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LEGAL PROVISION OF SOCIAL PROTECTION OF EMPLOYEES IN THE CONDITIONS OF MARTIAL LAW

Purpose. To study changes in legal provisions regarding social protection of employees because of legal restrictions put into effect during martial law. To develop recommendations for clarifying the legal provisions of specified restrictions. To propose ways and directions of strengthening protection of the social rights of employees (SRE).

Methodology. General and special methods of cognition are used: hermeneutic method – for the interpretation of legal provisions of legislative acts, which regulate legal provision of SRE; analysis and synthesis – to study changes in legal provision of SRE; induction and deduction – to develop recommendation on clarifying the legal provisions of normative restrictions on SRE: analytical, formal legal and special legal methods – to determine the ways and directions of strengthening protection of SRE.

Findings. The changes in the legal framework for the protection of SRE because of legal restrictions put into effect during martial law are studied and presence of some inconsistencies in legal provisions is indicated, which requires clarification of new legal concepts and the application of indicating norms. The need for a well-founded implementation of a dispositive approach to rules for protection of SRE is pointed out and as well as for an imperative approach to the rules that the employer must follow. It is proposed to weaken the tendency to oust collective agreements from the legal field. Normalization of feedback between legislators and public organizations and trade unions is proposed.

Originality. Insufficiency of the legal conditions-indicators in normative-legislative field regarding introduction of SRE narrowing and limitation of the legal possibilities for their protection are pointed out. Recommendations to clarify the legal provisions of regulatory restrictions of SRE are developed. Ways and directions of strengthening the protection of SRE are proposed.

Practical value. The introduction of indicating norms and the implementation of the proposed recommendations will contribute to the strengthening of SRE protection.

Keywords: *legal support, social protection of employees, conditions of martial law, the regulatory and legal field*

Introduction. The introduction of martial law and the normative legal acts regarding the peculiarities of the realization of the legitimate interests of citizens in these conditions significantly limits the social rights of workers. Restrictions introduced by the specified normative legal acts are applied taking into account the priority of public interests and the preservation of statehood under conditions of war. Accomplishing these tasks requires unpopular decisions regarding the narrowing of social rights.

This is caused, first of all, by the limitations of the basic norms of the Constitution of Ukraine, in particular, those promulgated in Article 43 regarding the right to work, Article 44 regarding the protection of the rights of the working population; Article 53 regarding the right to education, etc.

Significant changes adopted in 2022 (the latest – No. 2849-IX dated 13.12.2022) to Law of Ukraine No. 389-VIII “On the Legal Regime of Martial Law” also lead to restrictions on the social rights of workers. First of all, this concerns Article 8 of the Law of Ukraine No. 389-VIII “Measures of the Legal Re-

gime of Martial Law”. Also, according to the specified changes, restrictions on the rights of workers are introduced and other “peculiarities of the organization of labor relations” are introduced in the Law of Ukraine No. 2136-IX “On the Organization of Labor Relations in the Conditions of Martial Law”.

This indicates radical changes in the regulatory and legal field, which lead, in particular, to a significant narrowing of the possibilities of protecting the social rights of workers in a special period. Therefore, these changes require a detailed study by legal experts and human rights defenders in order to prevent an unjustified reduction of the interests of working citizens of Ukraine. Also, changes in the regulatory and legal field require improvement of the existing legal mechanisms for the protection of social rights and clarification of the introduced legal norms to eliminate differences in their interpretation by the parties to court proceedings.

Ensuring the appropriate level of social rights of employees requires the joint efforts of state institutions, management, enterprise owners who should be interested in providing production with labor during the special period and after its end,

trade unions and public organizations, which should form coordinated requirements for ensuring these rights in a normative and legal field.

Literature review. The importance of the problem of legal provision of social protection of workers in the conditions of martial law is indicated by the significant attention of scientists to its various aspects. Thus, Chernous [1], using the example of the restriction of the constitutional right of employees to rest during martial law, points to the dichotomy of legal protection of the social rights of consumers and the interests of ensuring the functioning of industries and the economy as a whole. At the same time, it is claimed that the narrowing of the social rights of employees must be substantiated and comply with the provisions of the laws that regulate legal relations under martial law. The requirement for legal specification of legal restrictions of social rights implicitly formulated in [1] is detailed in the presented study.

Panasiuk, et al. [2] conducted a more extensive analysis of the constitutional rights of workers under martial law. The state of ensuring the specified rights and the difficulties of their legal protection under the conditions of legislative restrictions were also studied. It is indicated that, despite the conditions of martial law, social protection, protection of constitutional rights should be the absolute priority of state and legal structures. This conclusion became the dominant thesis of the presented research.

