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## ARTÍCULO DE INVESTIGACIÓN

### **Garantías sociales de los empleados bajo la ley marcial en Ucrania**

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Danylo Leschukh\*, Oleksii Yakymets\*\*, Natalia Polishko\*\*\*, Volodymyr Kantsir\*\*\*\*,  
Ihor Furyk\*\*\*\*\*

#### **Resumen**

En el artículo científico, con la ayuda de métodos filosóficos generales y especiales de conocimiento científico, se investigan las garantías sociales de los trabajadores bajo la ley marcial en Ucrania. La definición y clarificación de la esencia de la protección social como una de las categorías clave de la política social del Estado. Se hace hincapié en que la protección social de los empleados requiere la definición de un conjunto de medidas a gran escala a nivel estatal, sectorial, regional y de producción, aumentando la responsabilidad mutua de los empleadores y los empleados, mejorar la organización de la prevención de accidentes y enfermedades en el trabajo. Se determinan las principales direcciones para aumentar el nivel de protección social del empleado. Los argumentos relativos a la necesidad, en caso de rescisión del contrato de trabajo durante el período de la ley marcial, de garantizar la aplicación, protección y protección efectivas y sin trabas de los derechos laborales, principalmente de los trabajadores movilizados y desplazados internos, embarazadas y menores. La conveniencia de proporcionar garantías adicionales a los empleados que trabajan con contratos de empleo de plazo fijo en las condiciones de un régimen jurídico especial está justificada.

**Palabras clave:** protección social, garantías sociales, derechos laborales, empleado, contrato de trabajo.

#### **Abstract**

#### **Social guarantees of employees under martial law in Ukraine**

In the scientific article, with the help of general philosophical and special methods of scientific knowledge, social guarantees of workers under martial law in Ukraine are investigated. The definition and clarified the essence of social protection as one of the key categories of social policy of the state. It is emphasized that social protection of employees requires the definition of a complex of large-scale measures at the state, sectoral, regional and production levels, increasing the mutual responsibility of employers and employees, improving the organization of prevention of accidents and diseases at work. The main directions of increasing the level of social protection of the employee are determined. The arguments concerning the necessity in case of termination of the employment contract during the period of martial law to ensure the unhindered and actual implementation, protection and protection of labor rights

primarily of such workers as mobilized, internally displaced persons, pregnant and minors. The expediency of providing additional guarantees for employees working under fixed-term employment contracts under the conditions of a special legal regime is substantiated.

**Keywords:** social protection, social guarantees, labor rights, employee, employment contract.

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\*Doctor of Law, Docent of the department of social law, Franko National University of Lviv, Lviv, Ukraine. ORCID ID: <https://orcid.org/0000-0003-0635-0143> . E-mail: [leshchuhdr@gmail.com](mailto:leshchuhdr@gmail.com)

\*\*Candidate of legal sciences, Associate Professor, Professor of the department of the civil and juridical disciplines, National Academy of Internal Affairs, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0002-7030-104X> . E-mail: [iakymets@gmail.com](mailto:iakymets@gmail.com)

\*\*\*Philosophy Doctor in law, Associate Professor of the department of the civil and juridical disciplines, National Academy of Internal Affairs, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0002-3898-3896> . E-mail: [ekspertndeks@i.ua](mailto:ekspertndeks@i.ua)

\*\*\*\*Doctor of Law, Professor of the department of criminal law and procedure of Educational and Scientific Institute of Law, Psychology and Innovative Education, Lviv Polytechnic National University, Lviv, Ukraine. ORCID ID: <https://orcid.org/0000-0002-5061-5340> . E-mail: [kancir\\_01@ukr.net](mailto:kancir_01@ukr.net)

\*\*\*\*\*Candidate of legal sciences, Associate Professor of the department of social law, Franko National University of Lviv, Lviv, Ukraine. ORCID ID: <https://orcid.org/0000-0003-0709-1876> . E-mail: [dok\\_igor@ukr.net](mailto:dok_igor@ukr.net)

## 1. Introduction

The formation of the foundations of a social state, the implementation of its main functions is impossible without proper legal regulation. The right to work occupies a priority place in the system of basic social rights, and its implementation is interpreted as a certain set of actions aimed at determining the content of all norms of labor law as a branch of law and internal coherence in accordance with the objective needs of the development of relations in this area.

