

Case Study

THE IMPACT OF THE ARMED CONFLICT ON LABOUR LAW: THE CASE OF UKRAINE

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ABSTRACT

Background: *The full-scale military aggression against Ukraine by the Russian Federation has dramatically affected all walks of life in the country, and the world of work is certainly not exempt from this. During the first months of the war, the operation of many enterprises was significantly disrupted; a substantial proportion of the working-age population was conscripted into the armed forces, some were forced to seek employment in regions of the country not affected by the hostilities or even had to change occupations entirely. This circumstance necessitated the adoption of appropriate legislative measures to stabilise labour relations in the light of wartime. The article focuses on the specifics of Ukrainian labour law in wartime conditions, reveals the difficulties of legal regulation of labour in connection with martial law, and highlights the possible ways of solving the challenges for labour law in the period of armed conflicts based on the experience of Ukraine.*

Methods: *The methods of legal reasoning and analysis were applied to present the main approaches to legal regulation of labour relations during martial law in Ukraine. Actual statistical and empirical data were used for proper argumentation of the conclusions. The method of analogy was used to assess possible ways of solving the challenges faced by labour law during armed conflicts, based on the experience of Ukraine.*

Results and Conclusions: *The article stresses that there is no single approach towards regulating labour relations during armed conflicts. Such conflicts are always unique, i.e. they differ in scale, intensity, duration, technical capabilities of the parties, types of weapons used, etc. Given the diversity of armed conflicts in the world, it is impossible to develop uniform labour standards applicable, for example, at the international level. This demonstrates the priority of national law in adapting the regulation of labour relations to wartime conditions. In this regard, considering the Ukrainian experience, it is appropriate to take into account that: a) armed conflict is dynamic by nature; thus, it can have different stages of development, which can also affect the world of work and labour legislation may need to be systematically revised to reflect new realities; b) considering that the territory of a country may not be evenly affected by the consequences of an armed conflict, in some cases it might be appropriate to provide for the different legal regulation of labour relations for its different regions; c) armed conflict should never be considered a 'valid reason' for unjustified and long-lasting restriction of employees' rights, as it is at a period when they are more vulnerable and therefore require additional legal protection.*

Keywords: *labour law, employment relationship, armed conflict, martial law, restriction of labour rights, Ukraine.*

1 INTRODUCTION

On 24 February 2022, the Russian Federation waged a full-scale military invasion of Ukraine and aerial attacks on the Ukrainian territory, which have not stopped since. Russian troops invaded Ukraine near the areas of Kharkiv, Kherson, Kyiv, Chernihiv and Sumy, entering from the territory of Russia, Belarus and Crimea, temporarily occupied by the Russian Federation. As of early autumn 2023, the Russian Federation continues to occupy about 18 % of Ukraine's territory.¹ On the same day of the invasion, Ukraine declared martial law along with the general mobilisation of its armed forces.² The war outbreak has dramatically affected all walks of life in the country, and the world of work, in this case, is no exception.

During the first months of the war, the operation of many enterprises was significantly disrupted; some of them remained in the occupied territory, while others were completely or partially destroyed, and some could not function properly due to the broken supply chains, regular aerial attacks, an outflow of the labour force, etc. Moreover, the airstrikes caused significant damage to the critical infrastructure, resulting in widespread power outages affecting both businesses and private households during the autumn-winter period 2022-2023. Overall, the capacity of Ukraine's energy system was reduced by 68 %, nuclear generation capacity by 44 %, and hydroelectric power plants by 29 %. Out of 94 most important high-voltage transformers, 42 were damaged or destroyed.³ At the same time, according to the estimation of the Ministry of Economy of Ukraine of March 2023, the GDP decline in 2022 amounted to 29.2 %.⁴

The war also had a significant negative impact on the workforce. For example, the National Bank of Ukraine estimated the unemployment rate in Ukraine at 25-26 % in 2022, equating to a total of 3.2 million unemployed persons.⁵ Moreover, a substantial proportion of the working-age population was conscripted into the armed forces, while some were forced to seek employment in regions of the country not affected by the hostilities or even had to change occupations entirely. On the other hand, the workforce has been heavily influenced by the migration of the female population to other countries. The International Labour Organization (hereinafter, the ILO) estimates that approximately 1.6 million Ukrainian refugees, overwhelmingly women, were employed in Ukraine before fleeing the aggression, accounting for 10.4 % of the country's total pre-conflict workforce.⁶ The UN Refugee Agency estimates that the number of refugees from Ukraine registered for temporary protection as of 29 August 2023 was 6.2 million.⁷ This figure looks quite impressive, considering that the population of

