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SUPERVISION AND CONTROL OVER COMPLIANCE WITH LABOR LAW IN UKRAINE DURING THE MARTIAL LAW

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ABSTRACT

The study deals with organizational and legal principles of supervision and control over compliance with labor law in Ukraine during martial law. There were determined general trends in the development of labor law and peculiarities for the organizational and legal supervision and control provision in the field of labor. First, it is a legislative narrowing of labor rights and at the same time preservation of such a guarantee of compliance with minimum labor rights as supervision and control. In the conditions of martial law, state supervision (control) measures are carried out in a more favorable mode for employers: conducting only unplanned inspections, a limited list of reasons for conducting inspections, and non-application of fines provided that the orders of labor inspectors are fulfilled. Second, the trend of increasing the flexibility of labor relations corresponds to the strengthening of supervision (control) over undeclared work, which is accompanied by the broad application of informational and advisory measures. Third, the general trend of modernization of the national system of managing the safety of workers at work based on the principles of proactivity and prevention of industrial risks corresponds to increasing the role of the employer's internal control in ensuring proper, safe, and dignified working conditions. Finally, the digitalization of supervision (control) measures is one of the optimization trends and the general direction of improvement of public administration.

Keywords: Supervision, Control, Labor law, Martial law, Labor inspection, Ukraine.

INTRODUCTION

One of the challenges for Ukraine during the legal regime of martial law is the issue of optimal legislative regulation for labor relations, considering the need to ensure economic needs for the defense of the country and take into account certain social consequences of the Russian-Ukrainian war such as unemployment growth, internal and external labor migration, the imbalance between demand and supply of labor force, an increase of shadow employment, and a decrease of actual wages.

The military aggression of the Russian Federation against Ukraine exacerbated long-overdue demands for structural reforms in the direction of European integration and intensified the corresponding legislative activity. On April 22, 2022, the Law of Ukraine "On the De-Sovietization of the Law in Ukraine" was adopted; according to its final provisions, the Cabinet

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of Ministers in Ukraine had to develop and submit for the Verkhovna Rada of Ukraine a draft for the Labor Code of Ukraine within a year. Labor law reform is one of the priorities since the lion's share of the population is involved in the labor sphere. It is this sphere that determines the Ukrainian economy's development and well-being for both employees and employers. Social peace or social harmony are components of general peace. It is no coincidence that the Statute of the International Labor Organization (hereinafter – the ILO) was developed by a special Commission on International Labor Law, approved on April 11, 1919, at the Paris Peace Conference and included as Part XIII to the Versailles Peace Treaty. The Statute of the ILO defines one of the functions of the International Labor Office as providing assistance to governments in the development of laws and regulations, improving administrative practices and the system for labor inspections (clause "b" part 2 of Article 10) to serve as an organizational and legal guarantee of the labor rights protection as levels of international and national institutions (Statute of the International Labor Organization, 1919). If we consider peace according to the definition of the famous American political scientist Quincy Wright (the author of "The Study of War") as a balance of forces that includes political, social, cultural, and technological factors, then the social balance in society is an integral component of general peace. That is why it is so important for Ukraine, facing the large-scale armed aggression of the Russian Federation, to continue reforming the law and modernizing state institutions. During the war, Ukraine received the status of a candidate for joining the European Union, once again demonstrating the European integration aspirations of its citizens.

In the labor sphere regulation, the normative design activity regarding the development of the draft for the Labor Code of Ukraine continues. In parallel, changes are being made to the current Code of Labor Laws in Ukraine (hereinafter referred to as the Labor Code). During the legal regime of martial law, which was introduced on February 24, 2022, in connection with the military aggression of the Russian Federation against Ukraine, there were changes and additions to the Code of Labor Laws 14 times. Some of them concern the fulfillment of Ukraine's obligations to bring the law in line with European standards, its development began before the introduction of martial law. The process of the laws draft adoption was not suspended in the conditions of martial law. It became a demonstration of the state's fulfillment of its obligations and confirmation of the issue of workers' legal protection. The innovations related to ensuring equal labor rights, preventing discrimination in the field of work, and mobbing (harassment) at the workplace. These are also innovations related to the introduction of employment contracts with non-fixed working hours to increase the flexibility of labor relations in the conditions of the spread of the latest forms of employment and remote technologies usage. We should note the legislator's measures to simplify the regulation of labor relations in the field of small and medium-sized enterprises with the introduction of a special procedure for concluding labor contracts.

