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Right to work under martial law: Legislative aspect in Ukraine

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Abstract
The right to work is one of the fundamental human rights guaranteed by international documents and the constitutions of most countries, including Ukraine. However, the conditions and restrictions relating to the right to work under martial law may change. Due to the constant threat to Ukraine's independence, as well as to the lives and health of its citizens, the regulation of labour relations is substantially different from peacetime, which requires scientific substantiation. The purpose of this study was to outline the key provisions of labour law relating to the person's exercise of the right to work according to the social and legal vector of the state's activities under the legal regime of martial law. The study demonstrated the significance of ensuring stability and security under martial law but emphasised the temporary nature of restrictive measures. The importance of maintaining a balance between the interests of employers and employees was substantiated, as well as the development of labour legislation to accommodate the specifics of the situation during a military conflict. Human rights may not be violated in either peacetime or wartime. On the contrary, the state should create conditions for the free development of labour and the fulfilment of human potential. Based on formal legal analysis of wartime legislation of Ukraine, comparison of various regulatory documents and scientific positions, the study highlighted the problematic aspects of observance of the constitutional right to work. The relevant conclusions were formulated, outlining the legal ways to achieve the balance of interests of employer and employee and proposals for improving the legislation were identified. The recommendations proposed in this study may be used by the legislator to improve the current labour legislation of Ukraine

Keywords:
labour relations; coercion to work; labour rights; constitutional rights; labour code

Introduction
The decline in the number of jobs and deterioration of working conditions in the de-occupied territories of Ukraine and in the areas of active hostilities had a substantial impact on the economy and the rights of employees. Understanding the legal framework for the exercise of the right to work under martial law is key to the effective protection of the rights and interests of citizens and ensuring stability. It is important to account for the fact that the state must strike a balance between rights and responsibilities. Thus, the investigation of the right to work in Ukraine under martial law is of great importance from both theoretical and practical perspectives.

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According to the conclusions of the Constitutional Court of Ukraine[1], freedom of labour implies the right of each person to decide independently whether to work. This is an inalienable right to secure employment under equal conditions. However, the state prescribes only equal opportunities for the exercise of the right to work but is not obliged to employ every citizen. Thus, Ukraine has adopted a modern concept of the right to work, which guarantees the possibility of free choice of the form and type of employment. However, the problem of investigating the right to work becomes relevant in the context of the full-scale invasion of the aggressor state, which has led to significant population displacement and loss of employment.

The provisions of the constitution have a historical context. They reflect society's need for stability and security, but at the same time open a discussion about limiting the power of employers to violate employees' labour rights. M. Ashri (2019), in the study of the application of international humanitarian law and human rights in the context of armed conflict, found that some international instruments do not recognise "war" or "armed conflict" as the principal reasons that may suspend or limit a state's human rights obligations. However, war is a vivid example of an emergency that can endanger the life of a nation. S. Kelbia *et al*. (2021) noted that the definition and affirmation of human rights determines the legal basis and value of a democratic society. This should be consistent with the principle of the rule of law, which defines the essence of the constitutional state. M. Hurkovskyi & M. Sydor (2020) analysed the theoretical foundations of guaranteeing human and civil rights and freedoms and the right to work in the context of the evolution of national legislation and the stability of international regulations governing these issues. L. Sotiroski (2023) examined how the exercise of these rights in Europe is hampered by socio-political crises, including the pandemic and the war in Ukraine.

Based on the findings of N.V. Kokhan (2022), the right to work is a necessary socio-economic right through which every person meets their own and their family's needs and contributes to the development of the state and society. This right, which is prescribed in international instruments, is central to the labour sphere and underlies other labour-related rights. It allows a citizen to secure their livelihood by performing work that they choose or freely agree to.

The principle of the right to work, based on the ideas of social justice and human rights, is generally accepted, reflecting both individual and collective needs to create material and spiritual values, which is important not only for satisfying personal needs but also for ensuring the existence of society. In peacetime, the state has an obligation to provide all citizens with equal and free opportunities to fully exercise the right to work. This is expressed through the basic principles of labour law, which should be understood as the right of a person to be exclusively entitled to their skills and abilities. Every person is entitled to freely choose the form or scope of their business at will. In turn, this right creates an obligation for the employer not to require the employee to perform work that is not stipulated in the employment contract and is not part of the employee's job duties without the employee's voluntary consent (Southwick *et al*., 2019).

