COLLECTIVE AGREEMENT AS A MEANS OF ENSURING THE STABILITY OF THE ENTERPRISE IN MARTIAL LAW

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Abstract. *The article is devoted to the study of the dual legal nature of the collective agreement (contract and local regulatory act), which allows it to influence the sustainable development of the enterprise and its employees. It is substantiated that the collective agreement has the function of ensuring sustainable development, which manifests itself both with the positive dynamics of enterprise development and in conditions of turbulence. Its manifestations are considered in both cases. The article is aimed at clarifying such a function of the collective agreement as ensuring the sustainable development of the enterprise and its implementation under martial law, forming proposals for improving the legal regulation of the collective agreement in emergency conditions. The methodological basis of the study is philosophical (analytical and dialectical for determining the nature of the collective agreement and outlining its function to ensure the sustainability of the enterprise, determining its action under martial law), general science (axiomatic and hypotecodeductive methods for formulating the conclusions of this study), special legal methods (technical and legal method is used to identify purely legal significance. legal acts, and the method of legal modeling is used in formulating proposals for improving the current legislation). It is proved that in conditions of martial law, the function of the collective agreement on ensuring sustainable development is manifested in the possibility of suspending the provisions of the collective agreement, which establish additional, in comparison with the current legislation and guarantee agreements, social and household benefits to employees, as well as those that are suspended for the period of martial law in the legislative order. commission appointed by order of the head of the enterprise. The legal form of suspension of certain provisions of the collective agreement can be both an additional agreement and an order of the head of the enterprise.*

Keywords: *collective agreement; functions of the collective agreement; sustainable development; martial law.*

JEL Classification: J08, J22, J33, K31

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Introduction. On February 24, 2022, a military attack by Russian troops on Ukraine began. According to The Wall Street Journal, this was the first major clash to mark a new order in international politics [1]. Martial law was imposed by the Decree of the President of Ukraine № 64/2022 on the same day. This Decree was approved by the Law of Ukraine of February 24, 2022 № 2102-IX. The highest military and political leadership of the state was faced with the task not only to ensure the protection of the country, but also to bring its economy to new realities in order to reduce the negative impact on it. One of such measures was the adoption of the law

"On the organization of labor relations in martial law" № 2136-IX from 15.02. 2022 (hereinafter referred to as the Law). Indeed, providing flexibility in the use of human resources by economic entities is the key to the sustainability of the enterprise in conditions of turbulence and emergency. On the other hand, it is necessary to ensure safe living and health conditions for workers.

Of course, the need to quickly take measures to create safe conditions, the need to prevent crises in the economy and determined the legal form - not to amend the Labor Code of Ukraine (hereinafter the Labor Code of Ukraine), and the adoption of an independent legal act. At the same time, there are numerous questions in the order of its interaction with other norms of labor law, as well as such a local act as a collective agreement. The latter is designed to ensure social protection of the rights of employees, but the law imposes certain restrictions on their rights. This in some way affects the social guarantees that were laid down in the collective agreement before the start of hostilities.

Therefore, it is necessary to scientifically comprehend the changes that have taken place in the legal regulation of labor and the collective agreement, and so on. Such an analysis will highlight the areas of correct law enforcement and further improvement of labor legislation. Given the above, the topic of the article is relevant.

Literature review. Domestic scientists are actively developing the theory of collective bargaining. G. Chanysheva studied the collective agreement as a legal form of social partnership and argued in favor of its conclusion. Scientific articles on the collective agreement disclose: legal techniques of creation and interpretation (M. Smoliarova, A. Bodziak), functions (O. Melnychuk) and ways to increase the effectiveness of its application (O. Khrabatyn). Through the prism of the means of achieving social peace, the collective agreement is revealed by V. Pokryshka. At the dissertation level the problems of the collective agreement were considered by: G. Rybnytskyi "Collective Agreement in a market economy", 2005 and D. Prymich "The right to collective bargaining and the conclusion of collective agreements: international standards and legislation of Ukraine", 2013. However, these scholars have not studied the application of the collective agreement in martial law.

