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DEBATABLE PRACTICAL ASPECTS OF THE IMPLEMENTATION OF ARTICLE 23 OF THE LAW OF UKRAINE «ON MOBILIZATION PREPARATION AND MOBILIZATION»

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*The purpose of the article is a comprehensive analysis of the organizational, legal and practical aspects of the implementation of the right to deferment from military service during mobilization, for a special period in the context of the Law of Ukraine "On Higher Education" dated 01.07.2014 No. 1556-VII, the Law of Ukraine "On Mobilization Preparation and Mobilization" dated 21.10.1993 No. 3543-XII, and the explanations of the Ministry of Education and Science of Ukraine provided in the Letter dated 03.06.2024 No. 1/9758-24. **Research methods:** the chosen topic of scientific research requires the use of various scientific methods and approaches to obtain high-quality results. Therefore, the following research methods were used to solve the tasks set: analysis; systematic method; analytical method, etc. **Results:** it was found that higher education students who, in particular, were enrolled in higher education institutions based on the results of the 2024 enrollment on Bachelor and Master programs (or who, as of the validation date of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Certain Issues of Military Service, Mobilization and Military Registration" dated 11.04.2024 No. 3633-IX, were students), but were previously expelled from higher education institutions before completing higher education in the same (or equivalent) educational programs on the grounds provided for by the Law of Ukraine "On Higher Education" dated 01.07.2014 No. 1556-VII, based on the Letter of the Ministry of Education and Science of Ukraine dated 03.06.2024 No. 1/9758-24, have actually lost the right to a deferral from military service during mobilization, for a special period. This, in the authors' view and according to the judicial practice of resolving the relevant cases by courts of administrative jurisdiction, directly contradicts the current legislation on education and requires more substantive legislative regulation. **Discussion:** compliance with the basic principles and provisions of the current legislation on education, the explanations of the Ministry of Education and Science of Ukraine regarding student registration in the Unified State Electronic Database on Education (hereinafter referred to as EDEBO), as well as the algorithm for determining the sequence of receiving education, provided in the Letter dated 03.06.2024 No. 1/9758-24.*

Key words: *conscription deferment; algorithm for determining the sequence of obtaining education; higher education; organizational and legal principles of mobilization; right to education; restrictions on the rights and freedoms of a person and a citizen under martial law.*

Problem statement and its relevance. Ukraine has existed as an independent country only since 1991, but this was preceded by centuries of intense selfless struggle of the Ukrainian people for the right to a sovereign state. Although that struggle was characterized by great losses and pain, it associated with the Ukrainians' faith and unity. The main document that determined the fundamental principles and course of state-building processes, including foreign policy, external and internal security, was the Act of Proclamation of Independence of Ukraine, solemnly approved by the Verkhovna Rada of Ukraine on August 24, 1991, based on the right to self-determination provided for by the Charter of the United Nations.

The gradual development of Ukraine as an independent, democratic, and legal state required not only a rethinking and transformation of the fundamental principles of the functioning of state and political institutions and different aspects of social life, but also responding to a number of challenges and threats that faced Ukrainian statehood (e.g., the Crimean crisis of 1992-1994 and subsequent attempts to usurp state power and externally impose controlled "puppet governments"). One of the most difficult and dramatic challenges for Ukrainian state (as it seemed under those specific conditions and circumstances) were the events that began to unfold in the southern and eastern regions of Ukraine in March 2014: the facts of undeclared and covert incursions into the territory of Ukraine by units of the armed forces and other law enforcement agencies of the Russian Federation; Russia's support for illegal armed formations and systematic shelling of Ukrainian territory gave grounds for the adoption on April 13, 2014, by the National Security and Defense Council of Ukraine at an emergency meeting of the decision "On urgent measures to overcome the terrorist threat and preserve the territorial integrity of Ukraine", which was put into effect on April 14, 2014 by the Decree of the Acting President of Ukraine, Chairman of the Verkhovna Rada of Ukraine O. Turchynov [1]. This decision marked the beginning of the anti-terrorist operation