N.R. Prokopchuk (2023) concluded that Ukraine has adopted a modern understanding of the right to work, which guarantees every citizen the opportunity to freely choose the form and type of employment. This is in line with international standards and current judicial practices in the country. Therewith, reviewing Part 2 of Article 64 of the Constitution of Ukraine[2], I.O. Taran & O.V. Pleskun (2022) stated that it concerns the restriction of certain constitutional rights in case of martial law, provided that such rights are not prescribed in this provision, i.e., the legislators are entitled to oblige or prohibit able-bodied citizens to work.

G. Khrystova & O. Uvarova (2022) argue that today most companies recognise their responsibility for negative human rights impacts within their business processes, specifically, according to the United Nations Guiding Principles on Business and Human Rights (UNGP). In this context, the Verkhovna Rada's active legislative work aims to resolve these issues and ensure that new laws follow the constitutional rights of citizens. Thus, the purpose of this study was to analyse the problematic aspects of labour law aimed at guaranteeing the right to work under the legal regime of martial law, following the social and legal vector of the state's activities.

Materials and Methods

The study analysed the problems of legal regulation and focused on the observance of the right to work in the context of military operations and martial law. The study was based on the application of special legal scientific methods, which provide the reader with an understanding of the specifics of approaches to analysing the problem. The methodological framework of this study included a wide range of general and special methods of cognition. The study employed general scientific methods such as analysis, synthesis, comparison, analogy, deduction, induction, and abstraction. Other formal and logical methods, such as analysis, synthesis, generalisation, and abstraction, were also used. The study also included transitions from theoretical and

[1] Decision of the Constitutional Court of Ukraine No. 14-рп/2004. (2004, July). Retrieved from https://zakon.rada.gov.ua/laws/show/v014p710-04#Text.
[2] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.

legal abstraction to specificity in the field, using normative modelling and the method of legal forecasting. The approach to the investigation of the subject matter was based on the integrated use of special methods, such as structural-functional, comparative legal and formal legal analysis.

To investigate the specific provisions of the Constitution of Ukraine[1], laws and other regulations governing the right to work under martial law, the study employed the formal legal method, which allowed for a detailed analysis of the definition of restrictions on employees' rights and the establishment of the rights and obligations of the parties in the context of emergency circumstances.

The methods of comparative and historical and legal analysis were used to analyse legal norms and approaches to the regulation of the right to work under martial law in different countries and in different historical periods – peacetime[2] and wartime[3]. This helped to identify similarities and differences in legislation, legal practice and constitutional norms, as well as to assess the effectiveness of these methods in different contexts. This approach allowed identifying the best practices of other countries in regulating labour relations under martial law and helping develop optimised strategies for Ukraine.

The application of the descriptive method in the context of this study was to systematically describe and analyse legislation and research related to the right to work under martial law in Ukraine, including a detailed review of constitutional and legislative provisions, definition of key concepts, and analysis of trends in the development and implementation of this right. The descriptive approach helped to systematise and summarise the available data, which contributed to a better understanding of the issue and the formulation of recommendations for further research or the development of legal solutions. Analysis of decisions of the European Court of Human Rights[4,5] helped define the standards and principles recognised by the international community in the field of human rights and ensures their implementation and protection at the national level. Furthermore, the analysis of the European Court's judgments can serve as a valuable source of information and a basis for the development and improvement of legislation aimed at protecting human rights. The use of these sources helped to fulfil the purpose of this study, as they provided the necessary legal framework, context, and analytical data to understand and analyse the issue of the right to work under martial law in Ukraine.

Results

The Constitution of Ukraine[6] affirms the significance of the well-being, integrity, and security of citizens for society. Ensuring the rights and freedoms of individuals is a key function of the state that determines the future of the country. It is important that the interaction between the citizen and the state is predominantly determined by human rights and freedoms, and the rule of the Constitution is one of the key components. This is reflected in Article 3 of the Constitution of Ukraine[7], which confirms the importance of the choice of the Ukrainian people and their future in the space of the social state. Article 43 of the Constitution[8] prescribes the right to work as a fundamental human and civil right. The Labour Code of Ukraine empowers employees to exercise their labour rights but restricts employers. It has been repeatedly emphasised that to implement the idea of the rule of law, it is necessary that interactions between the individual and the state are predominantly determined by human rights and freedoms, while the rule of the Constitution is one of the key components.