- 1 *DeepState Map* <<https://deepstatemap.live/#7/48.078/34.596>> accessed 31 August 2023.
- 2 Decree of the President of Ukraine no 64/2022 'On the Imposition of Martial Law in Ukraine' of 24 February 2022 <<https://zakon.rada.gov.ua/laws/show/64/2022>> accessed 31 August 2023; Decree of the President of Ukraine no 65/2022 'On the General Mobilization' of 24 February 2022 <<https://zakon.rada.gov.ua/laws/show/65/2022>> accessed 31 August 2023.
- 3 Olena Kovalenko, 'This winter will be more terrible than the one we have already passed — energy' (UNIAN, 13 July 2023) <<https://www.unian.ua/economics/energetics/energetiki-rozpovili-shcho-chekayena-ukrajinu-vzimku-12327288.html>> accessed 31 August 2023.
- 4 Ministry of Economy of Ukraine, 'GDP falls by 29.2% in 2022' (*Government Portal*, 13 March 2023) <<https://www.kmu.gov.ua/en/news/minekonomiky-vvp-za-pidsumkom-2022-roku-vpav-na-292>> accessed 31 August 2023.
- 5 National Bank of Ukraine, *Inflation Report, January 2023* (NBU 2023) <https://bank.gov.ua/admin_uploads/article/IR_2023-Q1.pdf?v=4> accessed 31 August 2023.
- 6 International Labour Organization, *ILO Monitor on the World of Work: Multiple Crises Threaten the Global Labour Market Recovery* (10th edn, ILO 2022) 15 <https://www.ilo.org/global/publications/books/WCMS_859255/lang-en/index.htm> accessed 31 August 2023.
- 7 'Ukraine Refugee Situation' (*Operational Data Portal*, 29 August 2023) <<https://data.unhcr.org/en/situations/ukraine>> accessed 31 August 2023.

Ukraine before the armed conflict was approximately 41 million citizens.⁸

The purpose of this article is to study the specifics of Ukrainian labour law in the context of wartime, to identify difficulties in the legal regulation of employment relationships in connection with martial law, and to focus on possible ways of solving the challenges for labour law in the period of armed conflicts, based on the Ukraine experience.

2 A BRIEF SUMMARY OF UKRAINIAN LABOUR LAW

Before analysing the impact of the armed conflict on Ukrainian labour law, one should clearly understand what the country's labour law looks like. Overall, Ukrainian labour law is characterised by the broad application of legislation and a rigid regulatory framework for employees and employers to autonomously determine their rights and obligations at the contractual level, including collective bargaining. In practice, this means that the primary regulations of labour relations in Ukraine are carried out through the Constitution, the Labour Code (hereinafter, the LC), specialised laws and subordinate legislation, with individual employment contracts and collective agreements holding a secondary importance.

The Constitution of Ukraine⁹ belongs to a new generation of constitutions that widely began to be adopted after the Second World War and which are defined by a certain unified model, characterised by the consolidation in their provisions of strict rules on fundamental human and civil rights and freedoms, including in the world of work. The Ukrainian Constitution is no exception in this regard and contains a significant number of labour rights. These rights include the right to freedom of association and the right to strike; the right to labour, including the possibility to earn a living by labour that person freely chooses or to which a person freely agrees; the right to proper, safe, and healthy work conditions; the right to remuneration no less than the minimum wage determined by the law; the prohibition of employing women and minors in work hazardous to their health; protection from unlawful dismissal; the right to rest, ensured by the granting of weekly rest days and annual paid leave, the establishment of shorter working hours for certain professions and industries, and the reduction working hours at night; and the right to social protection in cases of disability or unemployment.

The LC plays a central role as it is the main legislative act regulating labour relations in Ukraine.¹⁰ The fact that the Code was adopted in 1971, i.e., when Ukraine was part of the Soviet Union, is often used as a ground for criticism of its outdatedness and inconsistency with the realities of the modern world of work. But this criticism is only partially fair, given that the LC has been amended almost 170 times since its adoption, including 15 amendments during the last year alone. Consequently, based on these arguments, the LC can no longer be considered irrelevant in the present context. For example, in recent years, the Code has been supplemented with provisions covering on-call work, home and remote work, paternity leave, etc. However, since the world of work is extensive, not all categories related to it have received timely and proper regulation in the LC. In this regard, the Code still does not contain provisions on non-competition and non-disclosure of trade secrets, apprenticeship agreements, grievance procedures, digital labour platforms, etc.

In addition to the LC, there is a great variety of labour laws in Ukraine. As P. Pilipenko em-

8 Mariia Timonina (ed), *Number of Present Population of Ukraine, as of January 1 2022* (State Statistics Service of Ukraine 2022) <http://db.ukrcensus.gov.ua/PXWEB2007/popul_eng.htm> accessed 31 August 2023.

9 Constitution of Ukraine no 254 k/96-BP of 28 June 1996 (as amended of 01 January 2020) <<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>> accessed 31 August 2023.

10 Labour Code of Ukraine (LC) no 322-VIII of 10 December 1971 (as amended of 30 July 2023) <<https://zakon.rada.gov.ua/laws/show/322-08?lang=en#Text>> accessed 31 August 2023.

phasises, 'such practice of regulation of labour relations has emerged symptomatically and, unfortunately, has not justified itself'.¹¹ After all, the system of Ukrainian labour legislation is, in essence, a peculiar mishmash of legal regulation of labour, in which the still preserved Soviet labour law approach is not always successfully combined with modern practice.¹² Y. Simutina states that 'the process of improving the legal regulation of labour relations is not systemic but chaotic, generating numerous inconsistencies of legal norms'.¹³ As a result, many provisions of Ukrainian labour laws essentially duplicate the LC, which undoubtedly confuses parties involved in employment relationships. For example, the regulation of labour remuneration is addressed both in a separate chapter of the LC, titled 'Remuneration of Labour', and in a distinct law — the Law on Remuneration of Labour.¹⁴ Yet, a significant portion of the provisions in these two acts is almost identical. The same can be observed concerning the correlation between the LC and the Law on Leaves¹⁵ as well as the LC and the Law on Occupational Safety and Health.¹⁶

Regarding the subordinate labour acts adopted by the executive authorities, it should be noted that their presence in Ukraine's current system of labour legislation is insignificant and diminishing year by year. For instance, at the end of 2022, two key acts¹⁷ in the field of multiple job holding were repealed. Since no alternative legislation was put in place, this sought-after category of labour law remains virtually unregulated. In addition, many subordinate acts enacted at a completely different time become obsolete in modern conditions. For example, due to the growth of digitalisation, the administration of employment record books became non-mandatory in 2021. Consequently, the still applicable guidelines on the procedure for administering these books¹⁸ have lost practical significance. Notably, exceptions to this situation are the sphere of labour inspectorate and occupational safety and health, where subordinate legislation continues to hold substantial importance.

