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ROZWIĄZANIE UMOWY O PRACĘ ZGODNIE Z OBOWIĄZUJĄCYM PRAWEM UKRAINY: ASPEKT TEORETYCZNO-PRAWNY

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Adnotacja. W artykule naukowym przeprowadzono teoretyczno-prawne badanie regulacji prawnej rozwiązania umowy o pracę zgodnie z obowiązującym prawem Ukrainy. Zidentyfikowano i przeanalizowano zmiany w przepisach prawnych dotyczących rozwiązania umowy o pracę w okresie stanu wojennego w Ukrainie, które zostały wprowadzone ustawą Ukrainy „O organizacji stosunków pracy w warunkach stanu wojennego” z dnia 15.03.2022 r. nr 2136-IX i innymi aktami prawnymi.

Zbadano, że pojęcie „wypowiedzenie umowy o pracę” w swojej treści jest pojęciem szerszym niż pojęcie „wypowiedzenie umowy o pracę”. Termin „rozwiązanie Umowy o pracę” przewiduje już rozwiązanie stosunku pracy za pomocą jednostronnej woli (lub pracownika najemnego, pracodawcy lub osób niebędących stroną umowy o pracę). „Zwolnienie pracownika najemnego” oznacza przeprowadzenie konsekwentnie powiązanych ze sobą pilnych działań pracodawcy w celu prawnego rozwiązania stosunku pracy z pracownikiem. Ponadto pojęcie „rozwiązanie Umowy o pracę” zasadniczo różni się od takich pojęć, jak „zawieszenie umowy o pracę”, „zawieszenie pracy”, „zwolnienie pracowników”, „anulowanie umowy o pracę”.

Rozwiązanie Umowy o pracę oznacza zakończenie stosunku pracy za porozumieniem (zgoda) stron, wolą stron lub osób trzecich, które nie są ich stroną, a także z przyczyn niezależnych od woli stron, w sposób określony przez ustawodawstwo.

Słowa kluczowe: umowa o pracę, pracownik najemny, pracodawca (pracodawca-osoba fizyczna), stosunek pracy, wypowiedzenie umowy o pracę, prawo Ukrainy, stan wojenny.

TERMINATION OF AN EMPLOYMENT CONTRACT UNDER THE CURRENT LEGISLATION OF UKRAINE: THEORETICAL AND LEGAL ASPECT

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Abstract. In the scientific article, a theoretical and legal study of the legal regulation of the termination of the employment contract under the current legislation of Ukraine is carried out. The changes in the legal regulation of the termination of the employment contract during the period of martial law in Ukraine, which were introduced by the Law of Ukraine «On the Organization of Labor Relations in the Conditions of Martial Law» dated March 15, 2022, were determined and analyzed. No. 2136-IX and other legislative acts.

It has been studied that the concept of «termination of an employment contract» in its meaning is a broader concept than the concept of «cancellation of an employment contract». The term «cancellation of the employment contract» already implies

the termination of the employment relationship by unilateral expression of will (either by the employee, or by the employer, or by persons who are not parties to the employment contract). «Dismissal of an employee» means the implementation of sequentially interrelated urgent actions of the employer regarding the legal formalization of the termination of employment relations with the employee. In addition, the concept of «termination of an employment contract» fundamentally differs in its meaning from such concepts as «suspension of an employment contract», «suspension from work», «release of employees», «annulment of an employment contract». Termination of the employment contract means the termination of the employment relationship by agreement (astipulation) between the parties of an employment contract, the will of the parties or third parties, and also on grounds not depending on the will of the parties, in the manner prescribed by law.

Key words: employment contract, employee, employer (employer is a natural person), labor relations, termination of employment contract, legislation of Ukraine, martial law.

ПРИПИНЕННЯ ТРУДОВОГО ДОГОВОРУ ЗА ЧИННИМ ЗАКОНОДАВСТВОМ УКРАЇНИ: ТЕОРЕТИКО-ПРАВОВИЙ АСПЕКТ

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Анотація. У науковій статті здійснене теоретико-правове дослідження правового регулювання припинення трудового договору за чинним законодавством України. Визначено та проаналізовано зміни у правовій регламентації припинення трудового договору у період дії воєнного стану в Україні, які запроваджені Законом України «Про організацію трудових відносин в умовах воєнного стану» від 15.03.2022р. № 2136-IX та іншими законодавчими актами.

