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LEGAL SUPPORT OF LABOR PROTECTION STANDARDS UNDER MARTIAL LAW

Purpose. To study the peculiarities of legal provision of labor protection issues in crisis conditions, in particular in conditions of military operations, to propose conditions-indicators and additions to legislative provisions for the improvement of legal regulation in this area and harmonization of the labor law norms introduced during the war with the existing norms of legislation.

Methodology. General and special methods of cognition are used: content analysis – to establish that even indirect influence of military actions is a significant factor in industrial injuries; formal-legal method – to substantiate the need to take into account impact of complex risks on employees' life and health; special-legal method – to propose proactive approach and system of local regulatory acts; logical generalization – to establish that military actions cause new grounds for the employer's legal responsibility.

Findings. It is indicated that peculiarities of legal provision of labor protection issues in the conditions of martial law require the introduction of changes and additions. It is indicated that the influence of complex risks in cases of threats to employees, which include industrial and military circumstances, needs legal clarification. The legal substantiation for the need to take into account the impact of complex risks in case of industrial injury cases is provided. Legal tools for assessing impact of complex risks, in particular re-certification of workplaces, are proposed.

Originality. A proactive approach is proposed for leveling consequences of risks to working conditions by preparing employees for possible threats by implementing systematic, echeloned labor protection policy. The system of local normative acts of the enterprise should be the instrument of this policy. Indicator conditions and additions to legislative provisions are proposed.

Practical value. The developed recommendations will contribute to the legal regulation of labor protection and the harmonization of new norms of labor law with the existing norms of legislation in the field of labor protection.

Keywords: *legal support, labor protection, international legal standards, martial law, adaptation of legislation*

Introduction. The conditions of the war significantly complicated the implementation of labor protection tasks at Ukrainian enterprises. This is not only due to the increased risks of damage to production, the relocation of enterprises and the associated dysfunction of the established labor protection system; increased risks due to sudden long-term power or water supply outages, especially at enterprises whose technological cycles are tied to dangerous compounds; physical and psychological exhaustion of employees, etc. Proper legal provision of labor protection in such conditions also becomes problematic, or even becomes impossible, the application of legal norms of labor protection is complicated. As an example, the requirement of Article 16 of the "Convention on Safety and Health at Work (No. 155)", according to which the management of enterprises is required to ensure labor protection standards "to the extent that it is reasonably practicable". Insurance against military risks in the conditions of war often does not depend on the desire and capabilities of enterprise management, especially due to the lack of resources for this, so such a provision is actually an indulgence from legal responsibility for the life or health of employees. In the Ukrainian realities, the thesis about "force majeure circumstances", in individual or collective labor contracts, which used to be somewhat abstract, is now also a concrete circumstance that is referred to in case of accidents.

Inadequate provision of occupational health and safety is a significant demotivating factor that, under significant psychological, emotional and additional physical stress due to military actions, reduces the working capacity of employees, which directly affects the efficiency of the enterprise. But in the conditions of the political, economic and social crisis, employers often consider the problems of occupational health and safety to be insignificant and neglect them. This increases the significance of legal liability for failure to provide adequate working conditions.

The conditions of war create new requirements for the regulatory framework, which necessitates changes in legislation. At the same time, new legislative acts should not lead to a deterioration of working conditions, an increase in hazards to the life and health of employees, or a decrease in the level of legal responsibility for violating the norms of existing laws aimed at labor protection. This requires the introduction of an adaptation approach using additions to the legal provisions of Ukrainian legislation and indicator norms, due to the specifics of ensuring proper working conditions under martial law.

Literature review. Many scientific works are devoted to legal problems in the field of labor protection in Ukraine. Large-scale military actions have led to changes in the regulatory and legal field of Ukraine regarding the implementation of legislative norms in wartime conditions and required attention to the specifics of the implementation of the population's rights to safe working conditions. Thus, the article by Prytyka, et al. [1] provided a broad overview of "legal challenges for Ukraine under martial law: protection of civil, property and labor rights, right to a fair trial, enforcement of decisions". In the article Prytyka, et al. [1] stated that the need to ensure "the balance of state power gives fewer opportunities to properly exercise the right to a fair trial during war and pandemic, some current problems make the proper administration of justice in the conditions of these obstacles almost impossible". Unfortunately, the mentioned article does not provide a detailed analysis of the legal peculiarities of labor protection due to the significant changes in labor legislation caused by the war.

In the article Slobodian, et al. [2] indicated that martial law necessitates the need to reduce the number of lawsuits on

labor disputes and to provide for workers as much as possible. But it is not indicated that the existence of martial law makes it difficult to protect the rights of workers, in particular due to the formation of legal conflicts.

Rezvorovych, et al. [3] examined changes in legislation aimed at resolving conflicts between parties to labor relations, introducing restrictions "to protect the rights of each party to labor relations, as well as to ensure the minimization of risks associated with the work of employees". The legal mechanisms of "the introduction of essential working conditions in order to overcome the consequences of military aggression" were studied. The limitations of employment contracts regarding working conditions which are used in this article are specified.