The legal regime of martial law provides for the restriction of the constitutional rights and freedoms of a person and a citizen, including labor rights, defined by Articles 43 and 44 of the Constitution of Ukraine (Constitution of Ukraine, 1996). Limitation of labor rights can be defined as a legitimate, purposeful, quantitative, and/or qualitative narrowing in the process of legal implementation for the measure of a person's possible behavior (authority). Such restrictions have an "exclusively legal, temporary, targeted, non-discriminatory, socially useful



character" and are an indicator of the relationship between the state and a person in a special period (Lazarev, 2022). The Constitutional Court of Ukraine in Decision, June 01, 2016 No. 2-rp/2016 emphasized: "...in case of constitutional right or freedom restriction, the legislator is obliged to introduce such legal regulation that will make it possible to optimally achieve a legitimate goal with minimal interference in the realization of this right or freedom and not to violate the essential content of such a right" (Decision of the Constitutional Court of Ukraine, 2016, No. 2-rp/2016).

The Law of Ukraine "On the Organization of Labor Relations in Martial Law", March 15, 2022 (hereinafter – Law No. 2136-IX) (Law of Ukraine No. 2136-IX, 2022) has priority for application in the field of labor. This means that the labor law norms in part regulated by the said Law are not applied in a special period. Thus, we have a significant number of innovations in labor law due to the introduction of the legal regime of martial law and the ongoing process of reforming law and state institutions in the field of labor management.

The purpose of the study is to determine organizational and legal principles of supervision and control over compliance with labor law during martial law based on the analysis of normative legal acts adopted in a special period, and taking into account the approaches grounded in legal doctrine regarding the social purpose of the institution of supervision and control, its prospects development in the process of reforming labor law and further approximation to international and European standards.

To achieve the set goal, we have defined the following tasks: to characterize the limitations for labor rights and guarantees of their provision in Ukraine during the period of the legal regime of martial law; determine trends in the legal regulation of labor relations and features for organizational and legal provision of supervision and control; outline the prospects for the development of the supervision institution and control in the process of labor law reform.



Literature Review

Yu. Gryshina and Yu. Chanyshcheva studied the trends in the development of labor law under martial law, including "strengthening the protection of labor rights for employees and guarantees of their implementation" (Gryshina & Chanyshcheva, 2022). V. Panasiuk, Yu. Polyuk, I. But, I. Zhivotovska, and P. Sinitsyn found out the grounds and conditions for the restriction of constitutional human rights under martial law (Panasiuk *et al.*, 2022). Yu. Prytyka, I. Izarova, L. Malyarchuk, and O. Terek focus on the biggest crisis in the labor market in Ukraine during the years of independence, caused by the military aggression of the Russian Federation, and justify the need to apply stabilization measures: assistance in relocation business from the war zone; one-time aid to victims, compensation payments to internally displaced persons and their employers; reduction of the tax burden on business; amending the law to strengthen the protection of workers' rights (Prytyka *et al.*, 2022). A. Slipachyk characterizes such a novel labor law of the martial law period as "suspension of the employment contract" and control measures applied by the State Labor Service of Ukraine (from now on referred to as the State Labor Service) in the event of an employee contesting the illegality of the specified ground application (Slipachyk, 2022).

At the same time, the specifics of the legal regulation of supervision and control over compliance with labor law in Ukraine in the conditions of martial law did not become the subject of separate scientific investigations actualizing the conduct of the study.

MATERIALS AND METHODS

To achieve the goal of the study, there were used the legal acts adopted under martial law determining the grounds and procedure for supervision and control over compliance with labor law; conventions and other ILO documents; judicial practice; information data of the State Labor Service, other institutions and organizations; scientific achievements of Ukrainian and foreign scientists.

