RESTRICTIONS ON THE RIGHT OF EVERYONE TO EDUCATION DURING THE PERIOD OF THE LEGAL REGIME OF MARTIAL LAW

OLSHEVSKYI Ivan - postgraduate student of the Department of Constitutional Law of the Educational and Scientific Institute of Law of the Taras Shevchenko National University of Kyiv

https://orcid.org/0009-0001-7341-4293

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The article examines the issue of restrictions on the right of everyone to education during the period of the legal regime of martial law. It is noted that Article 53 of the Constitution of Ukraine guarantees everyone the right to education, but it is not absolute: according to Article 64 of the Constitution of Ukraine, it may be restricted in conditions of martial law or a state of emergency.

The emphasis is on the fact that the restriction of the right to education during the period of the legal regime of martial law must be provided for by law. It is argued that the effect of only the Law of Ukraine "On the Legal Regime of Martial Law" and/or the Law on Approval of the Decree of the President of Ukraine "On the Extension of the Term of Martial Law in Ukraine" is not sufficient to state that the restriction of the right to education during the period of the legal regime of martial law meets the criterion of "provided for by law". The provisions of a law or a by-law that restricts the right to education must be compatible with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms. Restrictions on the right to education by local regulations are such that they do not meet the requirement of "established by law" since these acts are not covered by the concept of "law". It has been established that for this reason, laws and/or by-laws that restrict the right to education of everyone under martial law are assessed by the European Court of Human Rights as to whether their provisions are compatible with the provisions of the Convention, while local regulations are not.

It is noted that the restriction of the right to education of everyone must meet a legitimate aim. When determining the aim of restricting the right to education under martial law, the state must comply with the requirement not to go beyond what is in the public interest in a democratic society.

Measures taken to restrict the right to education under martial law must be proportionate. These measures must also be aimed at ensuring a level of education that is assessed using the criteria of "minimum level of education" and "adequate level of education". It is argued that the development of the curriculum and its content fall within the competence of the member states of the Council of Europe. The European Court of Human Rights does not have the competence to assess the content of curricula, the appropriateness or inappropriateness of certain forms of control provided for therein.

Keywords: human rights, restrictions on human rights, education, the right to education, provided for by law, legitimate aim, proportionality of interference, martial law, state authorities, local self-government bodies, local regulatory legal acts, the European Court of Human Rights, decisions of the European Court of Human Rights

Formulation of the problem

According to Article 53 of the Constitution of Ukraine, everyone has the right to education [1]. Part 2 of Article 53 of the Constitution of Ukraine states that complete general secondary education is mandatory [1]. The state ensures the availability and free provision of preschool, complete general secondary, vocational and technical, higher education in state and municipal educational institutions; the development of

preschool, complete general secondary, out-of-school, vocational and technical, higher and postgraduate education, various forms of education; the provision of state scholarships and benefits to pupils and students (Part 3 of Article 53 of the Constitution of Ukraine) [1]. Part 4 of Article 53 of the Constitution of Ukraine states that citizens have the right to obtain higher education free of charge in state and municipal educational institutions on a competitive basis [1]. Citizens belonging to national minorities are guaranteed by law the right to education in their native language or to study their native language in state and municipal educational institutions or through national cultural societies (Part 5, Article 53 of the Constitution of Ukraine) [1].

According to Part 1 of Article 64 of the Constitution of Ukraine, the constitutional rights and freedoms of man and citizen may not be restricted, except in cases provided for by the Constitution of Ukraine [1]. Part 2 of Article 64 of the Constitution of Ukraine states that in conditions of martial law or a state of emergency, certain restrictions on rights and freedoms may be established, indicating the period of validity of these restrictions [1].

The right to education, guaranteed by Article 53 of the Constitution of Ukraine, is not included in the list of human rights and freedoms that cannot be restricted. The Law of Ukraine "On the Legal Regime of Martial Law" of May 12, 2015, as amended and supplemented, is in force in Ukraine [2]. As is well known, on April 16, 2025, the Verkhovna Rada of Ukraine extended martial law and mobilization in Ukraine until August 9, 2025.

