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THE RESTRICTION OF LABOUR RIGHTS IN WAR CONDITIONS: THE UKRANIAN EXPERIENCE

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ABSTRACT

The full-scale Russian invasion of Ukraine has once again sparked discussions about the mechanisms for ensuring sustainable peace. It is imperative to confront this challenge to safeguard world security and democratic values. Neglect of economic, social, and cultural rights during acts of aggression and other emergency situations can lead to further violations of human rights and, in turn, to further conflicts. The negative challenges faced by Ukraine, and as a result by many other countries, require all possible resources to be mobilized. The critical challenges for the Ukrainian economy are currently represented by a decline in production, an increase in the number of unemployed, weakening stability of state finances, and threats to the currency stability. And obviously, the difficulties arisen have once again shown strong interdependence between labour law and the economic system. As you know, effective social and labour relations constitute an essential component of the business climate. The need for new and effective market mechanisms for regulating labour relations creates new tasks for labour legislation and, at the same time, requires achieving the balance of interests of the parties to labour relations. In this regard, regulations of labour relations under the conditions of the COVID crisis and the war in Ukraine have undergone significant changes and updates, exposing quite a few problems in various social relations areas and requiring an adaptation to the society development under current conditions. Throughout the article, a key point of the author is that in a democratic society, any restrictions on the rights and freedoms of a person and a citizen, even under martial law, must be reasonable and justified. This article critically analyzes recent labour legislation reforms in Ukraine, exploring their implications for employees' rights and the broader socio-political context. It underscores the necessity for balanced legal reforms that uphold labour rights while

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facilitating economic growth and adaptation to international standards, especially amid challenging wartime conditions.

Key words: *International Labour Organization, international labour standards, labour regulation, employment protection, labour flexibility, human rights.*

1. INTRODUCTION

The state's existence in the modern world is one of those inviolable and irrefutable facts, as evidenced by the progressive development of our civilization. At the same time, Western jurisprudence and sociology, prone to exaltation and predictable pessimism, have for quite some time assessed the previous century as the century of the "great crisis of the state", giving preference to studies not of its development, but of its regression and disintegration. At the same time, the opinion was expressed that "the laws of social development, and accordingly, the laws of progress, have not yet been discovered. "[1] Of course, if you look at the reasons for such judgments, you can find them in the realities of the development of modern civilization, which is exposed to the effects of global upheavals. The modern world trembles from rampant terrorism, transnational and national crime, ethnic, religious and territorial conflicts. The collapse of the superpowers that took place at the end of the 20th century had a significant impact on the development of negative views of the state. The negative perception of the state as an organizing system also spread to state institutions, formulating projects of political reforms focused on direct democracy and self-government of the population. However, this situation resulted in severe negative socio-political outcomes, as illustrated by the political doctrines of powerful nations intervening in the affairs of less developed nations through "soft power". This refers to undermining the nation-state's authority by national leaders with advanced ideas and standards of state functioning, leading to the erosion of its institutions. Undoubtedly, at its core, this attitude towards the institution of the state has a particular theoretical explanation and justification. Simultaneously, the events that transpired in Ukraine, including the armed aggression by the Russian Federation and the occupation of Ukrainian territory, alongside the population's active resistance and the crucial role played by state institutions, particularly the President of Ukraine, strongly demonstrate that in contemporary circumstances, the state's role as an organizing societal system dedicated to development and protection is immensely powerful. In this regard, the situation with Ukraine shows that the functioning of any state is dominated by its economic power and ability to provide financing for all the

[1] Cole, G. D. H.: The idea of progress [Review of the idea of progress: a revaluation, by M. Ginsberg], *The British Journal of Sociology*, 4(3) 1953, pp. 266–285.

necessary aspects of protecting its independence, which is characterized in the literature as economic independence.

The analysis of modern research in the field of economic development of the state shows that one of the most necessary elements of the economic independence of the state and its power is the ability of its population to provide themselves and their families with all material benefits by using their abilities and skills during labour activity. At the same time, today, this aspect of the economic activity of the population has significant problems before its implementation. The negative challenges faced by Ukraine, namely the drop in production, the increase in the number of unemployed, the weakening of the stability of public finances, and threats to currency stability indicate the need to review the approaches used in this area and implement those that have proven effective in other states with similar social and political situations. In this connection, in the further development of Ukraine as an economically powerful and independent state, the problem of its interaction with the economic environment, particularly with the population in its labour activity, comes to the fore[2]. In the author's opinion, this problem has several aspects, which greatly complicates its solution. First, Ukraine as a state is in the conditions of a colossal demographic crisis caused by forced migration. Secondly, the regions experiencing the most active ground combat have traditionally accounted for a significant share of the country's economy. The processing industry is the dominant sector in all of these regions; in fact, these five regions account for almost 31 percent of the gross sales of the manufacturing industry in the country. Since the start of the full-scale Russian aggression, 65 percent of enterprises are located in conflict-affected territories, employing about 64 percent of employees and contributing approximately 73 percent of gross sales for Ukrainian micro, small, and medium-sized enterprises[3]. Thirdly, the latest legislation of Ukraine does not correspond to the existing objective realities and needs to be reformed. At the same time, without solving this problem, the further development of Ukraine, which has declared itself an independent and democratic state, is impossible. Along with the observance of world democratic standards for the protection of human and citizen rights, Ukraine should apply those mechanisms that have shown their effectiveness in the process of their application in other states in similar historical conditions. Considering

[2] Ukraine: what's the global economic impact of Russia's invasion?, https://www.economicsobservatory.com/ukraine-whats-the-global-economic-impact-of-russias-invasion, 10/12/2023.

[3] Assessment of the impact of the war on micro, small and medium-sized enterprises in Ukraine, https://www.undp.org/ukraine/publications/assessment-wars-impact-micro-small-and-medium-enterprises-ukraine, 05/10/2023.

the above, in the course of this research, the focus will be on analyzing options for the actions of states in similar socio-political conditions. Attention will be directed towards the development of global standards for regulating the labour activity of the population, which were developed and implemented by international organizations. Additionally, the current state of legal protection of labour rights in Ukraine will be analyzed. This approach is expected to contribute to Ukraine achieving substantial development and evolving into a developed state that upholds European values.

2. DEVELOPMENT OF GLOBAL STANDARDS FOR ENSURING THE LABOUR RIGHTS OF CITIZENS

The development of modern civilization follows the path of protecting natural rights inherent to individuals from birth and acquired during socialization. Among these rights, labour rights are fundamental, serving as the basis for a person's proper existence and ability to provide for themselves. When investigating the essence of labour rights and their fundamental nature, it is important to note that as early as the 19th century, there was an opinion within society "... spent a century in ridiculous disputes about human rights, not caring about the knowledge of the most important right to work, without which other rights are worthless... Our writers have forgotten to define and recognize the decisive right to work, without which the others are just a cruel mockery[4]". Perceiving labour rights as fundamental, philosophers emphasized their importance as decisive for forming the system of all other rights in social society. It was pointed out that labour rights are fundamental rights that influence the provision of other human rights to self-realization and, broadly, to life, because a person, as a citizen of a certain state and as a social being, ensures his livelihood precisely through work. In this connection, attention was drawn to the fact that thanks to receiving payment for the performed labour duties, i.e. the regulated consolidation of the exchange of the use of one's labour resources for a reward in monetary or other form to meet the needs for food, housing, clothing, exercising the right to rest etc. In the 20th century, this trend continued and consolidated both in the world as a whole and in the scientific works of Ukrainian scientists. In particular, one of the leading scientists in the field of Ukrainian labour law is O.I. Protsevsky, who emphasizes the fundamental nature of labour rights and defines labour as the essence of a person or as the person himself, which develops in the context of the state. At the same time, the right to work as a free opportunity for the manifestation of the human essence and other labour rights and freedoms of a person and a citizen are designed to expand and create

[4] Fure, Sh.: Izbrannye sochineniia [Selected works], *Nauka*, 3 1954, p. 525.

conditions for the realization of the basic right to work, its improvement, fair conditions of implementation and payment[5]. In this regard, it is worth noting the idea that labour rights are a subsystem of inalienable, natural capabilities of a person, which are necessary to meet the needs and interests in the field of using the ability to work, which are enshrined in national legislation[6].