of the Armed Forces of Ukraine. However, in connection with the full-scale military aggression of the Russian Federation (hereinafter referred to as the RF) against Ukraine, based on the proposal of the National Security and Defense Council of Ukraine, in accordance with paragraph 20 of part 1 of Article 106 of the Constitution of Ukraine [2], the Law of Ukraine "On the Legal Regime of Martial Law" dated 12.05.2015 No. 389-VIII [3], in accordance with the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" dated 24.02.2022 No. 64/2022, approved by the Law of Ukraine "On Approval of the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" dated 24.02.2022 No. 2102-IX [4] (hereinafter referred to as the Presidential Decree of 24.02.2022 No. 2102-IX), starting from 05:30 on February 24, 2022, a legal regime of martial law was introduced in Ukraine for a period of 30 days. Today (given the dynamics of the hostilities on the contact line), the martial law is constantly being extended.

According to the constitutional and legal principles of protecting the sovereignty and territorial integrity of Ukraine as well as its economic and information security the state and the entire Ukrainian people are responsible for fulfilling these important functions (Part One of Article 17 of the Constitution of Ukraine). At the same time, in accordance with Part Two of Article 17 of the Fundamental Law, the defense of Ukraine, the protection of its sovereignty, territorial integrity and inviolability are provided by the Armed Forces of Ukraine.

The relevant constitutional and legal provisions of the Fundamental Law state that it is the direct and immediate duty of all citizens of Ukraine to protect the country, its independence and territorial integrity, and as well as to respect its state symbols. Citizens are obliged to perform military service in accordance with the law (Article 65 of the Constitution).

The declaration of the legal martial law in Ukraine (in terms of the cited norms of the Constitution) led to the implementation of a comprehen-

sive system of legal mechanisms, which encompass a set of political, economic, social, military, scientific, technical, informational, organizational and other measures aimed at repelling the armed aggression of the RF, guaranteeing national security, and eliminating the threat to the independence of Ukraine and its territorial integrity. Among such measures in accordance with the provisions of the Laws of Ukraine: "On the Defense of Ukraine" dated 06.12.1991 No. 1932-XII [5], "On the Legal Regime of Martial Law" dated 12.05.2015 No. 389-VIII, "On Military Duty and Military Service" dated 25.03.1992 No. 2232-XII [6], "On Mobilization Preparation and Mobilization" dated 21.10.1993 No. 3543-XII [7], mobilization is a set of measures to transfer the national economy, the activities of state bodies, local self-government bodies, enterprises, institutions and organizations to functioning in a special period, as well as to transfer the Armed Forces of Ukraine and other military formations and civil defense forces to the wartime organization and staffing. Given the above, in light of numerous systemic infringements, the issue of authorities' respect of citizens' rights during the implementation of mobilization measures is becoming increasingly relevant.

Summary of the main research material. As directly follows from the provisions of Article 19 of the Constitution of Ukraine, the legal order in Ukraine is based on the principles according to which no one may be forced to do what is not provided for by law. State authorities and local self-government bodies as well as their officials are obliged to act only on the basis, within the limits of their powers and in the manner provided for by the Constitution and laws of Ukraine. Article 64 of the Fundamental Law regulates that the constitutional rights and freedoms of a person and a citizen may not be restricted, except in cases provided for by the Constitution of Ukraine. 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. The rights and freedoms stipulated in Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63 of this Constitution may not be restricted.

Article 53 of the Constitution of Ukraine enshrines the right of everyone to education. Accord-

ing to Parts 1 and 5 of Article 4 of the Law of Ukraine "On Higher Education" dated 01.07.2014 No. 1556-VII [8], everyone, regardless of age, citizenship, place of residence, sex, skin color, social and property status, nationality, language, origin, state of health, attitude to religion, presence of a criminal record, as well as other circumstances, has a guaranteed right to higher education. No one may be restricted in the right to obtain higher education, except in cases established by the Constitution and laws of Ukraine.

Paragraph 3 of the Decree of the President of Ukraine dated 02/24/2022 No. 2102-IX expressly provides that in connection with the declaration of martial law in Ukraine, the constitutional rights and freedoms of a person and a citizen provided for in Articles 30 - 34, 38, 39, 41 - 44, 53 of the Constitution of Ukraine may be temporarily restricted, for the period of the legal regime of martial law, as well as temporary restrictions on the rights and legitimate interests of legal entities may be introduced within the limits and to the extent necessary to ensure the possibility of introducing and implementing measures of the legal regime of martial law, which are provided for in Part One of Article 8 of the Law of Ukraine "On the Legal Regime of Martial Law".

