

ОСНОВНІ АСПЕКТИ ТРУДОВИХ ПРАВОВІДНОСИН В УКРАЇНІ В УМОВАХ ВОЄННОГО СТАНУ

BASICS ASPECTS OF LABOUR LEGAL RELATIONS IN UKRAINE UNDER MARTIAL LAW

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Abstract. In the article, the authors examine the main aspects of labor relations in Ukraine under martial law. In the conditions of Russia's aggressive war against Ukraine, special attention should be paid to the protection of basic constitutional rights and freedoms of man and citizen. One of the most important constitutional rights is the right to work. The main focus is on the main changes in labor legislation under martial law. The authors point out that martial law is a special legal regime that is established in Ukraine or in some of its localities in the event of armed aggression or a threat of attack, a threat to the state independence of Ukraine. of Ukraine, its territorial integrity and provides for the granting to the relevant bodies of state power, military administration, military administrations and local self-government bodies of the powers necessary to avert the threat, repel armed aggression and ensure national security, eliminate the threat to the state independence of Ukraine, its territorial integrity, as well as temporary restriction of the constitutional rights and freedoms of a person and citizen, rights and legal interests of legal entities, indicating the period of validity of these restrictions as a result of the threat. In the conditions of martial law, one of the main factors in achieving our victory in the fight against the terrorist state-the Russian Federation is the support of Ukraine, which directs all its capabilities to support the Armed Forces of Ukraine and protect the country's population. That's why victory depends on each of us, and that's why it's more important today than ever to work and pay taxes. In this regard, declared work is the way to a free, independent, economically strong state. So, today's realities have caused a significant revision of the system of organizing labor relations in the conditions of martial law. At the same time, it is necessary to reduce all labor disputes to a minimum and protect the right of workers to work and rest, taking into account the limitations of human and citizen rights provided by the Constitution for the period of martial law. For the sake of our victory, we all coordinate our efforts as much as possible - everyone works in his place. In this difficult time, each of us needs to put in much more effort than under normal conditions. This is necessary to

stabilize the country's economy, ensure the critical needs of citizens and the Armed Forces of Ukraine.

Key words: labor law, labor relations, martial law, right to work, contract.

Анотація. У статті автори досліджують основні аспекти трудових правовідносин в Україні в умовах воєнного стану. В умовах агресивної війни росії проти України, особлива увага має бути приділена захисту основних конституційних прав та свобод людини і громадянина. Одним із найважливіших конституційних прав є право на працю. Основна увага приділяється основним змінам трудового законодавства в умовах воєнного стану. Автори зазначають, що воєнний стан є особливим правовим режимом, який встановлюється в Україні або в окремих її місцевостях у разі збройної агресії чи загрози нападу, загрози державній незалежності України, її територіальної цілісності та передбачає надання відповідним органам державної влади, військового управління, військових адміністрацій та органів місцевого самоврядування повноважень, необхідних для відвернення загрози, відсічі збройній агресії та забезпечення національної безпеки, усунення загрози небезпеці державну незалежність України, її територіальної цілісності, а також тимчасове внаслідок загрози обмеження конституційних прав і свобод людини і громадянина, прав і законних інтересів юридичних осіб із зазначенням строку дії цих обмежень. В умовах воєнного стану одним із головних чинників досягнення нашої перемоги у боротьбі з терористичною державою-РФ є підтримка України, яка спрямовує всі свої можливості на забезпечення Збройних Сил України та захист населення країни. Тому перемога залежить від кожного з нас, і тому сьогодні як ніколи важливо працювати та сплачувати податки. У цьому плані задекларована праця – це шлях до вільної, незалежної, економічно сильної держави. Отже, реалії сьогодення спричинили суттєвий перегляд системи організації трудових відносин в умовах воєнного стану. При цьому необхідно звести до мінімуму всі трудові спори та захистити право працівників на працю та відпочинок, враховуючи передбачені Конституцією обмеження прав людини і громадянина на період дії воєнного стану. Заради нашої перемоги ми всі максимально координуємо зусилля – кожен працює на своєму місці. У цей складний час кожному з нас потрібно докласти набагато більше зусиль, ніж за звичайних умов. Це необхідно для стабілізації економіки країни, забезпечення критичних потреб громадян і Збройних Сил України.