At the same time, the formation of labour rights had a certain history and took place against the background of radical socio-political transformations in the world, which were associated with the construction of international legal institutions in this area and the adoption of relevant regulatory acts. The leading international body in the field of protection of labour rights of citizens is the International Labour Organization (ILO). Studying the history of its formation and development through the prism of adopted acts, it is worth noting that, at the beginning of the 20th century, the world was in a state of substantial socio-political cataclysms, which resulted in an almost complete political division of the world and attempts to create a just society. The creation of international organizations on labour market issues dates to the beginning of the 20th century. The First World War and the post-war state of the world played the decisive role in the need to create the ILO. During the war years, trade unions were notably active in matters of international labour regulation. They demanded that an international organization for labour and peace promotion be established at the end of the war. The International Labour Organization was established in 1919 under the League of Nations under Title XIII of the Treaty of Versailles, originally as the International Commission for developing conventions and recommendations on labour law and improving working conditions. In the same year, 1919, it was proclaimed an autonomous international organization affiliated with the League of Nations. Since its establishment in 1919, the ILO has gradually established itself as a sort of international parliament of labour and a forum for trade unions. The ILO is not solely focused on the labour market. Throughout its history, the ILO has advocated higher labour standards not just to promote economic growth, but to pursue social justice and peace. Although peace has often been broken since 1919, the ILO's efforts to protect vulnerable workers, to combat unemployment, and to promote freedom of association are generally recognized as having contributed to democratization and social stability[7].

[5] Protsevsky, O.: The new content of the right to work is the basis of reforming the labour legislation of Ukraine, *Law of Ukraine*, 6 1999, pp. 101-104.

[6] Andriiv V. M.: For the protection of labour rights of workers. *Current problems of State and law*, 57 2011, pp. 343-347.

[7] Charnovitz, S.: The International Labour Organization in its second century, *Max Planck Yearbook of United Nations Law Online*, 4(1) 2000, pp. 147-184.

In 1944, at the 26th session of the International Labour Conference in Philadelphia, the ILO adopted the Declaration on the Aims and Objectives of the International Labour Organization[8], which became an integral part of its Charter, which noted that the main goal of national and international politics is to achieve conditions under which all people, regardless race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, economic stability and equal opportunity.

After the Second World War, as changes were taking place in the world, the scope of the ILO's activities expanded significantly: in addition to norm-setting activities, the scope of the Organization's activities on the creation of social and labour norms of the national legislation of states expanded, and measures were also developed to improve working conditions, establish social and labour justice. The strategic course of the Organization was aimed at the convergence of the labour policy of the regions with the Organization as a whole to ensure the technical exchange of available data and to resolve possible critical situations through universal mechanisms.

The role of the ILO in promoting and respecting labour rights became more prominent in the 1990s. In 1998, the ILO Declaration on Fundamental Principles and Rights at Work[9] and the mechanism implementing the Declaration were adopted. The provisions of the Declaration oblige ILO member states to respect and promote implementation and legal awareness of the following four fundamental principles: "freedom of association and the effective recognition of the right to collective bargaining; the abolition of all forms of forced or compulsory labour; the effective prohibition of child labour; and non-discrimination in employment and occupation".

By the end of the XX century, the ILO is strengthening its role in addressing the challenges posed by changes in the world of work, and the concept of decent work has become an important initiative. According to this concept, productive work is called worthy, which is at the same time free, safe, fairly paid, and developing and does not degrade human dignity. It expands a person's possibilities in social and labour relations, implies a higher satisfaction of the needs of the individual, and contributes to its development, a more complete disclosure of human potential.

[8] Declaration concerning the aims and purposes of the International Labour Organisation, (Philadelphia Declaration), 1944, pp. 621-623.

[9] Declaration on fundamental principles and rights at work , adopted by the International Labour Conference at 86th Session, Geneva, 18 June 1998.

The concept of decent work was finally institutionalized in 2008, when the ILO adopted the Declaration on Social Justice for a Fair Globalization[10]. It defines the principles binding on all ILO member states: freedom of association and the effective recognition of the right to collective bargaining; the abolition of all forms of forced or compulsory labour; the effective prohibition of child labour; non-admission of discrimination in the field of labour and employment.

At present, the ILO faces qualitatively different goals and objectives than those that faced it not only at the beginning of its creation, but even 15-20 years ago. This is due, first of all, to the globalization of the world economy, which has positive and negative consequences. They impact the working people of all countries, who are forced to work in the face of increased competition, accelerated technological change, growing social inequality and military aggression.

Responding to today's challenges, the 106th session of the International Labour Conference in June 2017 adopted ILO Recommendation No. 205[11]. The new ILO Recommendation No. 205 on Employment and Decent Work for Peace and Resilience, adopted at the 106th Session of the International Labour Conference in June 2017, directly marks the revision of Recommendation No. 71 of 1944 on Employment in Transition from War to Peace and replaces it.

The need to revise the 1944 Recommendation on Employment in Transition from War to Peace was motivated by the aim of broadening its scope and providing up-to-date advice on the important role of employment and decent work in the process of reconstruction and ensuring peace, prevention of crises arising from conflicts and disasters, expanding and strengthening resilience. Furthermore, the impacts of conflicts and disasters on poverty, human rights and dignity, development, decent work and sustainable enterprises were considered. The new Recommendation recognizes the need to guarantee respect for all human rights and the rule of law, including respect for fundamental principles and rights at work and international labour standards, in particular rights and principles concerning employment and decent work.

In addition, Recommendation No. 205 expands on the original guidance on measures to promote employment creation in the transition from war to peace. For example:

[10] Declaration on social justice for a fair globalization, adopted by the International Labour Conference at 97th Session, Geneva, 10 June 2008.

[11] Employment and decent work for peace and resilience recommendation No. 205, adopted by the International Labour Conference at 106th Session in Geneva, on 16 June 2017.

- it takes into account all four pillars of decent work (employment, rights, social protection, and social dialogue), since all these elements are relevant in crisis contexts;
- it places the issue of employment creation and decent work at the center of prevention, recovery, peace and commitment issues;
- it recognizes the complexity of the current global context and the multi-faceted nature of crises while at the same time recognizing the diversity of national peculiarities and priorities;
- it has a vital gender component which is enshrined in numerous provisions;
- it recognizes the critical role of the public sector;
- it recognizes the importance of investments that create employment;
- this instrument pays special attention to those population groups that have become especially vulnerable due to the crisis[12].

Particular attention in the new Recommendation is given to issues related to labour legislation, labour regulation, and labour market information. Contrary to popular belief about the weakening of labour legislation in times of crisis, the ILO focuses on the fact that in the process of emerging from crisis situations, states should, in consultation with the most representative organizations of employers and workers: 1) review, develop, restore or strengthen labour legislation, where appropriate, in the spirit of the ILO Declaration on Fundamental Principles and Rights at Work and its Implementation Mechanism (1998) and in accordance with applicable international labour standards; 2) ensure that labour laws also contribute to the expansion of opportunities for creation of decent and productive jobs; 3) establish, restore or strengthen, as necessary, the system of labour administration, including labour inspection, as well as other competent institutions, taking into account the Labour Inspection Convention No. 81 of 1947; 4) create, restore or strengthen, as necessary, systems for the labour market information collection and analysis, paying particular attention to population groups most affected by the crisis; 5) establish or restore and strengthen public employment services, including emergency employment services; 6) provide legal regulation of private employment agencies; 7) promote synergy between all parties of the labour market to enable local people to take full advantage of the employment opportunities that result from investments in peace and recovery.

