



Yuliia Khlystun

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Khlystun Yuliia,

Assistant judge of Kyiv District Court of Kharkiv, Kharkiv, Ukraine.

ORCID: <https://orcid.org/0009-0000-5016-8694>

e-mail: hlystunjulia@gmail.com

Davydenko Daria,

Candidate of economic sciences, senior researcher,

head of the postgraduate and doctoral studies department,

National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute» of the Ministry
of Justice of Ukraine, Kharkiv, Ukraine.

ORCID ID: <https://orcid.org/0000-0001-9124-9511>

e-mail: davydenko.dasha@ukr.net

Grounds For Limitation Of Labor Rights Of Employees Regarding Protection Of Personal Data Under Conditions Of Marital State

Abstract: the specified article examines personal data, their list, their extension to labor relations, definition of martial law is disclosed and the grounds for limiting the rights and freedoms of a person and citizen, their legal regulation, grounds for processing and guarantees for the protection of personal data of employees in the conditions of martial law are defined. It is noted that the personal data of an employee is a narrower concept than the personal data of a person and in connection with the lack of legal protection regulation of personal data of employees while their processing and protection, there are urgent issues that require legal regulation specifically by special legislation, which should be adopted from taking into account practice of ECHR and European experience. In addition, in Ukraine, the employer is not obliged to obtain consent from its employees for processing of their personal data, provided that the employee's personal data (for example, name, patronymic and surname of the employee, information about education, marital status) is used by the employer for exercising the rights and fulfilling owner duties in the field of labor relations in accordance with the law with provision of appropriate protection. It was concluded that employee's personal data in wartime, in particular in the occupied territories, are not protected, and require more detailed protection from both State and employers.

Keywords: personal data, martial law, limitation of constitutional rights, processing of employee's personal data, grounds for processing, consent to processing, protection, guarantees of protection.

Introduction. In modern conditions, any person, becoming a participant in social relations, must provide society, state institutions, and private enterprises with some information about himself. Therefore, it is necessary to understand what information is personal data of human in general and of a specific employee in the performance of his work duties, and what is the mechanism of its protection in ordinary everyday life and in the event of unavoidable circumstances.

Analysis of recent research and publications. In the modern science of labor law, this problem has also been studied by many scientists, in particular, the works of such scientists as M. M. Hrekova, V. V. Zhernakov, Ye. V. Krasnov, K. Iu. Melnyka, S. M. Prylypko, O. M. Yaroshenko, A. M. Chernobai,

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**Khlystun Yuliia,
Davydenko Daria**

**GROUND'S FOR LIMITATION OF
LABOR RIGHTS OF EMPLOYEES
REGARDING PROTECTION
OF PERSONAL DATA UNDER
CONDITIONS OF MARITAL
STATE**

Abstract: the specified article examines personal data, their list, their extension to labor relations, definition of marital law is disclosed and the grounds for limiting the rights and freedoms of a person and citizen, their legal regulation, grounds for processing and guarantees for the protection of personal data of employees in the conditions of martial law are defined. It is noted that the personal data of an employee is a narrower concept than the personal data of a person and in connection with the lack of legal protection regulation of personal data of employees while their processing and protection, there are urgent issues that require legal regulation specifically by special legislation, which should be adopted from taking into account practice of ECHR and European experience. In addition, in Ukraine, the employer is not obliged to obtain consent from its employees for processing of their personal data, provided that the employee's personal data (for example, name, patronymic and surname of the employee, information about education, marital status) is used by the employer for exercising the rights and fulfilling owner duties in the field of labor relations in accordance with the law with provision of appropriate protection. It was concluded that employee's personal data in wartime, in particular in the occupied territories, are not protected, and require more detailed protection from both State and employers.

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M.V. Savchyn. However, at present, this topic remains relevant and not fully explored.

Formulation of research objectives. The purpose of this article is to study the reasons for limiting the labor rights of employees regarding protection of their personal data under martial law, grounds for their processing, guarantees of protection, and the analyzed norms regarding martial law, and their extension to the labor rights of employees.

Main Content Presentation. The legislator in our country determined that personal data is information or information pool about a natural person who is identified or can be specifically identified. The personal data term refers only to natural persons¹.

Ministry of Justice of Ukraine in the clarification "Some issues of practical application of Law of Ukraine: On Personal Data Protection" dated on 21.12.2011² indicated that legislation of Ukraine does not establish and cannot establish a clear list of information about natural person that is personal data, for possibility of applying provisions of the Law to a variety of situations, including while processing personal data in information (automated) databases and personal data files that can arise in the future, in connection with changes in technological, social, economic and other fields of public life. Currently, Ministry of Justice, recognizing problem existence does not answer the question of what information allows identification of natural person, limiting itself to only general concepts about field of life.