Spytska [3] points out the gaps in the legal regulation of labor relations with some categories of employees of enterprises in wartime conditions, first of all, in relation to military personnel and volunteers, the non-observance of whose social rights leads to a violation of the principle of social justice. To reduce the level of social tension in these issues, it is proposed to develop a mechanism for taking into account comments to new legislative acts regulating labor relations under martial law, which will contribute to the expansion of social partnership and the protection of the social rights of the specified categories of workers.

Pankova and Kasperovich [4] studied the legal protection of the social aspects of the activities of digital platform workers in a special period. This IT sector, on the one hand, is an example of effective work under martial law; on the other hand, as it is indicated by the research by Pankova and Kasperovich [4], there is social insecurity of employees of digital platforms due to a large degree of legal irregularity of their labor relations, which is significantly strengthened by recent changes in legislation. This leads to: a significant level of shadowing of the industry; lack of regulation of rights and uncertainty of the status of workers in this sector; legal unsettled liability of employers for failure to provide social protection for employees; legal narrowing of the significance of collective contracts to protect the interests of platform workers [4]. All of the above indicates the presence of gaps in the regulatory and legal provision of social protection of workers during martial law.

Prytyka, and others [5] studied in detail various aspects of temporary restriction of social and constitutional rights due to the effects of martial law restrictions. The introduction of the peculiarities is pointed out as to “suspension of labor relations, changes in the jurisdiction of courts and the possibility of justice” and others, which, according to the conclusion by Prytyka, et al. [5], complicates the legal protection of the social rights of employees. Measures to solve these issues are proposed, some of them are considered in the presented study.

The issue of protection of the basic social human being – the right to work – arises especially acutely during active hostilities on the territory of the country. This issue, in particular, is researched in the article by Zanfirova [6], which points out the main contradiction in the provision of social and constitutional rights during martial law, which is that, on the one hand, all people should have freedom of labor, but during war for social needs in the legal field labor service is normalized, which has all the signs of forced labor, which contradicts the Consti-

tion and, accordingly, this provision needs to be clarified in the main Law of the country. According to the conclusion of Zanfirova [6], legal settlement of the specified problem is needed, which will reduce the level of subjectivity in the assessment of labor service under martial law. This confirms the need to introduce clarifications to regulatory legal acts of a special period, even regarding their main provisions, and this is considered in the presented study.

Pylypenko, and others [7] also analyzed changes in the labor legislation of Ukraine during the introduction of martial law. It is indicated that even the introduction of restrictions on the rights of workers in view of the priority of ensuring public needs and interests of the state should not violate the established regulatory and legal order in the regulation of individual and collective labor relations and should comply with the norms of international law. Pylypenko, and others [7] indicated the trends of changes in labor law under martial law conditions: “establishment of certain restrictions and features of the organization of labor relations with an emphasis on the realization of state needs; implementation of mobile legal mechanisms to realize the right to work; expansion of the contractual principles of regulation of labor relations; strengthening the protection of the labor rights of workers, primarily those who were mobilized”. The presented study pays attention to the indicated trends.

Also, the article by Yaroshenko and Lutsenko [8] indicates that in order to ensure the basic social needs in the conditions of martial law, the labor relations of workers need protection and legal regulation. Yaroshenko and Lutsenko [8], using a qualitative analysis of legislation and statistical data, proved that the legal regulation of social protection in the case of the need to change labor relations under martial law “does not keep up with the levels of flexibility and timeliness necessary for an effective response to the ongoing crisis”. This thesis is developed in the presented study.

Bortnyk’s article [9] states that at present there is a leveling of the “Code of Labor Laws” as a basic legal instrument for regulating relations between employees and employers. It was noted that due to certain circumstances, the Code of Labor Laws (hereinafter – the Labor Code) of Ukraine “nowadays does not fulfill the role of the main act of labor legislation”. This legal conflict under the conditions of martial law is exacerbated by the introduction of changes to the Labor Code of Ukraine, which have insufficiently regulated provisions, which complicates the protection of the social rights of workers [9]. This is confirmed in the presented study.

Mashkov, et al. [10] stated that full-scale military operations significantly complicated the legal relationship between employees and employers. It is indicated that the implementation of the Law of Ukraine No. 2136 “On the Organization of Labor Relations in the Conditions of Martial Law” determines its priority over other normative legal acts in the sphere of employment, the legal basis of new, atypical for peacetime forms of work is studied and the need for social protection of workers under these forms is indicated [10]. Law of Ukraine No. 2136 is a really important legal document, but the thesis about its “priority” [10] in the legislative field is questionable.