Sydorenko [4] stated that "during martial law, it is extremely difficult to guarantee proper, healthy and safe working conditions" and indicated gaps in the legislation in this regard. It is also indicated that under martial law, in addition to fulfilling the requirements of international and national legislation in the field of labor protection, the employer must ensure additional requirements for working conditions at workplaces. Unfortunately, only the recommendations of the State Labor Office are listed among the legal acts that substantiate additional requirements under martial law.

Kovalenko [5] indicated the insufficiency of indicator conditions for legal restrictions on the rights of workers in the field of labor protection during the war, which is considered in the presented study. Pylypenko, and others [6] researched the legal peculiarities of the organization of labor relations during the war. It is asserted that the key mechanism for ensuring "the basic labor rights of the employee and the employer in accordance with international standards, guarantees of their implementation, forms, methods and means of protection" is the "development of an effective sectoral legal mechanism" under the unchanged direction of the legislation on the protection of the rights of workers in conditions of martial law. Unfortunately, this contradicts the new legislative norms in this area. At the same time, Prokopchuk [7] asserts the need for new forms of labor contracts to ensure the rights of workers "in conditions of war with unstable work processes". The legal reasoning of this thesis is expanded and supplemented in the presented article. The expansion of the contractual normalization of labor relations, in particular, in the field of labor protection, is indicated in the article by Hryshyna, et al. [8]. Also Hryshyna, et al. [8] indicated the need for legal protection of workers in war conditions.

According to Voroniatnikov, and others [9], the need to increase attention to the protection of the labor rights of workers and the legislative provision of their implementation is determined as a trend of changes in the legal field during wartime. The need for adaptability of legal protection of workers' rights during wartime is also indicated. This thesis is expanded and substantiated in the presented study.

Bortnyk [10] indicated that the introduction of martial law caused a number of problems "both of a practical and theoretical-legal nature" regarding the interaction of the parties to labor relations, in particular in the field of labor safety, and indicated that the current labor legislation needs to be adapted to new challenges by introducing changes and additions. That is, the necessity of harmonizing new legal provisions is itemed out, which is the aim of the presented research.

Kozak, et al. [11] indicate that the current state of the regulatory field in the sphere of labor protection is characterized by the lack of a holistic approach and it is proposed to develop a modern model of labor protection that requires the formation of conceptual support for this area of legislation and the implementation of effective mechanisms for this. Kozak, et al. [11] also reasonably point to the improper implementation of the provisions of international legislation in the Ukrainian legal field in the specified area, thereby confirming the perspective of this direction of legislation reform. Unfortunately, the conditions of war, the impact of which is not sufficiently studied by Kozak, et al. [11], limit the proposed reforms to the need to adapt existing norms to new threats.

Bochkovskyi, and others [12] proposed the concept of a proactive system of legal protection of labor safety. The specified concept in the presented article is adapted for the use of local normative regulation of labor safety. Koval, et al. [13] examined the issue of legal liability for violation of labor protection legislation. New grounds for legal liability in this area, due to military threats, are indicated. This thesis is developed in the presented article.

The above review of scientific works indicates the need for a detailed study on the peculiarities of the legal provision of labor protection issues in crisis conditions, in particular, in the conditions of military operations, and the harmonization of the norms of labor law introduced during the war with the existing norms of legislation in the field of labor protection.

Purpose. To investigate the peculiarities of the legal provision of labor protection issues in crisis conditions, in particular, in the conditions of military operations, to propose indicator conditions and additions to legislative provisions for the improvement of legal regulation in this area and the harmonization of the norms of labor law introduced during the war with the existing norms of legislation in the field of labor protection.

Methods. When performing scientific research, general and special methods of cognition are used. The method of content analysis was implemented to assess the dynamics of industrial injury cases and to confirm that even the indirect influence of military actions is a significant factor in the formation of a threat to the appropriate level of labor protection.

The application of the formal-legal method made it possible to provide legal substantiation for the need to take into account and assess the impact of a complex of risks in case of industrial injuries during the period of martial law and to offer tools for assessing the impact of a complex of risks, in particular, re-certification of workplaces.

The application of the analytical method made it possible to establish that the norms of Ukrainian legislation and EU regulatory guidelines, which impose obligations on the employer to ensure safe and harmless working conditions, are of a declarative nature and to propose indicator norms with the purpose of strengthening the imperative,

The special legal method made it possible to offer a proactive approach to leveling the consequences of risks to the life and health of employees, by preparing employees for possible threats by implementing a systematic, echeloned labor protection policy at the enterprise, and to propose a system of local regulatory acts of the enterprise as a tool of this policy. The application of the method of logical generalization made it possible to establish that it is the local normative acts of the enterprise that are able to ensure the proper dynamics of the legal regulation of labor protection under military threats.

The method of logical generalization made it possible to establish that military actions determine new grounds for the employer's legal responsibility for violations in the field of labor protection and specified examples of such grounds.

Results. According to the State Labor Service of Ukraine [14] the assessment of the dynamics of industrial injury cases indicates an increase in accidents with fatal consequences (Figure). At the same time, it should be noted that the State Labor Service of Ukraine does not take into account accidents at work due to violations of technological processes as a result of military actions. Even under such conditions, a comparison of the period before the start of large-scale aggression and after its start indicates a 28 % increase in fatal accidents over the comparable period (January-September inclusive). This confirms that even the indirect influence of military actions is a significant factor in the increase of threats to the life and health of workers.