Досліджено, що поняття «припинення трудового договору» за своїм змістом є більш широким поняттям, ніж поняття «розірвання трудового договору». Термін «розірвання трудового договору» вже передбачає в собі припинення трудових правовідносин одностороннім волевиявленням (чи найманого працівника, чи роботодавця або осіб, які не є стороною трудового договору). «Звільнення найманого працівника» означає проведення послідовно взаємопов'язаних невідкладних дій роботодавця щодо юридичного оформлення припинення трудових відносин з працівником. Також поняття «припинення трудового договору» за своїм змістом принципово відрізняється й від таких понять, як «призупинення трудового договору», «відсторонення від роботи», «вивільнення працівників», «анулювання трудового договору».

Під припиненням трудового договору розуміється закінчення дії трудових правовідносин за угодою (згодою) сторін, волевиявленням сторін або третіх осіб, які не є їх стороною, а також з підстав, які не залежать від волі сторін, в порядку, визначеному законодавством.

Ключові слова: трудовий договір, найманий працівник, роботодавець (роботодавець – фізична особа), трудові правовідносини, припинення трудового договору, законодавство України, воєнний стан.

Introduction. The employment contract takes a special place in the life of every citizen. Based on the employment contract, there are labor legal relations of the employee with the employer, which entail the inclusion of these subjects in the whole system of relations with the use of hired labor. The employment contract continues to be the central institution of labor law, the main basis for the emergence of employment relations and a criterion for their existence. The Constitution of Ukraine defines that everyone has the right to work, which includes the opportunity to earn a living by work that he freely chooses or freely agrees to (Art. 43 Constitution of Ukraine dated June 28, 1996 No. 254k/96-vr.).

In accordance with the second part of Article 2 of the Labor Code of Ukraine (Code of Labor Laws of Ukraine: Law No. 322-VIII dated 10.12.71 (current version dated 27.01.2023) employees realize their right to work by concluding an employment contract for work at an enterprise, institution, organization or with a natural person. In other words, this concludes that the most common form of realization of a person's right to work is an employment contract. The Labor Code of Ukraine establishes an exhaustive list of grounds for terminating an employment contract, which can be recognized as legitimate only if there is a legal fact of termination of employment and compliance with the established procedure for dismissal on a specific basis provided for by law.

In the science of labor law many studies were carried out, which were devoted to the procedure of termination of the labor contract. Among them are the scientific works of such scientists as N.B. Bolotina, V.S. Venediktov, L.P. Garashchenko, G.S. Goncharova, O.V. Danilyuk, V.V. Gernakov, M.I. Inshina, P.D. Pylypenko, S.M. Prylypko, O.I. Protsevskiy, S.O. Silchenko, H.I. Chanysheva, N.M. Khutorian, O.A. Yakovliev, O.M. Yaroshenko and others.

Research of legal regulation of termination of employment contract is devoted to candidate dissertations of domestic scientists: O.V. Tyshchenko «Legal problems of concluding, changing and terminating employment contracts with teaching staff of secondary comprehensive schools of Ukraine» (2002), S. M. Hlazko «Legal regulation of termination of the employment contract: theoretical aspect» (2005), O. Chumak «Termination of the employment relationship not at the initiative of the parties to the employment contract» (2011), S. V. Selezhen «Peculiarities of terminating an employment contract according to Clause 2 of Article 41 of the Labor Code of Ukraine» (2010), L. Y. Prohoniuk «Peculiarities of the termination of the employment contract under Clause 30 of Art. 40 of the Labor Code of Ukraine» (2012), V.R. Shyshliuk «Termination of an employment contract under the legislation of Ukraine and Poland» (2017) and others.

However, despite the considerable number of scientific studies, the concept of «termination of an employment contract» is not defined at the legislative level. In legal literature and in practice, the concepts of «termination of an employment contract», «cancellation of an employment contract», «dismissal of an employee from work», «termination of employment relations», «cancellation of an employment contract», «suspension from work», «release of employees» are often used «annulment of the employment contract» are used as synonyms, although in their content they are different legal categories.

To date, there are certain problematic issues related to the procedure for terminating an employment contract, which causes violation of the right of a person to work, and therefore require a solution and appropriate legal regulation.

The presence of Ukraine in a state of war led to the emergence and increase of significant problems related to the effective organization of labor relations, which did not exist before or remained isolated in the pre-war period.

