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## CONSTITUTIONAL AND LEGAL REGULATION OF THE LIMITATION OF THE RIGHT TO EDUCATION DURING A STATE OF EMERGENCY IN EU MEMBER STATES

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### Карапетян А.Р. Конституційно-правове регулювання обмеження права людини на освіту в умовах надзвичайного стану в державах-учасницях ЄС.

Вказується, освіта є запорукою сталого розвитку людства. Дотримання та захист права людини на освіту є важливою та актуальною проблемою для світової спільноти, яка докладає максимум зусиль у цій сфері. Право на освіту є гарантією реалізації ряду інших суб'єктивних юридичних прав. В даний час склалася система основних прав і свобод людини, які взаємопов'язані і гармонують між собою. Це сприяє нормальній життєдіяльності людства, прогресивному розвитку суспільства. Закріплене міжнародним правом право кожного на освіту при його реалізації на практиці не повинно завдавати шкоди правам і свободам інших осіб, іншим охоронюваним законом інтересам особи, суспільства і держави. Для цього держави змушені за певних умов обмежувати право на освіту за допомогою міжнародно-правових та внутрішньоправових засобів.

Зокрема, у сучасному світі виникла глобальна загроза для людства – агресія Росії. Російська Федерація веде повномасштабну війну на території України, окупувала частину території України, Молдови, Грузії, намагалася розпочати військові дії в Казахстані, Азербайджані. І тут на перший план виходить питання обґрунтованого та необхідного обмеження права людини на освіту в умовах надзвичайного чи воєнного стану.

Акцентовано увагу на концепції правової держави адже одна з її ознак - визнання природного характеру прав і свобод людини. Проаналізовано конституції Іспанії, Нідерландів, ФРГ та інших держав. Виявлено три способи конституційно-правового регулювання обмеження прав і свобод в умовах надзвичайного стану. Встановлено, що в конституціях Іспанії, Нідерландів, ФРГ закріплено права людини, які можуть бути обмежені в умовах надзвичайного стану чи стану оборони, але право на освіту в цей перелік не входить. Другий спосіб регулювання обмеження прав і свобод в умовах надзвичайного стану

полягає в тому, що перераховуються тільки ті права, які ні в якому разі обмежувати не можна (Португалія). Перелік прав, які можна обмежити, залишається відкритим. Право на освіту в перелік прав, які не можуть бути обмежені – не входить. Третій спосіб регулювання обмежень – в конституції закріплено норми, відповідно до яких під час надзвичайного стану обмеження прав людини можливі, але не встановлює перелік цих прав – йде відсилка до спеціального закону, який розвиває положення конституції.

Високовується, що найбільш таким, що відповідає концепції правової держави, є перший спосіб: закріплення вичерпного переліку тих прав і свобод, які можна обмежити.

**Ключові слова:** права людини, право на освіту, конституційно-правове регулювання, обмеження прав людини, надзвичайний стан, держави-учасниці ЄС.

### Karapetian A.R. Constitutional and legal regulation of the limitation of the right to education during a state of emergency in EU member states.

Education is the key to the sustainable development of mankind [1; 2]. Observance and protection of the human right to education is an important and urgent issue for the world community, which makes maximum efforts in this area [3]. The right to education is a guarantee of the realization of a number of other subjective legal rights. Currently, a system of basic human rights and freedoms has developed, which are interconnected and in harmony with each other. This contributes to the normal functioning of humanity, the progressive development of society [4; 5].

Everyone's right to education, enshrined in international law, in the course of their implementation in practice should not harm the rights and freedoms of other persons, as well as other legally protected interests of the individual, society and the state. For this purpose, states are forced to limit the right to education under certain conditions with the help of international legal and domestic legal means.

In particular, a global threat to humanity has arisen in the modern world – Russia's aggression. The Russian federation is waging a full-scale war on the territory of Ukraine, occupied part of the territory of Ukraine, Moldova, Georgia, tried to start military operations in Kazakhstan, Azerbaijan. And here the issue of reasonable and necessary restriction of the human right to education in the conditions of a state of emergency or war comes to the fore.