In our country, the legislator has not defined an exhaustive list of information that belongs to personal data. However, the decision of the Constitutional Court of Ukraine dated on January 20, 2012 No. 2-пн/2012 provides indicative list of personal data that is not exhaustive according to which information about personal and family life (personal data about him) is any information or a set of information about a natural person who is identified or can be specifically identified, namely: nationality, education, marital status, religious beliefs, state of health, financial status, address, date and place of birth, place of residence and stay, etc., data on personal property and non-property relations of this person with other persons, in particular family members, as well as information on events and phenomena that occurred or are occurring in the household, intimate, social, professional, business and other fields of the personal life, with exception of data regarding the exercise of powers by a person holding a position related to the performance of functions of the state or local self-government bodies. Such information about an individual and his family members is confidential and can be shared only with their consent, except for cases specified by law and only in the interests of national security, economic well-being and human rights³.

In accordance with the first and second parts of Article 32 of the Basic Law, no one can be subjected to interference in his personal and family life, except for the cases provided for by the Constitution of Ukraine. It is not allowed to collect, store, use and distribute confidential information about a person without his consent, except for cases specified by law and only in interests of national security, economic well-being and human rights⁴.

¹ Про захист персональних даних: Закон України від 01.06.2010 №2297-VI. URL: <https://zakon.rada.gov.ua/laws/show/2297-17#Text>

² Деякі питання практичного застосування Закону України «Про захист персональних даних» від 21.12.2011: роз'яснення Міністерства юстиції України. URL: <https://zakon.rada.gov.ua/laws/show/n0076323-11#Text>

³ Рішення КСУ від 20.01.2012 № 2-рп/2012 за конституційним поданням Жашківської районної ради щодо тлумачення ст. 32 Конституції України. URL: <https://zakon.rada.gov.ua/laws/show/v002p710-12#Text>

⁴ Конституція України від 28.06.1996 р. № 254к/96-ВР. Редакція від 01.01.2020. URL: <https://zakon.rada.gov.ua>

**MOTIFS DE LIMITATION DES
DROITS DU TRAVAIL DES
EMPLOYÉS CONCERNANT LA
PROTECTION DES DONNÉES
PERSONNELLES DANS LES
CONDITIONS DE L'ÉTAT
MARITALE**

L'article spécifié examine les données personnelles, leur liste, leur extension aux relations de travail, la définition de la loi martiale est révélée et les motifs de limitation des droits et libertés de la personne et du citoyen, leur réglementation légale, les motifs de traitement, et garanties pour la protection des données personnelles des salariés dans les conditions de la loi martiale introduite. Il est à noter que les données personnelles d'un employé sont un concept plus étroit que les données personnelles d'une personne, et en raison de l'absence de réglementation légale sur la protection des données personnelles des employés lors de leur traitement et de leur protection, des problèmes urgents se posent qui nécessitent réglementation juridique spécifiquement par une législation spéciale, tenant compte de la pratique de la CEDH et de l'expérience européenne. De plus, en Ukraine, l'employeur n'est pas obligé d'obtenir le consentement de ses employés pour le traitement de leurs données personnelles, à condition que les données personnelles de l'employé (par exemple, le nom, le patronyme et le prénom de l'employé, les informations sur l'éducation, l'état civil statut) est utilisé par l'employeur pour exercer les droits et remplir les devoirs du propriétaire dans le domaine des relations de travail conformément à la loi avec la fourniture d'une protection appropriée. Il a été conclu que les données personnelles des salariés en temps de guerre, en particulier dans les territoires occupés, ne sont pas protégées et nécessitent une protection plus détaillée de la part de l'État et des employeurs.

Conclusions. La protection des données personnelles d'un employé en Ukraine n'est actuellement pas réglementée par des normes juridiques spéciales, à savoir le Code du travail de l'Ukraine. Par conséquent, lors de l'embauche, l'employeur les traite conformément aux exigences de la loi ukrainienne « Sur la protection des Données personnelles » qui sont des normes juridiques

In labor law, the employee's personal data should be considered as information that employer needs to obtain regarding each employee in connection with labor relations⁵.

However, in connection with military aggression of Russian Federation against Ukraine, on the basis of the proposal of National Security and Defense Council of Ukraine, martial law was introduced in our country from 05:30 on February 24, 2022 for a period of 30 days that is valid even in current conditions.