To address, at least in part, the most urgent issues concerning overcoming the acute military challenges faced by employers in terms of organizing labor relations and ensuring the labor rights of employees, the Supreme Council of Ukraine adopted a number of legislative acts, namely, the laws of Ukraine: «On the organization of labor relations in the conditions of war» dated 15.03.2022 No. 2136-IX (hereinafter – Law No. 2136-IX) («On the organization of labor relations under martial law»: Law of Ukraine dated March 15, 2022 No. 2136-IX), «On Amendments to Certain Legislative Acts of Ukraine Regarding the Optimization of Labor Relations» dated July 1, 2022 No. 2352-IX (hereinafter – Law No. 2352-IX) («On making changes to some legislative acts of Ukraine regarding the optimization of labor relations»: Law of Ukraine dated 01.07.2022 No. 2352-IX), «On Amendments to Certain Legislative Acts of Ukraine Regarding the Regulation of Labor Relations with non-fixed working hours» dated July 18, 2022 No. 2421-IX (hereinafter – Law No. 2421-IX) («On making changes to some legislative acts of Ukraine regarding the regulation of labor relations with non-fixed working hours»: Law of Ukraine dated 07/18/2022 No. 2421-IX), «On Amendments to Certain Legislative Acts of Ukraine on Simplifying the Regulation of Labor Relations in the Field of Small and Medium-Sized Entrepreneurship and Reducing administrative burden on business activity» dated 19.07.2022 No. 2434-IX («On making changes to some legislative acts of Ukraine regarding the regulation of labor relations with non-fixed working hours»: Law of Ukraine dated 07/18/2022 No. 2421-IX.) (hereinafter – Law No. 2434-IX) and others. The mentioned laws made changes to some legislative acts, including those related to the termination of the employment contract, which require a special study.

The purpose of the scientific article is to study the termination of the employment contract under the current labor legislation, taking into account the updated legislation of Ukraine under martial law.

Basic content. The current Labor Code of Ukraine stipulates concepts, parties, and the general procedure for concluding and grounds for terminating an employment contract. The specified norms are contained in Chapter III «Employment Contract» of the Code According to the first part of Art. 21 of the Labor Code of Ukraine, an employment contract is an agreement between an employee and an employer (employer – natural person), according to which the employee undertakes to perform the work specified in this agreement, and the employer (employer – natural person) undertakes to pay the employee wages and ensure working conditions, necessary for the performance of work, provided for by the labor legislation, the collective agreement and the agreement of the parties. An employment contract may establish conditions for the performance of work that require professional and/or partial professional qualifications, as well as conditions for the performance of work that do not require a person to have a professional or partial professional qualification.

There is no definition of the concept of termination of an employment contract in the labor legislation. This concept is defined in the legal literature. Thus, V.I. Prokopenko considered this concept generic; emphasizing that it covers all cases of termination of employment relations (Prokopenko, 1998: 235). In our opinion, we should agree with S.M. Prylypko and O.M. Yaroshenko, who consider the termination of the employment contract as «the termination of the employee's employment relationship with the employer in all cases provided for by labor legislation» (Prylypko, Yaroshenko, Moroz, Malynovska, 2013: 288).

It should be borne in mind that the termination of the employment contract does not always entail the termination of employment relations and vice versa. Thus, the first part of Art. 39¹ of the Labor Code of Ukraine stipulates that if, after the expiration of a fixed-term employment contract, the employment relationship actually continues and none

of the parties demands its termination, the validity of this contract is considered to be extended for an indefinite period. Therefore, the concept of «termination of an employment contract» cannot be completely equated with the concept of «termination of employment relations». Termination of an employment contract cannot be completely equated with the concept of «cancellation of an employment contract», since «termination» is a broader concept, it acts as a generic concept in relation to the concept of «cancellation», and the latter acts as a specific. The term «termination» includes cases of dissolution of employment contract.

According to V.S. Venediktov, «cancellation of the employment contract involves the termination of the employment contract at the initiative of one of the parties to the employment relationship – the employee or the owner or a body authorized by him, and in some cases also a third person who demands the termination of the employment relationship» (Venedyktov, 2004: 107). V.V. Zhernakov, who notes that, held a similar opinion «cancellation of an employment contract means the termination of legal relations by a unilateral expression of will (either by the employer, or by the employee, or by persons who are not parties to the employment contract)» (Zhernakov, 2012: 208).