Summarising Ukrainian labour law, it is worth noting that, in addition to the dominance of legislative regulation of labour relations, it is generally characterised by low collective bargain-

- 11 PD Pylypenko, *Academic works of Pylypenko Pylip Danylovych: Selected works* (TV Parpan ed, Kolo 2013) 407.
- 12 For example, the literal title of the LC is 'Code of Labour Laws', which initially implied that the Code incorporated all the basic labour regulations, while certain labour issues were specified in subordinate legislation. As for standalone labour laws, they began to emerge in Ukrainian labour law only from the end of 20th century.
- 13 Yana Simutina, 'Current Challenges of the Labour Law of Ukraine: On the Way to European Integration' (2018) 27 *Juridica International* 88, doi: 10.12697/JI.2018.27.09.
- 14 LC no 322-VIII (n 10) ch 7; Law of Ukraine no 108/95-VR 'On Remuneration of Labour' of 24 March 1995 (as amended of 1 April 2023) <<https://zakon.rada.gov.ua/laws/show/108/95-%D0%B2%D1%80#top>> accessed 31 August 2023.
- 15 LC no 322-VIII (n 10) chs 3b, 5, 12, 14; Law of Ukraine no 504/96-VR 'On Leaves' of 15 November 1996 (as amended of 29 July 2023) <<https://zakon.rada.gov.ua/laws/show/504/96-%D0%B2%D1%80#Text>> accessed 31 August 2023.
- 16 LC no 322-VIII (n 10) ch 11; Law of Ukraine no 2694-XII 'On Occupational Safety and Health' of 14 October 1992 (as amended of 31 March 2023) <<https://zakon.rada.gov.ua/laws/show/2694-12#Text>> accessed 31 August 2023.
- 17 Resolution of the Cabinet of Ministers of Ukraine no 245 'On Multiple Job Holding of Employees of State Enterprises, Institutions and Organisations' of 3 April 1993 <<https://zakon.rada.gov.ua/laws/show/245-93-%D0%BF#Text>> accessed 31 August 2023; Order of the Ministry of Labour of Ukraine, Ministry of Justice of Ukraine and Ministry of Finance of Ukraine no 43 'On the approval of the Regulations on Working Conditions in Case of Multiple Job Holding for Employees of State-Owned Enterprises, Institutions and Organisations' of 28 June 1993 <<https://zakon.rada.gov.ua/laws/show/z0076-93#Text>> accessed 31 August 2023.
- 18 Order of the Ministry of Labour of Ukraine, Ministry of Justice of Ukraine, Ministry of Social Protection of Population of Ukraine no 58 'On the approval of the Instruction on the Procedure for Administration of Employment Record Books of Employees' of 29 July 1993 (as amended of 27 July 2018) <<https://zakon.rada.gov.ua/laws/show/z0110-93#Text>> accessed 31 August 2023.

ing coverage, insufficient popularity of industrial actions among employees,¹⁹ and detailed regulation of the main terms and conditions of an employment relationship (remuneration, working hours and rest periods, termination of employment, etc.) at the legislative level. It also features extensive regulation of disciplinary proceedings against an employee, comprehensive legal regulation of the material liability of an employee towards the employer, and the presence of still unremoved vestiges of the Soviet labour law doctrine.²⁰

3 REGULATION OF LABOUR RELATIONS DURING ARMED CONFLICT UNDER THE LEGISLATION OF UKRAINE

The ancient Roman politician Marcus Tullius Cicero said — *inter arma silent leges*, which means — in times of war, the laws are silent. But in the modern world, it is already difficult to agree with this well-known statement. Thus, armed conflict at the international level should be understood as the use of armed force by one state(s) against another state(s). Meanwhile, it does not matter whether the states concerned consider themselves at war with each other or how they describe the conflict.²¹ Definitely, during such conflicts, the legal regulation of any type of social relations, including labour relations, is subject to the interference of many external unpredictable factors. However, it is important to emphasise that, in most cases, armed conflicts are not expressed by themselves; instead, they are accompanied by the imposition of martial law. Martial law is a special legal regime imposed on the whole country or some of its territories in the event of armed aggression or threat of aggression. One of the main tasks of martial law is to adapt social relations to the conditions of conflict in the most effective way. Typically, martial law is associated with temporary emergency measures, which are liable by their very nature and may involve certain restrictions, including on fundamental rights.

The foundations for the practical implementation of martial law in Ukraine are laid down at the constitutional level. Thus, the Constitution of Ukraine specifies that under the conditions of martial law, specific restrictions on rights and freedoms may be established with the indication of the period of effect for such restrictions. Also, the Constitution defines rights and freedoms that cannot be restricted, but labour rights are not among them.²² Consequently, in Ukraine, the limitation of all relevant labour rights in the event of imposition of martial law is allowed at the constitutional level. This limitation is not absolute and may be adjusted by the government depending on the situation's complexity.