Aims. The purpose of the article is to clarify the function of the collective agreement as ensuring the sustainable development of the enterprise and its implementation in martial law, the formation of proposals to improve the legal regulation of the collective agreement in emergency situations.

Methods. The methodological basis of the study are philosophical (analytical and dialectical to determine the nature of the collective agreement and outline its function to ensure the sustainability of the enterprise, determine its operation in martial law), general science (axiomatic and hypothetical-deductive methods for formulating conclusions of this study), special legal methods the technical and legal method was used to identify the purely legal significance of regulations, and the method of legal modeling was used in formulating proposals to improve existing legislation).

Results. For the purposes of our study, it is necessary to dwell on the legal essence of the collective agreement and its functions.

Several views on its essence have been formed among scholars who have studied the problem of the collective agreement. The former prefer the normative nature of the collective agreement and consider it a legal act or document. For example, the following definition is given: "a collective agreement is an organizational and regulatory consolidation of social partnership in the enterprise and is a legal act that regulates labor, socio-economic and professional relations between employers and employees of enterprises" [2, p. 11].

L. Hruzinova and V. Korotkin points out that "the collective agreement is a legal act that regulates the social-partnership relations between the social partners in the organization" [3, p.109]. According to N. Parkhomenko collective agreement is an important legal document, which formulates the rights and responsibilities of the administration of the enterprise or institution and the staff, as well as regulations on issues within the competence of the administration and representatives of the workforce [4, p. 25].

The views of the second group are that a collective agreement is a local legal act. Yes, I. Losytsia believes that a collective agreement is a local normative act that contains a set of regulations and collective bargaining obligations aimed at regulating labor, socio-economic and organizational-managerial relations at enterprises and institutions, organizations, regardless of form ownership, management and number of employees who have the right of legal personality and use hired labor [5, p. 12]. The following definition is also given: "a collective agreement is a local normative legal act that regulates labor and socio-economic relations between the owner or his authorized body and employees of enterprises, institutions, organizations, regardless of ownership and management, which use hired labor and have the rights of a legal entity [6, p.70].

Others point to the dual nature of a collective agreement, which is that it is both a contract (agreement) and a normative legal act. G. Chanysheva writes that the collective agreement has the features of an agreement and a legal act. The share of regulatory conditions in the content of the collective agreement has increased significantly in recent years. In this case, the origin of some local norms is determined by legislative provisions on the inclusion of certain provisions in the collective [7]. O. Khrabatyn emphasizes that the collective agreement has a priority role in the hierarchy of local regulations, due to its contractual nature [8, p. 152]. O. Potopakhina also points out that the collective agreement has a mixed legal nature, combines the boundaries of the agreement and the normative legal act [9].

The fourth emphasizes the contractual nature of the collective agreement. So, V. Zhernakov notes that "a collective agreement is an agreement concluded to reconcile the interests of enterprises, institutions, organizations based on any form of ownership, which are legal entities and use hired labor, between the owner, on the one hand, and the labor collective represented by a trade union or other body authorized to represent, on the other hand, which contains the obligations of the parties to regulate labor, industrial and other socio-economic interests and regulations establishing working conditions, wages, working hours and leisure time etc., as well as additional, compared to current legislation, benefits and advantages for

employees" [10, p.23]. N. Zabolotna also points to its contractual nature but sees it as a legal contract [11].

In our opinion, a collective agreement is both a local legal act and an agreement (contract) in view of the following.

The collective agreement corresponds to many features of the general theoretical construction of the agreement. It is a universal legal instrument of self-regulation of social relations of considerable complexity. At the legislative level, the procedure for negotiating and concluding a collective agreement is established, the conditions on which an agreement must be reached and the form of such an agreement are determined. Having defined mutual rights and responsibilities, the parties create a legal mechanism on the basis of which they can carry out social interaction. Like any agreement, a collective agreement is the result of mutual expression of the will of the counterparties and the agreement of their wills on the basis of a compromise reached.