The legislator defines martial law as a special legal regime introduced in Ukraine or in some of its localities in the event of armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity, and provides for provision of relevant state authorities, military command, military administrations and local authorities self-governance of the powers necessary to avert the threat, repulse armed aggression and ensure national security, eliminate the danger threat to State independence of Ukraine, its territorial integrity, as well as temporary, caused by the threat, restriction of the constitutional rights and freedoms of a person and a citizen and the rights and legitimate interests of legal entities with indicating the term of validity of these restrictions⁶.

Therefore, by its legal nature, martial law is a special legal regime that can be imposed under certain conditions on the territory of the whole of Ukraine, or in some of its localities, the grounds for which are imposed are: armed aggression of another country; threat of attack; danger of State independence of Ukraine; danger to territorial integrity of the State.

It should be noted that in the 19th and 20th centuries, martial law was introduced in more than 80 countries of the world. The most famous cases of the introduction of martial law: in the USA while the San Francisco earthquake in 1906, the miners' strike in 1914, Japanese attack on Pearl Harbor in 1941 and the African-American demonstrations in Detroit in 1967; in Canada to stop separatist demonstrations in the province of Quebec in 1970; in Poland, with the aim of suppressing the protest movement led by the Solidarity trade union in 1981; in Panama, after the invasion of country by US troops in 1989; in Yugoslavia, in connection with the NATO operation: Union Force in 1999; in Georgia as a result of Russia attack in 2008; in Thailand, in response to anti-government protests in 2014; in Turkey, due to an attempted military coup in 2016; in the Philippines, in connection with intensification of activities of extremists. It should be noted that during introduction of martial law in each of the mentioned countries, during various historical events of each country, state applied restrictions on human rights and freedoms. However, the number of restricted rights and the level of such restrictions had a significant difference. Thus, in relation to introduction of martial law in democratic countries, there is a certain list of rights that cannot be violated in any case or are of a temporary and minimal nature. However, in totalitarian countries, human rights were limited in their entirety⁷.

M. V. Savchyn comparing legislation on restriction of human rights and freedoms in Ukraine and the approaches to the mentioned issue within the framework of international law, noted that human rights can be limited by observing principle of proportionality, exclusively on the basis of the law adopted by parliament as the highest representative body of government

⁵ Чернобай А.М. Поняття персональних даних працівника. Актуальні проблеми держави і права: зб.наук.пр./Одес. нац. юрид. акад. О.: Юрид. л-ра, 2004. Вип. 22. С. 827-833.

⁶ Про правовий режим воєнного стану: Закон України від 12.05.2015 № 389-VIII. URL: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

⁷ Гвоздь В. Воєнний стан і права людини. Національна безпека. 2018. URL: <http://ekmair.ukma.edu.ua/handle/123456789/15246>



and in compliance with conditions of the need to define the boundaries of subjective law taking into account the interests of other persons⁸.

Legal basis for the introduction of martial law in our country is Constitution of Ukraine, the Law of Ukraine: On Legal Regime of Martial Law and Decree of the President of Ukraine: On the Introduction of Martial Law in Ukraine or in Certain Localities approved by the Verkhovna Rada of Ukraine.

Basic Law of Ukraine declares that constitutional rights and freedoms of a person and a citizen cannot be limited, except in cases provided for by the Constitution of Ukraine. In conditions of war or State of emergency, separate restrictions of rights and freedoms can be established with an indication of the validity period of these restrictions. The rights and freedoms stipulated by Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63 of this Constitution cannot be limited⁹.

The specified norms of the Constitution of Ukraine correspond to the norms of Universal Declaration of Human Rights stipulating that in the exercise of their rights and freedoms, each person should be subject to only such restrictions as are established by law exclusively for the purpose of ensuring proper recognition and respect for the rights and freedoms of others and ensuring fair requirements of morality, public order and general well-being in a democratic society¹⁰.

Restrictions that are introduced during operation of legal regime of wartime should correspond to the limits and scope necessary to ensure possibility of introducing and implementing measures of the legal regime of martial law.

As stated above, a special normative act that defines the content of legal regime of martial law, the procedure for its introduction and cancellation, the legal basis of activities of state authorities, military command, military administrations, local self-government bodies, enterprises, institutions and organizations in conditions of martial law, guarantees rights and freedoms of a person and a citizen and the rights and legitimate interests of legal entities is the Law of Ukraine: On Legal Regime of Martial Law dated on May 12, 2015 No. 389-VIII.