A more specific regulation for governing martial law in Ukraine is established through a special normative act known as the Law on the Legal Regime of Martial Law.²³ However,

19 According to official statistics there were no strikes at all in Ukraine in 2018–2020 and only 11 in 2021, see: 'Strikes and their consequences, by individual types of economic activity in 2018–2021' (*State Statistics Service of Ukraine*, 2022) <<https://ukrstat.gov.ua>> accessed 31 August 2023.

20 For example, the primary body for resolving most individual labour disputes in Ukraine remains the Labour Dispute Commission, which is formed at the level of a particular employer and consists of at least half of its employees. The introduction of the concept of commissions in the middle of the 20th century probably seemed to make sense. In particular, from an ideological point of view, giving workers considerable discretion in resolving a dispute at the Labour Dispute Commissions was in line with communist doctrine that cultivated the concept of a 'workers' and peasants' state'. In turn, in present-day conditions, a decision made by a Commission, a significant part of which is formed by employees who are indirectly dependent on the employer, may raise doubts about its objectivity.

21 The Art. 2 of Convention (IV) Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949 Geneva) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/geneva-convention-relative-protection-civilian-persons-time-war>> accessed 31 August 2023.

22 Constitution no 254 k/96-BP (n 9).

23 Law of Ukraine no 389-VIII 'On the Legal Regime of Martial Law' of 12 May 2015 (as amended of 20 August 2023) <<https://zakon.rada.gov.ua/laws/show/389-19#Text>> accessed 31 August 2023.

despite its diverse provisions, the Law does not contain precise rules devoted to regulating labour relations under martial law. Nonetheless, the mentioned law does impose certain restrictions, such as prohibiting strikes during martial law, defining the legal status of labour duty²⁴, and granting military authorities the authority to utilise production facilities and labour resources of enterprises for defence needs. In the early days of the aggression, the lack of clear regulation of labour at times of war created certain difficulties for both employees and employers. Remarkably, the Covid-19 experience (namely the practice of telework, which was widely applied during the pandemic) helped in this case to adapt to labour relations in new circumstances. Nevertheless, a few weeks after the war outbreak, the legislative body passed a specific act on this subject — the Law on the Organization of Labour Relations under Martial Law (hereinafter, the LML),²⁵ aiming to harmonise the regulation of labour relations under martial law.

The LML introduces various provisions applicable during the period of martial law. These include the possibility of imposing restrictions on the rights and freedoms guaranteed by Articles 43 and 44 of the Constitution of Ukraine²⁶. Additionally, it allows employees and employers to independently determine the form of the employment contract, whether written or verbal. Limitations on the conclusion of fixed-term employment contracts, as stipulated in the LC, do not apply, and employers are not bound by the typical two-month notice period for notifying employees of changes in essential working conditions and conditions of remuneration.

The LML also grants employers the right to terminate an employee's employment during his or her temporary incapacity for work, as well as during his or her leave, with exceptions for social leave. It permits employers at critical infrastructure facilities to unilaterally extend standard working hours from 40 to 60 hours per week. Notably, time constraints on overtime work, established by the LC (four hours over two consecutive days and 120 hours per year), and public holidays on which work is not performed (12 days during the year) do not apply. Moreover, the LML grants power to employers to refuse any type of leave requested by an employee, except for social leave, if such an employee is involved in performing work on critical infrastructure facilities. The LML also stipulates that during martial law, certain provisions of the collective agreement may be suspended unilaterally at the employer's initiative, and employers are not obliged to deduct funds for the activity of trade union organisations.

In addition to the LML, on 19 July 2022, the Ukrainian Parliament adopted the Law on Amendments to Certain Legislative Acts of Ukraine on Simplifying the Regulation of Labour Relations in the Field of Small and Medium-Sized Entrepreneurship and Reducing the Administrative Burden on Entrepreneurial Activity (hereinafter, the LSR).²⁷ This Law significantly amended the LC by establishing a simplified regime for the regulation of labour relations

24 The labour duty is a short-term duty to perform defence-related work during martial law, as well as to eliminate man-made, natural and military emergencies that arose during martial law, which does not require the consent of the person in respect of whom such a duty is imposed (para 3), see: Resolution of the Cabinet of Ministers of Ukraine no 753 'On the approval of the Procedure for involving working-age individuals in socially useful work under martial law' of 13 July 2011 (as amended of 22 December 2022) <<https://zakon.rada.gov.ua/laws/show/753-2011-n#Text>> accessed 31 August 2023.

25 Law of Ukraine (LML) no 2136-IX 'On the Organization of Labour Relations under Martial Law' of 15 March 2022 (as amended of 19 July 2022) <<https://zakon.rada.gov.ua/laws/show/2136-20#top>> accessed 31 August 2023.

26 While Article 44 of the Constitution of Ukraine only ensures the right to strike, Article 43 tactfully contains the majority of labour-related constitutional rights.

27 Law of Ukraine (LSR) no 2434-IX 'On Amendments to Certain Legislative Acts of Ukraine on Simplifying the Regulation of Labour Relations in the Field of Small and Medium-Sized Entrepreneurship and Reducing the Administrative Burden on Entrepreneurial Activity' of 19 July 2022 <<https://zakon.rada.gov.ua/laws/show/2434-20#Text>> accessed 31 August 2023.

during martial law. The concept of a simplified regime means that the parties entering into an employment contract may, at their own discretion, determine the grounds for the emergence and termination of employment relationship, the remuneration system, labour standards, working hours and rest periods. Moreover, employers applying the simplified regime are not subject to the obligation to adopt local regulations and administrative documentation such as employee handbooks and leave schedules. The simplified regime is of limited application and can only be extended to the regulation of employment relationship between an employee and an employer who is a small or medium-sized business entity or between an employer and an employee whose monthly salary exceeds eight minimum wages.

