

LEGAL REGULATION OF LABOR RIGHTS AND THEIR WARRANTIES DURING THE WAR

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Abstract: The article highlights the features of the legal regulation of labor in martial law. The study analyzes the labor legislation of Ukraine on the emergence, change and termination of labor relations under martial law. The content of the employment contract, its parties and the form of conclusion under current legislation have been studied. Scientific and theoretical conclusions and practical recommendations for improving the legal mechanisms of national labor legislation have been developed. states. The problem of legislative regulation of legal relations that arise between an employee and an employer in martial law is analyzed. Emphasis is placed on the fact that the intensive development of labor relations "requires" more detailed legislation on telework, in particular on the proper social security of teleworkers, ensuring the labor rights of the latter on a par with employees who are forced to perform duties directly in the workplace.

Keywords: Labor legislation, labor relations, the basis of labor relations, employment contract, termination of employment, martial law.

1 Introduction

The Constitution of Ukraine recognized man, his rights and freedoms, life and health, honor and dignity, inviolability and security as the highest social value. Human rights and freedoms and their guarantees determine the content and direction of the state, the establishment and maintenance of which is its main duty. Fundamental and inalienable human rights are the right to work, to free choice of profession and freedom of creativity, to fair remuneration, to safe working conditions and to protection against unemployment. Current legislation of Ukraine enshrines the principle of freedom of labor in accordance with the Universal Declaration of Human Rights, approved by the UN General Assembly on December 10, 1948, and all legal framework governing the use of labor must be brought into line with generally accepted international labor standards.

Problems of legal regulation of public life, including in the field of labor, were studied by representatives of various branches of legal science, in particular: V. B. Averyanov, O. M. Bandurka, I. L. Borodin, Y. P. Bytyak, A. S. Vasiliev, I. P. Golosnichenko, S. M. Gusarov, R. A. Kalyuzhny, V. V. Kovalenko, L. A. Sidorchuk, N. P. Matyukhina, S. M. Prilipko, K. B. Levchenko, O. M. Yaroshenko, S. G. Stetsenko, N. B. Bolotina, V. I. Shcherbina, O. I. Protsevsky, G. I. Chanisheva and others. Considerable attention to the forms of employment in its various aspects was also paid in the research of such domestic scientists as V. D. Aveskulov, N.M. Vapnyarchuk, V. S. Venediktov, O. V. Demchenko, M. I. Inshin, I. Ya. Kiselyov, M. Yu. Kuznetsova, V. K. Tobacconist and others. However, new conditions are emerging that require timely legal regulation, in particular, various forms of flexible working, home and remote employment are gaining relevance, which increases the practical significance of the research topic. In addition, the practical significance of the research subject is growing in the context of the imposition of martial law throughout Ukraine in connection with the full-scale military aggression of the Russian Federation in Ukraine.

2 The initial presuppositions

Russia's armed aggression has negatively affected most aspects of the peaceful life of Ukrainians until February 24.

Most spheres of life have changed due to the military actions of the occupiers. One of the components that has changed significantly and is now changing is the employment relationship. The urgency of terminating such relationships is facing many employers and employees. All this is due to the fact that some businesses are simply destroyed, other companies are unable to operate against the background of armed aggression in the Russian Federation, some companies for one reason or another were left without employees. The same applies to the workers themselves: many went in search of a safe place outside of Ukraine or their locality without the opportunity to work remotely. It is because of all these cases that the legal regulation of labor relations, including the procedure for their termination, during martial law is very important for the labor market.

3 Methods

The methodology of the chosen problem is a systematic approach, as well as dialectical, formal-logical and structural-functional methods and other general scientific research methods, as well as special legal methods: comparative law and formal law. The methodological basis of the study is theory cognition, its general method of materialist dialectics. The following were used as general scientific research methods: formal-logical and systematic methods.

4 Results and discussion

The Constitution of Ukraine enshrined the principles of freedom of labor, the human right to work, free choice of profession, work, fair and acceptable working conditions and protection against unemployment, a decent reward for work, protection of their rights and legitimate interests. In the conditions of social and economic transformations of the Ukrainian society and crisis phenomena in economy the questions of legal regulation of labor relations become especially actual. There are both subjective and objective reasons that prevent a person from fully and harmoniously exercising his or her constitutional right to work. Many theoretical issues remain controversial in the implementation of such a form of regulation of labor relations as an employment agreement. The presence of social and political contradictions in society affects the legislation, the imperfection of which creates opportunities for violations of labor rights of man and citizen, their right to social protection.

