THE DUTY OF THE STATE TO ENSURE THE RIGHT OF EVERYONE TO EDUCATION IN TEMPORARILY OCCUPIED TERRITORIES

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The article reveals the state's obligation to ensure everyone's right to education in temporarily occupied territories. The decisions of the European Court of Human Rights in cases against Russia and Turkey, which exercise, albeit illegal, but effective control over part of the territory of another state (Moldova, Georgia, Northern Cyprus), are analyzed, in which the issue of territorial jurisdiction and exclusive action (actions) of the state was raised, the consequences of which indicate that this state exercises jurisdiction beyond its territory, and the issue of ensuring the right to education in such territories. It is emphasized that these decisions are a source of law in Ukraine as well. Since in them the European Court of Human Rights interpreted Art. 1 of the Convention, Art. 2 of Protocol No. 1 to the Convention and other articles, they should be taken into account when developing and implementing state policy in the field of education in the territories of Ukraine temporarily occupied by Russia. It is also argued that both the state occupying part of the territories of another state and the state whose territory is occupied must take all necessary measures to ensure the right to education in this territory. Although Ukraine does not exercise effective control over its territory temporarily occupied by Russia, Ukraine nevertheless retains jurisdiction over educational institutions in these territories - they are located within the territory of Ukraine itself during the entire period of occupation (Ukraine is a territorial state). Ukraine is obliged under Article 1 of the Convention to take all possible measures to ensure the right to education in the territories of Ukraine temporarily occupied by Russia - the state must take all possible measures, not only legal, but also diplomatic. Since Russia has not been a party to the Convention for the Protection of Human Rights and Fundamental Freedoms since September 16, 2022, complaints may be filed against it to the European Court of Human Rights for all violations of the right to education that occurred in the territory of Ukraine occupied by it before this date. After September 16, 2022, Russia is obliged to ensure the right to education in these territories in accordance with its obligations under international human rights instruments of a universal and regional nature to which it is a party.

Keywords: war, martial law, state, human rights, right to education, territory, occupation, jurisdiction, state obligation, measures, ensuring the right to education, extraterritorial actions of the state, international human rights standards, European human rights standards, state responsibility.

Formulation of the problem

The right to education is one of the basic human rights, which is fundamental to human dignity, allows a person to live with dignity in the future, to provide himself and his family members with an adequate standard of living. There are international and regional standards for ensuring the right to education, as well as a national standard that may be higher than the international or regional one, but not lower. The duty of the state is to take all necessary measures to ensure the right to education. At the same time, there are cases in the world when part of the territory of one state is occupied by another state [1; 2]. The occupying state may be a party to the same international human rights instruments of a universal and regional nature as the state whose territory it

occupied. But there are cases when a state that occupied part of the territory of another state ceases to be a party to a regional human rights convention, and accordingly does not bear obligations under it. For example, until September 16, 2022 Russia was a party to the Convention for the Protection of Human Rights and Fundamental Freedoms, and then ceased to be a party to the Convention. At the same time, Russia exercises, albeit illegal, but effective control over part of the territory of Moldova, Georgia, and Ukraine. This raises the issue of the obligation to ensure the right to education in the occupied territories.

The purpose of this article is to characterize the obligation of the state to ensure the right to education in the occupied territories.

In the science of constitutional law, the issues of the state's obligations to ensure human rights were studied in the works of Y. Bysaga, O. Vasylchenko, L. Deshko, O. Kudryavtseva, O. Lotyuk, E. Chernyak and other scholars. The issue of ensuring the right to education by the state was raised in the works of A. Karapetyan, V. Prodan, T. Slinko, I. Shchebetun and other scholars. The martial law regime in Ukraine has made this issue more relevant and requires increasing the effectiveness of the regulatory and organizational-legal mechanisms for ensuring the right to education under martial law.

Presenting main material

Part of the territory of Ukraine is occupied by Russia [3; 4]. Information from open sources on the Internet indicates that in the territories of Ukraine occupied by Russia, children are deprived of the opportunity to officially study the Ukrainian language. In particular, Russia does not allow teaching the Ukrainian language either in schools or in higher education institutions (universities, institutes). The child's parents cannot apply for studying the Ukrainian language at school because they will be persecuted. There are no circles in which children could communicate in Ukrainian. Russification of the local population is taking place. Children are forced to study the Ukrainian language secretly in order not to be persecuted, and using mostly distance technologies and resources that were created by Ukraine and placed on the Internet (platforms). No platform for learning the Ukrainian language was created by Russia during the entire period of occupation.