In addition, these concepts cannot be revealed through the concept of «dismissal». The concept of «dismissal of an employee from work» should be considered as a procedure, as an algorithm of certain actions, «as a set of interrelated actions of the employer aimed at the legal formalization of the termination of the employment contract, which includes: issuing an order or a decree of the employer with reference to the relevant article, point of law; registration and issuance of the work book to the employee, copies of the order of dismissal (in case of cancellation of the employment contract at the initiative of the employer); carrying out the final settlement with the employee» (Shyshliuk, 2017: 231).

The concept of «termination of an employment contract» fundamentally differs in its meaning from such concepts as «suspension of an employment contract», «suspension from work», «release of employees», «cancellation of an employment contract».

Therefore, the termination of employment contract is the end of the validity of labor legal relations under the agreement of the parties, the will of the parties or third parties who are not their party, as well as for reasons that do not depend on the will of the parties, in the manner determined by the law.

The grounds for terminating an employment contract are certain vital provisions, which are enshrined in law as legal facts for terminating employment relations between an employee and an employer. Legal facts can be, in particular, volitional actions, when one or both parties to an employment contract or a third party initiates its termination, as well as events – circumstances that do not depend on the will of any of the parties to the employment contract.

Based on the provisions of the Labor Code of Ukraine, all grounds for terminating an employment contract are divided into general and additional. The list of general grounds for termination of an employment contract is defined in Art. 36 of the Labor Code of Ukraine, other grounds are established in Articles 28, 38, 40, 41, 45 of the Labor Code of Ukraine and in separate legislative acts.

Therefore, according to the current legislation, the employment contract can be terminated both on general and additional grounds, and the employee, the employer, as well as other persons can initiate its termination.

The first part of Art. 36 of the Labor Code of Ukraine provides general grounds for terminating an employment contract, namely: 1) agreement of the parties; 2) the end of the term, except in cases when the employment relationship actually continues and none of the parties has made a demand for its termination; 3) conscription or enlistment of an employee or an employer – a natural person for military service, referral to alternative (non-military) service, except for cases when the employee's place of work and position are kept in accordance with Part 3 of Art. 119 of the Labor Code of Ukraine; 4) cancellation of the employment contract at the initiative of the employee, at the initiative of the employer or at the request of a trade union or other body authorized to represent the labor collective; 5) transfer of the employee, with his consent, to another enterprise, institution, organization or transfer to an elected position; 6) employee's refusal to transfer to work in another area together with the enterprise, institution, organization, as well as refusal to continue working due to a change in essential working conditions; 7) the legal force of the court, to which the employee is sentenced (except in cases of release from serving a probationary sentence) to imprisonment or to another punishment that excludes the possibility of continuing this work; 7⁻¹) conclusion of an employment contract (agreement), contrary to the requirements of the Law of Ukraine «On the Prevention of Corruption», established for persons who have resigned or otherwise terminated activities related to the performance of state or local self-government functions, within a year from the date of its termination; 7⁻²) on the grounds provided for by the Law of Ukraine «On Purification of Power»; 7⁻³) the court's decision to recognize ungrounded assets and their collection into state income in relation to a person authorized to perform the functions of the state or local self-government, in the provisions of Art. 290 of the Civil Procedure Code of Ukraine cases; 8) the grounds stipulated by the employment contract with non-fixed working hours, the contract; 8⁻¹) the death of the employer – a natural person or the entry into force of a court decision declaring such a natural person missing or declaring him dead; 8⁻²) death of an employee, recognition of him by the court as missed or declared dead; 8⁻³) the employee's absence from work and information about the reasons for such absence for more than four months in a row; 9) grounds provided by other laws.

The employment contract can be terminated only on one of the above grounds. At the same time, this list is not exhaustive; there are other grounds that are provided for by separate laws. The essence of the procedure of termination of the employment contract under the agreement of the parties should be considered as a drawback

of the current Labor Code of Ukraine (p. 1 of Article 36 of the Labor Code of Ukraine). All of the listed grounds are, of course, independent of each other and can serve as the foundation for an individual scientific study.

