

## **CHANGES IN LEGAL REGULATION OF THE RIGHT TO EDUCATION**

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The right to education is a fundamental social and cultural right that ensures the stable development of the younger generation. The formation of the intellectual elite of the nation - scientists, researchers, public figures, innovator-entrepreneurs - is one of the basic components of education development. With the announcement of the military invasion of Russian troops on the territory of Ukraine on February 24, 2022, there were significant changes in the life of every citizen of Ukraine. In the conditions of martial law, all spheres of life, including education, have undergone significant changes and are constantly undergoing organizational restructuring as a whole, as well as legal regulation in particular.

The functioning of the education system in conditions of martial law is characterized by an intensive search for new approaches to learning, innovative forms of organizing the educational process, and effective pedagogical and informational technologies. That is why supporting the active implementation of innovations in the educational sector during the war has become one of the key directions of work for the Ministry of Education and Science of Ukraine and its subdivisions.

The educational process is bilateral, and therefore consists of those who receive education (students) and those who work in education (educators). Due to the military aggression of the Russian Federation against Ukraine, as a result of the threat to life, hostilities, and the temporary occupation of certain territories, educators have found themselves in different life circumstances, namely, some participants of the educational process of our state were forced to temporarily leave their places of residence and move within Ukraine or go abroad to save their own lives and the lives of their families. However, there are many educators and students who still remain in temporarily occupied territories and require special support from the state. Unfortunately, there are some educational institutions that have been practically destroyed, and educators have been forced to leave the territories and places of their residence, suffering physical and moral losses, since a number of higher educational institutions in the occupied territories were destroyed, and most of them work remotely. A. Vitrenko notes that "in the conditions of the

military aggression of the Russian Federation, Ukrainian education suffered losses that significantly affected its subjects, infrastructure, and functioning mechanism. As of the beginning of February 2023, 2,660 educational institutions were affected by bombings and shelling, 438 of them completely destroyed. In regions located in temporarily occupied territories of Ukraine or where active hostilities are taking place, it is impossible to determine the degree of damage"<sup>1</sup>. On the one hand, the beginning of a full-scale invasion caused a stressful state and panic in society, and on the other hand, it necessitated the government to focus on priority issues of strengthening the country's defense capability and for the relevant ministries to begin making decisions regarding the organization of the activities of educators. It is worth noting that during the COVID-19 pandemic, a system of distance education was established, which significantly simplified the organization of the educational process during quarantine.

In the field of education, the main public entities that carry out administrative and legal regulation of the activities of education workers include: the Verkhovna Rada of Ukraine; the President of Ukraine; the Cabinet of Ministers of Ukraine; the Ministry of Education and Science of Ukraine (MON)<sup>2</sup>, the Department of Certification of Higher Qualification Personnel, the National Agency for Quality Assurance in Higher Education, the Accreditation Commission of Ukraine, the Certification Board of the Ministry of Education and Science of Ukraine, the State Service for Quality of Education, the education ombudsman of Ukraine, as well as institutes of public administration of higher education in Ukraine.

The legislative framework of education in today's conditions requires changes, clarification of norms, and in view of the establishment of a state of war, regulation of new relations in the field of education. Among the changes that were made to regulatory acts in the field of education in 2022, we will mention: 1) Laws of Ukraine: "On the organization of labor relations in conditions of a state of war" dated 15.03.2022 No. 2136-IX<sup>3</sup>; "On amendments to certain laws of Ukraine regarding state guarantees in conditions of a state of war, emergency, or martial law" dated 15.03.2022 No. 2126-IX<sup>4</sup>; "On amendments to certain laws of Ukraine in the field of education" dated

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<sup>1</sup> <https://mon.gov.ua/ua/news/pravo-na-osvitu-pid-chas-vijni-konfliktu-ta-gumanitarnoyi-krizi-andrij-vitrenko-vzyav-uchast-u-zasidanni-komitetu-z-pitan-lyudskogo-vimiru-obsye>

<sup>2</sup> Про затвердження Положення про Міністерство освіти і науки України: Постанова Кабінету Міністрів України від 16 жовтня 2014 року № 630-2014-п. Офіційна інтернет-сторінка Верховної Ради України. URL: <https://zakon.rada.gov.ua/laws/show/630-2014-%D0%BF#Text>.