At the same time, in accordance with Article 64 of the Constitution of Ukraine, in conditions of martial law or state of emergency, certain restrictions on rights and freedoms may be established, indicating the term of these restrictions. The rights and freedoms provided for in Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63 of this Constitution may not be restricted.

In accordance with subparagraph 5 of paragraph 1 of Article 6 of the Law of Ukraine "On the Legal Regime of Martial Law" in the decree of the President of Ukraine on martial law indicates an exhaustive list of constitutional rights and freedoms of man and citizen, which are temporarily restricted the effect of these restrictions, as well as temporary restrictions on the rights and legitimate interests of legal entities, indicating the term of these restrictions.

According to paragraph 3 of the Decree in connection with the imposition of martial law in Ukraine temporarily, for the period of martial law, may restrict the constitutional rights and freedoms of man and citizen under Articles 30–34, 38, 39, 41–44, 53. Of the Constitution of Ukraine, as well as to introduce temporary restrictions on the rights and legitimate interests of legal entities within the limits and to the extent necessary to ensure the introduction and implementation of martial law measures provided for in part one of Article 8 of the Law of Ukraine "On Martial Law".

According to paragraph 2 of the section "Final Provisions" of the Law № 2136-IX Chapter XIX "Final Provisions" of the Labor Code of Ukraine is supplemented by paragraph 2 of the following content: "2. During the martial law imposed in accordance with the Law of Ukraine "On the legal regime of martial law", there are restrictions and features of the organization of labor relations established by the Law of Ukraine "On the organization of labor relations in martial law".

According to the second and third parts of Article 1 of Law № 2136-IX, restrictions on the constitutional rights and freedoms of man and citizen are introduced for the period of martial law in accordance with Articles 43 and 44 of the Constitution of Ukraine. During the period of martial law, the norms of labor legislation shall not apply in the part of relations regulated by this Law.

In view of the above, the provisions of Law № 2136-IX, which regulate some aspects of labor relations differently than the Code of Labor Laws, have priority for the period of martial law.

At the same time, other norms of labor legislation that do not contradict the provisions of Law № 2136-IX may also or should be applied in the relationship between the employee and the employer.

According to Article 119 of the Labor Code of Ukraine (hereinafter - the Labor Code) for the duration of state or public duties, if under current legislation of Ukraine these duties can be performed during working hours, employees are guaranteed to maintain jobs (positions) and average earnings.

Employees who are involved in the performance of duties under the laws of Ukraine "On Military Duty and Military Service", "On Mobilization Training and Mobilization" are provided with guarantees and benefits in accordance with these laws.

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

Taking into account the above guarantees, conscripts, conscripts, conscripts during mobilization, for a special period or enlisted under contract, including by concluding a new contract for military service, during the special period for the period until its expiration or until the day of actual release, during the special period for the period before its expiration or until the date of actual release are not subject to release under paragraph 3 of Article 36 of the Labor Code, but only exempt responsibilities provided for in the employment contract, which is executed by the relevant order (instruction) of the employer.

The basis for maintaining a job, position and average earnings at the enterprise, institution, organization, farm, agricultural production cooperative, regardless of subordination and form of ownership and individuals is the fact of conscription or military service under a contract (confirmed by the to the owner or his authorized body with relevant certificates, extracts from orders, summons, orders, extracts from orders on inclusion in the personnel of the military unit, etc.) during a special period until its expiration or until the day of actual release.

It should be noted that according to the second part of Article 24 of the Law of Ukraine "On Fundamentals of National Resistance" members of voluntary formations of territorial communities during their participation in training of voluntary

formations of territorial communities, as well as their territorial defense tasks are guaranteed social and legal protection, provided by the Law of Ukraine "On social and legal protection of servicemen and members of their families".

In addition, we inform you that according to Article 1 of the Law of Ukraine "On Defense of Ukraine" a special period – the period following the announcement of the decision on mobilization (except target) or bringing it to the executors of covert mobilization or martial law in Ukraine or in in some of its areas and covers the time of mobilization, wartime and part of the reconstruction period after the end of hostilities.