The causes of accidents at work with fatal consequences in the nine months of 2023 were: psychophysiological – 43.6 %; technical – 9.2 %; organizational – 47.1 %. The significance

of the share of psychophysiological factors in comparison with the share of technical factors indicates an increase in the psychophysiological load on the employee.

Under conditions of war, the separation of cases of industrial injuries due to reasons related to the technological process of specific production and a combination of factors, including military actions, is problematic.

This is particularly indicated by the statistics of accidents provided by the State Labor Service of Ukraine [14] (Figure). Although, even if the cases of industrial injuries due to reasons related to the technological process are singled out, the results of statistical analysis indicate an increase in the number of deaths after the start of large-scale military operations. The reason for this is precisely the impact of a combination of factors on the psychophysical condition of employees.

This requires a change in the emphasis of legal provision of labor protection under martial law conditions and legal consideration of the impact of the complex of risks on workers and determines the need for a legal definition of the psychophysiological causes of accidents at work. Therefore, an adaptation approach using additions to the legal provisions of Ukrainian legislation and indicator norms, determined by the peculiarities of ensuring proper working conditions during the period of martial law, is proposed.

At the same time, as lawyers know [15], employers often try to interpret cases of industrial injuries as a result of force majeure circumstances, which they consider military actions with reference to the letter of the Chamber of Commerce and Industry of Ukraine No. 2024/02.0-7.1 dated 28.02.2022 according to which military actions are interpreted as circumstances of force majeure for the fulfillment of contractual obligations. At the same time, according to Supreme Court Resolution No. 904/3886/21, force majeure circumstances do not determine prejudicial prerequisites for the performance of contracts, therefore the interested party must prove the force majeure effect of the specified circumstances on the fulfillment/non-fulfillment of the obligations assumed. Therefore, this limits the use of reference to the mentioned circumstances to hide the causes of an accident at work by the need to prove the force majeure nature of these circumstances in court proceedings.

Proper legal settlement of the specified issues also requires making corrections to the Resolution of the CMU adopted on January 20. No. 59 of 2023 "On Amendments to the Procedure for Investigating and Recording Accidents, Occupational Diseases, and Accidents at Work" in particular, regarding clarification of the definition of "hidden accident" by supplementing paragraph 3 of the Resolution of the CMU adopted on April 17. No. 337 of 2019: "hidden accident at work – an accident that the employer, the victim or the employee who discovered it did not report to the relevant bodies and institutions within the time limit established by this Order, and/or an accident that was not investigated by the commission of the enterprise (institution, organization)" with the following text: "or the case, the determination of the causes of which was not properly proven by the employer" and the introduction of appropriate changes to the Criminal Code in case of deliberate concealment of the causes of the accident.

Also, the definition of "production-related accident" used in the Resolution of the CMU No. 337 adopted on 17.04.2019 needs to be clarified because it leads to legal inconsistency in assessing the consequences of the impact of a complex of risks, which include both industrial and military circumstances, which leads to conflicting evidence in legal proceedings [16].

Since the Law of Ukraine No. 2694-12 "On Occupational Safety" adopted on October 14, 1992 indicates: "Occupational safety in Ukraine is a system of legal, socio-economic, organizational, technical, sanitary-hygienic and preventive measures and means aimed at preserving life, health and working capacity of a person during work", then this is a legal basis for taking into account not only the impact on the safety and health of employees of purely industrial risks, but the entire set of risks, which in wartime include military risks.

This is also confirmed by the provision of the Law of Ukraine No. 1105-XIV "On Mandatory State Social Insurance", where Article 1, Part 1, Clause 5 defines: "An accident at work is a time-limited event or a sudden impact on an employee of a dangerous production factor or environment that occurred during the performance of his/her work duties, as a result of which damage to health or death occurred". This provision confirms that the victim's presence at work during an accident already confirms the effect of a complex of risks, since it was the complex action of risks in this case that determined the implementation of a "dangerous production factor or environment". But the cause of action of a "dangerous production factor or environment" should be determined by the commission, which is formed in accordance with the Resolution of the Cabinet of Ministers of Ukraine adopted on April 17, 2019 No. 337 "The procedure for investigating and recording accidents, occupational diseases and accidents at work". Accordingly, this will allow one to legally establish the culprits in the accident and indicate the sources of social assistance to the victim or members of his (her) family [17].