Many innovations affected p. 4 of Art. 36 of the Labor Code of Ukraine, which provides for the termination of the employment contract: a) in the case of the employee's initiative; b) in case of initiative of the employer; c) in case of the initiative of a trade union or other body authorized to represent the labor collective. When studying the legal regulation of the termination of an employment contract under p. 4 of Article 36 of the Labor Code of Ukraine, it should be taken into account that on December 11, 2022, the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on the Prevention and Counteraction of Mobbing (bullying)» dated November 16, 2022 No. 2759-IX entered into force. (hereinafter – Law No. 2759), («On the introduction of changes to some legislative acts of Ukraine regarding the prevention and counteraction of mobbing (bullying)»: Law of Ukraine dated November 16, 2022 No. 2759-IX]). The Labor Code of Ukraine establishes a separate ground for cancellation of an employment contract at the employer's initiative – this is mobbing (harassment) by an employee established by a court decision that has entered into force (p. 12 of Article 40). The specified Law on the Labor Code of Ukraine supplemented Art. 22, which defines mobbing (harassment) as «systematic (repeated) long-term intentional actions or inaction by an employer, individual employees or a group of employees of a labor team, which are aimed at degrading the honor and dignity of an employee, his business reputation, including for the purpose of acquiring, changes or termination of his labor rights and obligations, manifested in the form of psychological and/or economic pressure, in particular with the use of electronic communications, creation of a tense, hostile, offensive atmosphere for the employee, including one that forces him to underestimate his professional suitability» (Code of Labor Laws of Ukraine: Law No. 322-VIII dated 10.12.71 (current version dated 27.01.2023). At the end of December 2022, relevant changes were made to the Code of Ukraine on Administrative Offenses regarding the prevention and counteraction of mobbing (harassment) («On amendments to the Code of Ukraine on administrative offenses regarding the prevention and counteraction of mobbing (harassment)»: Law of Ukraine dated 01.12.2022, No. 2806-IX (entered into force on 23.12.2022)).

The third part of Art. 40 of the Labor Code of Ukraine prohibits the dismissal of an employee at the initiative of the employer during the period of his temporary incapacity (except for dismissal under p. 5 of Article 40), as well as during the period of the employee's vacation. This rule does not apply to the case of complete liquidation of an enterprise, institution, or organization. But during the period of martial law in Ukraine, it is allowed to dismiss an employee at the initiative of the employer during the period of temporary incapacity for work, as well as during the period of the employee's vacation (except for leave due to pregnancy and childbirth and leave to care for a child until the child reaches the age of three). In addition, due to the conduct of hostilities in the areas where the enterprise, institution, organization is located, and the existence of a threat to the life and health of the employee, he may cancel the employment contract on his own initiative within the period specified in his application (except cases of forced involvement in socially beneficial works under martial law conditions, involvement in the performance of work at critical infrastructure facilities).

It should be noted that the List of territorial communities that are located in the area of military (combat) operations or that are under temporary occupation, encirclement (blockade), approved by the order of the Ministry for the Reintegration of the Temporarily Occupied Territories of Ukraine dated April 25, 2022 No. 75, became invalid on the basis of the approval of the new List of territories on which hostilities are (were) conducted or temporarily occupied by the Russian Federation, approved by the order of the Ministry for the Reintegration of the Temporarily Occupied Territories of Ukraine dated 12.22.2022 No. 309 (hereinafter- the List) (The list of territories on which hostilities are (were) conducted or temporarily occupied by the Russian Federation, approved. By Order of the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine dated 12/22/2022 No. 309) (The list of territories on which hostilities are (were) conducted or temporarily occupied by the Russian Federation, approved. By Order of the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine dated 12/22/2022 No. 309). In contrast to the new List, the previous legal act did not define the boundaries of the areas of hostilities, did not indicate the dates of occurrence/ceasing of the possibility of hostilities, the code of the territorial community. This is certainly a positive point that helps to determine the status of a displaced person (hereinafter – IDP) in labor and closely related relations.

It should be noted that at the legislative level, the procedure for terminating employment relations with persons who have left the occupied territory, from the areas where hostilities are being waged to another city of Ukraine or abroad, have received the legal status of IDP and receive assistance from Ukraine or another state is not established in accordance. There are rare cases when such IDPs receive both monetary and in-kind assistance, while remaining in the status of an employee, simultaneously receiving wages and IDP assistance, without fulfilling their labor (official) duties under the employment contract (agreement), i.e. labor law the relationship continues. It is clear that such a difficult situation arose not because of their fault, but there are objective reasons known to everyone. However, this situation should be resolved at the legislative level, and not by the parties to the employment contract (agreement).