The right to work, as a natural and inalienable human right to possess and use their abilities to work, provides for the state to provide mechanisms for its implementation. In particular, according to Article 43 of the Constitution of Ukraine, every citizen has the right to work, primarily as an employee. The state provides an opportunity to earn a living by labor that is not prohibited by law and that a person freely chooses or freely agrees to (Constitution of Ukraine, 2016). The implementation of the most accessible opportunity to exercise the right to work for citizens of Ukraine under martial law remains a priority task of the state.

Modern social and labor relations insistently require high-quality social protection of employees. Economic transformations of the country lead to corresponding changes in the field of social policy, the development of social protection mechanisms based on the principles of self-regulation and mutual support. In view of the above, it is important to study the system of social protection of workers, taking into account current trends in socio-economic development.

Today, it is possible to protect the rights of subjects of labor relations through various organizational and legal means. However, the means and ways to protect human

rights enshrined in legal norms in practice are not always really valid. In such a situation, the system of guarantees for the protection of the rights of subjects of labor relations requires detailed consideration and study. The greatest attention should be paid to the guarantees of the protection of the human right to work in the termination of labor relations with it, since, as practice shows, it is in this situation that violations of the rights of both workers and employers are most often observed.

It should be noted that the issues of exercising the right to work and in some cases the polarity of the interests of the employee and the employer lead to the emergence of labor disputes. In addition, certain provisions of the Labor Code of Ukraine are not perfect and are interpreted by the parties to labor relations in different ways. In this regard, labor legislation establishes a large number of guarantees when entering into labor relations, their existence. One of the most important are the guarantees of employees in case of termination of the employment contract. The greatest risks of non-compliance with relevant procedures and abuse exist when the termination of labor relations is carried out at the initiative of the employer.

Introduction on the basis of the Law "On the legal regime of martial law" (On the legal regime of martial law. Law of Ukraine, 2022) of martial law in Ukraine led to a new stage in the development of labor relations. Under such conditions, the main task of labor law is to develop an effective mechanism for ensuring labor rights and interests of employees and employers. Important at the same time is the proper legislative regulation of labor relations, the development of mechanisms for ensuring guarantees of the right to work, including in the case when the contract was terminated.

So, the issue of social protection as one of the key categories of social policy of the state, as well as the regulation of labor relations under a special legal regime, requires increased attention, because today the problems associated with the implementation of labor rights caused by the imperfection of the legal provision of the right to work and the practice of their application do not lose relevance. One of the most relevant today is the development of social guarantees for employees in case of termination of an employment contract.

## **2. Analysis of recent research**

The theoretical and practical aspects of the study of social guarantees of workers, labor rights, ways of their implementation and protection are devoted to the work of many scientists. Despite a significant number of scientific works in the indicated and related fields, they require a comprehensive study of the issue of determining the directions of increasing the level of social protection of an employee, further development of state mechanisms for the realization of the right to work, and related rights and obligations of participants in labor relations.

The study of social guarantees of employees in the event of termination of an employment contract under martial law in Ukraine did not find significant coverage and research in the scientific literature, therefore, on the basis of the study of scientific works

on the science of labor law and sociology, regulatory legal acts of Ukraine and judicial practice, it is necessary to study the relevant issues in a scientific article.

### **3. Results and discussion**

#### **3.1. Social protection of employees as a key category of social policy**

The social orientation of the policy of any state primarily means the protection of the rights and interests of its citizens, the narrative of their implementation. Guarantees of rights and freedoms are the duties of the state to protect a person, to create legal, social and cultural conditions for the realization of his human rights and freedoms, activities aimed at their protection. Guarantees are a socio-political and legal phenomenon, which is characterized by three components: 1) cognitive, which allows to reveal substantive theoretical knowledge about the object of their influence, to obtain practical knowledge about the social and legal policy of the state; 2) ideological - used by political power as a means of promoting democratic ideas within the country and abroad; 3) practical, recognized as an instrument of jurisprudence, a prerequisite for satisfying the social benefits of a person (Rudnitskaya, 2011). Based on this, guarantees can be defined as a system of socio-economic, political, legal, organizational prerequisites, conditions, means and methods that create opportunities for individuals to exercise their rights, freedoms, interests.