Thus, certain specifics of temporary restriction of constitutional rights and freedoms of a person and a citizen in connection with introduction of martial law are defined by Article 6 of Law No. 389-VIII, paragraph 5 which first part specifies that decree of the President of Ukraine on introduction of martial law specifies an exhaustive list of constitutional rights and freedoms of a person and a citizen, which are temporarily limited in connection with introduction of martial law with indication of the period of validity of these restrictions, as well as temporary restrictions of the rights and legal interests of legal entities with the indication of validity period of these restrictions¹¹.

In his decree, President of Ukraine determined the following: in connection with introduction of martial law in Ukraine, constitutional rights and freedoms of a person and a citizen, provided for in Articles 30 — 34, 38, 39, 41 can be temporarily limited for the period of legal regime of martial law 44, 53 of the Constitution of Ukraine, as well as to introduce temporary restrictions on the rights and legal interests of legal entities within the limits and to the extent necessary to ensure the possibility of introducing and implementing

générales, c'est-à-dire que dans ce cas, le traitement des données des salariés est effectué à la discrétion de l'employeur, en tenant compte des dispositions générales, et donc leur protection est généralement absente dans la plupart des cas, ce qui est extrêmement important dans les conditions de la loi martiale imposée, puisque dans les territoires occupés, les données personnelles des employés se sont retrouvées entre « les mains de l'ennemi », ce qui peut entraîner de graves conséquences à l'avenir, et constitue une violation de la droits du travail des employés. Par conséquent, nous proposons d'améliorer la législation nationale concernant les données personnelles des salariés et de préciser les motifs de leur traitement par l'employeur conformément au classificateur des professions, en indiquant un système efficace de garanties pour leur protection et en établissant la responsabilité appropriée de l'employeur pour leur violation, ce qui offrira à l'avenir une réelle opportunité de protéger les droits de l'employé même dans des conditions militaires ou d'état d'urgence.

Mots-clés : données personnelles, loi martiale, limitation des droits constitutionnels, traitement des données personnelles des salariés, motifs du traitement, consentement au traitement, protection, garanties de protection.

**Khlystun Yuliia,
Davydenko Daria**

**GRÜNDE FÜR DIE
EINSCHRÄNKUNG
DER ARBEITSRECHTE
DER ARBEITNEHMER
BEZÜGLICH DES SCHUTZES
PERSONENBEZOGENER DATEN
UNTER BEDINGUNGEN DES
HEIMSTAATS**

Zusammenfassung: Der angegebene Artikel untersucht personenbezogene Daten, ihre Liste, ihre Ausweitung auf Arbeitsbeziehungen, die Definition des Kriegsrechts und die Gründe für die Einschränkung der Rechte und Freiheiten einer Person und eines Bürgers, ihre gesetzliche Regelung, Gründe für die Verarbeitung und Garantien für die Der Schutz personenbezogener Daten von Arbeitnehmern unter den Bedingungen des Kriegsrechts wird festgelegt. Es wird darauf hingewiesen, dass die personenbezogenen Daten eines

⁸ Савчин М.В. Порівняльне конституційне право: навч. посібник. Київ: Юрінком-Інтер, 2019. С. 152.

⁹ Конституція України від 28.06.1996 р. № 254к/96-ВР. Редакція від 01.01.2020. URL: <https://zakon.rada.gov.ua>

¹⁰ Фігель Ю.О. Обмеження прав людини в умовах воєнного стану. Науковий вісник Львівської комерційної академії. Серія «Юридична». 2015. Випуск № 2. С. 223.

¹¹ Про правовий режим воєнного стану: Закон України від 12.05.2015 № 389-VIII. URL: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

Arbeitnehmers ein engerer Begriff sind als die personenbezogenen Daten einer Person, und im Zusammenhang mit der fehlenden rechtlichen Regelung zum Schutz personenbezogener Daten von Arbeitnehmern bei deren Verarbeitung und Schutz gibt es dringende Fragen, die einer gesetzlichen Regelung bedürfen insbesondere durch besondere Rechtsvorschriften, die unter Berücksichtigung der EMRK-Praxis und der europäischen Erfahrungen verabschiedet werden sollten. Darüber hinaus ist der Arbeitgeber in der Ukraine nicht verpflichtet, die Einwilligung seiner Arbeitnehmer zur Verarbeitung ihrer personenbezogenen Daten einzuholen, sofern die personenbezogenen Daten des Arbeitnehmers (z. B. Vor- und Nachname des Arbeitnehmers, Informationen über Bildung, Familienstand) Wird vom Arbeitgeber zur Ausübung der Rechte und zur Erfüllung der Eigentümerpflichten im Bereich der Arbeitsbeziehungen gemäß dem Gesetz und unter Gewährleistung eines angemessenen Schutzes verwendet. Es wurde der Schluss gezogen, dass die personenbezogenen Daten von Arbeitnehmern in Kriegszeiten, insbesondere in den besetzten Gebieten, nicht geschützt sind und einen detaillierteren Schutz sowohl seitens des Staates als auch der Arbeitgeber erfordern.