To some degree, the provisions of the LSR should be characterised as quite controversial. For example, it remains a mystery why the LSR amends the LC and not the LML. After all, it is at this level that the specifics of the legal regulation of labour relations under martial law are established. In turn, making direct amendments to the LC, which involve, among other things, significant interference with its structure and has a universal rather than time-limited application, seems illogical and creates risks of abuse of the simplified regime, especially on the employers' side. Furthermore, and most importantly, the largely unrestricted freedom given by the LSR to employers and employees to independently establish most rights and obligations may lead to the risk of narrowing labour rights, primarily in relation to employees. That is, given that the employee is in a subordinate position to the employer, his or her free will in determining the terms and conditions of employment is likely to be the 'free will' of the employer.

In addition to LML and LSR, the Parliament of Ukraine passed other laws that had limited impact on labour regulation under martial law. An example of this is an amendment of the LC to include a new ground for the termination of an employment contract at the employer's discretion. Under this amendment, an employer has the right to terminate an employment contract with an employee on the basis of the destruction (absence) of production, organisational and technical conditions, means of production or the employer's property due to military operations. Unfortunately, it is necessary to acknowledge that this new ground for termination of an employment contract appears somewhat declarative. After all, the LC has long included a ground for the termination of an employment contract in connection with the changes in the organisation of production and labour, which can also be applied to situations based on the employer's operational requirements related to the armed conflict. As a result, the LC currently contains two rather similar grounds for terminating an employment contract.

4 EFFECT OF THE MARTIAL LAW LEGISLATION ON LABOUR LAW

As the above examples show, the legislative framework adopted during the martial law period in Ukraine primarily focuses on the interests of employers and the government, leaving employees on the sidelines. While the deviations of the vector of legal regulation in this case appear insignificant, when combined with other factors, primarily the long duration of armed conflict, they could seriously affect the workforce. In this context, the observation of the ILO Committee on Freedom of Association on the impact of the duration of martial law restrictions on trade union rights should be referred to. The Committee notes that 'in a case in which emergency measures had been extended over many years, ... martial law was incompatible with the full exercise of trade union rights'.²⁸

The conclusion above can be illustrated by the example of regulating working hours and

²⁸ International Labour Organization, *Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO* (5th edn, International Labour Office 2006) para 200.

rest periods during martial law in Ukraine. As mentioned, under the LML, employers are authorised to unilaterally increase the working hours of workers employed at critical infrastructure facilities from 40 hours per week to 60 hours. Besides, the LML allows not to apply the overtime work limits set out in the LC for all categories of employees. Additionally, during martial law, employers have the discretion to deny leave (except for social leaves) to employees working at critical infrastructure facilities. In addition, the LC provisions, which prohibit employees from working during public holidays and allow for reduced working hours on the day preceding the public holiday, do not apply under martial law. Is such regulation of working hours and rest periods justified? If we talk about the first months of full-scale aggression in Ukraine, the answer in this case would be unequivocally affirmative. However, if we consider it from the perspective of 18 months of hostilities, which is the very case of Ukraine, there may be some concerns.

Of course, most of the restrictions on working time and rest periods in the case of Ukraine relate to critical infrastructure employees. But in practice, the term 'critical infrastructure' is described in Ukrainian legislation rather broadly. For example, it encompasses essential public (administrative) services, energy supply (including heat), water supply and sewerage, food supply, healthcare, electronic communications, financial services, transport services, chemical industry and even research activities. Thus, the legal coverage of employees involved in critical infrastructure facilities is quite extensive. As a result, a significant number of employees in the country may be at risk of physical and mental exhaustion due to the excessive workloads caused by extended working hours over a significant period.

Even setting aside critical infrastructure employees, it can be seen that the martial law labour legislation no longer restricts overtime and, to some extent, limits the right to rest for all categories of employees. For example, during martial law, the LC provisions stipulating the right of employees not to work on public holidays and concerning the reduction of working hours on the day preceding public holidays do not apply. On the one hand, this does not appear to be a significant restriction on workers' rights since there are only 12 such holidays per year. But, if we take the standard 40-hour working week as an example, we can see that in the entire pre-war 2021, an employee worked 1994 hours per year. However, if martial law lasts for the entirety of 2023, the working time under the same working conditions will be 2080 hours per year. That is, a typical employee under the standard working conditions will work 86 hours more compared to the pre-war period. This is without considering other factors leading to an increase in working time duration, such as overtime.

The martial law labour legislation stresses the fact that it was enacted in the first months of the full-scaled aggression. Since then, it has not been significantly revised and, subsequently, does not reflect the current realities in the country, which are quite different from those that prevailed during the first months of the war. Within a fairly short time and under rather complicated conditions, the legislative body developed the acts to take prompt measures necessary to resolve the situation at that challenging time for the country. Certainly, under such conditions, it was quite difficult to develop comprehensive laws that take into account the interests of all participants in the world of work. In turn, modifying the martial law labour legislation would allow not only to adapt it to the present-day realities of working life but also help to carry out some 'gap analysis'.