[12] Employment and decent work for peace and resilience recommendation No. 205, adopted by the International Labour Conference at 106th Session in Geneva, on 16 June 2017.

Therefore, despite the war, the state should use its authority to exert managerial influence on the labour relations system by implementing specific mechanisms. In this context, the state's efforts should be directed towards ensuring effective social protection and providing high-quality social services. It is evident that war will lead to long-term losses, particularly in terms of human resources. While material assets destroyed by the war can be relatively quickly restored if resources are available, it will take decades to reproduce human assets, which are associated with the birth, upbringing, education, and professional training of the workforce.

Commenting on the situation in Ukraine, Director-General of the International Labour Organization, Guy Ryder, has condemned the unprovoked and unjustified attack by the Russian Federation which is being conducted in violation of international law, and has emphasized that those responsible for this aggression are well aware that working population will be the first victims and the losses of jobs, businesses and sources of livelihood will be massive and will continue for many years[13].

To improve the efficiency of the state's human assets management, the priority areas of state and business actions have been defined, in particular as follows: liberalization of tax and labour legislation, support for Ukrainian companies and people returning from abroad and internally displaced persons, education reforms, promoting the development of digital culture, regaining talent and talent retention, ensuring the well-being of company employees, ensuring flexibility of business processes and transformation of business activities.

But any flexible (liberal) legal regulation of labour relations must be limited in one way or another. International standards on human rights act as generally recognized principles and norms of international law, including provisions of the acts adopted by the ILO and the Council of Europe, and for the member states of the European Union also norms of the EU's communitarian (supranational) legislation. Equally important is the question of what the goal of the labour legislative reform should be. Should such a reform in Ukraine focus exclusively on the liberalization and deregulation of labour relations? The goal of any legislative initiative is to achieve effective and balanced legal regulation and improve the legislation in such a way that it is consistent, stable, and can be fully implemented. It is unlikely that recent years' labour legislation reform attempts, both through the de-codification of labour legislation and the introduction of selective changes to the current Labour Code, will contribute pos-

[13] ILO Director-General condemns the aggression of the Russian Federation against Ukraine, https://www.ilo.org/resource/news/ilo-director-general-condemns-aggression-russian-federation-against-ukraine, 03/12/2023.

itively to the balance of legal norms and predictability of law administration.

In his speech, the head of the Federation of Trade Unions of Ukraine, Hryhoriy Osovy, noted that labour relations regulation reform would directly affect the standard of living of almost every Ukrainian family. According to statistics, there are 10.9 million/10,900,000 employees in the Ukrainian labour market; the rest are entrepreneurs and labour migrants; and 1.7 million/1,700,000 people are officially unemployed. And while in the EU employment constitutes up to 75 percent of the population, in Ukraine this figure only reaches about 57 percent. Today, one vacancy is being applied for by at least six people[14].

Therefore, taking into account the realities of the Ukrainian labour market and the dominance of the employer's economic interests over employees' personal needs, there is neither formal nor real equality of parties in the "employer-employee" relationship. However, national labour legislation worldwide is called to balance this inequality by providing employees with additional guarantees, and this is precisely what international labour market regulatory instruments are aimed at.

Thus, on 11 February 2021 the European Parliament approved a resolution on Ukraine's implementation of the Association Agreement with the EU[15]. It notes the successes of Ukraine in the implementation of the Agreement. However, it also contains several critical comments. The document states that to solve issues in the world of work the European Parliament calls on the Association Council to prioritize the implementation of international labour standards, EU legislation and practice in the areas of social policy, employment and work, collective bargaining norms, social dialogue, combating gender inequality and reforming labour legislation, to ensure that the social partners' interests are balanced and the rights of workers are protected by the provisions of the Association Agreement (Articles 419-421 and 424) and the relevant ILO Conventions (81, 87, 98, 117, 122, 129, 144, 154 and 173). This should remind the Ukrainian government that its efforts to improve the business climate, attract direct investment and promote economic growth should not come at the expense of workers' rights and their working conditions (clause 110).

To a large extent, this criticism is justified. It is quite obvious that under current political conditions, an international organization cannot compel a sovereign

[14] Position of trade unions of Ukraine: what liberalization of labour legislation brings to Ukrainians. http://opkho.com.ua/poziciya-profspilok-ukra%D1%97ni-shho-nese-ukra%D1%97ncyam-liberalizaciya-trudovogo-zakonodavstva/, 09/06/2023.

[15] EU Association Agreement with Ukraine, (EU) 2017/1247 and (EU) 2017/1248 of 11 February 2021, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0050_EN.html, 17/10/2023.

state to pursue a specific social policy through coercion. If we imagine the possibility of imposing economic sanctions within the framework of ILO procedures, it is clear that the result of such sanctions will be the withdrawal of the violating state from the Organization and the denunciation of all its Conventions. The promotion of international labor standards often has the exact opposite effect when it comes to governments in developing countries. In order to maintain their competitive advantage of low labour costs, authorities in poorer countries tend to avoid ratifying ILO conventions. In connection with this, the ILO should work with the IMF, the World Bank, and the UNDP to offer "social safety net insurance" to developing countries that ratify and enforce key ILO conventions and yet find their economies overwhelmed by economic forces outside their control[16].

3. THE MAIN DIRECTIONS FOR THE DEVELOPMENT OF STATE POLICY IN THE FIELD OF LABOUR REGULATION IN THE TERRITORY OF MODERN UKRAINE

The formation of labour rights on the territory of Ukraine had its own history. For almost the entire 20th century, the territory of Ukraine was part of the Soviet Union, and the events that took place within the framework of its functioning and related to labour rights were an integral part of the legislation governing labour rights in Ukraine. Studies show that the formation and implementation of labour rights were directly related to the socio-political events that took place and which later shaped the Soviet state as a totalitarian one. At the same time, the state policy in the field of ensuring labour rights was a direct reflection of these events. The main law governing labour relations in the USSR before the Second World War was the Labour Code 1922, according to which entry into labor relations was voluntary. Mobilization forms of involvement in labour were not allowed. Involvement in overtime work could be used only in a limited number of cases. During the Second World War, the legal regulation of labour relations went through the consolidation of imperative prescriptions and the establishment of harsh sanctions for violating labour legislation. Mobilizing the able-bodied population was the main form of attracting labour resources. In this regard, the Decree of the USSR Ministry of Defense dated February 13, 1942 "On the mobilization of the able-bodied urban population for work in production and construction for the wartime pe-

[16] Charnovitz, S.: The International Labour Organization in its second century, *Max Planck Yearbook of United Nations Law Online*, 4(1) 2000, pp. 147-184.

riod" was adopted.[17] Persons who evaded mobilization for agricultural work or voluntarily left work, except for schoolchildren and students, were prosecuted and subjected to forced labour at their place of residence for up to 6 months with deductions from wages of up to 25%. The Decree of the USSR Ministry of Defense of June 22, 1941 "On Martial Law" provided the military authorities in areas declared under martial law with the right "in accordance with applicable laws and government regulations to involve citizens in labour service to perform defense work, protect communications, facilities, communication facilities, power plants, power grids and other critical facilities, to participate in the fight against fires, epidemics, and natural disasters.