Attention is focused on the concept of the rule of law, because one of its features is the recognition of the natural nature of human rights and freedoms. The constitutions of Spain, the Netherlands, Germany and other states were analyzed. Three methods of constitutional and legal regulation of the restriction of rights and freedoms in the state of emergency have been identified. It has been established that the constitutions of Spain, the Netherlands, and the Federal Republic of Germany enshrine human rights, which may be restricted under conditions of a state of emergency or a state of defense, but the right to education is not included in this list. The second way of regulating the limitation of rights and freedoms in the state of emergency is that only those rights that cannot be limited in any way are listed (Portugal). The list of rights that can be limited remains open. The right to education is not included in the list of rights that cannot be limited. The third way of regulation of restrictions - the constitution enshrines norms according to which restrictions on human rights are possible during a state of emergency, but does not establish a list of these rights - there is a reference to a special law that develops the provisions of the constitution.

It is concluded that the first method is the most consistent with the concept of the rule of law: establishing an exhaustive list of those rights and freedoms that can be limited.

**Key words:** human rights, the right to education, constitutional and legal regulation, restrictions on human rights, state of emergency, EU member states.

**Formulation of the problem.** Education is the key to the sustainable development of mankind [1; 2]. Observance and protection of the human right to education is an important and urgent issue for the world community, which makes maximum efforts in this area [3]. The right to education is a guarantee of the realization of a number of other subjective legal rights. Currently, a system of basic human rights and freedoms has developed, which are interconnected and in harmony with each other. This contributes to the normal functioning of humanity, the progressive development of society [4; 5].

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The expediency of studying the experience of the EU member states on this issue is caused by the European integration aspirations of Ukraine, Georgia, and Moldova.

**The state of development of this problem.**

In the science of constitutional law, the issues of limiting human rights were raised in the writings of professor Lyudmyla Deshko [6; 7; 8-10], Yuriy Bysaga [11-13], Oksana Vasylichenko [14; 15], Olga Lotyuk [16], Svitlana Gretska [17] and other scientists [18; 19]. But a comprehensive study of the legal regulation of the restriction of the human right to education in the conditions of a state of emergency in the EU member states was not conducted.

**The purpose of this article** is to reveal the peculiarities of the legal regulation of the restriction of the human right to education in the conditions of a state of emergency in the EU member states.

**Presenting main material.** It is well known: James Jackson, one of the delegates to the first US federal Congress, said in 1789 during the discussion of amendments to the US Constitution: «There is an axiom in jurisprudence that the enumeration of clauses is intended to exclude those circumstances which should be excluded; therefore, if we do not agree on every right that is not within the authority of the government, it will be understood that all other rights are left to the discretion of the government.»

Although restrictions on the right to education are established by each EU member state independently on the basis of domestic legal acts, in modern conditions the integration community takes this problem beyond the exclusively internal competence of the state.

In foreign countries, restrictions on the right to education during a state of emergency usually mean a temporary refusal to guarantee the realization of this right.

Restriction of the right to education in the state of emergency is not arbitrary. Modern constitutions

of the EU member states are mostly based on the concept of the rule of law, one of the features of which is the recognition of the natural nature of human rights and freedoms. The Constitution of Spain states that human rights have become part of the fundamental order of the state [20]. They are mandatory for the legislative, executive and justice authorities: the right to confidentiality of correspondence, including postal and telegraphic messages, as well as telephone conversations (under normal conditions, the restriction of this right is possible only on the basis of a court decision); the right to freely choose a place of residence and move around the country, as well as the right to freely enter and leave Spain; the right to freely express and disseminate views, ideas and opinions and to freely transmit and receive reliable information (confiscation of publications, records and other means of information is also allowed without a court decision); the right of citizens to assemble peacefully and without weapons (in the conditions of a state of emergency, the prior permission of the authorities is required for holding meetings, the authorities can prohibit meetings for any reason); the right to strike; the right of workers and entrepreneurs to a labor conflict [20]. This list does not include everyone's right to education.

According to Part II of Art. 103 of the Constitution of the Kingdom of the Netherlands of 1983 «the declaration of a state of emergency may cause the suspension of the fundamental rights of the individual» [21] established by the Constitution. These rights include: the right to freely practice one's religion or religious beliefs, if it is practiced outside of buildings or specially designated premises; the right to freely disseminate one's views or beliefs; the right to create public associations; the right to hold meetings and demonstrations; the right to inviolability of housing; secrecy of correspondence, telephone and telegraphic messages; the right to consider offenses and pass a sentence involving deprivation of liberty only by a court. The right to education is not included in this list, so it cannot be suspended when a state of emergency is declared in the Netherlands.