In addition, Article 1 of the Law of Ukraine "On Mobilization Training and Mobilization" stipulates that a special period is the period of functioning of the national economy, public authorities, other state bodies, local governments, the Armed Forces of Ukraine, other military formations, civil defense forces, enterprises, institutions and organizations, as well as the fulfillment by the citizens of Ukraine of their constitutional duty to protect the Fatherland, independence and territorial integrity of Ukraine, which arises from the announcement of the decision on mobilization (except target) or situation in Ukraine or in some of its localities and covers the time of mobilization, wartime and the partial reconstruction period after the end of hostilities.

According to the first part of Article 119 of the Labor Code, while performing state or public duties, if under current legislation of Ukraine these duties can be performed during working hours, employees are guaranteed to retain their jobs (positions) and average earnings.

Given the specifics of the territorial defense service, which may involve not permanent but periodic involvement of the employee in the performance of their duties, we believe that the employer does not necessarily issue an order to dismiss the employee from work under an employment contract.

In each case, the level of involvement of the employee in the territorial defense, the amount of working time spent by the employee on this activity and the efficiency and ability to perform his duties under the employment contract.

At the same time, they are guaranteed to keep their jobs (positions) and average earnings during the working hours of the Territorial Defense. Documents confirming participation in territorial defense are the contract of the volunteer of territorial defense.

If the specifics of the work provides for the possibility of its implementation remotely, using information and communication technologies, the employer should decide to transfer the employee to remote work.

A significant event was the adoption on February 4, 2021 of the Law "On Amendments to Certain Legislative Acts of Ukraine to Improve the Legal Regulation of Telework, Homework and Flexible Working Hours" № 1213-IX. The validity of this Law is of great importance today, as it specifies the concept of remote work, improves the process of its design. The Labor Code was supplemented by important articles 60-1 "Homework" and 60-2 "Remote Work". It should be noted at once that these two concepts were finally separated from each other and now they are no longer identified in the science of labor law.

According to the first part of Article 602 of the Labor Code, remote work is a form of work organization in which work is performed by an employee outside the work premises or territory of the owner or his authorized body, anywhere chosen by the employee and using information and communication technologies.

According to paragraph 61 of the first part of Article 24 of the Labor Code, the employment contract is concluded, as a rule, in writing. Observance of the written form is obligatory at the

conclusion of the employment contract on remote work or on home work.

At the same time, the first part of Article 2 of Law № 2136-IX stipulates that during martial law the parties agree to determine the form of the employment contract.

However, the parties are not prohibited from using for standard work a standard form of employment contract for remote work approved by the order of the Ministry of Economic Development, Trade and Agriculture of Ukraine of May 5, 2021 № 913-21 "On approval of standard forms of employment contracts for home and remote work".

According to the second part of Article 3 of Law № 2136-IX during martial law, the provisions of the third part of Article 32 of the Labor Code of Ukraine and other laws of Ukraine on notifying the employee of changes in significant working conditions do not apply.

Therefore, the transfer of an employee to remote work does not require a mandatory notice of 2 months of significant changes in working conditions. Iasechko S., Ivanovska A., Gudž T., et al (2021).

The inability of an employee to perform remote work due to lack of appropriate communications, in our opinion, can not be considered a violation of labor discipline.

At the time of threat of epidemic, pandemic, the need for self-isolation of the employee in cases established by law, and / or in case of threat of armed aggression, emergency of man-made, natural or other nature, remote work may be introduced by order of the owner or his authorized body conclusion of an employment contract for remote work in writing. The employee gets acquainted with such order (instruction) within two days from the date of its acceptance, but before introduction of remote work. In this case, the provisions of the third part of Article 32 of this Code shall not apply. Pregnant women, workers with a child under the age of three or caring for a child according to a medical opinion until the child reaches the age of six, workers with two or more children under the age of 15 or a child with a disability, parents of a child with a disability Subgroup A I group, as well as persons who have taken care of a child or a person with disabilities from childhood Subgroup A I group, may work remotely, if possible, given the work performed, and the owner of the enterprise, institution, organization or authorized the body has the appropriate resources and means to do so.