The provisions of the LSR serve as a good example in this case, under which the employee and the employer participating in the simplified regime of regulation of labour relations may establish other grounds for terminating an employment contract than those established by LC. Undoubtedly, the purpose of such provision of the LSR was to facilitate the entry into and the exit from employment relationships that may not always be of a long-term nature under military conflict. However, it should be noted that implementing such a concept puts the simplified regime employees in an unequal position with 'ordinary' employees for whom

the law strictly regulates the termination of the employment contract. For example, the LC stipulates that the employer is entitled to dismiss an employee unless there is a valid reason for such dismissal connected with the capacity or conduct of the employee or based on the operational requirements of the employer. Moreover, providing the employee and the employer with unlimited freedom in determining the grounds for termination of the employment contract is contrary to the spirit of labour law, which presumes that when labour issues in an employment relationship are negotiated between essentially two unequal parties, such negotiations require appropriate legal safeguards for the less protected party, i.e. the employee. Also, such provision of the LSR is inconsistent with international standards binding on Ukraine.

5 INTERNATIONAL CONTEXT

On the one hand, the regulation of labour relations is a purely domestic matter, but on the other, if a country is party to relevant international treaties, the country is responsible for its proper implementation at the national level. In particular, Article 26 of the Vienna Convention on the Law of Treaties states that any treaty in force is binding upon the parties to it and must be performed by them in good faith. However, armed conflict is the factor that can make it difficult or even impossible for a country to fulfil its obligations. In this case, it would be useful to refer once again to the Vienna Convention, Article 73 of which takes this circumstance into account and excludes from the scope of application of the Convention cases involving the outbreak of hostilities between countries.²⁹

At the same time, some international treaties expressly provide for derogation clauses that may also be applicable in the event of armed conflicts. For example, Article 15 of the European Convention on Human Rights states that in times of war or other public emergency threatening the life of the nation, any country may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.³⁰ However, many international treaties do not contain such clauses. Among these treaties are the ILO conventions, which significantly influence the national labour law of the ratifying country.

In this context, it would be useful to draw attention to the practice of application of the Forty-Hour Week Convention, 1935 (No. 47)³¹ and the Termination of Employment Convention, 1982 (No. 158).³² After all, Ukraine is one of the few countries that have ratified these two ILO instruments. Without going into a detailed analysis of the content of these international labour standards, it seems appropriate to draw attention to just a few of their provisions. Thus, under Article 1 of the ILO Convention No. 47, each country which ratifies this Convention declares its approval of the principle of a forty-hour week applied in such a manner that the standard of living is not reduced in consequence and the taking or facilitating of such measures

29 Vienna Convention on the Law of Treaties of 23 May 1969 <https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=en> accessed 31 August 2023.

30 European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms, as amended) <https://www.echr.coe.int/documents/d/echr/convention_eng> accessed 31 August 2023. Ukraine declared a derogation from the European Convention on Human Rights on 28 February 2022.

31 Convention concerning the Reduction of Hours of Work to Forty a Week (Forty-Hour Week Convention no 47) (adopted 22 June 1935) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::N::P12100_ILO_CODE:C047> accessed 31 August 2023.

32 Convention concerning Termination of Employment at the Initiative of the Employer (Termination of Employment Convention no 158) (adopted 22 June 1982) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C158> accessed 31 August 2023.

as may be judged appropriate to secure this end and undertakes to apply this principle to classes of employment. In ILO Convention No. 158, particular importance should be given to Article 4, which states that the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

Even a cursory glance reveals that Ukraine's martial labour law legislation does not comply with the mentioned international standards. Increasing employees' working weeks to up to 20 hours contradicts the principle of a forty-hour week. Furthermore, allowing parties of the simplified regime for the regulation of labour relations to independently establish the grounds for termination of employment may violate the requirement that termination on the employer's initiative should relate to the employee's capacity or conduct or be based on the employer's operational requirements.

It should be noted that the ILO's approach to fulfilling a country's obligations under ratified conventions in situations of armed conflict is rather vague. The results of the work of the Committee of Experts on the Application of Conventions and Recommendations (hereinafter, the CEACR) responsible for the legal examination of ILO member states' reports on the implementation of the organisation's international standards are very illustrative in this case. For example, if we consider the observations and direct requests of the CEACR to Ukraine under Convention No. 158, it is clear their content does not refer to armed conflict when analysing the fulfilment of the country's obligations under the convention. In turn, Convention No. 158 is significant because it has been ratified by countries that have experienced some degree of armed conflict. These countries include Bosnia and Herzegovina, the Democratic Republic of the Congo, Uganda, and Yemen. Among those countries, the Committee's mention of conflict is only in direct request to Bosnia and Herzegovina.³³ However, to be more precise, CEACR's direct request focuses only on some details of overcoming the consequences of the armed conflict rather than on the fact of the obligations under Convention No. 158 during the conflict itself.

Turning to the question of Ukraine's compliance with its obligations under Convention No. 158, the CEACR, in its latest direct request, not only lacked any mention of the existing armed conflict in the country but seemed to overlook the real picture of Ukrainian labour law. In its direct request, published in the 111th ILC session (2023), the Committee 'requests the Government to indicate the reasons underlying the different probationary periods proposed for different categories of workers under the draft Labour Code.'³⁴ However, in this case, the CEACR examines the content of the draft Labour Code developed in 2014. It should be noted that since the development of this draft Labour Code, many aspects of labour relations in Ukraine have already undergone significant changes, and its developers have long abandoned the draft Code itself. Thus, only from 2019 to 2022, four draft acts have been developed to replace the current LC, and a fifth is being actively developed in 2023.