The importance of standards and measures of social protection of workers, as an active part of society, occupies a significant place among national social protective measures, because the paradigm of modern social policy of democratic states is based on the principles of maximum self-realization of a person, in particular through the ability to carry out labor activities and receive a fair reward for it.

The right of every worker to adequate social protection is provided for in the Community Charter on the fundamental rights of workers (Article 10) (Community Charter on Basic Social Rights of Workers, 1989). Therefore, from the definition of the essence of this concept, the types, scope and content of the rights vested in the subjects of such a right will differ.

The grounds, conditions, standards and guarantees for the realization by employees of the right to social protection are determined within the framework of centralized right-wing regulation in accordance with the constitutional provision of paragraph 1 of part 1 of article 92 of the Constitution of Ukraine (Constitution of Ukraine, 1996). However, the specificity of the sectoral nature of labor law, as a social law, allows the use of contractual procedures to expand state guarantees, in particular in the field of social protection of employees.

Proclaimed as constitutional, the human right to social protection is associated with the emergence of needs for material support, social services, rehabilitation measures, etc., caused by social risks.

Social protection is one of the key categories of social policy. In the most general sense, it is a set of organizational, legal and economic measures aimed at ensuring the well-being of members of society in specific economic conditions (Libanova, 2023). There is a narrow and broad interpretation of this term. Within the framework of a narrow interpretation, social protection is defined as a set of actions aimed at helping people in

difficult life situations. It is personified by passive policy measures, which, for the most part, have the appearance of social assistance. A broad interpretation of social protection includes, in addition to its own assistance during life crises, also mechanisms aimed at their prevention (Ivanova, 2003).

Consequently, social protection of workers is a system of measures aimed at observing and exercising the social rights of workers, compensation and prevention of the consequences of social and professional risks taken by the employer or other entities in cases and on conditions, predefined during the procedure of social dialogue and enshrined in the acts of social dialogue, in order to realize the social responsibility of employment partners, to ensure proper, safe and healthy working conditions, wages, social insurance and payments under its programs, social services and non-insurance social benefits, etc., outside their obligations provided for within the framework of centralized regulation of relations of this type.

A separate component of the social protection system is social standards - minimum levels of social security, wages, etc. (Libanova, 2023). Such social standards are, in particular, social guarantees of employees in case of termination of an employment contract. This issue will be given attention in the next subsection of the scientific article. The basis of a new type of social and labor relations is the awareness of the interests and needs of employees. An example of successful enterprises shows that management efficiency is achieved precisely in those where there is no alienation of employees from their professional duties, where trust in social partners in the person of employers is formed. Social factors today are valued by employees along with material benefits and conditions of social security, so it is advisable to determine the insurance protection of employees as a state of their protection from possible social risks associated with violation of vital interests in the field of social rights and freedoms (the right to work and its appropriate payment for professional education, treatment, rest, etc.). Such values should become the basis of social policy of the state and enterprise in particular.

Social protection of employees requires the definition of a complex of large-scale measures at the state, sectoral, regional and production levels; increasing the responsibility of both employers for proper working conditions and employees for meeting conditions for safe work; improved organization of accident prevention and production-related diseases.

Recently, during the device to work, workers are increasingly paying attention not only to the size of wages, but also to the social package, therefore, with the development of market relations, the importance of social benefits and benefits increases, the share of which is constantly growing in the total income of the employee. Employers, providing their employees with benefits in excess of the benefits provided by legislative norms, solve a number of tasks, including attracting new employees to the enterprise, reducing turnover and securing qualified personnel. At enterprises where there is a developed system of payments and benefits, significantly lower turnover rates, employees are more loyal to the administration, trying to stay in their workplace. This is especially true for highly skilled workers.