The use of such a condition as “threats to the life and health of the employee”, under which the employee has the right to cancel the employment contract on his own initiative, raises certain doubts, since today all citizens of our country are in one way or another under threat to life and health. In addition, the very fact of hostilities in the areas where an enterprise, institution, or organization is located suggests the presence of such a threat.

By Law No. 2421-IX, the current Labor Code of Ukraine was supplemented by Art. 21-1 «Employment contract with non-fixed working hours» («On amendments to some legislative acts of Ukraine regarding the regulation of labor relations with non-fixed working hours»: Law of Ukraine dated 07/18/2022 No. 2421-IX.), and by Law No. 2434-IX – Chapter III-B «Simplified mode of regulation of labor relations» («On making changes to some legislative acts of Ukraine regarding the simplification of the regulation of labor relations in the field of small and medium-sized entrepreneurship and reducing the administrative burden on entrepreneurial activity»: Law of Ukraine dated 07/19/2022 No. 2434-IX.)). Thus, under the simplified regime of regulation of labor relations, the termination of the employment contract, the cancellation of the employment contract at the initiative of the employee or the employer are carried out on the grounds and in the manner established in the Labor Code of Ukraine, taking into account the peculiarities of the legal regulation of the labor contract under the conditions of the simplified regime of the organization of labor relations. Cancellation of an employment contract at the initiative of the employer on grounds not provided for by the Labor Code of Ukraine is carried out with justification (indication of the reasons for such cancellation) and with the provision of compensatory payment to the employee in the amount and in the manner specified in the employment contract, but the amount established in Article 49-8 of the Labor Code of Ukraine. In addition, the employee and the employer, with their consent, can determine in the employment contract other grounds for termination or cancellation of the employment contract, in addition to those established by the Labor Code of Ukraine.

An employment contract with non-fixed working hours is a special type of employment contract, the terms of which do not establish a specific time for the performance of work, the obligation of the employee to perform which arises only in the event that the employer provides the work provided for in this employment contract without guaranteeing that such work will be provided continuously, but in compliance with the terms of payment of labor stipulated by the Labor Code of Ukraine (Part 1 of Article 21-1). The legislator allows the establishment of additional grounds for termination of the employment contract in an employment contract with non-fixed working hours. These grounds for termination of an employment contract with non-fixed working hours must be related to the abilities or behavior of the employee or other reasons of an economic, technological, structural or similar nature.

Conclusion. Based on the above, we can conclude that the termination of the employment contract should be understood as the termination of the employee's employment relationship with the employer in all cases provided for by the labor legislation. The concept of «termination of an employment contract» in its meaning is a broader concept than the concept of «cancellation of an employment contract». The term «cancellation of the employment contract» already implies the termination of the employment relationship by unilateral expression of will (either by the employee, or by the employer, or by persons who are not parties to the employment contract). «Dismissal of an employee» means the implementation of sequentially interrelated urgent actions of the employer regarding the legal formalization of the termination of employment relations with the employee. In addition, the concept of «termination of an employment contract» fundamentally differs in its meaning from such concepts as «suspension of an employment contract», «suspension from work», «release of employees», «annulment of an employment contract». The current legislation of Ukraine in the field of labor contract regulation is characterized by the number and presence of contradictions, the duplication of certain norms, their declarative nature, insufficiently clear definition of the specific rights of employees and the duties of relevant bodies. Legal regulation of the termination of an employment contract in Ukraine is carried out by an extensive system of normative legal acts, in particular the Labor Code of Ukraine, special laws, by-laws, as well as local acts. The specified shortcomings determine the need to systematize the current legislation, a gradual transition from the tradition of legal regulation of certain types of labor relations by special laws to the regulation of labor and related relations by a harmonious, balanced, modern, codified legislative act.

The limitations of labor rights specified in this article, unfortunately, do exist in the current labor legislation, but they are of a temporary nature, since the Law of Ukraine «On the Organization of Labor Relations in the Conditions of Martial Law» of March 14, 2022 No. 2136-IX applies in the conditions martial law and becomes invalid from the date of its termination or cancellation.