This is confirmed in the article by Hryshyna, et al. [11] where, in particular, it is indicated that the introduction of changes to the normative legal field should not change the established legal approach to the regulation of relations between employees and employers and should protect the rights of the working population. Also Hryshyna, et al. [11] studied the trends of labor law changes during full-scale military operations on the territory of the country. In particular, the trends regarding the provision of “minimum labor guarantees” are highlighted; protection of the labor rights of the working population, provision of guarantees for their provision; expansion of the scope of contract law to regulate relations between employees and employers. It is worth pointing out a certain inconsistency of these regarding the provision of “minimum labor

guarantees” and “strengthening the protection of the labor rights of the working population”. The thesis on expanding the scope of contract law to regulate relations between employees and employers is taken into account in the presented study. This thesis is revealed in more detail in the article by Oliukha, et al. [12] where it is indicated that in a special period the collective agreement should take on the features of the main legal instrument “ensuring the stability of the enterprise’s activity in the conditions of martial law” and, accordingly, protecting the social rights of employees at this enterprise.

The review of the literary sources, on the one hand, made it possible to identify the priority directions for studying the problem of protecting the social rights of workers under martial law, and on the other hand, to establish the need for an in-depth study of the specified directions and to develop ways to strengthen the protection of the social rights of workers on its basis.

Purpose. To study changes in legal provisions regarding the social protection of employees as a result of legal restrictions put into effect during martial law. To develop recommendations for clarifying the legal provisions of the specified restrictions. To propose ways and directions of strengthening the protection of the social rights of employees.

Methods. General scientific and special methods of cognition were used in the study. The hermeneutic method is used to interpret the legal provisions of legislative acts that regulate the legal provision of social protection of employees. First of all, this refers to regulatory restrictions put into effect during martial law. The method of analysis and synthesis is applied to the study on changes in legal provisions regarding the social protection of employees. The method of induction and deduction was introduced to develop recommendations for clarifying the legal provisions of normative restrictions on social rights. Analytical, formal-legal and special-legal methods are used to determine the ways and directions of strengthening the protection of the social rights of employees.

Results. The problem of legal provision of social protection for employees of Ukrainian enterprises in the conditions of martial law has several dimensions, in particular: regarding the improvement of the regulatory and legal field on this issue [13]; the need to develop a theoretical basis [14]; taking into account the peculiarities of protection in judicial practice under the specified conditions [15].

The acuteness of the problem lies in the fact that it is necessary to accelerate the solution of this problem in all the indicated directions due to the significant need to protect public interests and preserve statehood under conditions of war, and the solution of the indicated issue is complicated by the significant dynamics of changes in conditions during intensive military operations on the territory of Ukraine [16]. In such circumstances, there is a lack of time for analytical verification and coordination of the necessary regulatory legal acts, which causes the presence of certain contradictions and requires the clarification of new legal concepts [17].

For example, in Law of Ukraine No. 2352-IX dated July 1, 2022 “On Amendments to Certain Legislative Acts of Ukraine Regarding the Optimization of Labor Relations” and in Law of Ukraine No. 5371 dated July 19, 2022 “On Amendments to Certain Legislative Acts of Ukraine on Simplifying the Regulation of Labor Relations in the Field of Small and Medium-Sized Entrepreneurship and Reducing the Administrative Burden on Entrepreneurial Activity”, adopted shortly after the start of full-scale hostilities, there are such new legal concepts as “optimization of labor relations”, “simplifying regulation of labor relations”, etc.

These concepts need a normatively established definition, especially since, for example, the concept of “optimization of labor relations” is present only in the title, and not in the text of the Law of Ukraine No. 2352-IX. It should be added that even in technical sciences there are different interpretations of the definition of “optimization” under different conditions:

finding the optimum, extremum, improving the existing level of the parameter, etc. From the point of view of the theory of jurisprudence, these concepts can be classified as declaring norms [18], which only reinforces the need for their normative definition.

During the war, especially after the beginning of its active phase in February 2022, many legislative and normative acts were adopted regarding the regulation of labor relations and improvement of social protection of workers in the conditions of martial law. Since among the goals of the specified legal acts, in addition to the social protection of working people, there was also implementation of urgent tasks of the national economy; promotion of self-employment of the population; preservation of jobs and production; protection of the interests of the owners of enterprises and companies, etc., then this, due to some discrepancy in the specified goals, led to a certain regulatory inconsistency regarding the provision of social needs. At the same time, even under extraordinary conditions of the introduction of the specified legal acts, they have signs of ensuring a certain level of social needs of workers.

Thus, according to the Law of Ukraine No. 2220-IX dated 04/21/2022 “On Amendments to Certain Laws of Ukraine Regarding Provision of Employment and Mandatory State Social Insurance in Case of Unemployment During Martial Law” the following is introduced: stimulation of one’s own business by providing one-time financial assistance to entrepreneurs; simplification and regulatory imperative of the provisions on the provision of unemployment benefits, etc. For this, according to the Law of Ukraine No. 2220-IX dated 04/21/2022, amendments to the Laws of Ukraine “On mandatory state social insurance in case of unemployment”, “On employment of the population”, “On ensuring the rights and freedoms of internally displaced persons” were made. These provisions of Law No. 2220-IX indicate a tendency to ensure the social needs of working people.