33 Direct Request (CEACR) (adopted 2005, published 95th ILC sess 2006) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:2248235> accessed 31 August 2023. The CEACR 'recalls its comments on the application of Convention No. 111 in which, further to the communications by the USIBH and the trade union organization of the 'Ljubija' iron mines concerning the dismissal of miners during the civil war, it noted that these constituted dismissals of workers based solely on their national extraction. The Committee indicated at that time that it was the responsibility of the parties concerned (the Government, the managers of the enterprises and the workers who had made the complaints) to implement the legislation so as to ensure that the workers who have not been able to return to their former jobs, for the sole reason of their national extraction and/or religion, can receive appropriate compensation.'

34 Direct Request (CEACR) (adopted 2022, published 111st ILC sess 2023) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:P13100_COUNTRY_ID:4325712,102867:NO> accessed 30 August 2023.

6 LABOUR LAW REFORMS IN UKRAINE DURING THE ARMED CONFLICT

It is remarkable that despite the lack of timely improvements in the legislation on labour relations under martial law, labour reforms in Ukraine are in full swing. For example, a new Law on Collective Agreements was adopted by Parliament of Ukraine in early 2023,³⁵ and a new Law on Collective Labour Disputes is currently being finalised.³⁶ The same can be said concerning reforming legal regulation of individual employment relationships. In the fall of 2022, the Ministry of Economy of Ukraine developed a draft Law on Labour to replace the existing LC.³⁷ In early 2023, the ILO, following the Ministry's request, elaborated a detailed ILO Memorandum of technical comments to facilitate the national drafting. In the late summer of 2023, a working group of Ministry representatives and academics was set up to transform this draft Law on Labour into a full-fledged draft Labour Code.

At the same time, throughout the entire duration of the war, the regular renewal of the current LC can also be observed. Specifically, 17 amendments have been made since martial law was imposed. However, not all of these amendments are wartime-related. For example, the LC was supplemented with provisions establishing the prohibition of mobbing in employment relationships, the application of on-call work contracts, the modification of certain public holidays on which work is not performed, the definition of professions (occupations), job function and professional qualification, and giving a natural person who is an employer the right to be a party to a collective agreement. In addition to the LC, other labour legislative acts have also undergone some amendments. Thus, the long-dormant concept of applying the multi-party employment relationship enshrined in the Law on Employment of the Population has undergone a significant revision. In July 2023, Ukraine also ratified the ILO Chemicals Convention, 1990 (No. 170).³⁸

In this case, a fair question arises: is there any value in these reforms now? It is quite challenging to answer this question with absolute certainty. On the one hand, labour law needs constant development. After all, it evolves along with the social relations it regulates, and its failure to respond promptly to modern challenges may lead to negative consequences, primarily associated with a reduction of the rights and guarantees it offers. But on the other hand, the development of labour law requires a time-sensitive and well-balanced approach. Unfortunately, in the example of Ukraine, we can observe some kind of an oxymoron — a fairly comprehensive labour reform is taking place now. Still, it is oriented not for today but for some kind of tomorrow. Consequently, such a way of developing Ukrainian labour law does not provide employees and employers with what they need now and, therefore, fails to make their labour life any easier in this challenging time for the country.

For instance, the practical value of modifying public holidays remains unclear if, according to the LML, employees cannot take advantage of them during martial law. The comprehensive reform of the regulation of collective labour relations also raises certain doubts. As mentioned above, a new Law on Collective Agreements was adopted in 2023, planned to come into force six months after the cancellation of martial law, and a new draft Law on Collective Labour

35 Law of Ukraine no 2937-IX 'On Collective Agreements and Contracts' of 23 February 2023 <<https://zakon.rada.gov.ua/laws/show/2937-20#Text>> accessed 30 August 2023.

36 Draft Law of Ukraine 'On Collective Labour Disputes' (2023) <<https://www.nsp.gov.ua/images/2023/PuoektZakonyProKolektivnDogovir.pdf>> accessed 30 August 2023.

37 Draft Law of Ukraine 'On Labour' (2022) <<https://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=43600842-3772-427f-a725-39e35ae3adb8&title=ProektZakonuUkrainiproPratsiu>> accessed 30 August 2023.

38 Convention concerning Safety in the use of Chemicals at Work (Chemicals Convention no 170) (adopted 25 June 1990) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:P12100_INSTRUMENT_ID:312315> accessed 31 August 2023.

Disputes is being finalised. However, such steps by the legislative body are incomprehensible since, in the current realities, martial law legislation allows employers to unilaterally suspend the provisions of collective agreements, exempts employers from the statutory obligation to contribute to the activities of trade union organisations (which significantly reduces the effectiveness of their work), and prohibits strikes.

Thus, if we rephrase the question and formulate it as follows: is such a course of labour law reform appropriate in the context of an armed conflict? The answer is likely to be negative. After all, the war is not yet over and, to some degree, is at a different phase of progression, which means that at its beginning, the conditions for implementing labour relations were one, and now, they are entirely different. Accordingly, it is more appropriate in this stage of armed conflict to adapt labour regulation to the existing phase of the working conditions than to get ahead of it.