The war in Ukraine has been going on for over 3 years. Part of the territories of Ukraine are occupied by Russia, and fighting is ongoing in part of the territories of Ukraine. There are children who are under occupation and do not have access to the Internet for online learning, there are children who were forcibly taken out by Russia from the occupied territory of Ukraine and placed in Russia [3; 4]. They do not have access to Ukrainian education. The same applies to applicants for higher education. A number of territorial communities were evacuated due to occupation or military operations on their territory.

Also, as is well known, the territory of Ukraine is systematically subjected to massive attacks by Russia. The educational process is interrupted during air raids. A number of schools have been destroyed as is well known as a result of Russian shelling. All these circumstances raise the question: since it is obvious that children's rights to education are restricted, what criteria should such a restriction meet so that it is not arbitrary on the part of the state.

At the same time, we note that the right to education is one of those fundamental rights [5; 6], which enables each person to realize himself in the future, live with dignity without poverty, and ensure an adequate standard of living for himself and his family. We emphasize that even under martial law, the state must take all measures to ensure the right to education and protect constitutional values [7-9].

The purpose of this article is to characterize the criteria for restricting everyone's right to education during the period of martial law.

State of scientific development

In legal science, the issue of everyone's right to education was raised in the works of L. Deshko, O. Melnychenko, T. Slinko and other scholars. The issue of human rights restrictions was raised in the works of O. Vasylchenko, Z. Kravtsova, O. Kudryavtseva, O. Lotyuk and other scholars. At the same time, the restriction of the right to education under the conditions of the martial law legal regime in Ukraine was not comprehensively studied.

Presenting main material

According to the established practice of the European Court of Human Rights, as correctly noted in her studies by Professor Lyudmila Deshko [10-12], when restricting a human right or fundamental freedom, including the right to education, the state must adhere to the so-called three-part test.

Firstly, the restriction of the right to education in martial law must be provided for by law.

At the same time, the law that restricts the right to education, as well as the subordinate regulatory legal acts that develop its provisions, must not contradict the Convention for the Protection of Human Rights and Fundamental Freedoms, other international human rights instruments of a universal and regional nature, to which the state is a member or participant. We also emphasize that if the European Court of Human Rights considers a case in which the applicant complains about the violation by the state of Article 2 of Protocol No. 1 to the Convention, arguing that the law itself that restricted his right to education under martial law, or the subordinate regulatory legal act, contradicts the Convention, then the task of the European Court of Human Rights is to clarify whether the provisions of such a law are indeed incompatible with the provisions of the Convention.

But, as is known, in addition to laws and subordinate normative legal acts, educational institutions are guided in their activities by local acts of local self-government bodies, local state administrations, and their own local acts of educational institutions. In the case of Kjeldsen, Busk Madsen and Pedersen v. Denmark, the European Court of Human Rights noted that "specific measures of implementation, decisions on which are taken at the level of each specific municipality or educational institution, do not fall within the scope of the Court's control" [13]. This is due to the fact that such local acts are not covered by the concept of "law". Accordingly, when considering the question of whether the restriction of the right to education was established by law, if such a restriction is established by a local act, the answer will be "the restriction of the right to education is not established by law", and therefore the requirement to restrict the right of an individual by law has not been complied with.

In the case of Kjeldsen, Busk Madsen and Pedersen v. Denmark, the issue was raised that the "Guideline" of April 1971 was not a law or a regulation, but only a working document intended to assist and give guidance to the administration of local schools, and although the Regulation in Section Two and the Circular of 8 June 1972 referred to this document, the Circular of 15 June 1972 no longer referred to this document. Nevertheless, it continued to be used throughout the country and was often cited in the European Court of Human Rights. Therefore, the European Court of Human Rights took it into account because it helped to clarify the essence of the national legislation. The European Court of Human Rights did not assess this Guideline, did not assess this document as appropriate or inappropriate, did not assess the appropriateness or inappropriateness of other legislation - the European Court of Human Rights only took into account the real situation that existed.

