

# LEGITIMATE RESTRICTION OF THE RIGHT TO EDUCATION OF CHILDREN WITH DISABILITIES

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**Annotation.** *The article is devoted to the issue of legitimate restriction of the right to education of children with disabilities. It is emphasized that although the limitations of the right to education of children with disabilities are established by each state independently on the basis of domestic legal acts, in modern conditions the international community takes this problem beyond the internal competence of the state. Conceptual principles and principles are highlighted that could serve as a basis for law-making and law-enforcement activities regarding restrictions on the right to education of children with disabilities. The above-mentioned principles are characterized: the principle of matching the limitation of the right to education of children with disabilities to the situation in society; the principle of proportionality of limitation; the principle of balancing the interests of the individual, society and the state; the principle of purposefulness; the principle of equality. The definition of the concept of legitimate restriction of the right to education of children with disabilities is formulated - these are legal measures introduced for strictly defined purposes, enshrined in normative legal acts, aimed at establishing obstacles to the realization of the right to education of children with disabilities and which ensure compliance with the necessary balance of interests individuals, society and the state.*

**Keywords:** *right to education, children with disabilities, restriction of human rights, lawful restriction.*

## 1. Formulation of the problem.

According to Art. 3 of the Constitution of Ukraine, the establishment and provision of human rights and freedoms is the main duty of the state [1]. Citizens have equal constitutional rights and freedoms and are equal before the law (Article 24 of the Constitution of Ukraine). In Art. 53 of the Constitution of Ukraine states that "everyone has the right to education. Complete general secondary education is mandatory. The state ensures the availability and free of charge of preschool, full general secondary, professional and technical, higher education in state and communal educational institutions; development of preschool, full general secondary, extracurricular, vocational, higher and post-graduate education, various forms of education; provision of state scholarships and benefits to pupils and students. Citizens have the right to obtain higher education free of charge in state and communal educational institutions on a competitive basis. According to the law, citizens belonging to national minorities are guaranteed the right to study in their native language or to study their native language in state and communal educational institutions or through national cultural societies" [1]. Among the citizens of Ukraine there are citizens with disabilities. According to the Ministry of Education and Science of Ukraine, before the full-scale invasion of Russia into Ukraine, more than 334 special general educational institutions operated in Ukraine, in which more than 39.2 thousand children studied; more than 40 educational and rehabilitation centers for children with psychophysical developmental disorders, more than 142 special preschool institutions and more than 1,200 special groups in preschool institutions, more than 300 rehabilitation centers functioned, of which more than 208 are centers for early rehabilitation of children with developmental disorders, more than 90 - centers medical-social and professional-labor rehabilitation. Rehabilitation services for children and youth with disorders of psychophysical development were provided in more than 46 social and psychological rehabilitation centers subordinate to the Ministry of Education and Science of Ukraine [2].

On February 24, 2022, a full-scale Russian invasion of the territory of Ukraine took place. Part of the territories of Ukraine were occupied by Russia, in part of the territories of Ukraine, Russia destroyed the

institutions listed above and continues to destroy them in other territories of Ukraine even today. Air raids, missile attacks on the territory of Ukraine, crimes of sabotage and intelligence groups of Russia occur every day, taking the lives of children, forcing educators, teachers, social workers, lecturers to interrupt the educational process in order to hide children in bomb shelters and save their lives. In order to protect against threats from the Russian Federation, the right of children with disabilities to education is restricted. This actualizes the issue of principles and conceptual foundations that could serve as a basis for law-making and law-enforcement activities regarding restrictions on the above-mentioned right of citizens. Moreover, this issue is also relevant in view of the practice of the European Court of Human Rights, which is a source of law in Ukraine, and in view of the fact that the decision of the European Court of Human Rights is an act of interpretation of the norms of the Convention, and therefore must be taken into account by each state in the improvement of national legislation and the practice of its application.

## **2. Analysis of scientific publications.**

In the doctrine of constitutional law, the issue of limiting human rights and fundamental freedoms was studied in scientific articles, monographs, textbooks by Dmytro Belov [3], Yuri Bysaga [4-6], Sibylla Buletsa [7-8], Oksana Vasylychenko [9], Lyudmila Deshko [10-15], Viktor Zaborovsky [16], Olena Kudryavtseva [17], Oleksandr Moskaluk [18] and others. The issue of limiting the right to education was raised in the dissertation research and scientific articles of Svitlana Gretska [19; 20]. At the same time, a comprehensive study of the issue of limiting the right to education of children with disabilities in the doctrine of constitutional law of Ukraine was not carried out. Decisions of the European Court of Human Rights in the cases of *Leila Sahin v. Turkey* [21], *Whitman v. United Kingdom* [22] and others have not been comprehensively analyzed.