To illustrate the above, it is appropriate to focus on the specifics of the application of the working time regime and the impact of various wartime factors on it. One of these factors involves air raid alarms, which are launched periodically throughout Ukraine and, unfortunately, in some cases have negative consequences in the form of airstrikes. Statistically, the most common time slot for an air raid alarm is 12.00-18.00, i.e. it explicitly covers the period of typical working hours. In addition, the duration of air raid alarms in many regions of Ukraine is quite impressive. For example, in the time interval from 22 February 2022 to 27 August 2023, it was 2184 hours — in the Kharkiv region, 1895.3 hours — in the Dnipro region, 1543.6 hours — in the Kyiv region, etc.³⁹ In this case, we may at once have quite obvious questions: Does the employer have a direct obligation to ensure the safety of employees during air raid alarms? Is the time of the employees' stay in the bomb shelter related to working hours? What are the time frames for returning to the employer's premises (in cases where the employer does not have a bomb shelter and employees have to use an external one, e.g., a metro station)? What are the legal consequences of an employee's refusal to go to the bomb shelter?

At the same time, the legislation lacks provisions addressing the legal status of air raid alarms in labour law. So, in practice, the above issues are resolved on the basis of interpretation of general, not only labour law norms.

For example, the LC includes a broad rule (Article 153) in which the employer is responsible for ensuring the employee's safe and healthy working conditions. Based on the content of this provision of the Code, it can be concluded that the employer is also obliged to take appropriate measures during air raid alarms, given the potential hazard to employees. To find guidance on these measures, it is necessary to refer to Article 130 of the Civil Protection Code of Ukraine,⁴⁰ which states that business entities must establish an emergency response plan encompassing instructions for staff in case of emergency situations covering inter alia, air raid alarms. Meanwhile, the issue of remuneration of employees staying in a bomb shelter may be resolved on the basis of the provisions of Article 113 of the LC. According to this Article of the Code, the average wage is retained for downtime when a work situation is dangerous to the employee's life or health through no fault of his or her own. In addition, under Article 159 of the LC, the employee is obliged to cooperate with the employer in organising safe and hazard-free working conditions. Thus, it can be assumed that the employee must use the bomb shelter during air raid alarm.

As can be seen, most of the labour law issues related to air raid alarms can be addressed in practice. However, it should be emphasised again that the mentioned provisions of legislation are of general application and are not directly tied to armed conflict. Therefore, their

39 *Statistics of Air Alarms in Ukraine* <<https://air-alarms.in.ua/en>> accessed 31 August 2023.

40 Civil Protection Code of Ukraine no 5403-VI of 2 October 2012 (as amended of 31 March 2023) <<https://zakon.rada.gov.ua/laws/show/5403-17>> accessed 31 August 2023.

application by the parties to an employment relationship may entail corresponding risks due to their ambiguous interpretation. For example, employees' obligation to use a bomb shelter in the event of an air raid alarm is not supported by an appropriate employer response in the event of the employee's refusal. In this case, the employer has no right to suspend the employee, as the LC allows for suspension only in cases expressly provided for by law. The above-mentioned problem underlines the need to improve legislation regulating labour relations during martial law. At the same time, all the above issues can be resolved quite promptly by introducing appropriate amendments to the LML.

CONCLUSIONS

The analysed situation with the regulation of labour relations during the armed conflict in Ukraine brings us to the following conclusions.

There is no unified approach to regulating labour relations during armed conflicts. After all, such conflicts are always unique, i.e. they differ in scale, intensity, duration, technical capabilities of the participants, weapons used, etc. In most cases, however, armed conflicts are no longer so extensive and all-consuming as in the First and Second World Wars but are rather more hybrid in nature. For example, in Ukraine, as of early autumn 2023, active hostilities are taking place in only 6 of the country's 27 regions. Unfortunately, this does not mean that the other significant part of the country lives an ordinary life. As rocket strikes continue to be launched throughout Ukraine, there is no place where a person feels safe. However, it should also be noted that the intensity of the air strikes differs depending on the country's territory. So, while the duration of air raid alarms between 22 February 2022 and 30 August 2023 in the Donetsk region totalled 3751 hours, in the region of Transcarpathian, it was only 390.1 hours.⁴¹

In Ukraine, most of the laws aimed at harmonising the regulation of labour relations in the conditions of the armed conflict were developed in the first months after the outbreak of the conflict. Since then, although the conflict has been ongoing for 18 months, no significant amendments have been made to wartime labour legislation. Against the background of the continuous dynamics of labour law reform in Ukraine, this looks rather extraordinary. In this case, given the uncertainty of when the armed conflict will end, it would be more beneficial for the legislative body to focus on improving the regulation of labour relations in light of the current situation rather than seeking to improve labour legislation in perspective.

Given the diversity of armed conflicts in the world, it is impossible to develop uniform labour standards applicable, for example, at the international level. This demonstrates the priority of national law in terms of adapting the regulation of labour relations to wartime conditions. In this regard, considering the Ukrainian experience, it is appropriate to take into account that: *a)* armed conflict is dynamic by nature; thus, it can have different stages of development, which can also affect the world of work and labour legislation may need to be systematically revised to reflect new realities; *b)* considering that the territory of a country may not be evenly affected by the consequences of an armed conflict, in some cases it might be appropriate to provide different legal regulation of labour relations for its different regions; *c)* armed conflict should never be considered a 'valid reason' for unjustified and long-lasting restriction of employees' rights, as it is at a period when they are more vulnerable and therefore require additional legal protection.

⁴¹ *Statistics of Air Alarms in Ukraine* (n 39).

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