Also, amendments to the Law of Ukraine dated 07.05.2012 No. 5067-VI “On Employment of the Population” introduce a certain flexibility in the provision of social assistance. In particular, this refers to changes to Chapter VIII “Final Provisions” of the specified Law, dedicated to granting the Cabinet of Ministers of Ukraine the powers to determine the types, sizes and features of social security and services in the working mode; making decisions regarding the mandatory State Social Insurance Fund without agreement with the board of the specified fund, etc. Restrictions on the actions of the employer, which may lead to the violation of the social rights of employees, are also introduced. An example of this is the restriction of the conclusion of labor contracts by the employer where the condition of “non-fixed working hours” is specified by ten percent of the total number of specified contracts. But the maximum amount of assistance is also limited – it should not be more than 1.5 times the minimum wage.

Another example of legislative protection of social rights is the Law of Ukraine dated 18.10.2022 No. 2682-IX “On Amendments to Certain Laws of Ukraine Regarding the Protection of Social, Labor and Other Rights of Individuals, Including During Martial Law, and Simplifying the Accounting of Workplaces for persons with disabilities”. According to the specified legislative act, the liability of employers for non-compliance with its provisions is introduced, in particular regarding the employment of disabled people, and the procedure for monitoring the implementation of this law is introduced.

The given examples testify to the presence of positive trends in the legislation, which are aimed at reducing restrictions on social rights, in particular, restrictions put into effect during martial law.

At the same time, it is necessary to mention the insufficient level of introduction in the normative-legislative field of legal clarifications and conditions-indicators regarding the practical implementation of the specified restrictions in the

practice of jurisprudence. The introduction of such clarifications and legal conditions-indicators is required, in particular, by clause 3. Article 47 of the Law of Ukraine No. 2220-IX, which states: "Partial unemployment benefit is not provided ... if during the six months preceding the month of production stoppage (reduction) (performance of work, provision of services), the employer, natural person – the entrepreneur has an existing arrears as to the payment of wages and/or as to the payment of a single contribution to the mandatory state social insurance, and/or as to the payment of insurance contributions to the mandatory state pension insurance". That is, if the employer does not provide the employee with information about whether he/she is insured and whether the employer has debts under the above-mentioned articles, the protection of his/her social rights is limited by the current legislation, in particular, regarding the provision of financial assistance for unemployment. This is a violation of the principles of responsibility and social justice [19] because for a violation committed by one person, damages are imposed on another person. One of the possible legal conditions-indicators, in this case, may be the imposition of the obligation on the employer to timely inform the employee about the existence of debt under the above-mentioned articles.

Also in clause 3. Article 47 of the Law of Ukraine No. 2220-IX unemployment benefit is not granted for: stopping (reduction) of the enterprise's activities for organizational and production reasons; refusal of the employee "from employment for a suitable job"; and in the event that the employer's business activities are terminated, or they are declared bankrupt, etc. In this case, the social rights of employees are also narrowed under circumstances that did not arise due to their activity (or inaction), and therefore the specified provision needs regulatory and legal clarification. It also requires a legally precise definition of the provision regarding "suitable work", since in judicial practice this causes a contradiction in its interpretation by the parties to the legal process.

The given examples also indicate the need to strengthen legal protection in ensuring the social needs of employees, to prioritize their protection in case of uncertainty of legal provisions regarding the party that needs protection first, because, as it is known, under the theoretical uncertainty of legal norms, in a regulatory manner, "justified freedom of conduct" may provoke non-fulfillment of contractual obligations by one of the parties to legal relations.

This, in turn, serves as a substantiation for the need to introduce a dispositive approach to the implementation of the principle of priority strengthening of the legal protection of the social needs of employees and to specify for this the provisions of the implemented normative legal acts for the working population and, accordingly, an imperative approach to the formulation of provisions that the employer must follow.

As an example of the social significance of the introduction of dispositive and imperative approaches, we can point to the changes to the Law of Ukraine No. 2136-IX "On the Organization of Labor Relations in the Conditions of Martial Law", in which, instead of imperative, dispositive approaches were introduced regarding the employer's possible reduction of the duration of an employee's vacation. Also, an example of the dispositive nature of changes in the provisions of the specified law is the spread of the word "may" and the verb "has": "has the right to...", "may be established...", etc.

The insufficient level of analytical work in the preparation of normative-legal documents due to the need to introduce urgent changes to existing laws even leads to legal disagreements in the implementation of the introduced changes and complications of their application in judicial practice.

Thus, the Law of Ukraine No. 2136 "On the Organization of Labor Relations in the Conditions of Martial Law" introduces the imperative provision of Article 13, Clause 4 that the aggressor state has to compensate non-payment of wages in case of suspension of the employment contract. At the same

time, Article 15. Clause 1 of the Law of Ukraine No. 2136 states that: "compensation ... is carried out at the expense of the funds of the aggressor state, as well as funds received from the relevant funds for the restoration of Ukraine, including international, international technical and/or revocable or irrevocable financial aid, other sources provided by law". That is, according to Article 13, clause 4 of Article 15. Clause 1, the list of sources of payment varies significantly, and since the legislation does not define the instruments and mechanisms for the legal implementation of compensation at the expense of the funds of the aggressor state, given the fact that it is practically impossible for workers to submit complaints to international courts, the implementation of this provision in practice of jurisprudence is complicated.