Schlüsselwörter: personenbezogene Daten, Kriegsrecht, Einschränkung verfassungsmäßiger Rechte, Verarbeitung personenbezogener Daten des Arbeitnehmers, Verarbeitungsgründe, Einwilligung zur Verarbeitung, Schutz, Schutzgarantien.

measures of legal regime of martial law, which are provided for in part one of Article 8 of the Law of Ukraine: "On Legal Regime of Martial Law"¹².

Thus, in labor legislation of our country there is no legal regulation of the protection of personal data of employees, although this issue is relevant, since when hiring for any job, including both through competition and under a contract, and while work itself, employee you need to provide employer with your personal data, namely information about the person himself, his education, marital status, information about work experience, information about health and even information about income, etc.

However, it should be noted that on October 25, 2022, Verkhovna Rada of Ukraine registered draft law № 8153 On Personal Data Protection which purpose is to speed up integration of Ukraine into the Single Digital Market of European Union, as well as to bring national legislation as close as possible to European standards in the field protection of personal data. It should also strengthen the protection of the rights of persons related to processing of personal data, introduce mechanisms for realization of such rights, including for the fight against cybercrime, and also establish an appropriate and high level of protection of personal data. This draft law contains Chapter VIII Processing of personal data by the employer which for the first time in Ukraine will regulate the procedure for processing personal data specifically between the employer and the employee and/or candidate for employment, civil servant, which relate to employment, execution of the employment contract (contract), gig contract, including execution responsibilities provided for by legislation, constituent documents, collective agreement, as well as planning and effective management of the state authority and local self-government body, enterprise, institution or organization and termination of labor relations. The specified draft law provides that processing of personal data by the employer will be carried out in accordance with the requirements of the Labor Code of Ukraine of this Law, taking into account the features provided for in this section¹³. However, as stated above, currently the Labor Code of Ukraine does not contain provisions regarding personal data of employees.

Data about employees reflected in personnel documents, in particular about age, date and place of birth, place of residence, actual place of residence, registration number of the taxpayer registration card, social status, state of health are considered personal data of the employee which together constitute the database personal data or part thereof. In addition, the documentation of enterprises, institutions and organizations in electronic form and/or in the form of filing cabinets, containing structured personal data of employees in a certain way is also considered a personal data base or its part.

Thus, personal data of employees is contained, as a rule, in the form of cards stored at the enterprise, or in electronic form in specially developed software.

During period of the legal regime of martial law in Ukraine, constitutional rights and freedoms of a person and a citizen, in particular, provided for in Art. 32 of the Constitution of Ukraine may be limited.

This limitation is consistent with provisions of Convention for the Protection of Human Rights and Fundamental Freedoms, according to which state authorities can not interfere with exercise of the right to respect for private and family life, except when the interference is carried out in accordance with the law and is necessary in a democratic society in the interests of national and public security or economic well-being of the country, prevent riots or crimes, to protect health or morals, or protect the rights and freedoms of others. In

¹² Про введення воєнного стану в Україні або в окремих її місцевостях: Указ Президента України від 24.02.2022 №64/2022. URL: <https://zakon.rada.gov.ua/laws/show/64/2022#Text>

¹³ Про захист персональних даних: законопроект від 25.10.2022 № 8153. URL: <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1517426>



**Khlystun Yuliia,
Davydenko Daria**

**PODSTAWY OGRANICZENIA
PRAW PRACOWNICZYCH
PRACOWNIKÓW W ZAKRESIE
OCHRONY DANYCH
OSOBOWYCH W WARUNKACH
STANU MAŁŻEŃSKIEGO**