Ключові слова: трудове право, трудові правовідносини, воєнний стан, право на працю, контракт.

Formulation of scientific problem and its significance. In the conditions of martial law, one of the main factors for us to achieve victory in the fight against the terrorist state-russia is the support of Ukraine, which directs all its capabilities to the provision of the Armed Forces of Ukraine and the protection of the country's population. That's why victory depends on each of us, and that's why working and paying taxes are more important today than ever. In this regard, declared work is the way to a free, independent, economically strong state.

Analysis of research on a scientific problem. Many Ukrainian scientists dealt with issues of legislative regulation of relations in the labor sphere. In the process of analyzing labor relations in Ukraine under martial law, we especially studied the works of T. Zanfirova, O. Melnychuk, M. Melnychuk, I. Pavlichenko and others.

Formulation of the purpose and objectives of the article. The purpose of the article is to analyze the legislative constructions of the main provisions on ensuring the normal functioning of labor relations in the conditions of martial law.

Presentation of the main material and substantiation of the obtained research results. According to the Article 1 Of the Law "About the legal regime of martial law" martial law is a special legal regime introduced in Ukraine or in some of its localities in the event of armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity, and provides for the provision of appropriate state authorities, military command, military administrations and bodies local self-government of the powers necessary to avert the threat, repulse armed aggression and ensure national security, eliminate the threat of danger to the state independence of Ukraine, its territorial integrity, as well as temporary, due to the threat, restriction of the constitutional rights and freedoms of the person and citizen and the rights and legitimate interests of legal entities indicating the period of validity of these restrictions [1].

In accordance to Part 1 of Art. 8 of the Law of Ukraine "On the Legal Regime of Martial Law", where it is established that in the state or in some of its localities, where martial law has been imposed, the military command together with military administrations (in the case of their formation) may independently or with the involvement of executive authorities, the Council ministers of the Republic of Crimea, local self-government bodies to introduce and exercise within the limits of temporary limitations the constitutional rights and freedoms of man and citizen, as well as the rights and legal interests of legal entities, provided for by the decree of the President of Ukraine on the introduction of martial law.

In Part 3 of Art. 43 of the Constitution explicitly states that, on the one hand, the use of forced labour in our country is prohibited, on the other hand, the work or service that individuals must perform in accordance with the martial law and emergency laws is not considered forced labour [2].

Some Ukrainian scientists draw attention to the fact that in the case of the introduction of martial law, persons who are in the territory where this legal regime is introduced are deprived of a share of freedom of labour in favour of public needs and interests: martial law involves the introduction of compulsory labour, which in its essence is forced labour because it meets the criteria of coercion, but it is not considered as such, because the Constitution clearly indicates that this duty cannot be considered coercion [3].

In a separate opinion of the Constitutional Court of Ukraine judge I.D. Follow-up on the Conclusion of the Constitutional Court of Ukraine in the case of the appeal of the Verkhovna Rada regarding the compliance of the finalized draft law on amendments to the Constitution of Ukraine (regarding justice) with the requirements of Art. Art. 157 and 158 of the Constitution of Ukraine" [4], it is emphasized that "the issue of introducing martial law lies in the plane of political expediency, according to which the President of Ukraine acts, but this has nothing to do with the

real circumstances and requirements of the Constitution of Ukraine and current legislation".

The peculiarities of the organization of labor relations in Ukraine are regulated by the Law of Ukraine dated March 15, 2022 "On the Organization of Labor Relations in Martial Law" [5]. The peculiarities of concluding an employment contract in the conditions of martial law are: 1) During the period of martial law, the parties agree to determine the form of the employment contract. 2) When concluding an employment contract for the period of martial law, the condition of employee probation upon hiring may be established for any category of employees.

In addition, with the aim of quickly attracting new employees to work, as well as eliminating personnel hunger and labor shortages, including in connection with the actual absence of employees who have been evacuated to another area, are on vacation, idle, temporarily unable to work, or whose whereabouts are temporarily unknown, the employer may conclude fixed-term employment contracts with new employees for the period of martial law or for the period of replacing a temporarily absent employee.

Separately, we should dwell on the peculiarities of the transfer and change of essential working conditions in wartime conditions.