Therefore, the question arises: under conditions of occupation, should the occupying state ensure the learning of the language of the state it occupies, as well as ensure the general right to education in the occupied territory? The answer to this question lies in the jurisdiction of the state. The European Court of Human Rights, regarding the jurisdiction of a member state of the Council of Europe under Article 1 of the Convention [5], noted in the case of "Catan and Others v. Moldova and Russia" [6] that it is primarily territorial, but there are exceptional cases of such an action (actions) of the state (states), the commission of which leads to consequences that indicate that the state exercised (exercises) jurisdiction outside the borders of its state. That is, in fact, extraterritorial actions of the state took place.

A State may exercise jurisdiction extraterritorially either through the exercise of power and control by its representatives over a person or persons (for example, through control over local authorities, school administrations, school pupils and their parents, etc.), or if there is a situation of lawful or unlawful military action as a result of which the State exercises effective control over the territory of another State outside its national territory.

In particular, in the judgment in the case of Catan and Others v. Moldova and Russia, the European Court of Human Rights established that the Republic of Moldova had jurisdiction over three schools because these schools were located throughout the period within the territory of the Republic of Moldova, although it was stated that at the time of the violation of the rights of Catan and Others, Moldova no longer had authority over the part of the territory in which the violations occurred and could not control the actions of the Pridnestrovian Moldavian Republic.

That is, as in the judgment in the case of Ilaşcu and Others v. Moldova and Russia [7], the European Court of Human Rights considered Moldova as a territorial State. The fact that Moldova did not exercise effective control over the territory occupied by Russia (the Transnis-

trian Moldavian Republic) did not affect the Court's conclusion that Moldova was under an obligation under Article 1 of the Convention to take all possible measures to ensure the human rights and fundamental freedoms guaranteed by the Convention.

Thus, even if part of the territory of a State is occupied, the State must take all possible measures (not only legal, but also diplomatic) to continue to ensure all the rights guaranteed by the Convention, including the right to education.

As regards a State occupying the territory of another State, in the judgment in the case of Ilaşcu and others v. Moldova and Russia The European Court of Human Rights has set out the legal position that, if the persons applying to the Court are under the jurisdiction of a state that has occupied part of the territory of another state, it is necessary to assess whether there is evidence of any direct participation of representatives of the occupying state in the measures taken against the schools where the applicants' children studied. That is, it is subject to establishing whether the state that has occupied the territory of another state exercises effective control over that territory, including whether the local authorities are subordinate to it. It must also be established whether the military presence of the occupying state in the region of occupation and whether the number of its military forces deployed there is relevant to the size of the territory. That is, it must be assessed whether the totality of the military arsenal located in the region allows for influence on the occupied territory. When establishing and assessing the above-mentioned facts, the historical context is not left aside: what is the role of the military state that exercises power in maintaining power in the occupied territory; what is the role of economic support (including humanitarian) of the state that exercises power in maintaining power in such a territory.

With regard to Article 2 of Protocol No. 1 to the Convention, the European Court of Human Rights established the following facts: in the occupied territory of Moldova, the use of the Latin alphabet was considered an offense, schools were forced to move to other premises, which were mostly at considerable distances from the place of residence of students; there was a significant reduction in the number of schoolchildren. Taken together, all the measures and persecutions that schoolchildren and their parents were subjected to constituted an interference by the authorities with everyone's right to education (in particular, the possibility of access to schools; the possibility of teaching in their native state language; the possibility of parents to provide education and training for children in accordance with their worldview).

Assessing whether such interference pursued a legitimate aim, the European Court of Human Rights noted that there was no evidence to suggest that the measures taken by the authorities of the Pridnestrovskaia Moldavskaia Respublika pursued a legitimate aim. In particular, the language policy of the Pridnestrovskaia Moldavskaia Respublika was entirely aimed at the complete Russification of both the language and culture of the entire Moldovan community.

In the judgment in the case of "Catan and Others v. Moldova and Russia", the European Court of Human Rights established that Moldova had made significant efforts to provide support to the applicants: since the authorities of the Pridnestrovskaia Moldavskaia Respublika had confiscated the premises of Moldovan schools, the Government of Moldova paid both the rent and the repair of new premises for Moldovan schools, equipment, paid the salaries of school staff, and transport costs. Such measures on the part of Moldova demonstrated that Moldova had fulfilled all its obligations under the Convention in good faith. Moldova was recognized as a state that is not in violation of the Convention in this case.

It follows that Ukraine, in order to ensure the right to education in the territories of Ukraine occupied by Russia, must take all measures (both legal and political) within Ukraine's control in order to fulfil its obligations under the Convention in good faith.

As regards Russia, the European Court of Human Rights noted that there was no evidence of Russia's direct involvement in the measures taken against the applicants and their children; there was also no evidence of Russia's participation in or approval of the language policy of the Pridnestrovskaia Moldavskaia Respublika.