In the event of an accident, employers must draw up acts in the H-5 and H-1 forms and notify the relevant authorities. The investigation of the accident substantiates the receipt of compensation for the victims. Employers may evade investigation to avoid liability for an accident. A significant part of pretrial and court disputes in this category of cases is due to the employer's attempts to evade the investigation [16]. Courts often reject the claims of the injured party because the court does not have the right to determine the circumstances in this category of cases. This is due, in particular, to the fact that the legislation does not give the worker the right to independently initiate an investigation of the accident. Therefore, it is advis-

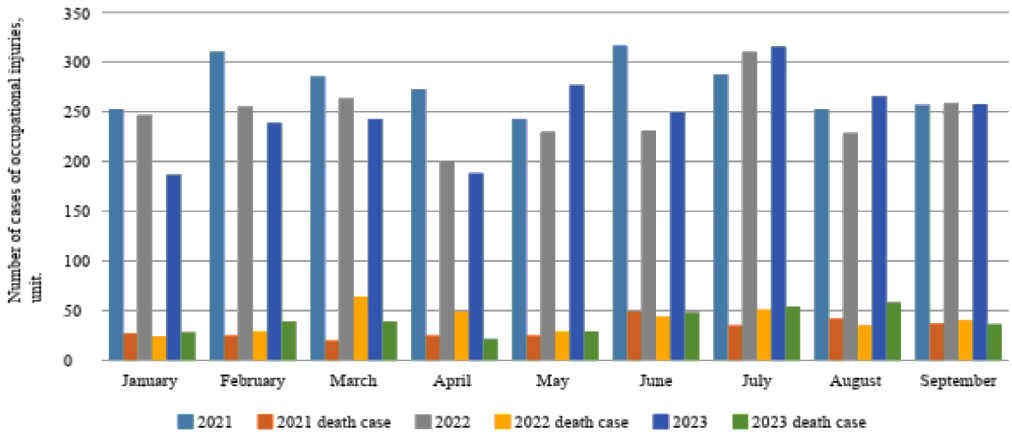

Fig. Dynamics of industrial injury cases, unit

able to supplement Clause 8 of the Resolution of the Cabinet of Ministers of Ukraine No. 337 with the following indicator condition: "In the event that the employer does not provide information about this case to the structures specified in the Law within three hours from the moment of the occurrence of an accident or injury to the employee's health, the victim or persons authorized by him/her have the right to apply to the Social Insurance Fund with a corresponding application".

Article 153 of the CLL indicates the need to "create safe and harmless working conditions" and imposes obligations on the employer to ensure these conditions. It corresponds to the instruction of Article 6 of the Directive of the Council of the EEC (89/391/EEC) that the employer must ensure proper working conditions, in particular, in view of professional risks, adjust the implementation of the specified tasks in case of changes in circumstances. But these provisions of both Ukrainian legislation and EU regulatory guidelines are rather declarative in nature.

Due imperativeness of the employer's obligations regarding the organization of "safe and harmless working conditions" is provided by Article 271 of the Criminal Code (CC) of Ukraine, which stipulates punishments for criminal offenses in the field of labor protection. At the same time, it should be noted that the Supreme Court, not only during this period, but during its entire existence, has not considered a single case under this article. In the period of 2021–2023, only four cases were submitted to the courts of the first instance under this article. This does not correspond to the principle of the preventive effect of legislation on the prevention of offenses and the principle of inevitability of punishment for the commission of offenses.

It also complicates the litigation of legal disputes by the provisions of Article 153 of the CLL, as the legal definition of the specified duties of the employer has a declarative rather than an imperative character. An example, in particular, can be Article 158 of the Labor Code of Ukraine, which states that the employer must take measures for the safety of workers and the protection of their health. The implementation of any individual measures meets the specified definition. Therefore, Article 158 of the Labor Code of Ukraine requires an indicator condition – not "measures", but "system of measures".

At the same time Article 6, clause 1, paragraph g of the EU Council Directive No. 89/654/EEC indicates the employer's duty to implement an agreed general policy to prevent negative effects on the health and safety level of employees. This provision more unambiguously than the Labor Code of Ukraine asserts the need for a systematic approach in the implementation of a system of measures or a "coordinated general policy" of ensuring the safety and health protection of employees.

Since Article 8-1 of the Civil Code indicates the need to apply the norms of international treaties to which Ukraine has joined, even if they are different from those contained in the legislation of Ukraine, therefore, the specified provision of the EU Council Directive No. 89/654/EEC, firstly, must be implemented for fulfillment in Ukraine, secondly, indicates a certain inconsistency of certain norms of Ukrainian legislation on labor protection with Ukraine's obligations regarding the implementation of EU norms.

A comparison of the labor protection regulatory framework of Ukraine and the EU indicates their significant difference. Thus, the fundamental principle of labor protection of the EU consists in the "unity and differentiation" of normative and legal regulation in the specified sphere. Unlike in Ukraine, the implementation of this principle is ensured by taking into account the sectoral, regional and other peculiarities of the implementation of production activities and using a risk-oriented approach to the implementation of occupational health and safety measures at the place of performance of labor duties by the employee.

A peculiarity of the EU labor protection legal framework is also the predominant orientation of legal instruments to the prevention of offenses rather than their punishment, in particular, due to the strengthening of methodological and legal advisory support of employers in these matters by EU institutional structures [18].

The Draft Laws "On Safety and Health of Workers at Work" and "On Amendments to Certain Legislative Acts of Ukraine Regarding Liability for Violation of the Requirements of the Laws on Safety and Health of Workers at Work", prepared by the Cabinet of Ministers, are aimed at implementing these tasks and modernizing the regulatory environment of Ukraine in the field of labor protection.