The use of research methods was determined by the set goal and the tasks. The general philosophical method of dialectics enabled the integrity for dynamic knowledge of value, normative and organizational principles of supervision, and control over compliance with labor law. The method of analysis and synthesis made it possible to highlight several general trends in the development of labor law and features of the legal regulation of supervision and control under martial law. Specific sociological and statistical interdisciplinary research methods allowed us to analyze the practical directions of State Labor and their effectiveness. The hermeneutic method used in the interpretation of legal sources made it possible to find out the reasons for implementing unplanned measures for state supervision (control) in martial law conditions. The prognostic method served as a basis for determining trends in the development of the legal institution for supervision and control over compliance with labor law to remain relevant in the expected post-war period.

RESULTS AND DISCUSSION

The Law of Ukraine "On the Organization of Labor Relations in Martial Law", March 15, 2022, introduced restrictions on the constitutional rights and freedoms provided for in Articles 43 and 44 of the Constitution of Ukraine and determined the specifics of the labor relations for employees in a special period regarding the conclusion, suspension, and termination of the labor contract, changes in working conditions, establishment and accounting of working time and rest time, involvement for certain categories of workers in the performance for certain types of work (Law of Ukraine No. 2136-IX, 2022). The provision of minimum labor guarantees was entrusted by the Law to trade unions, which have the right to exercise public control. The first edition of Law No. 2136-IX did not provide for state supervision and control over its compliance. By Resolution No. 303 of the Cabinet of Ministers of Ukraine, March 13, 2022, there were suspended the scheduled and unscheduled measures of state supervision (control), including those carried out by the State Labor Service of Ukraine (Decree of the Cabinet of Ministers of Ukraine No. 303, 2022).

The joint representative body of trade union associations appealed to the Cabinet of Ministers of Ukraine (letter dated April 27, 2022, No. 01-12/168-SPO) with the justification of the need for state supervision (control) of compliance with labor law during the legal regime of martial law (Department of labor protection of the FPU apparatus: news, 2022). In addition, the State Labor Service received a significant number of appeals from employees about violation of their rights in the form of non-payment of their wages, dismissal, granting of unpaid leave, etc. Of course, such violations were not always caused by the illegal actions of employers, they were often caused by the impossibility of continuing labor relations due to the occupation, hostilities, dangerous working conditions, rocket attacks, the lack of shelter at the enterprise, and



circumstances of financial insolvency. Thus, according to a survey conducted in March 2022 by the European Business Association (EBA), among member companies of the association, only 17 % had financial reserves for one year or more, 28 % – for six months, 43 % of companies had financial reserves for several months, 6% were financially exhausted. The situation regarding the payment of wages and the dismissal of employees at small and medium-sized enterprises in Ukraine under martial law in March - May 2022 is shown in **Table 1**.

Table 1. The situation regarding the payment of wages and dismissal of employees at small and medium-sized enterprises in Ukraine under martial law March–May 2022) (Pyshchulina & Markevich, 2022)

Employers	March 2022	April 2022	May 2022
Salaries are paid in full	27 %	25 %	23 %
Salaries were reduced	19 %	27 %	32 %
They do not pay wages	21 %	22 %	21 %
Staff are fired	8 %	9 %	12 %

To ensure the observance of labor rights provided for by the legal regime law of martial law and the legalization of employment, on July 1, 2022, there was adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Optimizing Labor Relations" (Law of Ukraine No. 2352-IX, 2022), stating supervision (control) of the State Labor Service and its territorial bodies resumed in the form of unscheduled measures aimed at ensuring compliance with the provisions of Law No. 2136-IX, as well as on issues of identifying unregistered labor relations and terminating employment contracts.

Such measures of state supervision (control) in the conditions of martial law have several features, defined both at the normative level of national law for a special period, and determined by practical steps to implement the functions of the State Labor Service with the assistance of the ILO and foreign partners.