Streszczenie: we wskazanym artykule omówiono dane osobowe, ich wykaz, zakres ich stosowania w stosunkach pracy, ujawniono definicję stanu wojennego oraz podstawy ograniczenia praw i wolności człowieka i obywatela, ich regulację prawną, podstawy przetwarzania oraz gwarancje ochrony danych osobowych. określono ochronę danych osobowych pracowników w warunkach stanu wojennego. Należy zauważyć, że dane osobowe pracownika są pojęciem węższym niż dane osobowe osoby i w związku z brakiem regulacji prawnych dotyczących ochrony danych osobowych pracowników przy ich przetwarzaniu i ochronie, pojawiają się pilne kwestie wymagające uregulowania prawnego w szczególności poprzez specjalne ustawodawstwo, które powinno zostać przyjęte z uwzględnieniem praktyki EKPC i doświadczeń europejskich. Ponadto na Ukrainie pracodawca nie jest zobowiązany do uzyskania zgody swoich pracowników na przetwarzanie ich danych osobowych, pod warunkiem, że dane osobowe pracownika (na przykład imię, patronimika i nazwisko pracownika, informacje o wykształceniu, stanie cywilnym) służy pracodawcy do wykonywania praw i obowiązków właścicielskich w zakresie stosunków pracy zgodnie z przepisami prawa, pod warunkiem zapewnienia odpowiedniej ochrony. Stwierdzono, że dane osobowe pracowników w czasie wojny, w szczególności na terytoriach okupowanych, nie podlegają ochronie i wymagają bardziej szczegółowej ochrony zarówno ze strony państwa, jak i pracodawców.

Słowa kluczowe: dane osobowe, stan wojenny, ograniczenie praw konstytucyjnych, przetwarzanie danych osobowych pracownika, podstawy przetwarzania, zgoda na przetwarzanie, ochrona, gwarancje ochrony.

accordance with Article 15 of this Convention, in time of war or other public danger threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention only to the extent required by situation urgency and provided that such measures do not conflict with its other obligations under international law¹⁴.

Article 9 of Convention on Protection of Individuals in Connection with Automated Processing of Personal Data states that deviations from provisions of Articles 5 (Data quality), 6 (Special data categories) and 8 (Additional guarantees for the data subject) of this Convention are allowed when such a deviation is provided for by legislation of the Party and is a necessary measure in a democratic society aimed at: a) protection of State and public security, financial interests of the State or fight against criminal offenses; b) protection of the subject or the rights and freedoms of other people¹⁵.

The Law of Ukraine: On Personal Data Protection regulating legal relations related to protection and processing of personal data in our country, contains provisions regarding the limitation of its effect, in particular, limitation of the effect of Articles 6 (General requirements for personal data processing) subjects of personal data or other persons¹⁶.

Accordingly, the above indicates that in fact there can be no limitations to legitimate purpose principles, necessity and legality. These principles are owner obligations which who should observe under any conditions, even under martial law.

In other words, in conditions of martial law introduced in Ukraine, protection of personal data of employees from accidental loss or destruction, damage, from illegal data processing, including illegal destruction or access to personal data stored in paper form, protection of information resources that contain personal employee data is important for our country and requires more robust protection, both from the State and from the owners or managers of personal data.

On March 12, 2022, resolution of the Cabinet of Ministers of Ukraine: Some issues of ensuring the functioning of information and communication systems, electronic communication systems, and public electronic registers under martial law entered into force established that during period of martial law, ministries, other central and local executive bodies authorities, state and communal enterprises, institutions, organizations belonging to the field of their management, ensure the proper functioning information, information and communication and electronic communication systems, public electronic registers, which owners (holders) and/or administrators they are and protection information processed in , as well as the protection of state information resources, can take the following additional measures:

1) place state information resources and public electronic registers on cloud resources and/or in data processing centers located outside of Ukraine and register domain names in the gov.ua domain;

2) create additional backup copies of state information resources and public electronic registers in compliance with requirements for integrity, confidentiality and availability established for such resources;

4) stop and limit information operation, information and communication and electronic communication systems, as well as public electronic registers.

During period of martial law, use of cloud resources and/or data processing centers located in the temporarily occupied territory of Ukraine is strictly prohibited, and the specified measures should be stopped within six months

¹⁴ Конвенція про захист прав людини і основоположних свобод від 04.11.1950 р. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text

¹⁵ Конвенція про захист осіб у зв'язку з автоматизованою обробкою персональних даних від 28.01.1981 р. URL: https://zakon.rada.gov.ua/laws/show/994_326

¹⁶ Про захист персональних даних: Закон України від 01.06.2010 №2297-VI. URL: <https://zakon.rada.gov.ua/laws/show/2297-17#Text>

after termination or cancellation of martial law and the State Administration of special communications and information protection services and the Ministry of Digital Transformation¹⁷.

Processing of personal data of employees in wartime should be carried out, in particular, in the cases provided for by laws of Ukraine, in the manner determined by legislation.