It should be emphasized here that although there are common features between the constructions of the agreement and the collective agreement, the latter has its own specific features that significantly distinguish it. We will not dwell on them, as they are not the subject of our study. They are clearly manifested in the functions of the collective agreement.

In the general theory of law, a normative legal act is "an official written document adopted by an authorized subject and aimed at regulating public relations by establishing rights and responsibilities for an indefinite number of persons and designed for multiple use" [12, p. 477]. And local regulations are understood as those "issued by state institutions and organizations of various forms of ownership to regulate their internal affairs and which apply to members of these organizations" [13, p. 308].

The collective agreement corresponds to such general theoretical features of local legal norms, although it has its own specifics. Among the main ones we see the following: 1) it is accepted and operates only at the enterprise; 2) cannot be adopted alone; 3) arises by signing the document by authorized representatives of the employer and the workforce; 4) signing is preceded by a collective bargaining procedure; 5) extends its effect to all members of the labor collective, as well as in some cases to members of their families, former retired employees, family members of employees who died at work; 6) regulates labor, social, property, organizational, production relations at the enterprise; 7) is designed for repeated use, but its effect is limited to a certain period.

Thus, the collective agreement has a dual nature - it is both an agreement (contract) and a local legal act. And this, in our opinion, should be the basis for determining the functions of the collective agreement.

In the scientific literature, the opinion is expressed that the functions of the collective agreement are not only in the regulation of social and labor relations, but also in mitigating social tensions, resolving labor disputes and contradictions in a civilized way [14, p. 11]. It seems that this is a rather narrow approach, these functions are basic, but not the only ones.

A more detailed list of functions of the collective agreement was proposed by O. Melnychuk. She gives the following list of them: 1) protective (collective agreement protects the rights of employees from the stronger side of the employment relationship - the employer); 2) regulatory (rules of conduct are established, as a result of which labor guarantees for employees are increased, legal norms are specified, gaps in labor legislation are filled); 3) social partnership (after the completion of negotiations and the conclusion of a collective agreement, a compromise is reached between the parties, ensuring social peace in the enterprise and stability); 4) information (contains information on the rights and obligations of both the parties and the relevant state bodies); 5) educational (the parties cultivate diplomacy, tolerance, growing their legal awareness, legal culture, the parties acquire legal knowledge) [15].

It should be noted that the collective agreement can perform not only these functions, but also the function of ensuring sustainable development of the enterprise and its employees.

By the Decree of the President of Ukraine No. 722/2019 "On the Sustainable Development Goals of Ukraine until 2030" of September 30, 2019, the tasks of sustainable development of the economy, civil society and the state were set.

The concept of sustainable development provides that the satisfaction of material, spiritual, social, environmental, cultural needs of modern people is taking into account the interests of future generations. This is achieved by a harmonious combination of the implementation of social, economic and environmental components of society.

Sustainable development of society as a whole is achieved by sustainable development of all its elements, including every person who must have a sufficient standard of living, environmental security, access to appropriate education, cultural development and so on. Establishing in the collective agreement social guarantees, adequate wages, working and leisure time, labor protection, creating conditions for training, ensuring equal rights and opportunities for men and women, prohibition of discrimination, all this creates conditions for sustainable development of every employee. This influence is realized precisely because of the dual legal nature of the collective agreement - as an agreement and a local legal act. It is not difficult to see that for employees the possibility of a collective agreement to ensure sustainable development of employees is quite multifaceted.

At the enterprise level, the function of ensuring the sustainable development of the enterprise is not so colorful. It is an opportunity to provide in the collective agreement provisions for changes in the organization of production and labor and conditions for productive employment. At the same time, the potential of the collective agreement to ensure sustainable development of the enterprise in conditions of turbulence is difficult to implement in practice. And that's why.

Most domestic economists believe that sustainable development of the enterprise is determined by a set of possible changes in economic, environmental and social subsystems due to the influence of various factors leading to the transition of the enterprise from one relatively stable state to another [16; 17; 18; 19].