According to Clause 2 of Art. 115-c of the Basic Law of the Federal Republic of Germany during the state of defense, by issuing a federal law, it is possible to set a term of imprisonment of up to four days until a court decision (under normal conditions, in accordance with Clause 3 of Article 104 «everyone who is previously detained on suspicion of a criminal offense, not later on the day following the detention, must be brought to the judge, who is obliged to inform him of the reasons for the detention, interrogate him and give him the opportunity to submit objections»). According to Clause 3 of Art. 12th «military conscripts, not called up for service ... may be obliged by law or

on the basis of law in the case of a state of defense to perform civil duties for the purpose of defense, including the protection of the civilian population, in the order of employment relations; duties in public-legal official relations may be assigned only for the performance of police tasks or such tasks of the supreme public administration, which can be performed only in the order of public-legal official relations. The application of labor relations ... can take place in the armed forces in the field of their supply, as well as in the public administration; the imposition of labor relations obligations in the field of supplying the civilian population can only be to meet their vital needs or ensure their protection.» Clause 4 of the mentioned article states that «if, during the state of defense, the needs for civil service in sanitary and medical institutions, as well as in-patient military hospitals, cannot be met on a voluntary basis, women aged 18 to 55 may, by law or on the basis of the law to be involved in the performance of this kind of service». According to paragraph 6, «if during the period of the state of defense the need for labor ... cannot be met on a voluntary basis, the freedom of Germans to stop working in their profession or to leave the workplace may be limited by law or on the basis of law to meet this need.» According to Clause 2 of Article 17-a, «laws intended for defense purposes, including for the protection of the civilian population, may establish that the basic rights to freedom of movement and the right to inviolability of housing are limited» [22]. Therefore, the constitutions of Spain, the Netherlands, and the Federal Republic of Germany enshrine human rights, which may be limited in the conditions of a state of emergency or a state of defense. The right to education is not included in this list.

The second way of regulating the limitation of rights and freedoms in the state of emergency is that only those rights that cannot be limited in any way are listed. Yes, in accordance with Clause 6 of Art. 19 of the Constitution of the Portuguese Republic of 1976 «the introduction of a state of siege or a state of emergency may in no way affect the right to life, to personal integrity, to individuality, to civil capacity and to citizenship, as well as the prohibition of establishing the retroactive effect of criminal law, the right for the defense of the defendant and freedom of conscience and religion.» The list of rights that can be limited remains open [23]. It follows that the right to education can be restricted under Portuguese law in a state of emergency.

The third variant of regulation of restrictions – the Basic Law determines only that during a state of emergency, restrictions of rights are possible, but does not establish a list of these rights, but refers to a special law. For example, according to Clause 16 of the Act on the Form of Government

of Finland of 1919, «the provisions relating to the fundamental rights of Finnish citizens do not prevent the establishment by law of such restrictions as are necessary in times of war, insurrection...» [24]. The constitutions of some states mention an emergency or other special state, but nothing is said about the possibility of restrictions on rights and freedoms in this situation. In this case, the general rule applies: restrictions on rights and freedoms in the state of emergency can only be established by law.

Of the considered ways of regulating restrictions on rights and freedoms in the state of emergency, the option, when the Basic Law enshrines an exhaustive list of only those rights and freedoms that can be limited, appears to be the most optimal and the one that meets the requirements of the rule of law. Therefore, in order not to leave it to the discretion of the authorities, the plenipotentiary.

Therefore, in order not to leave to the discretion of the bodies authorized to impose a state of emergency, an arbitrary decision on the question of which rights and freedoms can be limited, the Constitutions of Greece, Spain, the Netherlands, and Germany list only those rights and freedoms that are restricted under the conditions of a state of emergency is really necessary. These rights and freedoms include: the right to freedom, the right to freedom of movement and choice of residence, the right to inviolability of housing, the right to hold public events, the right to form unions and associations, the right to free expression of views, ideas and opinions, freedom of the press, the right to secrecy of correspondence, telephone and other negotiations and messages, the right to freely choose a profession and to work freely, the right to strike. The right to education is not included in this list.

At the same time, the effect of other rights cannot be suspended. It is with this method of regulation of restrictions in the state of emergency that one can say that a person will be protected from unjustified restriction of his right to education.

### Conclusions.

1. Legitimate restrictions on the right to education in all cases must meet the goal, to find a reasonable compromise between social necessity and the interests of a person who has certain rights. Limitation of the right is possible only as long as it does not contradict the true purpose of the right itself.

2. The constitutions of Spain, the Netherlands, Germany and other states were analyzed. Three methods of constitutional and legal regulation of the restriction of rights and freedoms in the state of emergency have been identified. It has been established that the constitutions of Spain, the Netherlands, and the Federal Republic of Germany enshrine human rights, which may be restricted under conditions of a state of emergency or a

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