**3. The purpose of this article** is to highlight principles and conceptual foundations that could serve as a basis for law-making and law-enforcement activities regarding restrictions on the right to education of children with disabilities.

## **4. Presentation of the main material of the study.**

In the modern world, new global threats to humanity are emerging, for example, such as: aggression, international terrorism, international organized crime and other criminal offenses. In this connection, the protection of society against such threats is of particular importance. This issue is especially acute in relation to children with disabilities who try as much as possible to be brought up together with their peers. And here the question of a reasonable and necessary limitation of the right to education of children with disabilities comes to the fore, the specifics of which are defined by international law and are directly implemented in the national legislation of states - constitutions, laws on education, by-laws.

Although restrictions on the right to education of children with disabilities are established by each state independently on the basis of domestic legal acts, in modern conditions the international community takes this problem beyond the state's internal competence.

Although, from the point of view of Article 2 of Protocol No. 1 [23], there is and is a constantly growing tendency to believe that children with disabilities should, as far as possible, be brought up together with their peers, however, this approach cannot be applied to all children with disabilities, and therefore, the competent state bodies have a wide opportunity to make decisions regarding the optimal use of resources allocated to them for the interests of children with disabilities in general. At the same time, the second sentence of Article 2 of Protocol No. 1 to the Convention on the Protection of Human Rights and Fundamental Freedoms does not oblige to admit a child suffering from severe mental retardation to a private non-specialized school, rather than to a specialized school for children with disabilities, in to which she was offered a place [24]. It was also decided that Article 2 of Protocol No. 1 does not oblige a child suffering from severe hearing impairment to be admitted to a classical school (at the expense of improving educational goals or to the detriment of other students), rather than to a specialized school

[24]. The refusal to build an elevator in a primary school to facilitate access to the upper floors for a pupil who suffered from muscular dystrophy did not constitute a violation of Article 2 of Protocol No. 1, either alone or in conjunction with Article 14 of the Convention. In the same sense, the refusal of a school, which did not have adequate resources, to accept a child with disabilities cannot, as such, be considered a failure by the state to comply with its obligations under Article 2 of Protocol No. 1 to the Convention or a systematic neglect of the right of this person to education due to his disability [24].

In its decisions, the European Court of Human Rights notes the importance of the fundamental principles of generality and non-discrimination in the realization of the right to education of persons with disabilities.

It is possible to single out several principles and conceptual foundations that could serve as a basis for law-making and law-enforcement activities regarding restrictions on the right to education of children with disabilities. The principle of compliance of limiting the right to education of children with disabilities to the situation in society means that limiting the right to education of children with disabilities is permissible only to the extent necessary to ensure the safety and interests of citizens, society and the state.

The principle of proportionality of the restriction implies that it is necessary to determine the limits of such a restriction, taking into account the fact that in this case the state acts as an entity that protects and protects human rights and at the same time limits them.

The principle of balancing the interests of the individual, society, and the state means that when establishing a limit, the right to education of children with disabilities can be limited only for the purpose of the normal functioning of society and the state, which without this limitation will not be able to ensure the rights and freedoms of the individual. The principle of purposefulness is that restrictions can be applied exclusively to achieve the goals for which they were intended. The principle of equality presupposes that in the same conditions, the same restrictions apply to all persons without exception.

At the same time, the legal representatives of children with disabilities must be informed in advance about the introduction of an emergency regime, as well as about the fact that the right to education of their children is limited and to what extent.

Restriction of the right to education of children with disabilities under the emergency regime should be temporary.

The introduction of a state of emergency or another state requires the approval of the parliament, and the extension of its validity period is possible only with the permission of the parliament.

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

In general, legitimate restriction of the right to education of children with disabilities can be defined as legal measures introduced for strictly defined purposes, enshrined in normative legal acts, aimed at establishing obstacles to the realization of the right to education of children with disabilities and ensuring the necessary balance is observed interests of the individual, society and the state.

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