The legal provision regarding the reimbursement of payments to employees at the expense of the aggressor state also leads to a reduction in the imperative of the condition of payment of wages by the employer, which contradicts those clauses of individual and collective agreements where the obligations of the employer regarding payments and wages are specified. That is, the specified provision leads to a legal conflict and therefore requires regulatory clarification and the introduction of indicating norms.

Cases of exclusion from the sphere of protection of public and trade union organizations significantly reduce the level of protection of the social rights of workers under the laws that regulate legal relations in wartime conditions. Evidence of this, in particular, is the fact that under the conditions of the simplified regime of regulation of labor relations according to Law No. 2434-IX, the provisions of Article 43 of the Labor Code "Termination of the employment contract at the initiative of the employer with the prior consent of the elected body of the primary trade union organization (trade union representative)".

This leads to the leveling of compensatory mechanisms to limit the actions of employers regarding the violation of the social rights of employees and makes it difficult for them to defend themselves in court. Such provisions, even if they are formally included in the labor contract, can provoke employers to violate the social rights of workers.

At the same time, it is necessary to point out certain signs of a return to the regulatory field of provisions on assisting trade unions in protecting the social interests of working citizens. As an example of this, the addition of Article 62 of the Labor Code according to the Law of Ukraine No. 2434-IX part four: "Overtime work can be carried out only after informing the elected body of the primary trade union organization (trade union representative) of the enterprise (in the event of the creation of such an organization), institution, organization about their use, except for the cases specified in paragraphs 1 and 2 of part three of this article, when it is allowed to inform the elected body of the primary trade union organization (trade union representative) during the next working day".

Also an example is clause 1 of Article 14 of the Law of Ukraine No. 2136-IX, which declares that trade unions must control the provision of the working population with "minimum labor guarantees". However, the specified discrepancies in the changes to the legislation increase the need to clarify legal provisions and introduce indicating norms.

It should be noted that when protecting social rights in legal proceedings, it remains open to refer to those norms of law whose effect is not stopped by the laws on the peculiarities of the implementation of legal provisions during martial law. In particular, this refers to the possibility of requesting the position of a trade union in this regard in court proceedings on recognition of dismissal of an employee by an employer as illegal.

Differences in the legal interpretation of legal provisions cause ambiguity in their application to judicial practice. As an example, there is a case from legal practice of dismissal for absenteeism after termination of downtime, provided that the employee is not notified about the start of work [20]. According to the law, an employer can fire an employee in case of

absenteeism “without valid reasons”. The employer and the employee, in the absence of a legally precise definition of “validity of reasons” in the legal process, will interpret it differently, especially if a significant complex of reasons related to military actions appears. The significance of this specific case is enhanced by the fact that under the conditions of concluding an employment contract with an employee for an indefinite period under Article 22 of the Labor Code of Ukraine will not allow a direct or indirect limitation of the social rights of the employee upon termination of the employment contract. That is, the provision regarding the dismissal of an employee in case of absenteeism “without valid reasons” needs regulatory and legal clarification. It is proposed to define as “valid” reasons that are due to the employee’s fault only.

There are a significant number of court cases that are in process and require regulatory clarification regarding two more sets of problems.

These are: termination by the employer of a fixed-term or indefinite contract with an employee who is in military service and settlement of labor relations between the employer and a civilian employee who are on different sides of the front line or by the employer, in the case of temporary occupation of the area where the production is located and employees who are outside Ukraine. The first position, as it is shown by judicial practice, requires normative clarification regarding the cases: relocation of enterprises, changes in the activity profile, when the employee will not be able to perform production tasks due to the profession, qualifications, age, distance from the place of residence, etc., as well as in the case of long-term cessation of activity by the enterprise. The second position, under the latest circumstances caused by military actions, requires the development of a new normative and legal model for the regulation of labor relations. Platform technologies, in particular, need such models [4].

It should also be noted that, despite the presence in the legislation of positive trends, which are aimed at reducing restrictions on social rights, in particular, restrictions put into effect during martial law, the rights of employers have also been significantly expanded, which can lead to the violation of the rights of employees.

For example, according to Law No. 2136-IX, the employer has the right to establish a “five-day or six-day working week”. And, unlike in peacetime, this provision is implemented without the consent of the trade union, labor collective, local council, and only with the consent of the military administration. According to this Law, the beginning and end of the working day is determined by the employer; “duration of weekly uninterrupted rest” may be limited to 24 hours, unlike during peacetime, when rest had a duration of at least 42 hours. Also, according to Law No. 2136-IX, the weekly duration of working hours can reach 60 hours, in contrast to peacetime, when this duration was 40 hours for a week.