In our opinion, it is advisable to increase the level of social protection of an employee in modern economic conditions in the following areas: ensuring safe working conditions; introduction of necessary measures for occupational safety and social protection in case of occupational diseases and accidents; citizens' access to national health, rehabilitation

and vocational education systems; providing a living wage of material means in case of unemployment, loss or decrease in income due to illness, birth of a child, accident in everyday life, occupational injury; full and timely payment of remuneration; creation of a basis for increasing the interest of workers in high-performance work by increasing wages; providing an additional "social package" and various social services; guarantees of employees in case of termination of the employment contract.

We share the point of view of individual scientists that social protection measures, on the one hand, should be carried out by providing each employee, regardless of position, experience and qualification, with equal opportunities to develop professionally, to implement their knowledge and skills. On the other hand, social assistance, according to its essence, should be targeted, that is, provided only to those who need it (Steshenko, Pupena, 2019).

Consequently, the level of social protection is determined by the quality of a person's working life, the price of his labor, the specific costs of reproduction of the employee himself. Therefore, the main task is to develop a unified strategy of social and labor partnership, uniting the interests of the state, various economic entities and the person of labor.

### 3.2. Social guarantees of employees in case of termination of the employment contract

Guarantees inextricably linked with the state are reflected in legal acts, which are a set of conditions and special legal methods and means that determine the conditions and procedure for the implementation of the indisputable exercise of the rights and freedoms of a person, as well as their protection, protection and restoration in case of violation.

Currently, numerous bill work is underway in Ukraine in the direction of reforming various spheres of social protection, including workers. Among them: the introduction of a funded pension system, as well as a professional pension system, health care reform, the formation of employment policy, improvement of the system of compulsory state social insurance, employment of persons with disabilities, etc. (Gosteva, 2021).

The amendments to the Labor Code of Ukraine recently introduced by Law No. 2352-IKh relate, in particular, to the concretization of the employer's duties before the start of the employee's work under an employment contract, the consolidation of new grounds for termination of the employment contract and the procedure for termination on some of these grounds. Thus, Art. 13 of the Law specifies the procedure for suspending the employment contract and its execution and provides for the possibility and procedure for appealing the relevant order of the employer in case of disagreement with the employee (On amendments to some legislative acts of Ukraine regarding the optimization of labor relations, 2022).

Also, Law No. 5371 "On Amending Certain Legislative Acts to Simplify the Regulation of Labor Relations in the Field of Small and Medium-Sized Enterprises and Reduce the Administrative Burden on Entrepreneurial Activity" is aimed at expanding the contractual principles for regulating labor relations for the period of martial law, which is to enable the employer and the employee by mutual agreement to include in the written employment contract provisions on the occurrence and termination of labor relations, working conditions, rights and guarantees defined by the Labor Code of Ukraine, at its discretion. The application of the contractual regime for the regulation of labor relations

by employers is voluntary (On making changes to some legislative acts of Ukraine on simplifying the regulation of labor relations in the field of small and medium-sized entrepreneurship and reducing the administrative burden on entrepreneurial activity, 2022).

The employer and the employee are invited, at their own discretion, by mutual agreement, to regulate their relations in terms of the emergence and termination of labor relations, the remuneration system, labor standards, wages, allowances, surcharges, bonuses, rewards, working time and rest standards, etc. In addition, the dismissal of an employee at the initiative of the employer is allowed without explanation, subject to compensation, employees are deprived of the right to trade union protection, socially vulnerable categories of persons actually lose their guarantees.

As the analysis of labor relations practice shows, there are problems of non-compliance with the guarantees of the position of employees established by labor legislation in comparison with the requirements of labor legislation (Articles 42, 42-1, 43, 44, 47, 49-2, 49-4 of the Labor Code) (Labor Code of Ukraine, 1971).