In martial law conditions, state supervision (control) retains its importance as a guaranteed tool for the minimum protection of labor rights. At the same time, measures of state supervision (control) are carried out in a more favorable mode with business entities/employers. The crisis of the labor market, caused by Russia's military aggression, is the largest during the entire period of independence, leading to a decrease and disruption of the human capital structure in the sense that is justified by Brian Langille (Langille, 2011). In March 2022, the number of job offers, which amounted to about 100,000 vacancies per month before the war, fell 15 times, recovering to only half at the beginning of 2023 (Tarasovsky, 2023). That is why it is so essential, both at the regulatory level and in the process of law enforcement, to facilitate the coordination of all participants' interests in the labor market.

ILO Convention No. 81 of 1947 on labor inspection in industry and trade, ratified by the Law of Ukraine on September 8, 2004, defines three main tasks of labor inspections: 1) ensuring the application of legal norms; 2) provision of both employees and employers with information and consultations on means of compliance with legal norms; 3) notifying the competent authorities of deficiencies and abuses (ILO Convention No. 81, 1947). At the same time, such tasks are



"indivisible, complementary, and important for the effective application of national labor law", (Report of the General Director of the Ministry of Labor, 2021, p. 7).

Concerning the control measures of labor inspections in the conditions of martial law, only unscheduled inspections are foreseen. The planned inspections are not carried out. In addition, the range of grounds for unscheduled inspections is somewhat narrowed, as it is shown by the data in the table below. The planned inspections are not carried out. In addition, the range of grounds for unscheduled inspections is somewhat narrowed, as it is shown by the data in the Table 2.

Table 2. Reasons for carrying out unplanned measures of state supervision (control)

General grounds for carrying out unplanned events	Grounds for carrying out unplanned measures in the conditions of martial law
(Part 1, Article 6 of the Law "On the basic principles of state supervision (control) in the sphere of economic activity")	(Part 3 of Article 16 of the Law "On the Organization of Labor Relations in the Conditions of Martial Law")
submission of a written statement by the business entity to the relevant state supervision (control) body about the implementation of a state supervision (control) measure at its request	
detection and confirmation of the data unreliability declared by the business entity in the mandatory reporting document (except the specified by the Law exceptions)	
verification of compliance by the business entity with prescriptions, orders, or other administrative documents regarding the elimination of legal requirements violations	in connection with the failure of the business entity to comply with orders to eliminate violations of legal requirements issued after May 1, 2022
appeal by an individual (individuals) about a violation that caused damage to his (their) rights, legitimate interests, life or health, the surrounding natural environment, or state security	
non-submission by the business entity of mandatory reporting documents for two reporting periods in a row without valid reasons or without providing written explanations about the reasons that prevented the submission of such documents	
the mandate of the Prime Minister of Ukraine to inspect business entities in the relevant field in connection with detected systemic violations and/or the occurrence of an event that has a significant negative impact on the rights, legitimate interests, life, and health of a person, environmental protection and ensuring state security	
the occurrence of an accident, death of the victim as a result of an accident or occupational disease, which was connected with the activities of the business entity	
petition of local self-government bodies officials about violation of legal requirements by a business entity in cases where the right to submit such a petition is provided for by law	



at the request of the Kyiv city military
administration or regional military
administration

The fines are not applied to employers in the case of full implementation and within the prescribed period for the violations elimination of the labor law. This proves that in the conditions of martial law, the legislator in Ukraine adheres to the trend of moving away from the punitive and repressive model of control to the preventive model, under which control increasingly acquires informational and analytical significance" (Theoretical principles of solving public administration problems in Ukraine, 1995, p. 20), aimed at preventing violations based on a risk-based approach.