Thus, the very restriction of the right to education under the legal regime of martial law must be provided for by law. The effect of only one law "On the Legal Regime of Martial Law" and/or the introduction of martial law and mobilization in the state by the parliament of the state are not sufficient to state that the restriction of the right to education under the legal regime of martial law meets the criterion of "provided for by law". The norms of the law or by-law that provide for the restriction of the right to education must be compatible with the norms of the Convention. Restrictions on the right to education by local regulatory legal acts do not meet the requirement of "established by law" since these acts are not covered by the concept of "law". Therefore, the law and/or subordinate legal acts that establish restrictions on everyone's right to education under the legal regime of martial law are assessed by the European Court of Human Rights as to whether their provisions are compatible with the norms of the Convention, while local legal acts are not.

Secondly, the restriction of everyone's right to education must correspond to a legitimate aim. In particular, such a legitimate aim may be the public interest. In the case of Kjeldsen, Busk Madsen and Pedersen v. Denmark, the European Court of Human Rights considered the content of the public interest in the field of education. In particular, the Danish government provided explanations to schoolchildren why it was introducing certain measures – the government explained the

benefits of these measures for children and in the future for their lives and the life of society, so that due to insufficient knowledge they would not put themselves or others in difficult circumstances (§54).

When determining the aim of restricting the right to education in the conditions of the introduction of martial law, the state must comply with the requirement not to go beyond what is in the public interest in a democratic society.

However, there may be situations where, when applying the provisions of the law that impose restrictions in the field of education, abuse occurs in an educational institution: by the administration, a specific teacher, etc. In this case, state authorities are obliged to take all measures to prevent the violation of the right to education. Ensuring everyone's rights, including the right to education, is the main duty of the state. Therefore, in order to properly fulfill this duty, the state must take all measures available to it, and it is the taking or not taking of such measures that is assessed by the European Court of Human Rights when deciding whether such actions of the state are compatible with the norms of the Convention. That is, the state is responsible for the actions of school administrations and teachers, and it is against the state that a person with an individual application (or a group of persons or non-governmental organizations) applies to the European Court of Human Rights in the event of a violation of the right to education, not against the administration of an educational institution or a specific teacher.

Thirdly, measures taken when restricting the right to education under the legal regime of martial law must be proportional. These measures should also be aimed at ensuring a level of education that is assessed using the criteria of "minimum level of education" and "adequate level of education". We also emphasize that the development of the curriculum and its content fall within the competence of the member states of the Council of Europe. The European Court of Human Rights does not have the competence to assess the content of curricula, the appropriateness or inappropriateness of certain forms of control provided for therein. States are free to independently choose the tools with which they measure the level of knowledge, skills, abilities of persons who are studying or, for example, have completed their studies at one level of education and are entering to continue their studies at another level of education. The Court does not have the competence to make decisions on the content or appropriateness of the tests in question.

For example, the decision of the European Court of Human Rights in the case of Tarantino and others v. Italy (§49) [14] shows that the introduction of a university entrance examination by means of testing in a state is a proportionate restriction. As for the content of the tests, in the decision of the case of Kjeldsen, Busk Madsen and Pedersen v. Denmark of 7 December 1976 (§53) the European Court of Human Rights noted that both the creation and planning of the curriculum are the competence of the state, and therefore the adoption of decisions by the European Court of Human Rights in this regard is not part of the Court's tasks. Thus, the European Court of Human Rights is not vested with the competence to adopt decisions on: 1) the content of the tests; 2) the appropriateness or inappropriateness of the use of tests.