Entrepreneurial activity is risky and the responsibility in the form of adverse consequences until the bankruptcy of the enterprise is borne by its owners. The top management of the enterprise has to prevent negative developments by constantly monitoring the financial condition and timely taking anti-crisis measures. In practice, it can be very difficult to prevent bankruptcy. Anti-crisis measures can be long-lasting and require significant cost reductions. Including social guarantees and payments to employees. Of course, this cannot be what is guaranteed at the state level. At the same time, the collective agreement may provide for additional guarantees in comparison with the current legislation and agreements, social and household benefits that could be fulfilled before the crisis.

According to Article 14 of the Law "About collective agreements and contracts" № 3356-XII of 01.07.1993, changes and additions to the collective agreement, contracts during their term may be made only by mutual consent of the parties in the manner prescribed by the collective agreement, the agreement [20]. That is, the owner must agree on changes that will worsen the situation of employees and fix them in an additional agreement to the collective agreement.

The legislator did not establish the procedure for making changes and left it to the discretion of the participants in the collective agreement. In a situation where the mechanism for making changes is not prescribed, this issue is difficult to solve. Undoubtedly, it can be noted that the risk of business should not be transferred to the workforce, but in response, it can be noted that the loss of jobs in the bankruptcy of the company will not be the best solution for employees. If the collective agreement will provide for the participation of the labor collective in the formation, distribution and use of enterprise profits, the lack of opportunity to make changes will be simply unfair.

The situation is complicated when the instability of the enterprise was the result of unpredictable, extraordinary events. A striking example is the situation with the coronavirus epidemic. In early 2020, the infectious disease COVID-19, caused by the coronavirus SARS-CoV-2, spread worldwide. A pandemic was declared by the World Health Organization on March 11, 2020. For the world economy, the crisis was manifested in a record decline in the indicator of the state of the world economy - the Dow Jones Index.

On March 25, 2020, a state of emergency was imposed in Ukraine to prevent the spread of infectious diseases. Quarantine was repeatedly imposed. As a result of the pandemic, the domestic economy received a severe blow and the circle of unprofitable enterprises grew sharply. This has led to job cuts and increased unemployment. Since the beginning of quarantine, 444,400 people have received the status of unemployed in our country.

It is obvious that in this case the state of instability of the enterprise is caused not by administrative miscalculations, and action of extraordinary circumstances. Reducing transaction costs can be one of the measures that will allow the company to overcome their negative impact. One of these is those due to additional preferences for employees established by the collective agreement. Management decisions must

be made and implemented quickly. Negotiating with unions, agreeing with the workforce, and subsequent processing can take time.

How fashionable to solve this problem. The answer is proposed in Article 7 of the Law, which states that for the period of martial law, certain provisions of the collective agreement may be suspended at the initiative of the employer [21]. That is, it is not a question of amending the collective agreement or terminating it, but only of suspending its individual provisions for the period of martial law.

Supporting the legislative novel on the possibility of suspending certain provisions of the collective agreement in martial law, it is necessary to point out some of its shortcomings. The law provides for the possibility of suspending certain provisions of the collective agreement in martial law, but there are other situations when it is necessary to do so to eliminate the instability of the enterprise. Therefore, such a possibility must be introduced not only for martial law, but also for any state of emergency that may be caused by an epidemic, pandemic and / or threats of man-made, natural or other nature. To do this, it is necessary to supplement certain provisions of the Labor Code of Ukraine and the Law of Ukraine "About collective agreements and contracts".

The Law also does not answer the question of which provisions of the collective agreement can be suspended and how this should happen.

In our opinion, this approach can be applied. The labor law of Ukraine has a principle according to which the rights of employees, defined at the centralized level, should not deteriorate due to their specification at the enterprise level. It is reflected in part 3 of Art. 5 of the Law of Ukraine "About collective agreements and contracts", which prohibits the inclusion in employment contracts of conditions that worsen the position of employees compared to current legislation, collective agreements and agreements [20]. Therefore, the conditions specified in the collective agreement regarding mandatory guarantees and employee benefits contained in the labor legislation cannot be stopped.