Justification of termination of labor relations "as a legal guarantee of an employee upon termination of an employment contract at the initiative of the employer imposes on the owner or his authorized body" the burden of proving the existence of a legal basis for dismissal (Convention of the International Labor Organization No. 158 on the termination of labor relations at the initiative of the employer, 1982). In fact, this indicates that the groundlessness of the termination of labor relations guarantees the employee the safety of the workplace, and in the case of non-compliance by the employer with the said guarantee, such dismissal is considered illegal. Violation of the guarantees of termination of labor relations, even if there is a legal basis for the dismissal of an employee, is also considered illegal dismissal (Tangiyan, 2020).

The employer has no right to force the employee to write a letter of resignation of his own free will under any conditions. If the company is located in the area of hostilities and it is impossible to organize the work of employees, the employer can introduce remote, home-based work, provide leave at the request of the employee, including without pay, issue a downtime without the fault of the employee, suspend the employment contract (Labor Code of Ukraine, 1971).

We emphasize that the mobilized employee retains his place of work and position at the enterprise, in an institution, organization, farm, agricultural production cooperative, regardless of subordination and form of ownership, and among individuals - entrepreneurs for whom they worked at the time of conscription. Such employees are paid financial support at the expense of the State Budget of Ukraine in accordance with the Law of Ukraine "On Social and Legal Protection of Military Personnel and Members of Their Families."

During the absence of a mobilized employee, the employer may conclude a fixed-term employment contract with another employee, which is subject to termination under paragraph 2 of Art. 36 of the Labor Code (expiration of the contract) in the event of demobilization of the main employee and return to his place of work (position) (Labor Code of Ukraine, 1971).

Currently, certain problems have developed in Ukraine regarding the real implementation of social guarantees of persons working under fixed-term employment



contracts. In particular, the current Ukrainian labor legislation does not provide equivalent protection provided by ILO Convention No. 158 for employees working under fixed-term labor contracts (contracts). In the case of equivalent guarantees to employees, the context of the Decision of the Constitutional Court of Ukraine No. 6-p (II)/2019 of 16.09.2019 would be different, or there would be no such proceedings at all. In this regard, there is a need to improve the current labor legislation, where it is necessary to provide appropriate equivalent guarantees to employees working under fixed-term labor contracts (contracts).

Equivalent protection for employees working under fixed-term employment contracts (contracts) may be the development of adequate legal guarantees, in particular: "a ban on the termination of fixed-term employment relations for the period of temporary disability of the employee, as well as for the duration of his vacation"; "monetary compensation in the amount of, for example, 0.5 official salary, in case of termination of a fixed-term employment contract (contract) during the period of temporary disability of the employee."

#### Conclusions

In modern economic conditions, it is advisable to increase the level of social protection of an employee in the following areas: creating safe working conditions; introduction of necessary measures for occupational safety and social protection in case of occupational diseases and accidents; citizens' access to health, rehabilitation and vocational education systems; providing a living wage of material means in case of unemployment, loss or decrease in income due to illness, birth of a child, accident in everyday life, occupational injury; full and timely payment of remuneration; creation of a basis for increasing the interest of workers in high-performance work by increasing wages; providing an additional "social package" and various social services; guarantees of employees in case of termination of the employment contract.

Social protection of employees requires the definition of a complex of large-scale measures at the state, sectoral, regional and production levels, increasing the mutual responsibility of employers and employees, improving the organization of prevention of accidents and diseases at work. The development of a social, legal state should be accompanied by effective legal mechanisms for ensuring human rights. In the realities of the war in Ukraine, employees and employers should quickly adapt to changes in labor legislation, in connection with the socially necessary purpose of such implementations. In the event of termination of an employment contract, employees, primarily mobilized, internally displaced persons, pregnant and minors, during the period of martial law should be provided with unhindered and actual implementation, protection and protection of their labor rights.

Under the conditions of a special legal regime introduced in connection with hostilities on the territory of Ukraine, for employees working under fixed-term employment contracts, guarantees should be provided in the form of appropriate prohibitions on the termination of fixed-term employment relations for the period of temporary disability of the employee, as well as during his stay on vacation and monetary compensation in case of termination of a fixed-term employment contract during the period of temporary disability of the employee.

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