However, since it was Russia that exercised, albeit illegal, but effective control over the occupied part of Moldova, there was no need to establish whether Russia exercised control over the policy of the Pridnestrovskaia Moldavskaia Respublika, the measures taken by the local administration subordinate to Russia in the field of education. Since there was a fact of ongoing military, economic, and political support of the Pridnestrovian Moldavian Republic by Russia, and without such support from Russia, the Pridnestrovian Moldavian Republic would not be able to exist, it was Russia that was recognized by the European Court of Human Rights as a violator of the right to education guaranteed by the Convention.

The principle of subsidiarity, included in Protocol No. 15 to the Convention, imposes both a joint responsibility on the European Court of Human Rights and the member states of the Council of Europe for the protection of the right to education, and on national authorities – they must interpret and apply the national legislation of the state in the field of education in such a way that the right to education, guaranteed by Article 2 of Protocol No. 1 to the Convention, is realized, and in the event of its violation – as L. Deshko correctly notes – "protected" [8-10].

The role of the above-analyzed decision of the European Court of Human Rights for Ukraine is that: Ukraine must develop and implement a consistent policy in the field of education in the occupied territories.

Conclusions

1. Both Ukraine and Russia have an obligation to ensure the right to education in the temporarily occupied territory. Such provision presupposes the existence of regulatory and organizational-legal mechanisms that must be effective not only in theory, but also in practice: the bearer of the right to education must be able to exercise his right, and in the event of its violation, there must be an effective mechanism for its protection and an effective mechanism for its defense.

2. There is territorial jurisdiction of the state and exceptional actions (actions) of the state, the consequences of which may indicate that this state exercises jurisdiction beyond its territory, and still has an obligation to ensure the right to education in such territories.

3. Both the state occupying part of the territories of another state and the state whose territory is occupied must take all necessary measures to ensure the right to education in this territory. Ukraine is obliged under Art. 1 of the Convention to take all possible measures to ensure the right to education in the territories of Ukraine occupied by Russia – the state must take all possible not only legal, but also diplomatic measures. Russia must also take such measures.

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ОБОВ'ЯЗОК ДЕРЖАВИ ІЗ ЗАБЕЗПЕЧЕННЯ ПРАВА КОЖНОГО НА ОСВІТУ НА ТИМЧАСОВО ОКУПОВАНИХ ТЕРИТОРІЯХ

У статті розкривається обов'язок держави з забезпечення права кожного на освіту на тимчасово окупованих територіях. Аналізуються рішення Європейського суду з прав людини у справах проти Росії, Туреччини, які здійснюють хоч і незаконний, але ефективний контроль над частиною території іншої держави (Молдови, Грузії, Північного Кіпру), у яких порушувалось питання територіальної юрисдикції та виняткової дії (дій) держави, наслідки яких свідчать, що ця держава здійснює юрисдикцію поза межами своєї території, та питання забезпечення права на освіту на таких територіях. Підкреслюється, що ці рішення є джерелом права і в Україні. Оскільки в них Європейським судом з прав людини здійснено тлумачення ст. 1 Конвенції, ст. 2 Протоколу №1 до Конвенції та ін. статей, то вони мають враховуватись при розробці та реалізації Україною державної політики у сфері освіти на тимчасово окупованих росією територіях України. Також робимо висновок, що і держава, яка здійснює окупацію частини територій іншої держави, і держава, частина території якої є окупованою, мають вживати всі необхідні заходи для забезпечення права на освіту на цій території. Хоча Україна і не здійснює ефективний контроль на тій своїй території, яка тимчасово окупована росією, тим не менш юрисдикція України щодо закладів освіти на цих територіях зберігається – вони перебувають протягом всього періоду окупації в межах території саме України (Україна є територіальною державою). На Україну покладено зобов'язання за ст. 1 Конвенції вживати всі можливі заходи для забезпечення права на освіту на тимасово окупованих росією територіях України – держава має вживати всі можливі не лише юридичні, а й дипломатичні заходи. Оскільки росія з 16 вересня 2022 р. не є учасницею Конвенції про захист прав людини і основоположних свобод, то за всі порушення права на освіту, які відбулись на окупованій нею території України до цієї дати, проти неї можуть бути подані скарги до Європейського суду з прав людини. Після 16 вересня 2022 р. росія зобов'язана забезпечувати право на освіту на цих територіях відповідно до своїх зобов'язань за міжнародними актами з прав людини універсального характеру та регіонального характеру, учасником яких вона є.

Ключові слова: війна, воєнний стан, держава, права людини, право на освіту, територія, окупація, юрисдикція, обов'язок держави, заходи, забезпечення права на освіту, екстериторіальні дії держави, міжнародні стандарти прав людини, європейські стандарти прав людини, відповідальність держави.