If the employment contract for remote work was not concluded, and the employee was transferred to remote work by order of the employer, in order to properly organize the work of remote work, acquaint the employee with orders (orders), messages, instructions, tasks and other documents of the employer. parties during the remote work:

- identify electronic means of communication, such as e-mail, telephone number, mobile application, etc.);
- conditions of the employee's reporting on the work performed (if necessary);
- conditions for notifying the employee of the occurrence of situations that make it impossible to properly perform remote work
- other conditions for communication and interaction of the parties.

Please note that the total working time may not exceed the norms provided for in Articles 50 and 51 of the Labor Code, and an employee who performs remote work is guaranteed a period of free time for rest (period of disconnection), during which the employee may interrupt any information. telecommunication with the owner or his authorized body, and this is not considered a violation of the terms of the employment contract or labor discipline. The period of free time for rest (period of disconnection) is determined in the employment contract for

remote work. If possible, flexible working hours and home-based work may also be introduced (Articles 60, 60-1 of the Labor Code).

Yu. V. Shovkun, noting that, despite some shortcomings that create even more legal uncertainty and the lack of full legislative regulation of the issue of remote, homework, open questions remain: to determine the mechanism of organization and working conditions during remote work; powers to provide the employee with the necessary means for work and the procedure for compensation for depreciation (depreciation) in the case of the latter's own funds; settlement of terminological differences in the concept of remote (home) work, etc.). Shovkun Y. V. (2020).

It is difficult to agree with the opinion of some scholars, who note that "remote work is a type of work performed in a place away from the central office, which excludes the possibility of employee communication with management and employees" in terms of excluding communication, because performing work remotely does not preclude communication, because in the conditions of distribution of gadgets, many applications (Zoom, Google Meet, Skype, Telegram, WhatsApp, Viber), which allow you to communicate via video, conference, telephone, etc., on the contrary, close communication between employees, management, staff is possible. M. Inshin also draws attention to this in his study, which considers "remote employment of workers as the organization of all necessary conditions for quality work outside the employer's office, provided that communication with the employer in the process of performing the job function by telephone, facsimile language, e-mail, social networks (Facebook), special programs (Skype), using smartphones and gadgets. Inshin M. I. (2015). Based on this, O. Gulevich names five main types of remote employment:

- 1) remote employment, which is divided into several places: partly – at home, partly – in the premises owned by the employer (most of the work is covered by collective agreements);
- 2) homework, which consists of monotonous, often repetitive operations that do not require high skills (paid for the end result);
- 3) freelance telework, which is based on homework and is carried out by freelancers on the basis of agreements with the employer (computer programming, design, etc.);
- 4) mobile remote work, which involves the use of new technologies in traditional forms of mobile activity (work of sales representatives, inspectors, etc.);
- 5) work in a specially equipped office, which is carried out by telecommunications ("telework" and "teleaccess"). Gulevych O. (2010).

Thus, this type of employment needs further legislative regulation. Appropriate conditions must be provided for the protection of the rights and freedoms of the parties to remote legal relations by prompt response of legislators to the needs of today's growing market relations and the challenges of epidemic or emergency nature. Plekhov D. O. (2021).

If possible, it is advisable to provide employees with paid leave (annual, social), as well as leave without pay, provided on a mandatory basis and leave without pay, provided by agreement of the parties in the manner prescribed by law (25, 26 of the Law of Ukraine "On Holidays").

According to the third part of Article 12 of the Law № 2136-IX during the martial law period the employer at the request of the employee may grant him unpaid leave without limitation of the period established by the first part of Article 26 of the Law of Ukraine "On Leave".

According to Article 34 of the Labor Code, a simple stop is a suspension of work caused by the lack of organizational or technical conditions necessary for the performance of work, inevitable force or other circumstances.

In case of downtime, employees may be transferred with their consent, taking into account the specialty and qualification to another job at the same company, institution, organization for the entire downtime or to another company, institution, organization, but in the same area for up to one month.

The introduction of downtime is formalized by an order of the manager, with which employees are acquainted in the possible way, including through electronic means. Payment for downtime is made at the rate of not less than two-thirds of the tariff rate set for the employee category (salary). Under the conditions stipulated in the collective agreement, payment for downtime may be made in a larger amount. Iasechko S., Kuryliuk Y., Nikiforenko V., et al (2021).