At the same time, the martial law leads to a contradiction between the EU legislation and the normative legal field of Ukraine in the sphere of labor protection. A vivid example of this is the following. According to the Directive of the Council of the EU No. 89/391/EEC adopted on 12.05.1989 on the introduction of measures to encourage the improvement of the safety and health of employees at work, it is the obligation of the employer to provide the employee not only with the proper conditions for preserving life and physical safety, but also psychophysiological welfare. For this, according to the specified document of the Council of the EU, the employer must provide adequate conditions for recreation. The significance of the psychophysiological causes of industrial accidents is confirmed by the above statistics. But the conditions specified in Directive No. 89/391/EEC for Ukrainian workers are significantly shortened by the requirements of Law of Ukraine No. 2136-IX "On the Organization of Labor Relations in Martial Law" [19]. So according to Article 6 of this law, the duration of working hours may increase to 60 hours/week for those working at critical infrastructure enterprises. The number of working days per week, the start/end time of the shift is determined by the employer according to this Law.

According to Article 12 of the Law of Ukraine No. 2136-IX, during wartime, the employer may deny the employee the appropriate number of vacation days. Article 12 of the Law of Ukraine No. 2136-IX also limits the effect of Part 7, Article 79 and Part 5 of Article 80 of the Labor Code of Ukraine, as well as Part 5 of Article 11, and part 2 of Article 12 of the Law of Ukraine "On Vacations".

Moreover, if it concerns critical infrastructure facilities, the employee may be denied leave altogether. Also, the vacation can be shortened by the employer to 24 calendar days with a postponement of the provision of unused vacation days only in case of the suspension of martial law. As a result, overtiredness of workers is guaranteed to lead to an increase in industrial injuries.

Also according to Article 3 Clause 1 of the Law of Ukraine No. 2136-IX introduced a normative provision on providing the right grounds for the transfer of an employee to another job by the employer, outside the terms of the employment contract, even without the agreement of this transfer with him/her. Despite the fact that this action under Article 3 Clause 1, Law of Ukraine No. 2136-IX can be implemented in the absence of risks to people's lives or health, the implementation of standardized occupational health and safety measures under such circumstances is extremely difficult or is not possible at all.

"Creation of safe and harmless working" under Article 153 of the CLL of Ukraine in crisis conditions, in particular in conditions of military operations, also has other peculiarities [20]. According to the theory of jurisprudence, measures to implement legal norms in crisis conditions are divided into reactive, due to the irreversible action of external factors, and proactive, due to the norms of local law, internal instructions, etc. [12, 21]. If reactive measures are spontaneous actions aimed at leveling the consequences of risks, proactive ones are characterized by planning and preparation. That is, proactivity means that not all risks to working conditions can be prevented, but employees must be prepared for them [22, 23]. This can only be ensured by the implementation of a systematic, echeloned labor protection policy at the enterprise.

Also, in the regulatory environment of Ukraine there are no procedures and conditions for the modernization of technological equipment [24]. This is, in particular, a consequence of significant sectoral, industrial differences in production technology, and lack of funds of the employer for these purposes. This greatly complicates proving in legal disputes that the cause of the accident is the employer's violation of the requirements for the modernization of technological equipment and, on the basis of this, holding the employer accountable. This is easier to prove in the presence of specific requirements for modernization periods in the collective agreement. Contractual regulation of social and labor relations expands the possibilities of protecting the rights of employees. Also, such a regulatory instrument as a collective or individual contract provides an opportunity to detail the legal field in the relationship between the employer and employees for the conditions of a specific enterprise, to make the process of regulating labor relations more flexible, in particular, in the field of labor protection.

Also, contractual regulation provides an opportunity to control the employer's spending of financial resources intended for labor protection measures. According to Article 162 of the Code of Labor Laws of Ukraine (CLL), funds the allocation of which is conditioned by the collective agreement on the need to implement labor protection measures, cannot be spent on other purposes. And the financing of labor protection measures in the specified amounts must be controlled by the labor team. This corresponds to Article 10 of CLL.

But, as practice shows, in conditions of martial law, employers shy away from concluding collective agreements and are more inclined to conclude individual labor contracts and temporary agreements. In particular, employers refer to Article 11 of the Law of Ukraine No. 2136-IX "On the Organization of Labor Relations in the Conditions of Martial Law", the employer has the right to suspend the effect of certain provisions of the collective agreement. The legal basis for this also lies in the fact that the Law of Ukraine No. 3356 stipulates that collective agreements are concluded on a voluntary basis. This corresponds to the conditions of the Conventions of the International Labor Organization "On the Application of the Principles of the Right to Organization and Conduct of Collective Bargaining" No. 98 ratified by the Verkhovna Rada and adopted on July 1, 1949; "On Facilitation of Collective Bargaining" No. 154 adopted on June 19, 1981; "On the protection of the rights of representatives of employees at the enterprise and the opportunities provided to them" No. 135 adopted on June 30, 1973. Therefore, the main prerequisite for concluding a collective agreement is the decision of the collective to gain a legal basis for the protection of its labor and social rights, and, in particular, rights in the field of labor protection.