During the period of martial law, the employer has the right to transfer the employee to other work not provided for in the employment contract, without his consent (except for transfer to another area where active hostilities are ongoing), if such work is not contraindicated for the employee due to his health, only for averting or eliminating the consequences of hostilities, as well as other circumstances that pose or may pose a threat to people's lives or normal living conditions, with wages for work performed not lower than the average salary for the previous job.

However, during the period of martial law, the notification of the employee about the change in the essential working conditions and the change in the payment conditions provided for in the third part of Article 32 and Article 103 of the Labor Code of Ukraine shall be carried out no later than before the introduction of such conditions [6].

According to Art. 49-6 of the Code of Labor Laws, regulation of labor relations between employees and employers, who are subject to the simplified regime, is carried out by an employment contract. In the conditions of martial law, the provisions of the labor contract are applied to the extent that they do not contradict the legislation on the regulation of labor relations in the conditions of martial law, unless otherwise established by agreement of the parties.

Article 4 of the Law «On the Organization of Labor Relations in Martial Law» [2] defines the specifics of termination of the employment contract at the initiative of the employee. In connection with the conduct of hostilities in the areas where the enterprise, institution, organization is located and the existence of a threat to the life and health of the employee, he may terminate the employment contract on his own initiative within the period established in his application (except in cases of forced involvement in socially useful works in conditions of martial law, involvement in work on critical infrastructure facilities). Without a doubt, the employer must take all possible measures to ensure the realization of the right of employees to timely receipt of wages. However, the employer is released from responsibility for violation of the

obligation regarding payment terms if it proves that this violation occurred as a result of hostilities or other force majeure circumstances. Releasing the employer from responsibility for late payment does not release him from the obligation to pay wage. In case of impossibility of timely payment of wages as a result of hostilities, the term of payment of wages may be postponed until the time of resumption of the enterprise's activities.

During the period of martial law, annual basic paid leave is granted to employees for a duration of 24 calendar days. However, during the period of martial law, the employer may refuse to grant any type of leave to an employee (except maternity leave and leave to care for a child up to the age of three), if such an employee is involved in the performance of work at facilities critical infrastructure. But during the period of martial law, the employer, at the request of the employee, may grant him leave without salary without the limitation of the period established by the first part of Article 26 of the Law of Ukraine "On Vacations".

Special attention needs to be paid to the organization of remote work at enterprises, institutions or organizations under martial law. Ukrainian scientists have repeatedly drawn attention to problematic issues in the organization of this work, who rightly pointed out that the procedure for setting the start and end time of work has changed, currently this right belongs to the employer; the normal and shortened working hours of employees have been increased; limiting the duration of annual paid leave to 24 calendar days and providing certain types of leave to employees involved in performing work at critical infrastructure facilities; the application of the norms of certain articles of the Code of Labor Laws, which regulate working time and rest time, has been suspended [7]. Remote work in the conditions of martial law has acquired special importance for the preservation of labor relations and the organization of relative labor safety. Today, the institution of remote work in Ukraine is properly regulated at the level of the Labor Code of Ukraine and other legislative acts, which ensures the existence of a legislative definition of remote work, the procedure and conditions of its application, requirements for the form and content of an employment contract, etc. Features of remote work can be determined by the following criteria: order of application, workplace, restrictions on application, mode of operation, availability of means of production, equipment, software and technical means, working hours, guarantee of rest. The legal regime of martial law led to the introduction of temporary changes in the organization of labor relations, which also affected the procedure for introducing remote work. First of all, this concerns the possibility of its application by order (order) of the employer, without concluding an employment contract in writing and without notifying the employee of a change in the essential working conditions, as provided for by legislation in peacetime. The transformation of the legal regulation of working time and rest time of the employee took place.

Conclusion. Thus, the realities of today have caused a significant revision of the system of organizing labour relations in the conditions of martial law. At the same time, it is necessary to minimize all labour disputes and protect the right of workers to work and rest, taking into account the limitations of human and citizen rights during the period of martial law provided by the Constitution. For the sake of our victory, we all coordinate our efforts as much as possible - each working in his place.

In this difficult time, each of us needs to make much more effort than under normal conditions. This is necessary in order to stabilize the country's economy, to ensure the critical needs of citizens and the Armed Forces of Ukraine.

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