The central body of the executive power, which implements state policy on supervision and control over compliance with labor law, is the State Service of Ukraine on Labor Issues. Characterizing the activity of the State Labor Service under martial law, it is worth emphasizing such a function as providing employers and employees with information and conducting consultations on the most effective means of compliance with legal norms, which meets the requirements of point "b", part 1, article 3 of the ILO Convention No. 81. Implementation of the mentioned function today is a reflection of the leading modern trend in the labor market, the growth of preventive inspection and information counseling for the widest possible range of interested persons (Burlachenko, 2021). The importance of such areas of State Labor activity increased under the conditions of martial law. Thus, since July 1, 2022, labor inspectors have launched an information campaign called "Come out into the light!", aimed at clarifying the benefits of declared work and employers' responsibility for failure to formalize employment relationships. The information campaign is implemented with the support of the EU-ILO project "On the way to safe, healthy and declared work".



In addition, with the assistance of the named project, State Labor implements the following areas of activity.

1. Mental health. With the support of the ILO, 300 Ukrainian labor inspectors were trained in psychological first aid (About the ILO in Ukraine, 2022).
2. Combating human trafficking and forced labor. Labor inspectors set up information points at railway stations, bus stations, employment centers, and local authorities to inform internally displaced persons and citizens – mainly women and children who went abroad – about the risks associated with employment. As of the end of September 2022, the campaign to raise awareness about the risks of human trafficking and labor exploitation reached 1.2 million displaced persons from Ukraine (About the ILO in Ukraine, 2022).

The war caused both external migration and internal displacement of citizens. In November 2022, more than 7.8 million Ukrainian refugees were recorded in European countries, and 6.5 million were forced to resettle within the country (ILO response to the Ukraine crisis, 2022). The growth of labor mobility requires guarantees of compliance with legal norms in the cross-border dimension. (Report of the General Director of the MBP, 2021, p. 32). Joint inspections conducted by representatives of authorized state bodies of several countries have become one of the methods of such a guarantee.

3. Above all, practical help. The State Labor Service has created an online portal that contains information about labor relations during martial law. In November 2022, more than 320,000 people used the online consultation service "interactive inspector" (Official website of State Labor: news, November 7, 2022).
4. Assistance to relocated enterprises. More than 3,000 enterprises that left the war zone used the services of the State Labor Service for adaptation in a new place (Ukraine crisis, 2022).

One of the trends in the organizational and legal provision of supervision and control is the "modernization of the national system for managing the employee's safety at work based on the principles of proactivity and prevention of industrial risks" (Ministry of Economy of Ukraine: Information on labor market reform), strengthening the role of the employer's internal control in ensuring proper, safe and decent working conditions that meet European standards, in particular, the requirements of the Council Directive on the introduction of measures designed to encourage the improvement of the safety and health protection of employees at the working place No. 89/391/EEC (EU Council Directive No. 89/391/EEC, 1989). Thus, under the provisions of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Prevention and Counteraction of Mobbing (bullying)" "the employer is obliged to take measures to ensure the safety and protection of the physical and mental health of employees, carry out prevention of risks and tension at the workplace, conduct informational, educational and organizational measures to prevent and counter mobbing (harassment)" (Law of Ukraine No. 2759-IX, 2022).

Discussing the expediency, sufficiency, and limits for the application of the declarative approach to determine the compliance for the material and technical base of the employer with the law on labor protection requirements, taking place as part of the preparation for the draft Law of Ukraine "On the Safety and Health of Workers" (Draft of the Law "On Safety and health of workers at work", 2022), the Cabinet of Ministers adopted a resolution that provides for the extension of the declarative approach to machines, mechanisms, and equipment of increased danger during the period of martial law (Resolution of the Cabinet of Ministers of Ukraine No. 357, 2022).

Regarding the use of the most dangerous works, machines, mechanisms, and equipment, there is still a requirement that employers must obtain a permit. From January 3, 2023, this became possible through the Portal of electronic services of the Ministry of Economy in Ukraine. Such measures demonstrate the ongoing digitization of services, contributing to their transparency and accessibility for employers. Digitization of supervision (control) measures is one of the optimization trends and the general direction of public administration improvement (Kailo, 2021); it helps to reduce the burden on administrative bodies and increases the efficiency of their activities.

