraine is legal and such that it does not contradict the constitutional foundations.

The decision on the introduction of compulsory labour and the involvement of able-bodied persons in the performance of socially useful works is taken by the military command and brought to the attention of the population through the mass media. If there is an opportunity, the decision is taken together with local executive authorities and local self-government bodies.

In addition, the above-mentioned Resolution No. 753 provides for socially useful work, representing types of temporary work activities of able-bodied persons under martial law, carried out with the above-mentioned purpose. The order of involvement specifies that these works cannot be connected with entrepreneurship or other activities aimed at making a profit³⁸. Thus, on the one hand, under peacetime labour duty can be considered a violation of labour rights, but under wartime conditions it can no longer be considered a violation,

³⁵ European Convention on Human Rights. (1950). Retrieved from: https://www.echr.coe.int/documents/convention_eng.pdf.

³⁶ Abolition of Forced Labour Convention. (1957). Retrieved from: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C105,/Document (accessed 4 August 2021).

³⁷ Constitution of Ukraine. (1996). Retrieved from: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

³⁸ Resolution of the Cabinet of Ministers of Ukraine No. 753 “On Approval of the procedure of engaging able-bodied persons in socially useful work under martial law”. (2011). Retrieved from: <https://zakon.rada.gov.ua/laws/show/753-2011-%D0%BF#Text>

because it was applied within the framework of the Law, under a special procedure and within the protection of state sovereignty. Thus, the labour duty is one of the typical examples of how the imposition of martial law affected labour relations.

It should be noted that such restrictions may occur only within the limits of temporary restrictions on the constitutional rights and freedoms of man and citizen, as well as the rights and legitimate interests of legal entities provided for by the presidential decree on the imposition of martial law³⁹.

Discussion

The review of general changes in the labour legislation of Ukraine was carried out by Ukrainian researcher Kovalchuk⁴⁰, who in his work collected all general changes in the legislation made in connection with martial law. In addition, he compared all the new changes with the old provisions that were in force on the territory of Ukraine until February 24, 2022. His work is a deep and comprehensive analysis, which included all the changes and the fundamental legal norms.

Interesting conclusions about the peculiarities of the functioning of labour law, as well as legislative changes during martial law were made by Volianska⁴¹. She not only analysed the changes adopted in the legislation but also outlined a number of rights that must be observed by employers in one way or another in relation to employees. She summarizes that the legislator temporarily worsened the conditions for implementation and protection of employees' labour rights before the end of martial law as compared to the rights enshrined in the labour Code of Ukraine and a number of special laws. However, such restrictions are badly needed in the framework of protection and maintenance of the state economy.

³⁹ Ishchenko, V. (2022). Introduction of martial law: what are the consequences and limitations. *Liga Zakon*. Retrieved from: https://jurliga.ligazakon.net/news/209360_vvedennya-vonnogo-stanu-yak-naslcki-ta-obmezheniya

⁴⁰ KOVALCHUK, V. (2022). Labour relations during the war: an analysis of the norms of emergency labour legislation of Ukraine. Retrieved from: http://fes.kiev.ua/n/cms/fileadmin/upload2/Trudovi_vidnosini_2022.pdf

⁴¹ VOLIANSKA, O. (2022). Without rest and strikes. Labour relations under martial law. *Economic truth*. Retrieved from: <https://www.epravda.com.ua/columns/2022/03/25/684645/>

It is also worth taking into account the opinion of Yakymenko⁴². The author reviews in detail certain categories of labour rights that have received the most changes, as well as procedures related to labour relations. The author paid special attention to the issue of leave and dismissal of an employee. She emphasizes that the issue of the possibility of dismissal of an employee during martial law and after its termination for unexcused absence is relevant, especially if, given the understandable circumstances, he went abroad and did not return. In addition, it says that the military command together with the military administrations can involve able-bodied persons in socially useful work, carried out during the introduction of conscription. If an employee was involved in socially useful work, an order to release him from work with preservation of his place of work and position should be issued.

The materials outlined in this article are a very important study, taking into account the relevance of this issue in the current situation in Ukraine, as well as the very small number of explanations and scientific works on this topic. In particular, the analysis of the adopted legislation is very important in the aspects of protection of the human right to work in general, and in particular IDP, as well as for understanding the correlation of restrictions of human rights in connection with martial law and the implementation of the right to work.

Conclusion

Thus, it can be stated that labour legal relations underwent a number of significant changes under the influence of martial law. Such changes were regulated by the legislator by adopting the Law “On organization of labour relations under martial law”. The law provides for a number of changes in such areas: changes in the issue of signing and termination of an employment contract, as well as its form; peculiarities of transfer to remote form, as well as dismissal; regulation of vacation, vacations and working hours; peculiarities of salary payment; transfer of employee to another job; peculiarities of probation period.

⁴² YAKYMENKO, Z. (2022). Labour relations during martial law. Scientific and industrial journal Labour Protection, 4/2022. Retrieved from: <https://ohoronapraci.kiev.ua/article/news/trudovi-vidnosini-v-period-voennogo-stanu>

At the same time, the author established that in spite of a number of restrictions in labour rights, the law accurately establishes the framework and terms of such restrictions, as well as the rights that cannot be restricted in order to protect employees. These include: equality before the law; the right to liberty and security; the right to marriage; the right to dignity; the protection and rights of children; the right to be informed of one's rights; the right to legal assistance; the right not to carry out manifestly criminal orders; and several others.

In addition to the fact that the state can demand additional labour duties from citizens and use the power of legal persons for the benefit of the defence sphere, a number of changes have also occurred in labour law, which regulates the familiar procedures, such as vacation, pay, trade unions and others. The changes affected many areas, due to the inability of some people to continue working, the occupation of territories, etc.

It was also established that the state had the right to use labour for the benefit of the homeland. Despite the prohibition of forced labour in the acts of international law and the Constitution of Ukraine, it was established that labour duty is not such and is necessary in the protection of the territorial integrity of the country. At the same time, it is applied within the limits strictly set by the legislator in order to avoid violation of human rights.

Thus, we can summarize that all changes adopted in the sphere of labour rights in Ukraine under the influence of martial law caused by the armed aggression are aimed at ensuring the functioning of the country's economy in conditions of war, state defence, ensuring the operation of critical infrastructure, protecting the lives of citizens by simplifying bureaucratic procedures. On this basis it can be argued that although the rights have been limited in one way or another, on the other hand these restrictions lead to the protection of other important human rights and the protection of the state.

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Universidade Portucalense Cooperativa de Ensino Superior, CRL

Rua Dr. António Bernardino de Almeida, 541 - 4200-072 Porto

Email: upt@upt.pt