It was first prescribed in modern human rights standards in the Universal Declaration of Human Rights[9], the International Covenant on Economic, Social and Cultural Rights[10], and the European Social Charter (revised)[11]. This right is considered as an obligation of the state to create conditions and mechanisms for its implementation following international regulations. According to the decision of the Constitutional Court of Ukraine[12], the right to work is the ability of every citizen to earn a living through work that they choose or agree to freely. This right is guaranteed by the state, which must ensure equality in the choice of profession

[1] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[2] Labour Code of Ukraine. (1971, December). Retrieved from https://zakon.rada.gov.ua/laws/show/322-08#Text.
[3] Law of Ukraine No. 2136-IX "On the Organisation of Labour Relations in Conditions of Martial Law". (2022, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2136-20#Text.
[4] Decision of the European Court of Human Rights No. 8919/80 "Van der Mussele v. Belgium". (1983, November). Retrieved from https://hudoc.echr.coe.int/ukr?i=001-62147.
[5] Decision of the European Court of Human Rights No. 73316/01 "Siladin v. France". (2021, April). Retrieved from https://hudoc.echr.coe.int/ukr?i=001-68376.
[6] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[7] Ibidem, 1996.
[8] Ibidem, 1996.
[9] Universal Declaration of Human Rights. (1948, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_015#Text.
[10] International Convention on Economic, Social and Cultural Rights. (1973, October). Retrieved from https://zakon.rada.gov.ua/laws/show/995_042#Text.
[11] European Social Charter (Revised). (1996, May). Retrieved from https://zakon.rada.gov.ua/laws/show/994_062#Text.
[12] Decision of the Constitutional Court of Ukraine No. 14-рп/2004. (2004, July). Retrieved from https://zakon.rada.gov.ua/laws/show/v014p710-04#Text.

and type of employment, as well as develop the system of professional education and training, accommodating the needs of society.

The full-scale invasion and introduction of martial law in Ukraine by Presidential Decree No. 64/2022 dated 24 February 2022[1], has created significant difficulties for the state and society in the field of legal regulation. Until now, labour legislation, specifically the Labour Code of Ukraine[2], did not prescribe any particular rules concerning labour relations during martial law. Therefore, in the first days of the war, the situation was regulated by the general provisions of the Code. As of 2024, one of the principal documents defining the specifics of labour relations of employees of all enterprises, institutions, organisations in Ukraine, as well as persons working under an employment contract with individuals, in times of war is the Law of Ukraine No. 2136-IX "On the Organisation of Labour Relations in Martial Law"[3] dated 15 March 2022, which sets substantial restrictions for employees.

Raising living standards and social protection standards to European levels is truly a crucial step towards integration with the European Union, but changes to the right to work in times of war can only exacerbate Ukraine's predicament, as they potentially contradict the Constitution and European law. The right to work, as defined in Article 1 of the revised European Social Charter[4], includes the ability of workers to freely choose their occupation and to receive sufficient and fair remuneration for their work.

Article 43 of the Constitution of Ukraine[5], Article 23 of the Universal Declaration of Human Rights[6], Article 1 of the European Social Charter (Revised)[7], ratified by Ukraine, declare the prohibition of forced labour, while Article 8 of the Law of Ukraine No. 2136-IX[8] prescribes restrictions on the right to work and the right to strike. Furthermore, the Law of Ukraine No. 389-VIII[9] (Article 8) prescribes the introduction of labour service for able-bodied persons who are not involved in defence work, do not take part in the protection of critical infrastructure, and are not employed during martial law. This may include performing work related to defence tasks and responding to emergencies that occurred during martial law. Individuals can also be involved in performing socially useful work aimed at meeting the needs of the Armed Forces of Ukraine and other military formations, law enforcement agencies, and civil defence forces. This can include protecting critical infrastructure and ensuring the normal functioning of the national economy, and it can be done without the need for specialised training. Persons engaged in conscription are guaranteed to retain their previous places of employment.

According to N.V. Kokhan (2022), solving socio-economic problems in times of war requires that each person carefully consider the aspects of security and availability of work. In such times, each employee must be ready to mobilise their strengths and skills to work effectively, constantly improving their level of skills in the field of work. The state is obliged to ensure the highest level of security in the workplace, and employers should not restrict the labour rights of employees during a period of military conflict.

The findings of the Institute for Economic Research and Policy Consultations (2021) point to a link between the war and a drop in household income. The military conflict leads to a decline in production, destruction of infrastructure and other economic obstacles, which directly affects the incomes of citizens. According to the Ukrainian Institute for Demography and Social Studies, the decline in the standard of living and quality of life in Ukraine during the military conflict has become a factor affecting the country's overall social climate. The war caused a considerable outflow of labour force from the country. Many citizens are looking for opportunities to earn money abroad due to job losses and general instability in the country (Cherenko *et al*., 2023). Thus, the justified focus of the state authorities in Ukraine on the war has led to negative consequences: a decline in the standard and quality of life, a drop in incomes, and labour migration. This drastically reduces investment and innovation activity, as well as the country's overall economic growth potential.