Heads of state bodies, enterprises, institutions and organizations financed or subsidized from the budget, until the termination or abolition of martial law in Ukraine within the salary fund provided in the budget, may determine the amount of downtime, but not less than two thirds the tariff rate of the tariff category (official salary) established for the employee (Resolution of the Cabinet of Ministers of Ukraine of March 7, 2022 № 221).

Suspension of the employment contract.

Article 13 of the Law № 2136-IX introduced a mechanism for suspending an employment contract. Suspension of an employment contract is a temporary termination by the employer of providing the employee with work and a temporary termination of the employee's performance of work under the concluded employment contract. The employment contract may be suspended due to military aggression against Ukraine, which excludes the possibility of providing and performing work. Termination of the employment contract does not entail termination of employment. Suspension of the employment contract. The employer and the employee should, if possible, inform each other in any available way.

In view of the above, the main condition for the suspension of the employment contract is the absolute impossibility of the employer and the employee to perform the relevant work. Both the employer and the employee can initiate the suspension of the employment contract. At the same time, in order to eliminate legal uncertainty, we recommend that the parties notify each other of the suspension of the employment contract in writing or electronically using technical means of electronic communications.

According to the third part of Article 13 of Law № 2136-IX, the state that carries out military aggression against Ukraine is fully reimbursed for compensation of wages, guarantee and compensation payments to employees during the suspension of employment. Thus, when suspending an employment contract, the employer must continue to keep records of the accrual of wages and compensation payments that would have been due to the employee in the absence of such suspension.

5 Conclusion

Given the above, it should be understood that during the martial law restrictions on constitutional rights and freedoms of man and citizen were introduced in accordance with Articles 43 (right to work), 44 (right to strike) of the Constitution of Ukraine, and therefore during martial law labor legislation in the part of relations regulated by the Law of Ukraine "On the organization of labor relations in martial law". Therefore, the norms of the labor legislation that contradict the provisions of this Law shall not be applied for the period of martial law. Thus, the regulation of labor relations today is a particularly important and complex matter and requires considerable research to adopt rules that would improve labor law and bring it into line with the realities of the modern world. In the conditions of aggravation of a pandemic and a wide range of application of various forms of work the important characteristic of legal regulation in the specified sphere remains its timeliness. Despite the changes and

demarcation of the concepts of remote and home-based forms of labor organization, many issues in the field of legal regulation of this type of public relations need to be addressed.

Literature:

1. On Amendments to Certain Legislative Acts of Ukraine Concerning the Improvement of Legal Regulation of Telework, Homework and Work with the Application of Flexible Working Hours: Law of Ukraine of February 4, 2021 № 1213-IX. Information of the Verkhovna Rada of Ukraine. 2021. № 20. Art. 178.
2. Iasechko, S., Ivanovska, A., Gudz, T., et al (2021). *Information as An Object of Legal Regulation in Ukraine/ IJCSNS International Journal of Computer Science and Network Security*, Vol. 21. No. 5, pp. 237–242. <https://doi.org/10.22937/IJCSNS.2021.21.5.33>.
3. Iasechko, S., Kuryliuk, Y., Nikiforenko, V., et al (2021). *Features of Administrative Liability for Offenses in the Informational Sphere/ IJCSNS International Journal of Computer Science and Network Security*, Vol. 21. No. 8, pp. 51–54. <https://doi.org/10.22937/IJCSNS.2021.21.8.7>.
4. Code of Labor Laws of Ukraine of December 10, 1971. № 322-VIII. Information of the Verkhovna Rada of the Ukrainian SSR, December 17, 1971. № 50.
5. Shovkun, Y. V. (2020) *Legal regulation of remote (home) work during quarantine*. Right. Man. Environment. Law. Human. Environment. Vol. 11, № 3, pp. 96–101.
6. Inshin, M. I. (2015) *General theoretical characteristics of remote employment of workers in Ukraine*. Law and society. pp. 123–128.
7. Gulevych, O. (2010) *Transformation of employment in the service sector under the influence of information technology development*. Ukraine: aspects of work. № 2. pp. 10–13.
8. Plekhov D. O. (2021) On the issue of legal regulation of remote work in Ukraine: current status. Current issues of state and law: Coll. Science. etc. Vip. 90 / editor: G. I. Chanisheva (editor in chief) and others. Odesa: Helvetika. pp. 139–144.

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