This makes it necessary to introduce changes to the Draft Law "On the Safety and Health of Employees at Work" regarding the assessment of the totality of risks and actions aimed at their elimination. In particular, the definition of "occupational risks" needs to be replaced by the definition of "risks of the action of a production factor or environment" in addition to clauses 30, 42, 44 part 1 of Article 1, clause 15 part 2 Article 4, clause 5 part 2 Article 9, part 3 Article 9, clause 1 Article 10, part 1, 3, 4, 7, 16 Article 19, parts 1.3 Article 28, and in clauses 9, 10, part 1 of Article 1 of the specified law, in which the definition of "professional risks" is replaced by "risks to life and health of employees". This will eliminate the need to introduce an additional definition of "complex of safety and health risks of employees" into the legal field.

This, in particular, indicates the need for employers to assess all risks, including military ones, and carry out the necessary set of works to reduce the impact of these risks on the health and life of employees.

This requires a radical change in approaches to occupational health and safety in accordance with the new fundamental principle regarding risks to the life and health of employees – "anticipate and prevent" [25, 26]. Also, it must correspond to the principles that the employer should be guided by, implementing safety and health protection measures of employees, declared by Article 6 clause 2 of EU Council Directive No. 89/391/EEC.

This is provided for by the implementation of a risk-oriented approach to occupational health and safety according to the Draft Law of Ukraine "On Safety and Health of Workers at Work" prepared by the Cabinet of Ministers. The implementation of this draft law will mark the transition from activities in the field of labor protection, aimed at reducing industrial injuries and the negative impact of the industrial environment at a relatively stable level of the production process and, accordingly, a stable level of threats, to the management of dynamic risks of labor and industrial safety. This is extremely timely as military threats are dynamically changing industrial risks at every workplace. This also determines the need for a dynamic response of the regulatory and legal field to dynamic changes in threats. Changes in legislation cannot be a sufficiently dynamic reaction to external influences due to the length of their procedure. Local regulatory acts of the enterprise are characterized by greater dynamism. It corresponds with Article 6 clause 1 of the EU Council Directive No. 89/391/EEC, which indicates the need to adjust the safety and health protection measures of employees in accordance with "changing circumstances".

The influence of military threats dynamically changes the industrial risks at each place of performance of labor duties by the employee, and this influence has its own characteristics at each enterprise. It is the consideration of these peculiarities that must be ensured by local legal documents: management orders, internal instructions, collective agreements, etc. At the same time, collective agreements should provide for adjustments depending on changes in external threats to the safety and health of employees.

This also requires the introduction of a system of local regulations at the enterprise which increase the safety of life and health of the enterprise's employees: provisions and instructions, in particular, competency maps, labor protection instructions, instructions for actions at each place where the employee performs work duties. emergency, etc.

In accordance with the letter of the Ministry of Justice of Ukraine dated April 15, 2010 No. 326-0-2-10-19, the employer can adopt a local regulatory document by approving it or issuing an order or a directive on approval, except for the cases provided for by the CLL regarding specific documents, for example, collective agreements. But in order to avoid social contradictions and ensure against possible conflicts when appealing to local regulatory documents in the court process, it is worth accepting these documents with the maximum involvement of interested parties (representatives of trade unions, other representative structures of the labor collective, individual groups of employees, etc.). The conditions for the implementation of the specified documents must be: compliance with the current legislative acts, founding documents of the enterprise in accordance with Article 57 and Article 65 of the Economic Code of Ukraine, collective agreements, labor agreements; no worsening of working conditions; notification of the employee's specified document, certified by his signature; mandatory nature of performance.

Military actions provide new grounds for the employer's legal responsibility for violations in the field of labor protection, in particular due to failure to carry out (or failure to carry out in a timely manner) the evacuation of employees from a location close to the zone of increased military risks, failure to provide the company's personnel with protective structures, means of collective and individual protection, failure to introduce instructions for handling technological equipment in the event of an increased level of danger, etc.

New threats require a review of the system of measures formed during peacetime to prevent hazards for personnel located on the enterprise's territory and/or performing produc-

tion tasks. It is necessary to develop a new strategy to take into account the entire set of risks and implement a new system of local regulations that implement the specified strategy and realize new legal conditions of labor protection.

This, in particular, is indicated by Article 153 of the CLL, according to the provisions of which the management of the enterprise is obliged to implement the latest safety equipment that ensures the reduction of the risks of industrial injuries.

One of the measures in the new conditions is the recertification of workplaces, since the impact of production factors combined with military threats on the level of risks to the life and health of an employee is radically changing. This is particularly confirmed by Article 1 clause 1 paragraph 1 of the Draft Law of Ukraine "On the Safety and Health of Employees at Work": "certification of workplaces/zones — a comprehensive assessment of the factors of the working environment and work process that affect the health and performance of employees during work". The mentioned article indicates precisely the "comprehensive" assessment of factors. Attestation of workplaces and, accordingly, re-attestation is carried out in accordance with the Resolution of the CMU adopted on August 1, 1992 No. 442 "On the Procedure for Attestation of Workplaces by Working Conditions. The certification procedure is defined in Appendix 1 of the Resolution of the CMU No. 442 "Methodological recommendations for certification of workplaces according to working conditions".