According to the Social Progress Index (2024), the quality of life and income of the population in Ukraine decreased by 11 points in the global ranking compared to 2021. Together with the increase in labour migration and the stable data on the employment of Ukrainians abroad (Fig. 1), this dramatically reduces the country's overall economic growth potential. As of the beginning of March 2023, more than one million Ukrainian refugees out of about 4 million registered (50% of whom

[1] Decree of the President of Ukraine No. 64/2022 "On the Introduction of Martial Law in Ukraine". (2022, February). Retrieved from https://zakon.rada.gov.ua/laws/show/64/2022#Text.
[2] Labour Code of Ukraine. (1971, December). Retrieved from https://zakon.rada.gov.ua/laws/show/322-08#Text.
[3] Law of Ukraine No. 2136-IX "On the Organisation of Labour Relations in Conditions of Martial Law". (2022, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2136-20#Text.
[4] European Social Charter (Revised). (1996, May). Retrieved from https://zakon.rada.gov.ua/laws/show/994_062#Text.
[5] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[6] Universal Declaration of Human Rights. (1948, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_015#Text.
[7] European Social Charter (Revised). (1996, May). Retrieved from https://zakon.rada.gov.ua/laws/show/994_062#Text.
[8] Law of Ukraine No. 2136-IX "On the Organisation of Labour Relations in Conditions of Martial Law". (2022, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2136-20#Text.
[9] Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (2015, April). Retrieved from https://zakon.rada.gov.ua/laws/show/389-19#Text.

are of working age) were employed in the EU. Analysing the above data, it can be established that, overall, 50% of Ukrainians of working age have found a job and assimilated into the country of their residence, which is consistent with the employment rates of such persons in Ukraine. International law protects the labour rights of such persons in terms of prompt payment of wages, decent pay, protection against unlawful dismissal, balance between work and rest, etc., on a par with Ukrainian law in times of peace.

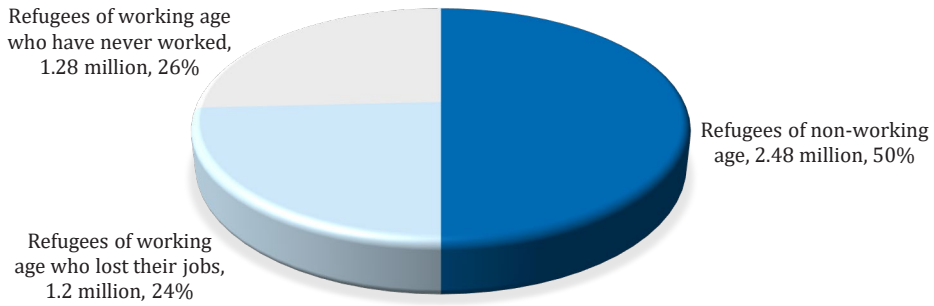


Figure 1. Diagram of employment rates of the able-bodied population who were forced to go abroad
Source: compiled by the author of this study based on data from ILO (2022)

The main problem for the labour sector during martial law is the possible risk of infringement of labour rights, including freedom of work. According to O.O. Konopeltseva (2016), for an employee, freedom of labour means the ability to choose an employer (both individual and legal entity), place of work, workplace, job function, and receive remuneration accordingly. For an employer, freedom of labour means the right to freely select employees, set wages, conduct collective bargaining and conclude collective agreements, adopt local regulations within its competence and establish employers' associations. The principle of freedom of labour, including the right to work, excludes the possibility of forced labour, since in this case there can be no talk of freedom of labour and the right to work, which everyone has can choose or to which they agree without coercion (Bozhko, 2018).

Within the framework of its international commitments, Ukraine has accepted the obligation to refrain from using any form of forced labour. This includes zero tolerance for political pressure or the use of forced labour as a means of punishment, mobilising labour for economic development, maintaining labour discipline, punitive measures for participation in strikes or other forms of protest, and discrimination based on race, social or national origin, or religion against employees[1].

The prohibition of forced labour is also prescribed in Article 43 of the Constitution of Ukraine[2], however, it does not apply to military or alternative (non-military) service, and to work or service performed by a person pursuant to a court verdict (decision) or following laws on martial law or a state of emergency. Under martial law, there is a need to distinguish between the interpretation of the terms "forced" and "necessary" labour, which can actually be applied in certain cases.

In its conclusions on Ukraine's compliance with Article 1 of the European Social Charter[3], the Council of Europe Committee stressed that any form of forced or compulsory labour should be inadmissible[4]. For the definition of such labour, the Committee refers to the International Labour Organization's Forced Labour Convention[5] and the judgments of the European Court of Human Rights in "Van der Mussele v. Belgium"[6] and "Siladin v. France"[7].