The next direction of state policy was the assignment of labour resources to enterprises and tightening labour discipline. So, in particular, the Decree of the PV of the USSR of September 29, 1942 "On the transfer to the position of mobilized workers, employees and engineering and technical workers in areas close to the front" establish that all workers, employees and engineering and technical workers, male and female, those working in state enterprises and institutions in areas close to the front are assigned to those enterprises and institutions in which they work. The unauthorized departure of workers and employees from the enterprises of these industries, including those evacuated, was considered desertion, and persons guilty of unauthorized departure (desertion) were punished with imprisonment for a term of 5 to 8 years. Cases of persons guilty of unauthorized departure (desertion) from the enterprises of these industries were considered by military tribunals.

Thus, the type of government and the war led to a tightening of labour discipline; for this reason, there were changes in the regulation of labour relations by tightening criminal repressive methods of influence, which were justified by the country's leadership. In the legal regulation of social relations in the field of employment, the Soviet state focused on unreasonable repressive and punitive legal measures, as a result of which a cult of fear was planted to prevent passive resistance of workers in the form of unauthorized exit from enterprises. It should be noted that after the end of the Second World War, the need for such excessive measures subsided, and the rules of law created by the emergency circumstances of wartime were eliminated. On July 1, 1945, the right to leave for workers and employees was restored, daily mandatory overtime work was canceled and the 8-hour working day was restored, labour mobilization of citizens to work in various sectors of the national economy was stopped, and measures for labour protection and health were reintroduced.

[17] Decree of the Presidium of the USSR Armed Forces on the mobilization for the wartime period of the able-bodied urban population for work in production and construction № 160/1 of 13 February 13 1942.

The Labour Code, which had existed for almost 50 years, was replaced by the Law of the USSR of July 15, 1970, with the Fundamentals of Labour Legislation of the USSR and Union Republics (which entered into force on January 1, 1971), which became the first all-Union codified labour act. They formed the foundation of the entire system of Soviet labour legislation and ensured its unity throughout the USSR. The code has become relatively softer compared to the acts of the 20-30s, and again this is due to internal political changes and the transition of state policy to the path of socialism. Analyzing the entire labour code of 1971, we can say that this legal act became the first most complete document that would include almost all aspects of the relationship between the employer and the employee. The legislator sought to regulate the relationship between the two parties as much as possible, but to a greater extent the Code consolidated and protected the employees' rights. The Labour Code of 1971 provided a large list of rights for the protection and protection of labour, much attention was paid to safety at high-risk enterprises, various benefits and supplements for employees, child and female labour was protected, and the right of workers was protected when applying for a job or dismissal from it.[18] It should also be noted that after the Second World War, all the main institutions of collective labour law were restored and further developed in labour law - the legal status of trade unions and employers' associations, representation of workers at enterprises, etc. During this period, the legislator paid considerable attention to the development of a system for the participation of employees in enterprise management. In the light of the idea of building a social state, part of the state-power powers was delegated to employees to ensure social peace and stability. Clearly, in such a situation, labour law was a mirror of the existing political dominant system.

Ukraine met its independence with the Labour Code of 1971, which clearly did not correspond to the realities and situation of the country's political and economic development. The proclaimed principles of the Code did not reflect the interests of any of the parties to labor relations. The Labour Code of Ukraine, which was developed for a planned economy, does not allow a successful response to the challenges of time, which is inconvenient for the modern economy, nor supports small and medium businesses with the appropriate level of employment flexibility required by employers and employees, especially in martial law. Even the terminology of the Code remains archaic.[19] Unfortunately, labour relations began to develop in a corrupt environment. Namely,

[18] The Labour Code of Ukraine, No. 322-08 of 10 December 1971.

[19] Yaroshenko, O., Lutsenko O.: The working in war: main changes in labour relations and working conditions under martial law in Ukraine, *Access to Justice in Eastern Europe*, 4-2(17) 2022, pp. 139-155.

employers actively tried to hide labour relations, covering them up with "civil contracts", as this relieved them of the need to adhere to the strict norms of the Labour Code of 1971. The trade unions created under the Soviet system, which were financially completely dependent on the employer, also turned out to be useless. And since the state sector of enterprises was reduced in connection with restructuring and privatization, private enterprises were not interested in cooperating with the existing trade unions. And with the system of trade unions developed back in the Soviet period and the rather strict law "On trade unions, their rights and guarantees of activity," they were unable to effectively develop and defend the rights of workers.

Thus, Ukraine faced the need to reform labour legislation in the context of the experience of social protection of the rights of the employee and the corrupt non-observance of these rights by the employer. This became especially acute in the context of the military aggression of the Russian Federation against Ukraine. It is obvious that at present there is a unifying effect of international legal regulation of labor, international labour migration, the universalization of mechanisms for the recognition and protection of labor rights and freedoms, which leads to the convergence of national labour law systems of various countries, the implementation of international conventions into national law. It is also obvious that the principles of labour law, which have been formed over decades in the conditions of the Soviet economic system, should be revised taking into account changes in social development and economic realities in Ukraine and the world. The principles of labour law that are typical for countries with a market economy should not be blindly copied, but rather objectively analyzed and implemented in the labour legislation of Ukraine Moreover, the orientation of the state policy towards integration with the European Union requires more or less unified approaches in the legal regulation of labour. On the agenda is the issue of implementing in the new labour legislation of Ukraine the principles "unknown" to Soviet labour law, which will lay the foundation for the formation of labour legislation of a democratic, legal and social state.

Undoubtedly, the guarantees of labour rights provided by the legislation can be fully implemented only under a normally functioning economy. But it is also quite clear that the level of the country's economy and ensuring the processes of its sustainable development and constant growth fully depend on how the state authorities relate to the effective regulation and use of the labour resources of the population. A democratic, rule of law state should take care of creating conditions for citizens to exercise the right to work, as well as its comprehensive guarantee through reliable legal protection.

4. THE CURRENT STATE OF ENSURING THE LABOUR RIGHTS OF UKRANIAN CITIZENS AND REFORMS IN WARTIME CONDITIONS

As mentioned above, changes to the Ukrainian labour legislation have been guided by "economic expediency," optimization and liberalization. In liberal market economies, liberalization of industrial relations institutions implies the transformation of the institutional form itself. The most common forms of this manner of institutional change are deregulation of the labor market, decentralization and individualization of bargaining, and decollectivization of class organizations.[20] The authorities have set a goal of conducting a complete revision and implementing a significant reform of the current Ukrainian labour legislation, given at the very least the fact that the Labour Code of Ukraine which continues to regulate labour relations was adopted back in 1971.

On April 21, 2022 Verkhovna Rada of Ukraine adopted the Law of Ukraine "On the De-Sovietisation of the Legislation of Ukraine" No. 2215.[21] Subpoint 4 of Clause 3 of the Final and Transitional Provisions of this Law stipulates the "task", within one year from the date of entry into force of this Law, to develop and submit for consideration by the Verkhovna Rada of Ukraine drafts of individual codified acts, including the draft Labour Code of Ukraine. Thus, the issue of the labour legislation reform received a new incentive.

Starting from February 2022 separate legislative acts were adopted. These include:

- Law of Ukraine "On Organisation of Labour Relations under the Martial Law" dated March 15, 2022;
- Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Optimising Labour Relations" dated July 1, 2022;
- Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Strengthening the Employees' Rights Protection" dated May 12, 2022;
- Law of Ukraine "On Amendments to Certain Legislative Acts to Simplify the Regulation of Labour Relations in Small and Medium Businesses and Reduce the Administrative Burden on Business Activity" dated July 19, 2022;

[20] Baccaro, L., Howell, C.: Industrial relations liberalization and capitalist instability, *MPIfG Discussion Paper Max Planck Institute for the Study of Societies,* (17/19) 2017, pp. 1-24.