Conclusions

1. Restrictions on the right to education under martial law must be provided for by law. The effect of only the Law of Ukraine "On the Legal Regime of Martial Law" and/or the Law on Approval of the Decree of the President of Ukraine "On Extension of the Term of Martial Law in Ukraine" are not sufficient to establish that the restriction on the right to education under martial law meets the criterion of "provided for by law". The norms of the law or by-law that provide for the restriction on the right to education must be compatible with the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms. Restrictions on the right to education by local regulatory legal acts are such that they do not meet the requirement of "established by law" since these acts are not covered by the concept of "law".

2. Restrictions on the right of everyone to education must meet a legitimate aim. When determining the purpose of restricting the right to education under martial law, the state must comply with the requirement not to go beyond what is in the public interest in a democratic society.

3. Measures taken when restricting the right to education under martial law must be proportionate. These measures must also be aimed at ensuring a level of education that is assessed using the criteria of "minimum level of education" and "adequate level of education". The development of the curriculum and its content fall within the competence of the member states of the Council of Europe. The European Court of Human Rights does not have the competence to assess the content of curricula, the appropriateness or inappropriateness of certain forms of control provided for therein. In the event of the use by the state of such an instrument as tests when admitting persons from one level of higher education to another, the European Court of Human Rights does not have the competence to make decisions regarding: 1) the content of the tests; 2) the appropriateness or inappropriateness of the use of tests.

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Ольшевський І.

ОБМЕЖЕННЯ ПРАВА КОЖНОГО НА ОСВІТУ В ПЕРІОД ДІЇ ПРАВОВОГО РЕЖИМУ ВОЄННОГО СТАНУ

У статті досліджується питання обмеження права кожного на освіту в період дії правового режиму воєнного стану. Зазначається, що статтею 53 Конституції України кожному гарантовано право на освіту, але воно не є абсолютним: відповідно до ст. 64 Конституції України воно може бути обмежене в умовах воєнного або надзвичайного стану.

Акцентується увага на тому, що саме обмеження права на освіту в умовах дії правового режиму воєнного стану має бути передбачене законом. Робимо висновок, що дія лише тільки Закону України «Про правовий режим воєнного стану» та/або Закону про затвердження Указу Президента України «Про продовження строку дії воєнного стану в Україні» не є достатніми для того, щоб констатувати, що обмеження права на освіту в умовах дії правового режиму воєнного стану відповідає критерії «передбачено законом». Норми закону або підзаконного акту, якими передбачено обмеження права на освіту, мають бути сумісними з нормами Конвенції про захист прав людини і основоположних свобод. Обмеження права на освіту локальними нормативно-правовими актами є таким, що не відповідає вимозі «встановлено законом» оскільки ці акти не охоплюються поняттям «закон». Встановлено, що з цієї причини закон та/або підзаконні нормативно-правові акти, які встановлюють обмеження права кожного на освіту в умовах дії правового режиму воєнного стану, оцінюються Європейським судом з прав людини щодо того, чи сумісні їх норми з нормами Конвенції, а локальні нормативно-правові акти – ні.

Зазначається, що обмеження права кожного на освіту має відповідати легітимній меті. Визначаючи мету обмеження права на освіту в умовах дії правового режиму воєнного стану, держава має дотриматись вимоги не вийти за межі того, що в демократичному суспільстві є суспільним інтересом.

Заходи, які вживаються при обмеженні права на освіту в умовах дії правового режиму воєнного стану, мають бути пропорційними. Також ці заходи мають бути спрямовані на забезпечення такого рівня освіти, який оцінюється за допомогою критеріїв «мінімальний рівень освіти» та «адекватний рівень освіти». Робимо висновок, що розробка навчальної програми, її змістовне наповнення відносяться до компетенції держав-учасниць Ради Європи. Європейський суд з прав людини не має компетенції оцінювати зміст навчальних програм, доречність чи недоречність певних форм контролю, які нею передбачені.

Ключові слова: права людини, обмеження прав людини, освіта, право на освіту, передбачено законом, легітимна мета, пропорційність втручання, правовий режим воєнного стану, державна влада, органи місцевого самоврядування, локальні нормативно-правові акти, Європейський суд з прав людини, рішення Європейського суду з прав людини.