According to Article 4 of the European Convention[8], states shall be obliged to adopt and enforce laws that punish slavery, servitude, and forced or compulsory labour. It is vital to consider that these obligations should be understood in the context of the Council of Europe Convention on Action against Trafficking in Human Beings. Labour exploitation, which includes forced labour, slavery, and servitude, is one of the forms of exploitation covered by the definition of human trafficking.

The Committee draws on the case law of the European Court of Human Rights and international legal instruments to interpret Article 1§2 of the European

[1] Convention of Forced or Compulsory Labour No. 29. (1956, August). Retrieved from https://zakon.rada.gov.ua/laws/show/993_136#Text.
[2] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[3] European Social Charter (Revised). (1996, May). Retrieved from https://zakon.rada.gov.ua/laws/show/994_062#Text.
[4] Conclusions of European Committee of Social Rights No. 2020/def/UKR/1/2/EN. (2021, January). Retrieved from https://hudoc.esc.coe.int/eng#{%22sort%22:[%22escpublicationdate%20descending%22],%22escdcidentifier%22:[%222020/def/UKR/1/2/EN%22]}.
[5] Convention of Forced or Compulsory Labour No. 29. (1956, August). Retrieved from https://zakon.rada.gov.ua/laws/show/993_136#Text.
[6] Decision of the European Court of Human Rights No. 8919/80 "Van der Mussele v. Belgium". (1983, November). Retrieved from https://hudoc.echr.coe.int/ukr?i=001-62147.
[7] Decision of the European Court of Human Rights No. 73316/01 "Siladin v. France". (2021, April). Retrieved from https://hudoc.echr.coe.int/ukr?i=001-68376.
[8] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

Social Charter[1], which imposes on States Parties the obligation to effectively protect the rights of workers to earn a living and to live in conditions of free occupation. States Parties to the Charter have positive obligations to introduce legislation to prevent forced labour and other forms of labour exploitation, to protect victims, and to investigate crimes of this kind.

At the same time, Ukraine has a labour duty established at the legislative level. According to the Decree of the Cabinet of Ministers of Ukraine No. 753 of 2011[2], in areas where martial law has been declared, the military command, jointly with other state bodies or independently, is entitled to impose labour service and mobilise citizens to perform socially useful tasks. The principal purpose of these duties is to carry out tasks related to the defence of the country and emergency response. The duration and remuneration of such tasks are regulated by labour law. Within the framework of these responsibilities, military commanders can use the resources, property, and facilities of various enterprises, organisations, and individuals. Labour service may be imposed on able-bodied persons who are not involved in defence or rescue operations and who do not work at enterprises, institutions, or organisations to perform work related to the country's defence. The above creates the need to establish criteria for distinguishing between the concepts of "forced labour" and "necessary labour".

The conditions of martial law lead to the institutionalisation of forced labour, which includes a system of obligations imposed on citizens during a military conflict. These responsibilities are defined and regulated by the relevant legislation and involve the performance of certain work in extraordinary circumstances, mostly under the influence of regulatory pressure from mandatory norms. In this context, the key point is the observance of the legal grounds for the use of forced labour during martial law. First of all, this concerns the key legal aspect that defines the right to work through the conclusion of an employment contract. As defined in the Forced or Compulsory Labour Convention No. 29[3], forced or compulsory labour is an activity that is required of a person under the threat of punishment for refusal to perform it. On the other hand, necessary labour is legitimate and necessary, remaining free from enslavement or coercion.

Notably, the basis of the necessary work is a person's inner conviction and desire to exercise their inalienable natural right to work. At the same time, forced labour is manifested in interference with a person's will through legal pressure and the threat of punishment for refusing to perform certain work. In wartime situations, voluntary work by volunteers who provide aid on their own initiative and conviction can be considered necessary labour. Therefore, within the meaning of the Law of Ukraine "On the Legal Regime of Martial Law"[4], the mobilisation of persons to work by imposing labour duty or other restrictions in the field of labour organisation cannot be considered as forced labour. However, it is crucial to strike a balance between the need to protect the state and ensure human rights, including the right to freedom of work. Therefore, any restrictions on this right must be substantiated and follow the principles of proportionality.

The current Labour Code of Ukraine[5] is somewhat outdated and in some cases unable to resolve disputes between employees and employers not only in wartime but also in peacetime. Therewith, effective regulation of labour relations requires a clear definition of the rights and obligations of the main parties to these relations – the employee and the employer or an authorised body, whose relations are based on the correspondence of the rights and obligations of one entity to the other. The quality of the regulatory framework for labour relations depends on how effectively these actors exercise their rights and fulfil their obligations according to the constitutional right to work.