According to Part 3 of Article 7 of the Law of Ukraine "About collective agreements and contracts", the collective agreement may provide additional compared to current legislation and agreements guarantees, social benefits, including child health and the purchase of New Year's gifts for children, etc. [20]. Therefore, the provisions of the collective agreement on such additional preferences can be suspended for the period of emergency.

For the period of martial law, the Law introduces restrictions on constitutional rights and freedoms of man and citizen under Articles 43 and 44 of the Constitution of Ukraine and stipulates that during martial law the norms of labor legislation do not apply to relations regulated by it. There was a narrowing of labor rights of workers, for example, during martial law:

- it is not necessary to report a change in significant working conditions for two months of the employee;
- the duration of weekly uninterrupted rest can be reduced to 24 hours;
- the transfer of the holiday is canceled if it falls on a weekend;

- during the period of martial law, the annual basic paid leave is granted to employees for a period of 24 calendar days.

Introduced by law and other restrictions that we do not cite, as this is not determined by the purpose of our article.

According to the labor legislation, the duration of the annual basic paid leave is not less than 24 calendar days, but in the collective agreement of the enterprise its minimum term can be increased at the expense of including additional paid leave. As a result, the duration of paid leave at a particular company under the terms of the collective agreement can be much longer than 24 calendar days. But according to the Law, this cannot be the case during martial law. Provisions of the legislation on the transfer of public holidays, the duration of weekly uninterrupted rest, the need to warn about the change of significant working conditions for two months may be duplicated in the collective agreement. It seems that such provisions of the collective agreement should also be suspended.

Of course, before suspending certain provisions of the collective agreement for the period of validity, it is necessary to carefully study all provisions of the collective agreement with the involvement of relevant specialists - lawyers, human resources, accountants, health and safety specialists, etc. and agree with union representatives. For this purpose, by order of the director of the enterprise, an appropriate commission may be established, which shall provide a reasoned opinion based on the results of its work. The duration of its work may be short and determined in the same order. Only after that should certain provisions of the collective agreement be suspended.

Discussion. The current legislation does not stipulate in what form certain provisions of the collective agreement should be suspended for the period of martial law. It is seen that the legal form of suspension of certain articles of the collective agreement for the period of martial law may be either an additional agreement signed by the same representatives who signed the collective agreement or the order of the director of the enterprise. In our opinion, in the latter case there is a possibility of prompt response, and therefore it is more appropriate.

Conclusions. The study indicates the need for further research on such a function of the collective agreement as sustainable development and leads to the following:

1. A collective agreement has a dual nature - it is both an agreement (contract) and a local legal act. Due to this dual nature, the mutual rights and responsibilities of employees and employers are clearly defined, labor relations are regulated, and their socio-economic interests are respected. On this basis, there is a sustainable development of the enterprise and its employees.

2. The function of ensuring sustainable development of the collective agreement can perform in turbulent conditions. In this case, it is manifested only in relation to the company in the form of amendments to the collective agreement, reducing the amount of additional compared to current legislation preferences for its employees, defined by the collective agreement. These changes must be adopted in the manner prescribed by the collective agreement.

3. In martial law, the function of the collective agreement on sustainable development is manifested in the possibility of suspending the provisions of the collective agreement, which establishes additional, compared to current legislation and guarantee agreements, social benefits for employees, as well as those suspended during martial law. legislative order. Suspension of certain norms of the collective agreement may be carried out after the necessary changes have been worked out by a commission appointed by order of the head of the enterprise. It should include lawyers, human resources, accountants, health and safety professionals and trade union representatives. The legal form of suspension may be an additional agreement signed by the authorized representatives of the labor collective and the employer, or an order of the head of the enterprise. The latter as a more operational tool is more appropriate.

4. It is necessary to make the following changes to the current legislation. In the Law «About collective agreements and contracts» to introduce Article 14-1 with the following content: «During a state of emergency or martial law, the provisions of the collective agreement also those suspended for the period of martial law may be suspended by law at the initiative of the employer. The specific list of norms of the collective agreement which is stopped is defined according to the order of the head of the enterprise».

Author contributions. The authors contributed equally.

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