References:

1. Konstytutsiia Ukrainy vid 28.06.1996 h. № 254k/96-vr. [1. Constitution of Ukraine dated June 28, 1996 No. 254k/96-vr.] // URL:<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96%D0%B2%D1%80#Text>
2. Kodeks zakoniv pro pratsiu Ukrainy: Zakon № 322-VIII vid 10.12.71.(potochna redaktsiia vid 27.01.2023) [Code of Labor Laws of Ukraine: Law No. 322-VIII dated 10.12.71 (current version dated 27.01.2023)] // URL: <https://zakon.rada.gov.ua/laws/%20show%20/322-08#Text>
3. Pro orhanizatsiiu trudovykh vidnosyn v umovakh voiennoho stanu : Zakon Ukrainy vid 15.03.2022 r.№ 2136-1Kh. [On the organization of labor relations under martial law: Law of Ukraine dated March 15, 2022 No. 2136-IX.] // URL: <https://zakon.rada.gov.ua/laws/%20show/2136-20#Text>
4. Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo optymizatsii trudovykh vidnosyn : Zakon Ukrainy vid 01.07.2022 r. № 2352-IKh. [On making changes to some legislative acts of Ukraine regarding the optimization of labor relations: Law of Ukraine dated 01.07.2022 No. 2352-IX.] // URL: <https://zakon.rada.gov.ua/laws/show/2352-20#Text>
5. Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo vrehuliuvannia trudovykh vidnosyn z nefiksovanym robochym chasom: Zakon Ukrainy vid 18.07.2022 r. № 2421-IKh. [On amendments to some legislative acts of Ukraine regarding the regulation of labor relations with non-fixed working hours: Law of Ukraine dated 07/18/2022 No. 2421-IX.] // URL: <https://zakon.rada.gov.ua/laws/show/2352-20#Text>

6. Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo sproshchennia rehuliuвання трудовykh vidnosyn u sferi maloho i serednoho pidpriemnytstva ta zmenshennia administratyvnoho navantazhennia na pidpriemnytsku diialnist : Zakon Ukrainy vid 19.07.2022 r. № 2434-IKh. [On making changes to some legislative acts of Ukraine regarding the simplification of the regulation of labor relations in the field of small and medium-sized entrepreneurship and reducing the administrative burden on entrepreneurial activity: Law of Ukraine dated 07/19/2022 No. 2434-IX.] // URL: <https://zakon.rada.gov.ua/laws/show/%202434-20#Text>
7. Prokopenko V. I. (1998) Trudove pravo Ukrainy. [Labor law of Ukraine.] Kharkiv: Konsum, p. 400 [in Russian]
8. Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo zapobihannia ta protydii mobinhu (tskuvanniu): Zakon Ukrainy vid 16.11.2022 r. № 2759-IKh [On the introduction of changes to some legislative acts of Ukraine regarding the prevention and counteraction of mobbing (bullying): Law of Ukraine dated November 16, 2022 No. 2759-IX] // URL: <https://zakon.rada.gov.ua/laws/show/2759-20#Text>
9. Pro vnesennia zmin do Kodeksu Ukrainy pro administratyvni pravoporushennia shchodo zapobihannia ta protydii mobinhu (tskuvanniu): Zakon Ukrainy vid 01.12.2022r., №2806-IX (nabuv chynnosti 23.12.2022r.) [On amendments to the Code of Ukraine on administrative offenses regarding the prevention and counteraction of mobbing (harassment): Law of Ukraine dated 01.12.2022, No. 2806-IX (entered into force on 23.12.2022)] // URL: <https://zakon.rada.gov.ua/laws/show/2806-20#Text>
10. Perelik terytorii, na yakykh vedutsia (velysia) boiovi dii abo tymchasovo okupovanykh Rosiiskoiu Federatsiieiu, zatv. Nakazom Ministerstva z pytan reintehratsii tymchasovo okupovanykh terytorii Ukrainy 22.12.2022 № 309 [The list of territories on which hostilities are (were) conducted or temporarily occupied by the Russian Federation, approved. By Order of the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine dated 12/22/2022 No. 309] // URL: <https://zakon.rada.gov.ua/laws/show/z1668-22#Text>
11. Ukladennia trudovoho dohovoru: teoretyko-prykladne doslidzhennia: monohrafiia [Conclusion of an employment contract: theoretical and applied research: monograph] / S.M. Prylypko, O.M. Yaroshenko, S.V. Moroz, K.A. Malynovska (2013): For science ed. Yaroshenko O.M. Kharkiv: Yurait, p. 288. [in Ukrainian]
12. Venedyktov, V.S. (2004) Trudovoe pravo Ukrainy. [Labor law of Ukraine.] Kharkov: Konsum, p. 107. [in Russian]
13. Shyshliuk, V.R. Prypynennia trudovoho dohovoru za zakonodavstvom Ukrainy i Polshchi: dys. ... kand. yuryd. nauk: 12.00.05 [Termination of an employment contract under the legislation of Ukraine and Poland: Doctor of Law: 12.00.05] / Shyshliuk Viktoriia Ruslanivna. - Odesa, p. 231 [in Ukrainian]
14. Zhernakov, V.V., Prylypko, S.M., Yaroshenko, O.M. ta in.; za red. Zhernakova, V.V. (2012) Trudove pravo: pidruchnyk [dlia stud. yuryd. spets. vyshch. navch. zakl.] [Labor law: textbook [for students. law special higher education app.]] / Kh.: Pravo, p. 208. [in Ukrainian]