According to the Law of Ukraine No. 5371, employers, under the simplified regime, are exempted from maintaining organizational and administrative documentation, including “regarding the regime of working hours and time of rest and vacations”. This provision limits the possibility of forming an evidence base in legal proceedings regarding the protection of the rights of employees.

Under the conditions of significant dynamic changes in the legal field in the sphere of protection of the social rights of employees, an individual and/or collective agreement becomes a reliable legal direction. But the legal field of collective agreement regulation has been significantly narrowed in the introduced legal acts. In particular, the Law of Ukraine No. 2352-IX introduced provisions on “suspension” of an employment contract. For example, the employer’s right to “suspend the effect of certain provisions of the collective agreement” is confirmed by Article 11 of the Law of Ukraine No. 2352-IX: “For the period of martial law, the effect of certain provisions of the collective agreement may be suspended at the initiative

of the employer”. In particular, according to this norm, employees are not officially dismissed, but they stop performing their work duties and do not receive wages. In fact, employers are given the opportunity to unilaterally violate the terms of collective agreements, suspending the fulfillment of their obligations to, for example, trade union activists or those workers who fight for their social rights, even at strategic enterprises.

The introduction of these provisions contributes to the displacement of collective agreements from the legal field, the reduction of their legal significance and their replacement by individual agreements.

This trend is confirmed by the study on the provisions of the Law of Ukraine No. 2136-IX “On the Organization of Labor Relations in the Conditions of Martial Law”, which predominantly regulate individual labor relations, that is, aimed at normalizing individual labor rights and obligations. Although the Law of Ukraine No. 2136-IX guarantees some minimum social rights of employees, the protection of which is based on individual labor contracts, the indicated trend of weakening the legal validity of collective agreements leads to a significant narrowing of the social rights of workers.

Therefore, as one of the primary tasks of legislation, it is necessary to define and follow the direction of strengthening the role and legal significance of collective and individual agreements.

The absence of indicating norms regarding the limitation of the employers’ right to “suspend the effect of certain provisions of the collective agreement” leads to a violation of the principle of equality of the parties to the labor contract, which does not correspond to the spirit and letter of the contract law.

Another provision that needs to be revised is the amendment of Article 119 of the “Code of Labor Law” implemented by Law No. 2352-IX, regarding the exemption of employers from paying the average salary to mobilized workers.

In order to strengthen the protection of the employee under the collective and individual contract, it is necessary to make it impossible for the employer to impose on the employee such a text of the contract, which excludes effective legal protection. For this purpose, it is proposed to establish several versions of the texts of the contract agreed by the normative acts and to introduce an imperative ban on the use of other texts.

On the basis of the study on changes in the legal provision regarding the social protection of employees, recommendations to clarify the legal provisions of the normative limitations of the specified rights were developed:

- regarding granting the employer the right to transfer an employee to a job that is not specified in the employment contract “without his/her consent” in particular for “circumstances that pose or may pose a threat to life” (Law of Ukraine No. 7160). In order to prevent a significant narrowing of the social rights of employees, it is necessary to specify the term of the transfer and the specified circumstances, since, for example, regular bombings of populated areas by the aggressor can be interpreted as such, which leads to the permanent and widespread nature of the introduction of the provision on the transfer of “an employee to another job not stipulated by an employment contract”;

- regarding the termination of the employment contract by the employee “in connection with the conduct of hostilities in the areas where the enterprise is located” (Law of Ukraine No. 7160). The limitation of this provision regarding “cases of forced involvement in socially beneficial works under martial law conditions, involvement in the performance of work at critical infrastructure facilities” should be adjusted, as the narrowing of the employee’s social rights increases as a result of the application of the previously mentioned provision;

- regarding “dismissal of an employee at the employer’s initiative during his/her temporary incapacity” (Law of Ukraine No. 7160). The time of incapacity for work needs to be clarified, since this time can be, according to this provision, even several hours. That is, this norm can become a justifica-

tion for the employer's legal violation of the provision of Law of Ukraine No. 2136-IX that "suspension of the employment contract cannot be a hidden punishment";

- regarding the employee's notice of termination of the employment contract by mail, after which the contract is considered terminated, including "after seven calendar days from the date of receipt of the employer's mail at the post office at the employee's address" (Law of Ukraine No. 2434-IX). Since in the conditions of hostilities there is a possibility that the employee may not receive this notification due to reasons beyond the employee's control, this should be taken into account in regulatory documents;

- regarding the notification of the employee according to the Law of Ukraine No. 2136-IX "on changing the essential working conditions and changing the working conditions" which "is carried out no later than before the introduction of such conditions". This term should be specified, since "no later" can be interpreted, for example, like several hours;