[21] Law of Ukraine on the de-sovietisation of the legislation of Ukraine, No. 2215-IX of 21 April 2022.

- Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Regulation of Employment Relations with Non-Fixed Working Hours" dated July 19, 2022.

So, from the above legislative acts a tendency to limit employees labour rights can be detected. Directly this trend is shown in the Law of Ukraine "On Organisation of Labour Relations under the Martial Law" dated March 15, 2022.[22] And unfortunately, this is a forced step. Thus, according to Article 64 of the Constitution of Ukraine, under conditions of war or a state of emergency, certain restrictions on rights and freedoms may be imposed with an indication of the validity period of such restrictions. At the same time, the Constitution of Ukraine names those rights and freedoms that cannot be limited even under martial law, although Articles 43 and 44 are not on this list[23]. Therefore, by a reversal of logic, the right to work restriction is allowed by the Constitution of Ukraine under martial law conditions.

Part 2 of Article 1 of the Law "On the Organisation of Labour Relations under the Martial Law" explicitly states that, during the period of martial law, restrictions are introduced on the constitutional rights and freedoms of a person and a citizen as regards Articles 43 and 44 of the Constitution of Ukraine.

At the same time, the limitation of the employees' labour rights is exercised not only directly but also indirectly. To substantiate the stated thesis we will consider the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Strengthening Employees Rights Protection" dated May 12, 2022. In particular, Article 22 of the Labor Code of Ukraine as amended on May 12, 2022, is entitled to Guarantees upon concluding, changing and terminating an employment agreement. At the same time, part 1 of this article provides: "The employer has the right to choose freely among the candidates for employment (position)..."[24]. But the same Part 1 of Article 22 of the Labor Code of Ukraine as amended on May 5, 2022, began with the following: "Unreasonable refusal to hire is prohibited..."[25].

The chief of Legal Department drew attention to the problematic nature of Article 22 of the Labor Code of Ukraine in the draft version No. 5266 submitting its comments to the draft. Thus, the Chief Legal Department noted: "Article 22 of the Code (in the draft version) is supplemented with a provision

[22] Law of Ukraine on the organization of labour relations in martial law No. 2136-IX of 15 March 2022.

[23] Constitution of Ukraine, No.254k/96-vr of 28 June 1996.

[24] Law of Ukraine on amendments to certain legislative acts of Ukraine regarding strengthening the protection of workers' rights No. 2253-iX of 12 May 2022.

[25] Constitution of Ukraine No.254k/96-vr of 28 June 1996.

regarding the employer's right to freely choose a candidate for the position. However, the current Article 22 establishes guarantees of the employee when concluding, changing and terminating the employment agreement, and not of the employer, which creates an internal inconsistency between the provisions of the article and its title."

The second significant trend, closely related to the previous, is the simplification or deregulation of labour relations. To justify mentioning this trend, we will analyze another regulatory legal act - the Law of Ukraine "On Amendments to Certain Legislative Acts to Simplify the Regulation of Labour Relations in Small and Medium Businesses and Reduce Administrative Burden on Business Activity" dated July 19, 2022 [26].

The lexical meaning of the word "simplification" means facilitation, and removal of obstacles, but even simple analysis gives reason to say that the draft law in its essence presents an indirect attack on the employee's rights and has nothing to do with simplification of labour regulation (in the usual sense of this concept).

Thus, the Law of July 19, 2022 introduced a so-called "simplified regime" to labour relations which arises:

- between an employee and an employer who is a subject of small or medium business, as defined by law, with an average number of employees for the reporting period (calendar year) of no more than 250 people;
- or between an employer and an employee whose monthly salary is more than eight times the minimum wage established by law [27].

The Law of July 19, 2022 added parts 4 and 5 to Article 21 with the following content: "under conditions of the simplified regime for regulating labour relations, an employment agreement presents the main means of regulating labour relations between employees and employers (owners of private businesses). Under the simplified regime, by mutual consent of the parties, an employment agreement may determine additional rights, duties and responsibilities of the parties, provisions in regard to facilities and organizing the employee's work, conditions of termination or early termination of the agreement".

[26] Law of Ukraine on amendments to certain legislative acts on simplifying the regulation of labour relations in the sphere of small and of medium-sized entrepreneurship and reducing the administrative burden on entrepreneurial activity No. 2434-IX of 19 July 2022.

[27] Law of Ukraine on amendments to certain legislative acts on simplifying the regulation of labour relations in the sphere of small and of medium-sized entrepreneurship and reducing the administrative burden on entrepreneurial activity No. 2434-IX of 19 July 2022.

Thus, for specific categories of employees, the legislator provides the so-called "simplified regime," within which de jure parties agree whereas the de facto employer (as the stronger party to the employment agreement) imposes on the employee additional duties, responsibilities and conditions for termination or early termination of the agreement. The content refers to the deterioration of the employee's position compared to the current legislation of Ukraine.

Before this Law came into force, in the case of concluding such an agreement, it would be appropriate to appeal to Article 9 of the Labor Code of Ukraine. However, in this case this argument "does not work" (the so-called "deterioration" is allowed by the Law dated July 19, 2022).

Undoubtedly, partial deregulation of labour relations is required (even for the sake of an employee), but an important and difficult question arises - in what way? Traditionally, labour relations have been regulated at the following three levels:

- legislation,
- local level (collective bargaining agreement and other acts of the employer operating at a specific business),
- individual level (employment agreement).

According to Article 9 of the Labour Code of Ukraine, the terms of employment agreements that worsen the position of employees compared to Ukrainian labour legislation are deemed invalid. This constitutes a guarantee for the employee's rights protection. When allowing derogation from Article 9 of the Labour Code of Ukraine, by consent of the parties, the question arises concerning ensuring adequate protection of the employee's labour rights in case of abuse by the employer[28].

In addition, it is unclear why it is necessary to expand the limits of contractual regulation specifically for the above two categories of employees and how exactly the wages (specifically defined) are determined? The question remains rhetorical.

It should be emphasized that the above-mentioned trends in the reform of labour legislation are interconnected because the so-called "deregulation" of labour relations ultimately limits the labour rights of employees.

The next trend of labour legislation reform is related to the previous two and follows logically from them – the assimilation of labour relations to civil law relations. The convergence of civil-law and labour-law connections is also ev-

[28] The Labour Code of Ukraine No. 322-08 of 10 December 1971.

idenced by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Regulation of Employment Relations with Non-Fixed Working Hours" dated July 19, 2022[29].

Thus, by Article 21-1 of the Labour Code of Ukraine as amended by this Law, an employment agreement with non-fixed working hours is a particular type of employment agreement the terms of which do not establish a specific time for the performance of work, while the employee's obligation to carry out work arises when the employer provides such work with no guarantees that such work will be provided regularly, but with compliance with pay conditions provided for in this Article.

Therefore, specific time of work is not set, and the work is provided "as and when available". In addition, according to Part 17 of Article 21-1 of the Labour Code (as amended by this Law), an employment agreement with non-fixed working hours may establish additional grounds for its termination which must be related to the employee's abilities or behavior or other reasons of economic, technological, structural or similar nature.

Thus, the parties to an employment agreement with non-fixed working hours can agree on additional grounds for its termination. At the same time, the wording "related to the abilities or behavior of an employee or other reasons of economic, technological, structural or similar nature" needs to be specified to say the least. In this case, the guarantee provided for in Article 9 of the Labour Code of Ukraine cannot be applied either. All of the above indicates a tendency towards assimilation, approximation of labour relations to civil-law relations.