The systematicity and obligation of recertification for the mentioned change in the influence of non-production factors must be confirmed in the normative and legal field. For this Article 10 clause 3 of the Resolution of the CMU No. 442 "Conducting attestation of workplaces/zones according to working conditions is mandatory in cases where legislation or a collective agreement, a contract directly establishes its implementation for the relevant industries, works, professions, positions, indicators" should be supplemented as an indicator condition: "as well as in the event of the action of external factors, which leads to a significant change in complex risks for the working environment and labor process".

This should correspond with Article 81 of the Civil Procedure Code (CPC) of Ukraine, according to the provisions of which, if a party in a legal proceeding points out that the other party has not committed certain actions, the court has the right to demand from the relevant party proof of the fact that these actions have been committed, because failure to recertify the workplace can be interpreted as the cause of an accident in a lawsuit.

Since the worker is the vulnerable party in litigation, therefore, in order to properly regulate the judicial practice for the resolution of this category of cases, it is proposed to add to Article 81 of the Code of Civil Procedure the following indicator condition: "In cases of the employer's failure to fulfill his/her duties regarding the creation of safe and harmless working conditions, the proof of the fact of the certification of the employee's workplace or the absence of grounds for it rests with the employer".

The employer's improper implementation of organizational measures to avoid complex threats to the life and health of employees also needs to be clarified. This is due to the fact that the employer's legal responsibility in the event of military threats is based on the provisions of the Code of Civil Protection (CCP) of Ukraine (document No. 5403-VI). In particular, according to Article 33 of the CCP, which regulates evacuation measures and according to Article 51 clause 2, the norm of which imposes responsibility of the business entity for the proper organization of man-made safety on the head, etc. At the same time, in order to avoid ambiguity of interpretation in judicial practice, the specified grounds for the employer's legal responsibility for violations in the field of labor protection should be included in Appendix 10 "Procedure for investigation and accounting of accidents, occupational diseases and accidents at work" (Decision of the CMU No. 337 adopted on 17.04.2019).

Also Article 153 of the CLL indicates that if it is impossible to completely eliminate the danger to the employee's health at the workplace, the employer is obliged to notify the relevant institutional structures, which can give temporary consent to such working conditions. But under martial law, it should be taken into account that the level of technological dangers increases significantly not only in the event of damage to technological equipment. It is often not possible to stop the technological process in a limited time in case of a significant increase in the level of danger. This especially applies to production processes of a continuous cycle. Therefore, the specified provision of Article 153 of the CLL should be supplemented with an indicator condition: "During the state of war, the employer is obliged to notify the central and local executive authorities of threats due to damage to the elements of the technological cycle, irregular termination of technological operations and the consequences of these threats for the employees of the enterprise and the consequences that may lead to man-made disasters".

The provisions of Article 153 of the CLL on the illegality of the employer's requirements for the performance of such work, and in such conditions which create clear threats to the life or health of the subordinate should also be supplemented by the following condition-indicator: "Under martial law, the employer must notify the employees of the enterprise about the increase in risks due to damage to the elements of the technological cycle, unregulated termination of technological operations and develop instructions for actions in case of damage".

This corresponds to Article 20 of the CCP, according to which "tasks and responsibilities of business entities" are defined. According to the regulatory provisions of the aforementioned article of the CCP, the employer is assigned the following responsibilities: to carry out a procedure for assessing the risks of situations that may pose a threat to the life and health of employees at the business facilities subordinate to him, to implement measures to neutralize the effects of the specified risks; training of employees on tasks determined by the needs of civil protection and elimination of man-made hazards, development of plans to reduce the consequences of accidents at the economic facilities subordinate to him, etc.

At the same time, the provisions of Article 20 of the CCP should be detailed and supported by local regulatory acts of the enterprise.

The need for legal reinforcement of the specified legislative provisions by local normative acts is also determined by Article 50 of CCP: "sources of the danger of man-made emergency situations are: ... economic entities with critical state of production funds". Since the dynamism of changes in threats requires prompt clarification in order to reduce the level of risk or level of its consequences for the life and health of employees, then, as it is stated above, the application of local regulatory acts of the enterprise for this is the most appropriate step.

At the same time, as a result of the fact that the legal definition of "criticality of the situation" changes significantly due to military threats, it needs to be clarified. First of all, it needs clarification due to the fact that Article 50 of the CCP, which contains this definition, has a declarative and not an imperative nature, and its application in legal disputes is possible only as a statement of the state of production equipment, therefore, technological peculiarities that, in the event of an increase in military risks, may expose workers to danger, must be reflected in order to avoid legal conflicts in the local regulations of a specific enterprise, in particular in the safety instructions.

The legal definition of "critical condition" is also related to the fact that in order to eliminate such a condition, the technological equipment needs to be modernized, and, as it is noted above, the legislation does not contain the procedure and conditions for modernizing the equipment in production. Therefore, the above should be implemented according to the principle of "unity and differentiation", which also necessitates the use of a collective agreement as a legal instrument for this purpose.