Certain provisions of the "martial legislation" are quite modern and entitled to be interpreted in the new Labour Code. Thus, the innovation of the aforementioned Law of Ukraine No. 2136-IX[6] is the expansion of the rights of the parties to labour relations in the context of freedom of contract – the right of the parties to an employment contract to determine its form independently (Part 1 of Article 2), as well as the increase in the possibility of concluding fixed-term employment contracts (Part 2 of Article 2) and the possibility for the employee and employer to terminate the employment contract at their own initiative at any time without giving two weeks or two months' notice somewhat equalises the rights of the parties to the employment contract (Article 4). These provisions should be viewed as adapted to the conditions of martial law. The law also prescribes the possibility of transferring an employee without their consent (Article 3), but this does not limit their right to refuse to follow the employer's order. Refusal may lead to termination of the employment contract without any additional sanctions,

[1] European Social Charter (Revised). (1996, May). Retrieved from https://zakon.rada.gov.ua/laws/show/994_062#Text.
[2] Resolution of the Cabinet of Ministers of Ukraine No. 573 "On Approval of the Procedure for Engaging Able-bodied Persons in Socially Useful Work under Martial Law". (2011, July). Retrieved from https://zakon.rada.gov.ua/laws/show/753-2011-%D0%BF#Text.
[3] Forced or Compulsory Labor Convention No. 29. (1956, August). Retrieved from https://zakon.rada.gov.ua/laws/show/993_136#Text.
[4] Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (2015, April). Retrieved from https://zakon.rada.gov.ua/laws/show/389-19#Text.
[5] Labour Code of Ukraine. (1971, December). Retrieved from https://zakon.rada.gov.ua/laws/show/322-08#Text.
[6] Law of Ukraine No. 2136-IX "On the Organisation of Labour Relations in Conditions of Martial Law". (2022, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2136-20#Text.

coercion, or pressure. In the case of changes to the essential terms and conditions of an employment contract, the restrictions relate mainly to procedural issues rather than to the substance of the rights to freedom of work, prohibition of forced labour, and guarantees of the right to freely dispose of one's abilities to work and choose one's occupation.

According to the law, if it is not possible to pay salaries due to military operations, such payments may be suspended until the company can resume its core business. Notably, from the standpoint of labour legislation, a work stoppage caused by the lack of organisational or technical capabilities necessary to perform work, force majeure, or other circumstances is considered a period of downtime (according to Article 34 of the Labour Code of Ukraine[1]).

This provision poses considerable risks for the country in the context of armed conflict, as it is intricately linked to the right to remuneration for work and is recognised in leading international documents. Specifically, Article 23 of the Universal Declaration of Human Rights[2] guarantees the right to just and sufficient remuneration to ensure a decent living for the worker and their family. Furthermore, States Parties recognise the right of everyone to just and equitable conditions of work, including adequate remuneration, which shall be ensured as a minimum for all workers. In addition, Article 7 of the International Covenant on Economic, Social, and Cultural Rights[3] guarantees the right to just and satisfactory conditions of work, including the right to fair remuneration for work performed. The International Labour Organization Convention No. 100[4] declares the right to equal pay for equal work without any form of discrimination, while the International Labour Organization Convention No. 131[5] recognises the right to remuneration for work and other social security as a basic human right. Article 4 of the European Social Charter[6] also defines the right to fair working conditions, including fair remuneration for work.

According to O.E. Kostyuchenko (2019), by revealing the essence of the terms "fair working conditions" and "fair remuneration", the international community seeks to achieve working conditions that not only provide employees with conditions for their existence, but also contribute to their comprehensive personal development. This ultimately underlies further socio-economic progress of society as a whole.

The Law's provisions on restrictions on collective bargaining agreements during martial law (Article 11) should also be critically assessed. The partnership between employees and employers is a key component of social management of labour relations, which includes collective responsibility and interaction between both parties to achieve common and mutually beneficial goals and results. The influence of trade unions and social dialogue on the state and on the observance of guarantees is of great significance. They will also influence the struggle for social change (Kyrylov & Cherevko, 2023). Thus, the termination of the collective agreement carries the risk of violating the labour rights of employees, specifically, remuneration, which, under martial law, will lead to a decrease in the level of income of the population and increase the unemployment rate.