The trend of the organizational and legal provision for supervision and control is also coordination and consolidation of the efforts by the State Labor Service, state bodies that have joint tasks with the labor inspectorate, and social partners. Interaction occurs through such a formal mechanism as memoranda and protocols on cooperation recommended for use in the ILO Guidelines on General Principles of Labor Inspection (Report of the General Director of the ILO, 10). Such cooperation, which is carried out for information exchange, and implementation



of joint programs, does not stop in the conditions of martial law. For example, on August 16, 2022, a Memorandum of Cooperation was concluded between the State Labor Service of Ukraine and the Professional Union of Construction and Building Materials Industry Workers of Ukraine. In the Memorandum, the parties stated, among other things, the desire to "strengthen the effectiveness of state supervision (control) and public control over compliance by employers with the requirements of labor and occupational safety law..." (Memorandum on cooperation, 2022).

It is worth noting that the need for cooperation (coordination of actions) between state labor inspection services, other interested state bodies, representatives of employees, and employers has been substantiated by scientists for a long time, together with an emphasis on internal and social-partnership control, development of a safety culture. Thus, Orly Lobel notes that "under a certain set of conditions, safety can be transformed into a common interest and integrated into the main goals of production enterprises. The purpose of the regulatory body is to define these conditions, to maintain and use them, and to recognize cases of their absence" (Lobel, 2005). For today, it is evident that one of the tasks of stabilizing the labor market, both in the conditions of war and in the post-war period, should be, among other things, "... the development of an effective system for labor market management (mechanisms and tools for its implementation), taking into account ... increasing level of social protection and security" (Pyshchulina & Markevich, 2022, p. 2), its component, undoubtedly, is the proper organizational and legal provision of supervision and control over compliance with labor law.

CONCLUSION

Thus, the development of Ukrainian labor law in the conditions of martial law makes it possible to highlight several general trends and features of the organizational and legal provision for supervision and control in the field of labor. Firstly, it is a legislative narrowing of labor rights while maintaining such a guarantee of compliance with minimum labor rights as supervision and control. The first edition of the Law of Ukraine, "On the Organization of Labor Relations in the Conditions of Martial Law," contained a normative prescription regarding public control, which relied on trade unions. The amendments to the Law renewed the measures of state supervision (control), which are carried out in a more favorable regime for business entities/employers, since inspections take place only unplanned, there is a limited range of reasons for conducting inspections, fines are not applied provided that the orders of labor inspectors are fulfilled. This confirms the appointment of supervision and control as a guaranteed tool for the protection of workers' rights, offenses prevention in the field of labor, and the provision of social (public) interest.

Secondly, this is a trend of labor law aimed at eclipsing the labor market, such as strengthening the flexibility of labor relations and simplifying their regulation in the field of small and medium-sized enterprises. Such innovations lead to the measures strengthening for supervision (control) over undeclared employment, and they are accompanied by the wide application of informational and advisory measures.

Thirdly, the general trend for modernization of the national management system is the safety of workers at their working places based on proactivity principles and industrial risks prevention



corresponding to the strengthening of the employer's internal control in ensuring proper, safe, and dignified working conditions.

Finally, the digitalization of supervision (control) measures is one of the optimization trends and general direction for public administration improvement helping to reduce the burden on administrative bodies and increasing the efficiency of their activities.

In the conditions of martial law, the practical activity of the State Labor Service is carried out in the following directions: conducting training on the provision of psychosocial assistance at the new workplace; an information campaign aimed at preventing human trafficking and labor exploitation; creating of an online portal of the State Labor Service on the peculiarities of labor relations under martial law; information services to relocated enterprises.

The trend of the organizational and legal provision of supervision and control is also the coordination and consolidation of the State Labor Service and state bodies that have joint tasks with the labor inspectorate and social partners.

Further steps to improve the system of supervision and control in Ukraine should take place within the framework of the implementation of the EU–ILO project "On the way to safe, healthy and declared work" (January 2020 – April 2023), aimed at ensuring the approximation of the national legal framework regarding safe and healthy work to international and European standards.

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