It is difficult to deny the need to reform the labour legislation considering the interests of both employees and employers. However, in a state governed by the rule of law, any changes in legislation must be balanced and justified. Otherwise, they will not be able to meet the challenges we face today, especially under conditions of martial law which, in turn, will lead to highly negative consequences.

5. DISCUSSION

Above, the features of the development of modern Ukrainian labour legislation were outlined, highlighting significant points of concern due to their direct impact on the realization of the right to work. It was also noted that to

[29] Law of Ukraine on amendments to certain legislative acts of Ukraine regarding the regulation of labour relations with non-fixed working hours, No. 2421-IX of 18 July 2022.

a certain extent, agreement exists with such a position of the legislator in the conditions of war as a temporary measure. In this part of the work, as part of the discussion, attention is drawn to the problems and mechanisms that, from the perspective presented, can enable the implementation of the right to work in war conditions without violation.

Blurring the concept of "employer".

The main problem of modern Ukraine is its effective functioning in the aspect of ensuring all the rights and legitimate interests of persons located on its territory. In this aspect, we focus on the problems associated with labor relations. As you know, the main subjects of labor relations are the employee and the employer. If there are practically no questions with the employee, although there are certain discussions[30], then with the employer, it is the other way around.

The reason for this situation was the military aggression of the Russian Federation and its occupation of part of the sovereign territory of Ukraine. As a result, about 30% of the territory of Ukraine is currently under occupation. Together with the occupation in these territories, all industrial and production capacities were almost completely destroyed, which led to the loss of about 40% of Ukraine's economic potential and a drop in GDP at the level of 40-50%[31].

Along with such colossal economic losses, Ukraine has faced a huge problem related to the further functioning of the enterprises and organizations that survived and continue to operate. This is the problem of breaking technological chains and consistent performance of work in producing goods necessary for the functioning of the state. Gradually, the Ukrainian state is solving this problem by transferring production facilities to safer areas, since now this is the main thing, but the issue of ensuring the rights of workers involved in production remains open.

The reason for this is that during the war, the number of works performed at enterprises not under the terms of an employment contract increased significantly, the share of outsourced work increased, and subcontracting mechanisms began to be used more actively, with a significant increase in the number of subcontractors, cooperative groups appeared. In the conditions of hostilities, especially in territories where military clashes occur, situations often arise

[30] Perulli, A.: The legal and jurisprudential evolution of the notion of employee, *European Labour Law Journal*, 11(2) 2000, pp. 117-130.

[31] The Ministry of Economy preliminarily estimates a drop in GDP in 2022 at the level of 30.4%, https://www.me.gov.ua/News/Detail?lang=uk-UA&id=4470bafb-5243-4cb2-a573-5ba15d9c8107&title=MinekonomikiPoperedno, 25/06/2023.

when an employee performs work. During this, the primary employer disappears (an enterprise is destroyed and a succession procedure occurs or an individual entrepreneur dies - the customer of the work).

All this leads to the fact that the concept of an employer on the territory of Ukraine in wartime conditions has begun to blur and lose its contours, as enshrined in legislation. Defining an employer as a legal entity (enterprise, institution, organization) or an individual entrepreneur who, within the framework of labour relations, uses the labor of individuals, Ukrainian legislation did not take into account and could not take into account the peculiarities of wartime and the circumstances indicated above.

Awareness of the reality of the indicated situations resulting from the military aggression of the Russian Federation, in the Ukrainian practice of settling labour disputes, the relevant subjects should be clearly defined. In this aspect, it is essential to formulate the fundamental features of the employer, which will help to clearly define this category of subjects of labour relations, especially in wartime.

A study of labour relations in Ukraine and European judicial practice[32] shows that the main criteria that should be taken to classify a particular entity as employers are the criterion of hierarchy and remuneration for the work done. The hierarchy criterion arises when the employer, based on their needs, orders certain work to be done, outlining its characteristics. This criterion in wartime conditions makes it possible to clearly determine the person who needs the work done, even when it is not assigned to them at the initial stage.

The remuneration criterion is a form of objectification of the inseparable connection between the employer, the employee and the work performed. It is the payment of the reward that is evidence of the actual recognition of the work performed and its quality. In wartime conditions, such a criterion is essential, since, as was indicated above, in the case of the disappearance of the primary employer, the payment of remuneration by his legal successor is the basis for formalizing these relations. Given the above, we believe that further discussion regarding the concept of "employer" should go in the direction of fixing these criteria at the level of legislation and substantiating the expediency of their use by representatives of Ukrainian legal science.

[32] van Schadewijk, M.: The notion of "employer": Towards a uniform European concept?, E*uropean Labour Law Journal,* 12(3) 2021, pp. 363-386.

Employment contract with non-fixed working hours

One of the most controversial issues that are actively discussed in the European scientific literature today, and which is ignored in the Ukrainian, is the problem of using labour contracts with zero working hours.

Exploring the mechanisms that include using this tool, you should pay attention to the following. There is no generally accepted definition of a zero working time contract. Although not amenable to precise definition, the common core characteristic of Zero-Hours Contracts is that they are working arrangements where an employer does not commit in advance to make any specific amount of work available[33]. The term "zero-hours contract" itself is quite controversial because it is relatively new and under-researched, partly due to the wide range of definitions that characterize this type of employment relationship. At the same time, some researchers point to this confusion and suggest using the term "work without a minimum working time" in relation to this mechanism for formalizing labour relations. Other terms that are used to refer to this mechanism are "work on demand", "chappy" or "discontinuous work"[34].

Research on the use of zero-hours contracts suggests that this mechanism for formalizing labour relations is not new. The practice of its use and cases related to it began to appear in the 1970s[35]. Currently, the literature on zero-hours contracts predominantly comprises national studies, particularly from countries like Ireland, the UK, Finland, New Zealand, and Australia. Interest in this form was caused by the fact that in industrialized countries practices began to appear that made it possible for subjects of labor relations to enter into the legal field relations that were not classical labour relations, the cause of which was atypical forms of work and their temporality, which in the literature called "precarious work"[36]. Given the atypicality of employment, researchers perceive such forms of securing labour relations as flexible employment contracts.[37] Contracts with zero working time have the peculiarity that the employment relations drawn up with its help are non-standard and have a long-term perspective and do not oblige

[33] Adams-Prassl, A. et al.: The 'Zero-Hours Contract': Regulating Casual Work, or Legitimating Precarity?, *Oxford Legal Studies Research Paper*, (11) 2015, pp. 41-65.

[34] Mantouvalou, V.: Welfare-to-work, zero-hours contracts and human rights, *European Labour Law Journal*, 13(3) 2022, pp. 431-449.

[35] Adams, F., Prassl, J. Zero-hours work in the United Kingdom, ILO conditions of work and employment series, *ILO working papers*, 2018, pp. 4-5.

[36] Kalleberg, A. L.: Precarious work, insecure workers: employment relations in transition, *American Sociological Review,* 74(1) 2009, p. 2.

[37] Broughton, A., Biletta, I., Kullander, M.: Flexible forms of work:'very atypical'contractual arrangements, *eF/10/10eN, European Foundation for the improvement of living and working conditions (Eurofound)*, 2010.

the employer to provide the employee with a minimum amount of working time**.** Certainly, the issue of employee protection under the terms of a zero-hour contract is extremely important, as this arrangement is employed when the employer cannot guarantee regular working hours. However, in specific conditions and roles, this arrangement enables the employee to secure, at least to some extent, their rights and satisfy their interests and needs. The vast majority of modern researchers draw their conclusions about the possibility or impossibility of applying contracts with zero working hours through the prism of protecting the rights of workers and employers under normal conditions. In conditions of a radical change in the socio-political situation in the state or in conditions of war, this form of labour relations has not been studied and its effectiveness and expediency of use have not been clarified. So, in wartime in particular, the possibility of financial and personal security becomes the main thing. The primary factor in choosing a job during hostilities is salary (70%), which provides financial security and meets basic individual needs, making it crucial during wartime. Additionally, work schedule, workplace safety (23-24%), and social guarantees (17%) are also significant for meeting basic needs[38].