A detailed comparative analysis with analogous foreign regulations can help to identify common and different aspects. In the United States of America, for instance, martial law is governed by federal laws such as the War Powers Resolution[7] and the National Defense Authorization Act[8]. These laws may impose restrictions on the right to work during a military conflict, specifically regarding the preservation of jobs and working conditions. According to C.L. Fisk (2021), martial law can create difficult conditions for employees, including issues of job security, working conditions and wages. In this context, labour legislation can provide not only a model, but also certain tools to protect workers' rights, including mechanisms to stabilise jobs in case of mobilisation, protection against arbitrary detention, and guarantees of safety in the workplace. Furthermore, organisational measures, such as the right to strike or negotiations with employers to protect the rights of employees in wartime, may be important. French legislation, specifically the Labour Code of France[9] and the Defence Code of France[10], prescribes a special status of employees during wartime, which guarantees them protection of their rights to wages, working conditions,

[1] Labour Code of Ukraine. (1971, December). Retrieved from https://zakon.rada.gov.ua/laws/show/322-08#Text.
[2] Universal Declaration of Human Rights. (1948, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_015#Text.
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[8] Public Law of United States of America No. 106-398 "National Defense Authorization Act". (2001, October). https://www.govinfo.gov/content/pkg/PLAW-106publ398/pdf/PLAW-106publ398.pdf.
[9] Labor Code of France. (2024, April). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072050/.
[10] Defence Code of France. (2024, May). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006071307/.

and job security. In Germany, the right to work under martial law is regulated by the laws "On Working Time"[1] and "On the Participation of Soldiers"[2], which prescribe compensation and aid to employees who may be affected by the conflict.

Discussion

The observance of the right to work in times of war has been the subject of research by many researchers who have come to analogous conclusions on the need to follow international law in Ukrainian legislation during the war, but each of them has a different emphasis and approach to the problem. T. Rutherford (2024) examines the impact of martial law on labour relations in the United States of America, focusing on federal laws governing this area. The researcher points to the restrictions on the right to work during military conflicts and the need to protect workers' rights in these circumstances. One of their proposals is to include provisions in federal legislation that guarantee the preservation of jobs and working conditions for employees during wartime. The researcher also recommends developing mechanisms to stabilise jobs in case of mobilisation and to protect workers from arbitrary detention. Furthermore, Rutherford also highlights the significance of organisational measures, such as the right to strike or bargaining with employers, to protect workers' rights during wartime. This opinion cannot be fully agreed with, as even peaceful gatherings can pose a risk to life in conditions of danger, which is unacceptable to the legislator. It is advisable to establish alternative forms of strike action, such as mediation, the use of IT technologies, and making silent strikes available in the form of work stoppages with proposals to the employer online.

Analogously, J.-P. Le Crom (2019) focused on the dynamics of labour relations in France during the wartime period. The researcher analysed a series of measures aimed at protecting wage rights, working conditions, and job security in this period of uncertainty. J.-P. Le Crom's (2019) main proposals included amending legislation to provide greater flexibility in regulating labour relations during the war and effective protection of employees' rights in a changing environment. Furthermore, the researcher recommended developing mechanisms for resolving labour conflicts and ensuring effective monitoring of the observance of workers' rights during wartime to ensure their adequate implementation and protection. Notably, flexibility in labour relations in times of crisis is key to respecting employees' rights. To this end, the author recognises that variations in the conclusion and termination of an employment contract, as well as changes to its terms and conditions, are appropriate, modern, and promising in peacetime.

At the same time, C. Schmidt (2005) studied the impact of martial law on labour relations in Germany. The researcher stressed the need to provide compensation and support to employees affected by the military conflict. One of the key proposals was to include provisions in the legislation aimed at providing compensation and support to these workers. Furthermore, Schmidt recommended developing mechanisms to stabilise jobs in case of mobilisation and ensure safety at the workplace under martial law. The researcher also emphasised the significance of effective control over the observance of workers' rights during a military conflict and suggested employing the practices of other countries in this area to improve the situation in Germany. It is worth agreeing with the researcher and emphasise the importance of effective monitoring of the observance of workers' rights during military conflict and suggest using the practices of other countries to improve the situation in the country under study.

Ukrainian scholars, specifically M. Mendzhul & A. Kalko (2022), point to the significance of maintaining flexibility in the regulation of labour relations during a military conflict. They consider changes that restrict workers' rights, but at the same time believe them necessary for the functioning of the economy and job security. Researchers propose to amend the legislation with a provision on the possibility of cancelling the suspension of an employment contract by an employee. This will provide employees with greater flexibility in restoring their jobs after the end of martial law. They are also developing a specific provision on the cancellation of the suspension of an employment contract, which may improve the situation for employees during the military conflict.

Therewith, it is important to emphasise the significance of respecting the fundamental principles of labour law and calls for any restrictions to be temporary and reasonable during this period. The study focuses on the observance of the leading principles of labour law, such as freedom of work and prohibition of discrimination in the labour sphere, identifies restrictions that may arise in a time of war and calls for the temporary nature of these restrictions to further restore the economy and develop the state. It also points to the need for changes in the legislation on remuneration and control over the observance of workers' rights during wartime.