The grounds for processing personal data in accordance with Law requirements are: consent of personal data subject to processing of his personal data; permission to process personal data granted to the owner of personal data in accordance with the law exclusively for exercise of his powers; conclusion and execution of a transaction to which the subject of personal data is a party or that was concluded for the benefit of subject of personal data or for the implementation of measures preceding conclusion of the transaction at the request of the subject of personal data; protection of vital interests of the subject of personal data; the need to fulfill the obligation of the owner of personal data provided by law; the need to protect legitimate interests of the owner of personal data or a third party to whom personal data is transferred, except when the needs to protect fundamental rights and freedoms of the subject of personal data in connection with processing of his data prevail over such interests¹⁸.

At the same time, the consent of the subject of personal data is only one of the six legal grounds for the processing of personal data provided by the Law. If available grounds specified in clauses 2-6 of the first part of Article 11 of the Law, processing personal data is carried out without consent of the of personal data subject, but on the law basis. Thus, processing of personal data should be proportionate and carried out for specific and legitimate purposes.

Thus, in Ukraine, the employer is not obliged to obtain consent from its employees for processing of their personal data, provided that the employee's personal data (for example, the name, patronymic and surname of employee, information about education, marital status) is used by employer for exercising the rights and fulfilling the duties of the owner in the field of labor relations in accordance with the law with provision of appropriate protection. However, written consent is required for processing of "sensitive" employee data.

Processing procedures, processing period and composition of personal data must be proportionate to the purpose of processing and based on legal grounds.

The following requirements for personal data processing are established, namely, the owner determines: 1) purpose and grounds of personal data processing; 2) categories of personal data subjects; 3) composition of personal data; 4) procedure for processing personal data, namely: method of collecting and accumulating personal data; term and conditions of storage of personal data; conditions and procedure for changing, deleting or destroying personal data; terms and procedure of transfer of personal data and the list of third parties to whom personal data can be transferred; procedure for access to personal data of persons who carry out processing, as well as subjects of personal data; measures to ensure personal data protection; procedure for saving information about operations related to processing personal data and access to¹⁹.

Processing purpose of personal data should always be clear and legal and should be formulated in laws, other normative legal acts, provisions, constituent

¹⁷ Деякі питання забезпечення функціонування інформаційно-комунікаційних систем, електронних комунікаційних систем, публічних електронних реєстрів в умовах воєнного стану: Постанова Кабінету Міністрів України від 12.03.2022 № 263 URL: <https://zakon.rada.gov.ua/laws/show/263-2022-%D0%BF#Text>

¹⁸ Про захист персональних даних: Закон України від 01.06.2010 №2297-VI. URL: <https://zakon.rada.gov.ua/laws/show/2297-17#Text>

¹⁹ Про затвердження документів у сфері захисту персональних даних: Наказ Уповноваженого ВР з прав людини від 08.01.2014 № 1/02-14. URL: https://zakon.rada.gov.ua/laws/show/v1_02715-14#Text



or other documents that regulating the owner activities of personal data, and should comply with legislation on protection of personal data.

The Law of Ukraine: On the Legal Regime of Martial Law, that as stated above, is a special law, provides that introduced martial law provides relevant bodies of State power, military command, military administrations and local self-government bodies with the powers necessary to avert the threat, repulse armed aggression and ensuring national security, eliminating threats to independence State of Ukraine, its territorial integrity.

In such a case, the grounds for processing (collection, registration, accumulation, storage, adaptation, modification, renewal, use, distribution, destruction, etc.) of personal data by relevant state bodies and local self-government bodies are clauses 2 and 5 of part one of Article 11 of the Law of Ukraine: On Protection of Personal Data, namely: permission to process personal data granted to the owner of personal data in accordance with the law exclusively for exercise of his powers (that is, for each processing of personal data, corresponding right should be provided by law each time. This provision of the Law allows processing personal data not only in the case when there is a direct indication of the law, and when it is objectively determined by State body powers); and the need to fulfill obligation of personal data owner provided by law (owner can process only those personal data of subjects that are necessary for him to fulfill his obligation, provided by law). At the same time, it is paragraph 5 that mostly applies to subjects of private law.

The Law of Ukraine: On Management of Labor Relations in Conditions of Martial Law establishes that during the period of martial law, procedure for management of labor relations affairs, registration and maintenance of labor books and archival storage of relevant documents in areas of active hostilities is determined by employer independently, provided that keeping reliable records of the work performed by the employee and accounting of labor costs. During the period of martial law, the parties to employment contract can agree on alternative methods of creating, forwarding and storing the employer's orders (orders), notices and other documents on labor relations issues and on any other available method of electronic communication, chosen by agreement between the employer and employee²⁰.