<sup>3</sup> Про організацію трудових відносин в умовах воєнного стану: Закон України 15.03.2022 р. № 2136-IX. URL: <https://zakon.rada.gov.ua/laws/show/2136-20#Text>

<sup>4</sup> Про внесення змін до деяких законів України щодо державних гарантій в умовах воєнного стану, надзвичайної ситуації або надзвичайного стану: Закон України від 15.03.2022 р. № 2126-IX. URL: <https://zakon.rada.gov.ua/laws/show/2126-20#Text>

24.03.2022<sup>5</sup>. Thus, in article 60-2 of the Labor Code of Ukraine (LCU), remote work is a form of work organization, under which work is performed by an employee outside the employer's premises or the territory authorized by it, in any place at the employee's choice and using information and communication technologies. In the conditions of remote work regime, the employee independently determines the workplace and is responsible for ensuring safe and harmless working conditions there<sup>6</sup>.

Educational institutions within their academic autonomy have the right to independently determine issues related to the organization of the educational process, the implementation of educational programs, the curriculum, and, if necessary, make changes to the schedule of the educational process by making corresponding changes to the structure of the academic year established by the institution. Therefore, depending on the location of the educational institution and the potential danger to employees, each university decided on issues regarding the form and timing of organizing the educational process.

An important aspect of administrative and legal regulation of the activities of education workers is the observance of guarantees. Thus, according to amendments to the Law of Ukraine "On Education," Article 57-1 provides for state guarantees in conditions of martial law, emergency situations, or a state of emergency. At the legislative level, learners, employees of educational institutions, research institutions, including those who, in conditions of martial law, were forced to change their place of residence, leave their job, place of study, regardless of their current location, during a special period, are guaranteed: organization of the educational process in a distance or in any other form that is most safe for its participants; preservation of the job, average earnings, payment of scholarships, and other payments provided by law; place of residence (boarding house, dormitory, etc.) and provision of food (if necessary)<sup>7</sup>.

The hearing scheduled for May 11th, 2023 in the Committee on Education, Science and Innovation of the Ukrainian Parliament on the topic of "Educational losses and gaps in general secondary education: measurement and mechanisms for overcoming" deserves attention. The committee notes that significant educational losses and gaps currently exist among various categories of general secondary education students in Ukraine. In addition, these losses and gaps have a cumulative effect, meaning that they tend to accumulate and deepen in the absence of timely and effective measures to

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<sup>5</sup> Про внесення змін до деяких законів України у сфері освіти: Закон України від 24.03.2022 р. № 2157-IX. URL: <https://zakon.rada.gov.ua/laws/show/2157-20#Text>

<sup>6</sup> Кодекс законів про працю України (КЗпП) від 10.12.1971р. № 322-VIII URL: <https://zakon.rada.gov.ua/laws/card/322-08>

<sup>7</sup> Про освіту: Закон України від 05.09.2017 р. № 2145-VIII URL: <https://zakon.rada.gov.ua/laws/show/2145-19#Text>

identify and overcome them (gap remediation). Therefore, similar challenges need to be analyzed and mechanisms for responding to them need to be developed, as the committee emphasizes that there are currently no established procedures in Ukraine for studying the level of educational losses and gaps in general secondary education, nor have mechanisms for their remediation been developed. This prevents the state from making adequate education-related decisions to compensate for and remediate the losses and gaps.

We believe that in order to conduct relevant research on educational losses, it would be worthwhile to use the PISA (Programme for International Student Assessment) methodology - an international study of the quality of education initiated in 1997 and coordinated by the Organisation for Economic Co-operation and Development (OECD). PISA provides evidence-based data on the quality of education, helping governments around the world to change education policies where needed.

It should be noted that in the conditions of military challenges, the realization of the right to education is an urgent issue, as the provision of decent living conditions for our citizens in an independent, sovereign, European-oriented Ukraine, and the provision of quality educational services depend on conducting constructive analysis of challenges and developing a plan to overcome them, strict adherence to and effective implementation of declared norms.