Analogous conclusions on the vital aspects of human and civil rights observance in wartime have been made by Y. Matvieieva (2023), who emphasises the significance of effective protection of human and civil rights in the context of military conflict. The researcher

[1] Law of Federal Republic of Germany No. I 1170 "On Working Time". (1996, May). Retrieved from https://www.gesetze-im-internet.de/arbzg/BJNR117100994.html.
[2] Law of Federal Republic of Germany No. I 2065 "On the Participation of Soldiers". (2016, August). Retrieved from https://www.gesetze-im-internet.de/sbg_2016/BJNR206510016.html.

stresses that without a proper mechanism for exercising these rights, they become declarative and have no real value for people. Y. Matvieieva (2023) also notes the need to punish those responsible for violating international law and to protect against the aggressor country's encroachment on territorial integrity. At the same time, the present study highlighted the significance of an effective mechanism for monitoring the observance of employees' rights in the context of military conflict and proposed a series of practical measures, such as monitoring and supervision of enterprises, development of mechanisms for resolving labour disputes and use of the practices of other countries in this area.

Conclusions

The study analysed the legal regulation of the right to work during military operations and martial law. The use of specialised scientific methods helped to thoroughly analyse the regulations and international standards, compare approaches to this issue in different countries, and help systematise and summarise existing data, which offered a better insight into the problematic and allowed formulating recommendations for future research and legal solutions. The analysis of the European Court of Human Rights judgments provided an important legal basis for understanding and analysing the problem.

It was found that martial law has a substantial impact on labour relations in Ukraine. On the one hand, temporary measures were introduced to protect workers' rights and stability in the labour market. On the other hand, there are numerous violations of labour rights. The study stated that under martial law, the state is not entitled to restrict the right to work, but in compliance with the principle of proportionality – any such restrictions must be substantiated, temporary, and proportionate to the purpose they pursue. Thus, the state's defence cannot be built on human rights violations; the right to work must be guaranteed at all times.

The study emphasised the need for constant monitoring and updating of the legislation regulating labour relations in wartime, accommodating changes in the situation and needs of society. Only through continuous improvement and adaptation of the legal framework can the effective protection of employees' rights and stability and order be ensured during a period of military conflict. The proposed recommendations can serve as a basis for improving the labour legislation of Ukraine and ensuring stability in the labour market under martial law. For further research in this area, it is advisable to focus on the analysis of labour rights violations, the development of new control mechanisms, and the study of the impact of martial law on gender equality in the labour market.

In the context of analysing the right to work under martial law in Ukraine, it is important to consider the effectiveness and efficiency of the existing mechanisms for monitoring the observance of these rights to ensure the implementation of the regulations governing labour relations during the period of military conflict.

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Conflict of Interest

None.

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Право на працю в умовах воєнного стану: законодавчий аспект в Україні

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Анотація
Право на працю є одним із фундаментальних прав людини, гарантованих міжнародними документами та конституціями більшості країн, серед яких Україна. Проте умови й обмеження, що стосуються права на працю в умовах воєнного стану, можуть змінюватися. У зв'язку з постійною загрозою незалежності України, а також життю та здоров'ю її громадян, регулювання трудових відносин істотно відрізняється від мирного часу, що потребує наукового обґрунтування. Метою роботи було окреслення основних норм трудового права щодо втілення особою права на працю відповідно до соціально-правового спрямування діяльності держави в умовах правового режиму воєнного стану. У статті засвідчено важливість забезпечення стабільності й безпеки в умовах воєнного стану, однак акцентовано на тимчасовості обмежувальних заходів. Було обґрунтовано вагоме значення збереження балансу між інтересами роботодавців і працівників, а також розвитку трудового законодавства, щоб воно враховувало специфіку ситуації під час воєнного конфлікту. Права людини не можуть бути порушені як у мирний, так і у воєнний час. Навпаки, держава повинна створювати умови для вільного розвитку праці, реалізації потенціалу людини. На основі формально-юридичного аналізу законодавства України воєнного часу, порівняння різних нормативно-правових документів і наукових позицій висвітлено проблемні аспекти дотримання конституційного права на працю. Сформульовано відповідні висновки, які окреслюють юридичні шляхи досягнення балансу інтересів роботодавця та працівника, а також визначено пропозиції з удосконалення законодавства. Запропоновані в статті рекомендації можуть бути використані законодавцем для вдосконалення чинного трудового законодавства України

Ключові слова:
трудові відносини; примус до праці; трудові права; конституційні права; трудовий кодекс