- regarding the termination of the employment contract by the employer due to the absence of the employee at the workplace or information about the reasons for this for more than 4 months. It requires regulatory clarification or termination of the employment contract under these circumstances is identical to dismissal for absenteeism (Article 40, Clause 4 of the Labor Code);

- regarding the suspension of the employment contract by the employer due to "destruction (absence) of production, organizational and technical conditions, means of production or property of the employer as a result of hostilities" (Law of Ukraine No. 2352-IX). Judicial practice has shown that it needs to be clarified whether the effect of this provision is automatically confirmed by the fact of conducting hostilities at the location of the enterprise, or whether additional indicating provisions need to be introduced;

- regarding "the duration of an employee's annual basic leave is more than 24 calendar days, the granting of unused days of such leave during the period of martial law is transferred to the period after the termination or cancellation of martial law" (Law of Ukraine No. 2136-IX). This needs to be clarified because the period of "martial law" can be significantly extended under certain circumstances;

- regarding the employer's permission to refuse "an employee to grant unused days of annual leave" (Law of Ukraine No. 2136-IX). This is a significant limitation of social law and requires substantiation from the employer for taking such actions;

- regarding the rule "Suspension of the employment contract cannot be a hidden punishment" (Law of Ukraine No. 2136-IX). The evidence base for the implementation of this norm in judicial practice requires the introduction of additional indicating norms and/or normative interpretation in the "Scientific and Practical Commentaries";

- regarding ensuring the principle of equality of the parties in the matter of termination of the employment contract by the employer according to Article 13 of the Law of Ukraine No. 2136-IX the introduction of indicator provisions is proposed, in particular, the provision of the opportunity to appeal the said action of the head of the enterprise by introducing the procedure and conditions for consideration of the employee's complaint.

For the study on the changes introduced by the Law of Ukraine No. 2352-IX regarding the resumption of inspections of enterprises by representatives of state institutions to control the level of compliance with social rights, in particular, regarding the legality of termination of labor contracts by employers with employees, on the one hand, it should be noted that this provision will contribute to the social protection of employees and will eliminate contradictions with the conventions of the International Labor Organization. On the other hand, it is necessary to point out the need to strengthen this trend. In particular, in order to effectively use the regulatory and legal field for the social protection of employees and, accordingly, reduce social tension, it is imperative to ensure the formation

of reliable feedback between lawmakers and legal experts, human rights non-governmental organizations and trade unions. Representatives of these organizations, for example, can be given an advisory vote regarding the introduction of changes to normative legal acts that limit social rights or complicate the protection of social rights.

There is also a need for a permanent analysis of wartime court practice on issues of violation of workers' social rights. On the basis of the results of the analysis of the specified judicial practice it is proposed to release and promptly update the normative electronic version of the Scientific and Practical Commentaries for the interpretation of those legal norms that lead to legal conflicts.

Conclusions. It is indicated that under martial law, in order to maintain social stability by balancing the interests of workers, enterprise managers, and the state, it is necessary to comply with the following conditions: regarding the compliance of the normative legal field of social protection of workers with new challenges; adapting the theoretical basis to the specified challenges and taking into account the peculiarities of the protection of the rights of workers in judicial practice with significant changes in the legislation. It is indicated that the problem of ensuring these conditions is exacerbated by the need for the rapid introduction of normative legal acts and the significant dynamics of changes in socio-economic conditions during intense hostilities. This causes the presence of certain contradictions and uncertainties of the normative-legal field and requires regulatory clarification of new legal concepts, in particular, such as "optimization of labor relations", "simplification of regulation of labor relations". An example of the uncertainty of the legal norm is cases of dismissal for absenteeism after termination of forced layoff with the optional notification of the employee about the start of work. According to the current regulations, the employer can also dismiss the employee in case of absenteeism "without valid reasons". In such a case, the employer and the employee, in the absence of a legally precise definition of the "validity of the reasons" in the legal process, will interpret these reasons in different ways. The significance of this specific case is enhanced by the fact that under the conditions of concluding an employment contract with an employee for an indefinite period according to Article 22 of the Labor Code of Ukraine a direct or indirect limitation of the social rights of the employee upon termination of the employment contract is unacceptable. That is, this provision of the Labor Code and the provision on the dismissal of an employee in case of absenteeism "without valid reasons" needs regulatory and legal clarification. It is proposed to define as "valid" reasons that are due to the employee's fault only.