Conclusions. The legal rationale for limiting the interpretation of cases of industrial injuries as force majeure due to military operations or an increase in the level of military threats is provided. The need to prove the force majeure nature of the effects of external threats on cases of industrial injury is indicated in legal proceedings. It is indicated that the proper legal settlement of these issues also requires an addition to the Resolution of the CMU No. 59 adopted on 20.01.2023 and clarification of the definition of "hidden accident" in the Resolution of the CMU No. 337 adopted on April 17, 2019. It is noted that the definition "production-related accident" needs to be clarified, as it leads to legal inconsistency in assessing the consequences of the impact of a complex of risks, which include both industrial and military circumstances, which leads to conflicting evidence in legal proceedings. The legal substantiation for the need to take into account and evaluate the impact of a complex of risks in the event of cases of industrial injuries is provided. Tools for assessing the impact of the complex of risks, in particular re-certification of workplaces, are proposed. The legal conditions for the use of the specified tools are provided.

Since the law does not give the worker the right to independently initiate an accident investigation the indicator condition for clause 8 of the "Procedure for the investigation and recording of accidents, occupational diseases and accidents at work" is proposed: "If the employer does not provide information about this case to the structures specified in the Law within three hours of the occurrence of an accident or damage to the employee's health, the victim or the persons authorized by him/her have the right to apply to the Social Insurance Fund with a corresponding application".

It is indicated that the norms of Ukrainian legislation and EU regulatory guidelines, which impose obligations on the employer to ensure safe and harmless working conditions, are rather declarative in nature. It is indicated that the imperative norms of the Criminal Code of Ukraine, which provide for the punishment of criminal offenses in the field of labor protection, are not properly implemented in judicial practice. It is noted that this does not correspond to the principle of the preventive effect of legislation on the prevention of offenses and the principle of the inevitability of punishment for committing offenses. Indicator norms are proposed to strengthen the imperative.

It is indicated that the martial law leads to a contradiction between the EU legislation and the normative legal field of Ukraine in the sphere of labor protection. This contradiction is considered using the example of the terms of the EU Council Directive 12.05.1989 No. 89/391/EEC on preserving the psychophysiological well-being of working people by ensuring proper conditions for rest. The specified conditions for Ukrainian workers are significantly reduced by the requirements of the Law of Ukraine No. 2136-IX.

A proactive approach is proposed for leveling the consequences of risks to working conditions by preparing employees for possible threats by implementing a systematic, echeloned labor protection policy at the enterprise. The system of local normative acts of the enterprise is proposed as a tool of this policy. This is due to the fact that military threats dynamically change industrial risks at each place where the employee performs work duties, which requires a dynamic response of the regulatory and legal field to dynamic changes in threats. Changes in legislation cannot be a sufficiently dynamic reaction to external influences due to the length of their procedure, and local normative acts of the enterprise are able to ensure the appropriate dynamics of legal regulation of labor protection issues in the event of such threats. The growth of the legal significance of collective agreements as local normative acts of the enterprise is indicated, and the directions of their application are determined.

It is noted that military actions determine new grounds for the employer's legal responsibility for violations in the field of labor protection, and examples of such grounds are given.

The proposed indicator conditions and additions to the legislative provisions will contribute to the improvement of legal regulation and the harmonization of the norms of labor law introduced during the war with the existing norms of legislation in the field of labor protection.

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Юридичне забезпечення стандартів охорони праці в умовах воєнного стану

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Мета. Дослідити особливості правового забезпечення питань охорони праці у кризових умовах, зокрема, в умовах воєнних дій, запропонувати умови-індикатори й доповнення законодавчих положень для вдосконалення правого регулювання в цій сфері та узгодження запроваджених під час війни норм трудового права з існуючими нормами законодавства у сфері охорони праці.

Методика. Використані загальні та спеціальні методи пізнання: контент-аналізу – для встановлення, що навіть непрямий вплив військових дій є значущим фактором виробничого травматизму; формально-юридичного – для обґрунтування необхідності врахування впливу комплексу ризиків на життя та здоров'я працівників; спеціально-юридичного – для пропонування проактивного підходу й системи локальних нормативних актів підприємства; логічного узагальнення – для встановлення, що військові дії обумовлюють нові підстави для юридичної відповідальності роботодавця.

Результати. Вказано, що особливості правового забезпечення питань охорони праці в умовах воєнного стану потребують запровадження змін і доповнень. Указано, що потребує правового уточнення вплив комплексу ризиків у випадках загроз життю та здоров'ю працівників, які включають у себе виробничі й військові обставини. Надане юридичне обґрунтування необхідності врахування впливу комплексу ризиків у разі випадків виробничого травматизму. Запропоновані правові інструменти оцінювання впливу комплексу ризиків, зокрема переатестація робочих місць. Надані правові умови задіяння вказаних інструментів.

Наукова новизна. Запропоновано проактивний підхід для нівелювання наслідків ризиків умовам праці шляхом підготовки працівників до можливих загроз упровадженням системної, ешелонованої політики охорони праці на підприємстві. Інструментом указаної політики запропонована система локальних нормативних актів підприємства. Запропоновані умови-індикатори й доповнення законодавчих положень.

Практична значимість. Розроблені рекомендації сприятимуть правовому регулюванню охорони праці та узгодженню нових норм трудового права з існуючими нормами законодавства у сфері охорони праці.

Ключові слова: *правове забезпечення, охорона праці, міжнародні правові стандарти, воєнний стан, адаптація законодавства*

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