The challenge of meeting the economy's labour force requirements and adjusting the employment sector to wartime conditions is becoming increasingly pertinent due to the prolonged conflict, which significantly alters the functioning of the economic system and labour market. In Ukraine, amidst the economic challenges arising from ongoing military operations, discussions have emerged regarding the necessity of implementing contracts with flexible working hours: in the context of wartime, such conditions for the organization of labour relations are optimal, since the employee can manage his mobility, independently assess the real possibilities for the performance of work, but retain the guarantees provided for by the labour legislation, in particular regarding the order and work regime relevant to the conditions of the wartime state, rest time, the mechanism of employment and dismissal, payment of wages[39].

Employers utilizing zero-hour contracts are often small businesses unable to maintain a large full-time staff in combat conditions but require additional workers. This type of contract can therefore legalize the work of many students in cafes, restaurants, hotels, advertising, design firms, and similar small businesses organized by entrepreneurs. However, unfortunately, there are problems in the practical application of the introduced changes. Thus, according to "On

[38] Pankova, O., Kasperovich, O.: The sphere of labor and employment of Ukraine under conditions of war: State, Problems, Dynamics of changes in the context of Post-War recovery, *Economic Bulletin of Donbas,* 1(71) 2023, pp. 26-35.

[39] Pylypenko, P. et al.: Organization of labor relations under martial law in Ukraine, *Baltic Journal of Law & Politics*, 16(1) 2023, pp. 485-492.

Amendments to Some Legislative Acts of Ukraine Regarding the Regulation of Some Non-Standard Forms of Employment" No. 5161 dated February 25, 2021, employer cannot exceed ten percent of the total number of prisoners employment contracts with himself. At first glance, this should protect workers and the state from the dishonest actions of large employers, who may begin to massively transfer their workers to "zero contracts" in order to optimize the tax burden but in other way this situation immediately deprives the neediest, small entrepreneurs, of the opportunity to take advantage of the innovation. After all, if an entrepreneur has fewer than ten workers, then he is not able to fulfill this requirement.

For Ukraine, concluding employment contracts with non-fixed working hours is a new experience. The main definitions of the bill were taken from the UK version of section 27A of the Employment Rights Act. But in this article, there is a developed system of differentiation of workers of different categories by age, specialty, field of work with their own social guarantees, enshrined in the relevant acts. That is, the general norms, on the example of the mentioned Art. 27A will not apply equally to any worker. Ukrainian labour legislation does not have such specifics. It remains to be hoped that the law will be finalized, because the same direction of regulation is, of course, very promising and necessary in modern conditions. Therefore, the current labour legislation needs fundamental changes. A simple fragmentary updating of existing or borrowing foreign norms can give at least temporary results only if they are comprehensively examined and adapted to the entire array of other "outdated" norms.

The primary systemic issue with this law is attributed to the insufficient attention given by its authors to adapting European standards to the specific context of Ukrainian labour relations. Joe Atkinson[40] identifies an additional source of protection for workers under zero-hour contracts derived from EU legislation designed to regulate other forms of atypical employment. Adhering to European labour standards, even in such employment structures, facilitates the application of fundamental labour guarantees. These guarantees encompass the preservation of employee dignity, ensuring equality among workers, prohibiting discrimination, and upholding workers' rights to associate with professional organizations. For instance, workers on zero-hour contracts may be protected under the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000. The Regulations provide a right not to be treated 'less favourably than the employer treats a comparable full-time worker' on the grounds that a worker is part-time[41]. Also it is crucial to enhance terminological consistency and achieve better alignment on the typology and charac-

[40] Atkinson, J.: Zero-hours contracts and English employment law: Developments and possibilities, *European Labour Law Journal,* 13(3) 2022, pp. 347-374.

[41] Atkinson, J.: Zero-hours contracts and English employment law: Developments and possibilities, *European Labour Law Journal,* 13(3) 2022, pp. 347-374.

teristics of the non-standard form of employment addressed in Directive (EU) 2019/1152 of the European Parliament and of the Council, dated 20 June 2019, concerning transparent and predictable working conditions within the European Union[42]. Specific essential minimum requirements concerning working conditions are delineated in Directive 2019/1152, aimed at improving transparency and predictability within the employment framework. These requirements encompass provisions that facilitate the shift towards more foreseeable employment arrangements, mandate worker training, and underscore the importance of collective agreements in improving working conditions. Consequently, workers under zero-hour contracts may be entitled to claim equal pay and contractual benefits, including holiday or pension contributions, if they are compensated less than comparable permanent employees.

In conclusion, employment contracts with non-fixed working hours should be considered as a measure for exceptional circumstances, such as during periods of war. These contracts offer a viable solution to financial challenges and safety concerns, particularly by enabling remote work. War conditions may necessitate flexible arrangements to accommodate disruptions and ensure the safety and financial stability of workers. However, it is essential to exercise caution in deploying such contracts outside of exceptional situations, as they can pose risks to workers' rights and stability in standard employment relationships. Therefore, the use of non-fixed working hour contracts should be carefully regulated and implemented judiciously to balance the needs of both employers and employees while upholding labour standards and protections.

Weakening of the role of trade union organizations

The trade union movement in Ukraine has a long history, most of which is not yet explained by the existence of Ukraine within the USSR. More than 113.5 million working people (as of March 1977) of the Soviet Union were trade union members; they united more than 98% of the workers. However, during the Soviet era, trade unions were included in the state apparatus as conductors of state policy, but today their independence from both employers and the state is proclaimed. All these subjects of labour law build their relationships on the principles of mutual respect, mutual understanding, and compromise. Changes in the basic requirements of interaction between subjects of labour relations unquestioningly affect the further formation of the legal framework for the organization and functioning of trade unions[43].

[42] Directive (EU) No. 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.

[43] Kovalenko, R. et al.: History of the origin and development of the trade union movement in Ukraine, *Cogent Arts & Humanities,* 10(1) 2023, pp. 1-25.

In this connection, society is accustomed to perceiving the trade union not as an association of solidary workers who defend the rights of the employee before the employer, but as a source of supposedly free gifts, some "preferential" assistance, the opportunity to go somewhere, relax at half price, etc. Therefore, when the ex-speaker of the parliament (Verkhovna Rada) Oleksandr Moroz, speaking at the plenum of the Federation of Trade Unions of Ukraine, began his speech like this: "You know that after the collapse of the Union, everything fell apart: the parties, and economic relations, and human relations, it was not possible to destroy only one thing - the trade union ", which caused applause. But Oleksandr Moroz replied to this: "Do not rush to applaud. You weren't destroyed just because you don't bother anyone." Actually, this is the problem of the post-Soviet trade unions - they are helpless and accustomed to adapting to the current situation. And although the joint representative body of trade unions opposed the adoption of laws restricting labour relations in wartime, this did not cause any special protest movements, referring to wartime. However, there are always fears that temporary restrictions on labour rights and trade union activities during wartime will be the basis for a more radical transformation of future labour and trade union legislation. This was especially confirmed by the legislative amendments adopted on August 17, 2022 "On Amendments to Certain Legislative Acts Concerning the Simplification of the Regulation of Labour Relations". And although trade unions appealed to employers and socially responsible businesses to refrain from applying the norms of this Law in order not to lose the personnel working potential necessary for the restoration of Ukraine, this did not bring much effect[44].