There is a well-founded need for regulatory strengthening of the legal protection of employees, in particular, by implementing the priority of protection in the event of legal uncertainty of legal provisions regarding the party that first needs protection, because, as it is known, under the theoretical uncertainty of legal norms, in a regulatory manner, "justified freedom of conduct" can provoke non-fulfillment of contractual obligations duties of one of the parties to legal relations. For this, it is also indicated the need to apply a dispositive approach to legal norms that ensure the implementation of the principle of priority strengthening of the legal protection of the social needs of employees and, accordingly, an imperative approach to the norms that the employer must follow. As a specific example, the legal provision regarding compensation of payments to employees at the expense of the aggressor state is given. This provision leads to a reduction in the level of imperativeness of the condition of payment of wages by the employer, which contradicts those clauses of individual and collective agreements where these obligations of the employer are specified. In addition, the uncertainty of the specified rule of law is exacerbated by the fact that it is extremely difficult for an ordinary employee to procedurally achieve the implementation of this legal rule by the aggressor state.

Signs of displacement of collective agreements from the legal field, reduction of their legal significance and the tendency to replace them with individual agreements are indicated. Although the Law of Ukraine No. 2136-IX guarantees some minimum social rights of employees, the protection of which is based on individual labor contracts, the indicated trend of weakening the legal validity of collective agreements leads to a significant narrowing of the social rights of workers. It is indicated that the legal significance of the legal instrument of collective agreements increases under conditions of uncertainty. It is indicated that not restricting the right of employers to disregard the collective agreement leads to a violation of the principle of equality of parties in labor relations.

The need for a permanent analysis of wartime court practice on issues of violation of the social rights of employees is indicated and on the basis of the results of the analysis of the indicated judicial practice it is proposed to release and promptly update a standardized electronic version of the Scientific and Practical Commentaries for the interpretation of those legal provisions that lead to legal conflicts.

It is pointed out that insufficient introduction of legal conditions-indicators in the normative-legislative field to eliminate the unjustified narrowing of the social rights of employees and the limitation of the legal possibilities of their protection. Examples of such legislative restrictions are analyzed and indicating conditions for them are proposed. In particular, it is indicated that cases of exclusion of public and trade union organizations from the sphere of protection significantly decrease the level of protection of the social rights of workers under the laws regulating legal relations in wartime conditions. This is evidenced, in particular, by the fact that under the conditions of the simplified regime of regulation of labor relations according to Law No. 2434-IX, the provisions of Article 43 of the Labor Code regarding granting to the trade union prior consent to the dismissal of employees have been discontinued. This leads to the leveling of compensatory mechanisms to limit the actions of employers regarding the violation of the social rights of employees and complicates their legal protection. Such provisions, even if they are formally denied by the labor contract, can provoke employers to violate the social rights of workers. Therefore, it is proposed to expand the imperative approach to the performance of the functions of protecting the social rights of employees by trade unions and the normative formation of reliable feedback between legislators and legal experts, human rights non-governmental organizations and trade unions. For this purpose, it is proposed to give representatives of human rights organizations and trade unions an advisory vote regarding the introduction of changes to normative legal acts that limit social rights or complicate the protection of social rights of employees.

Recommendations were developed to clarify the relevant legal provisions together with the study on changes in the legal provision of social protection of employees.

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Правове забезпечення соціального захисту працівників в умовах воєнного стану

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Мета. Аналіз зміни правового забезпечення щодо соціального захисту працівників унаслідок нормативно-правових обмежень, уведених у дію за воєнного стану. Розробити рекомендації з уточнення правових положень указаних обмежень. Запропонувати шляхи й напрями посилення захисту соціальних прав працівників (СПП).

Методика. Використані загальнонаукові та спеціальні методи пізнання: герменевтичний – для тлумачення правових положень законодавчих актів, якими регламентується правове забезпечення захисту СПП; аналізу й синтезу – для дослідження змін правового забезпечення соціального захисту працівників; індукції й дедукції – для розроблення рекомендації щодо уточнення правових положень нормативних обмежень СПП; аналітичний, формально-юридичний і спеціально-юридичний мето-

ди – для визначення шляхів і напрямів посилення захисту СПП.

Результати. Досліджені зміни правового забезпечення щодо захисту СПП унаслідок нормативно-правових обмежень, уведених у дію за воєнного стану, та вказано на наявність деяких неузгодженостей правових положень, що потребує уточнення нових правових понять і застосування норм-індикаторів. Указано на необхідність обґрунтованого впровадження диспозитивного підходу до норм захисту СПП і імперативного підходу щодо норм, яким має слідувати роботодавець. Запропоноване послаблення тенденції витіснення із правового поля колективних договорів. Запропоноване унормування зворотного зв'язку між законотворцями та громадськими організаціями та профспілками.

Наукова новизна. Указано на недостатність у нормативно-законодавчому полі правових умов-індикаторів щодо запровадження звуження СПП та обмеження правових можливостей їх захисту. Розроблені рекомендації з уточнення правових положень нормативних обмежень СПП. Запропоновані шляхи й напрями посилення захисту СПП.

Практична значимість. Запровадження норм-індикаторів і реалізація запропонованих рекомендацій сприятиме посиленню захисту СПП.

Ключові слова: *правове забезпечення, соціальний захист працівників, умови воєнного стану, нормативно-правове поле*

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