Список використаних джерел:

1. Вenedиктов В.С. Трудовое право Украины. Харьков: Консум, 2004. С. 107.
2. Конституція України від 28.06.1996 г. № 254к/96-вр. //URL:<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96%D0%B2%D1%80#Text>
3. Кодекс законів про працю України: Закон № 322-VIII від 10.12.71.(поточна редакція від 27.01.2023) // URL: <https://zakon.rada.gov.ua/laws/show/322-08#Text>
4. Про організацію трудових відносин в умовах воєнного стану : Закон України від 15.03.2022 р.№ 2136-IX. // URL: <https://zakon.rada.gov.ua/laws/show/2136-20#Text>
5. Про внесення змін до деяких законодавчих актів України щодо оптимізації трудових відносин: Закон України від 01.07.2022 р. № 2352-IX. URL: <https://zakon.rada.gov.ua/laws/show/2352-20#Text>
6. Про внесення змін до деяких законодавчих актів України щодо врегулювання трудових відносин з нефіксованим робочим часом: Закон України від 18.07.2022 р. № 2421-IX. //URL:<https://zakon.rada.gov.ua/laws/show/%202434-20#Text>
7. Про внесення змін до деяких законодавчих актів України щодо спрощення регулювання трудових відносин у сфері малого і середнього підприємництва та зменшення адміністративного навантаження на підприємницьку діяльність : Закон України від 19.07.2022 р. № 2434-IX. URL: <https://zakon.rada.gov.ua/laws/show/2434-20#Text>
8. Прокопенко В. І. Трудове право України. Харків : Консум, 1998. 400 с.
9. Про внесення змін до деяких законодавчих актів України щодо запобігання та протидії мобінгу (цькуванню): Закон України від 16.11.2022 р. № 2759-IX //URL: <https://zakon.rada.gov.ua/laws/show/2759-20#Text>
10. Про внесення змін до Кодексу України про адміністративні правопорушення щодо запобігання та протидії мобінгу (цькуванню): Закон України від 01.12.2022р., №2806-IX (набув чинності 23.12.2022р.) // URL: <https://zakon.rada.gov.ua/laws/show/2806-20#Text>
11. Перелік територій, на яких ведуться (велися) бойові дії або тимчасово окупованих Російською Федерацією, затв. Наказом Міністерства з питань реінтеграції тимчасово окупованих територій України 22.12.2022 № 309 // URL: <https://zakon.rada.gov.ua/laws/show/z1668-22#Text>
12. Трудове право: підручник [для студ. юрид. спец. вищ. навч. закл.] /В.В. Жернаков, С.М. Прилипка, О.М. Ярошенко та ін.; за ред. В.В. Жернакова. Х.: Право, 2012. С. 208.
13. Укладення трудового договору: теоретико-прикладне дослідження: монографія / С.М. Прилипка, О.М. Ярошенко, С.В. Мороз, К.А. Малиновська: За наук. ред. Ярошенка О.М. Харків: Юрайт, 2013. 288 с.
14. Шишлюк В.Р. Припинення трудового договору за законодавством України і Польщі: дис. ... канд. юрид. наук: 12.00.05 / Шишлюк Вікторія Русланівна. – Одеса, 2017. 231 с.