State authorities, local self-government bodies, enterprises, institutions of all ownership forms, natural persons: entrepreneurs, natural persons engaged in independent professional activity, who process personal data are obliged to ensure protection of this data against accidental loss or destruction, from illegal processing including illegal destruction or access to personal data.

Protection means measures taken by the system for access control, data protection (confidentiality, integrity, availability), description of processes and procedures, protection against attacks, technical support, staff training.

Owner and administrator of personal data take measures to ensure the protection of personal data at all stages of their processing, including with the help of organizational and technical measures.

Owner, administrator of personal data independently determines the list and composition of measures aimed at security of personal data processing, taking into account requirements of legislation in the areas of personal data protection and information security.

Protection of personal data involves measures aimed at preventing their accidental loss or destruction, illegal processing, including illegal destruction or access to personal data²¹.

²⁰ Про організацію трудових відносин в умовах воєнного стану: Закон України від 15.03.2022 № 2136-IX. URL: <https://zakon.rada.gov.ua/laws/show/2136-20#Text>

²¹ Про затвердження документів у сфері захисту персональних даних: Наказ Уповноваженого ВР з прав людини від 08.01.2014 № 1/02-14. URL: https://zakon.rada.gov.ua/laws/show/v1_02715-14#Text

In other words, personal data protection includes two mandatory elements: the owner's obligation to take organizational and technical measures to prevent their accidental loss or destruction, illegal processing, including illegal destruction or access to personal data; and obligation of each employee of the owner and administrator not to allow the disclosure of personal data that became known to him in connection with performance of professional or official or labor duties, so-called obligation of confidentiality.

Organizational protection measures include: determining procedure for accessing personal data of the owner/manager's employees; determining procedure for keeping records of operations related to processing of the subject's personal data and access to; development of an action plan in case of unauthorized access to personal data, damage to technical equipment, emergency situations; regular training of employees working with personal data²².

Requirements for technical measures are established by separate legislation in the field of information security, in particular, it includes the Law of Ukraine: On Protection of Information in Automated Systems, Resolution of the Cabinet of Ministers of Ukraine: Some Issues of Ensuring the Functioning of Information and Communication Systems, Electronic Communication Systems, Public Electronic registers under martial law etc.

Under specified circumstances, analyzing the above, in conditions of martial law, responsibility for personal data protection of employees rests with the owner or manager of personal data (if any), in other words, in most cases, with employer. The listed organizational and technical measures are general and not mandatory for application, and in each case the owner or administrator of personal data develops a plan of measures that should be effective but not illusory. Personal data use is impossible without an effective system of their protection. The disclosure of "sensitive" personal data in general can lead to negative consequences.

However, with the beginning of the full-scale invasion of Ukraine and de-occupation of territory part of our country, there were cases when the personal data of employees was stored only in paper form at the enterprise, and personal data owner was forced to leave the territory, leaving the file cabinets in the building of the enterprise itself that led to illegal distribution of personal data of the specified employees; there is no protection in this case at all that is a violation. If the personal data of employees were stored in IT processing programs and got into Internet and their further distribution over the network took place, or if they were on a server that was actually located in another country and was subject to the legislation of another country that significantly is different from ours, then in this case there are no effective mechanisms to guarantee their protection, whether the above should be attributed to insurmountable circumstances (force majeure) that is an actual issue at this time.

Conclusions. Taking into account the above, it should be noted that protection

of personal data of employee in Ukraine is currently not regulated by special legal norms, therefore, upon hiring, employer processes them in accordance with requirements of the Law of Ukraine: On Personal Data Protection that are general norms, i.e. in this case, processing of employee data is carried out at employer discretion, taking into account general provisions, and therefore their protection in most cases is completely missing, which is extremely important in the conditions of imposed martial law, since in the occupied territories personal data

²² Про затвердження документів у сфері захисту персональних даних: Наказ Уповноваженого ВР з прав людини від 08.01.2014 № 1/02-14. URL: https://zakon.rada.gov.ua/laws/show/v1_02715-14#Text



of employees ended up in the “hands of enemy” that in the future, it can lead to serious consequences, and is a violation of the employee’s labor rights. Therefore, we propose to improve the national legislation regarding personal data of employees and specify the grounds for their processing by employer in accordance with the classifier of professions, indicating effective system of guarantees for their protection and establishing appropriate employer responsibility for their violation, which in the future will provide a real opportunity to protect the rights of the employee even in conditions of military or state of emergency, and predict exactly which circumstances of illegal processing of personal data of employees can be attributed to unavoidable circumstances.

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