So, Anton Gorb, deputy chairman of the all-Ukrainian trade union of Novaya Poshta, the largest private operator of postal services in Ukraine, said how relations between Novaya Pochta and the company's employees have changed since then: "We had one of the best employers in Ukraine and efficient, current collective agreement, but now employers have turned their backs on social dialogue. We thought it was because of the start of the war, and then it turned out that they were waiting for the law's adoption"[45].

A similar situation has developed at other enterprises in Ukraine. So, the Trade Union of Metallurgists and Miners of Ukraine (PMGU) addressed the General Director of ArcelorMittal in Kryvyi Rih with an open letter. After the entry into force of this law, the largest metallurgical enterprise in Ukraine, without

[44] Ukraine: Trade Unions disagree with labour law reform, https://www.csee-etuce.org/ru/novosti/chlenskikh-organizatsij/4938-ukraina-profsoyuzy-ne-soglasny-s-reformoj-trudovogo-zakonodatelstva, 25/06/2023.

[45] War, liberalization and labour. How will the new legislation aggravate the plight of Ukrainian workers?, https://www.opendemocracy.net/ru/novyy-zakonoproyekt-podryvaet-sistemu-trudovykh-otnosheniy-v-ukraine/, 28/06/2023.

consultations and agreements with the trade unions, terminated the clauses of the collective agreement, which concerned not only the activities of the trade union but also social guarantees and benefits for employees of the enterprise[46].

Thus, it turned out that the trade union movement in Ukraine faced some factors, when temporary changes to labour legislation were adopted at the beginning of the war, they did not put up proper resistance, referring to the war and the temporary nature of these changes.

However, the liberalization of labour relations have continued because it has not meet a strong counterbalance from the trade unions, which confirms the assertion that stronger unions are always associated with a lower likelihood of liberalization because this depends crucially on other factors, most notably the extent of economic problems, the partisan leaning of the government, and the presence of a strong welfare state and compensatory policies[47]. Concerning the former, we theorize that the extent to which unions can dilute (or block) labour market reforms decreases as the economic situation deteriorates[48].

Of course, due to military aggression, Ukraine is in a difficult economic situation. And the change in labour legislation is justified by the economic need to provide opportunities for small and medium-sized businesses, to increase the number of officially employed persons. However, in our opinion, the reason for the growth of the informal economy in Ukraine lies not only in the frightening (1971) and cumbersome application of labour legislation, but also in broader problems. We are talking about complex taxation, the lack of real court protection and especially corruption. Thus, the president of the trade union of builders of Ukraine and deputy chairman of the Federation of Trade Unions of Ukraine, Vasily Andreev, even at the stage of discussing the law in November 2021, commented on the true reasons for shadow employment in Ukraine: "The reason why Ukrainian employers do not officially hire people lies not in formality or flexibility. It's about saving money and taxing." According to him, draft law No. 5371 can put 70-80% of workers outside the Ukrainian labour legislation[49].

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[46] War, liberalization and work. How will new legislation worsen the situation of Ukrainian workers? https://www.opendemocracy.net/ru/novyy-zakonoproyekt-podryvayet-sistemu-trudovykh-otnosheniy-v-ukraine/, 28/06/2023.

[47] Simoni, M., Vlandas, T.: Labour market liberalization and the rise of dualism in Europe as the interplay between governments, trade unions and the economy, *Social Policy & Administration,* 55 2021, pp. 637-658.

[48] Rathgeb, P., Tassinari, A.: How the Eurozone disempowers trade unions: the political economy of competitive internal devaluation, *Socio-Economic Review*, 20(1) 2022, pp. 323–350.

[49] Work was exempted from the law: What is the danger of labor liberalization in Ukraine in the light of new amendments?, https://www.solidarnost.org/articles/rabotu-osvobodili-ot-zakona.html, 28/06/2023.

From my perspective, the problem of today's changes in labour legislation is much deeper and is associated with a change in the world order. Obviously, the globalization of the world economy leads to a decrease in the role of a person in the development of labour and, in this regard, to the complexity of protecting one's labour rights. It is difficult to talk about the equality of the parties to labour relations, as a basic principle, in modern realities. In our opinion, Russia's military aggression against Ukraine has exposed these problems, since it has showed the dependence of the state's existence on economic stability and the level of its development. Post-war advances in the definition and observance of human rights met with economic necessity and balancing interests. Obviously, we are entering a new stage in the development of labour law, which requires the definition of a new ideology of labour, the ideology of freedom of choice and the right to work, the ideology of justice, the ideology of solidarity, the ideology of human dignity. A democratic, rule of law state should take care of creating conditions for citizens to exercise the right to work, as well as its comprehensive provision through reliable legal protection, since the development of society directly depends on the stability of labour standards and the level of control over their observance.

6. CONCLUSION

Each area of state and social life, including labour relations, has its own requirements for standards. In order to achieve good work process results for a large community it is necessary to consider the interests, rights and freedoms of the members of such community and enshrine them in legislation. With the express aim of the effective functioning of labour relations within the EU, specific labour organization standards were created taking into account the peculiarities of various members of the European community.

The need for new effective market mechanisms for regulating labour relations dictates new tasks for labour legislation while at the same time requires the balance of interests of the parties to labour relations to be ensured.

The International Labour Organization (ILO) underscores the significance of promoting decent work for sustainable development in conflict-affected countries. This entails reinforcing labour market institutions, ensuring adequate protection for all workers, and affirming the relevance of labour relations as a means to provide certainty and legal protection. Therefore, it is essential, especially during a crisis, to uphold a reliable system of labour relations regulation. In the post-crisis recovery phase, efforts should be directed towards ensuring that labour legislation safeguards the right to decent work.

Regrettably, despite the ILO's proclamation of the concept of decent work and numerous decisions and resolutions by this esteemed international organization, it largely remains a political appeal. Macro- and microeconomic policy tools that emphasize effective employment, the creation of decent jobs, and the expansion of labour opportunities are yet to be developed. Slowly but steadily, public awareness of the fact that the prospects of decent work are linked to the formal sector of the economy rather than the informal one, and that it is unacceptable to cross the "red line" in applying non-standard forms of employment that generate various social and economic risks is growing. The absence of decent work represents the primary cause of degradation in social and labour relations, leading to poverty, social isolation, rejection, disintegration, and a lack of social stability, all stemming from a common root.

At present, independent Ukraine is grappling with the most challenging and tragic chapters of its history. Ongoing hostilities are impeding economic and social development, depleting the state budget, causing despair and impoverishment among families, and, most importantly, resulting in the loss of crucial human resources. These losses can be regained through the implementation of high social standards, among other measures.

In the context of the researched topic, attention should also be given to the fact that neoliberal statements about the negative impact of legal regulation of labour on economic development are refuted by Western scientists.[50] In particular, in most countries scientists have noted a general trend of long-term legislation strengthening in the area of employment and labour relations over the past decades. In addition, as non-typical forms of employment are being spread, states began to pass legislation setting obligations not to "discriminate" against such non-typical employees compared to traditional ones. At the same time, a long-term positive effect has been noted in terms of employment, labour productivity and production. Given the above, even the most liberal labour legislation on its own cannot be a panacea for the shortcomings in the economy or the labour market. Both employees and employers should be interested in complying with the law. That is why it is important for both parties to be fully involved in developing and adopting new labour legislation. It is hoped that, in the process of labour legislation reform in Ukraine, both positive and negative experiences of other countries, the peculiarities of the national legal system, and our socio-economic realities will be taken into account. As a result, a modern, fair, and balanced new Labour Code of Ukraine will be adopted.

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