From the provisions of Part Two of Article 3 of the Law of Ukraine "On Mobilization Preparation and Mobilization" dated 21.10.1993 No. 3543-XII (hereinafter referred to as the Law of Ukraine dated 21.10.1993 No. 3543-XII), it is clear that mobilization is carried out, in particular, according to the principle of respecting the rights of enterprises, institutions and organizations and citizens. Paragraphs one and two of Part Three of Article 23 of the Law of Ukraine dated 21.10.1993 No. 3543-XII (as amended by the Law dated 19.04.2024) stipulate that students of professional (vocational and technical), professional pre-higher and higher education, assistant interns, postgraduate students and doctoral students who study full-time or receive dual education are not subject to conscription during mobilization, for a special period.

Numerous facts of abuse of the right to higher education by those liable for military service during 2022-2024 (statistical data of the Ministry of Education and Science of Ukraine indicate an increase

in the number of men aged 25 and over who were enrolled by higher education institutions for the first (bachelor's) and second (master's) levels of higher education in 2023 compared to 2021, from 6227 to 56182 (for a bachelor's degree) and from 11936 to 55801 (for a master's degree)) solely for the purpose of extending the conscription deferral during mobilization, as well as other violations in the organization and implementation of the full-time educational process by both higher education students and higher education institutions, became the basis for the adoption by the Verkhovna Rada of Ukraine on 11.04.2024 of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Certain Issues of Military Service, Mobilization and Military Registration" No. 3633-IX (hereinafter referred to as the Law of Ukraine of April 11, 2024 No. 3633-IX).

The Law of Ukraine dated 11.04.2024 No. 3633-IX, among other things, amended paragraph one of part three of Article 23 of the Law of Ukraine dated 21.10.1993 No. 3543-XII and introduced its new wording (which remains in force today): "The following are also not subject to conscription during mobilization for a special period:

1) students of professional (vocational and technical), specialized pre-higher and higher education who study full-time or receive dual-form education and obtain a level of education that is higher than the previously obtained level of education in the sequence determined by part two of Article 10 of the Law of Ukraine "On Education", as well as doctoral students and persons enrolled in internship training" [7].

It should be noted, with full justification, that, on the one hand, the legislative changes directly contributed to the reduction in abusing the right to higher education in terms of mobilization procedures and narrowed the circle of higher education students who have the right to a conscription deferral during mobilization for a special period, however, on the other hand, they created a complex of problems in the implementation of the provisions of the cited legal norm (especially in the interpretation and application by the authorities of the prescription of the norm, which is outlined by the phrase: "...obtain a level of education that is higher than the previously obtained level of education in the

sequence determined by part two of Article 10 of the Law of Ukraine "On Education"").

The Resolution of the Cabinet of Ministers of Ukraine dated 16.05.2024 No. 560 approved the "Procedure for the Conscription of Citizens during Mobilization, for a Special Period" (hereinafter referred to as the Procedure for the Conscription of Citizens during Mobilization, for a Special Period) [9], which entered into force simultaneously with the Law of Ukraine dated 11.04.2024 No. 3633-IX.

Paragraph one of clause 62 of the Procedure for the Conscription of Citizens during Mobilization, for a Special Period, regulates that students of professional (vocational-technical), professional pre-higher and higher education who study full-time or receive dual-form education and obtain a level of education that is higher than the previously obtained level of education in the sequence determined by part two of Article 10 of the Law of Ukraine "On Education", as well as doctoral students, in order to obtain a conscription deferral during mobilization, for a special period, submit to the district (city) territorial recruitment and social support center a student registration card issued by the Unified State Electronic Database on Education, in the form in accordance with Appendix 9 to the specified Procedure.

The letter of the Ministry of Education and Science of Ukraine dated 03.06.2024 No. 1/9758-24 (hereinafter referred to as Letter dated 03.06.2024 No. 1/9758-24) [10], which was addressed to the heads of institutions of professional (vocational), professional pre-higher and higher education, the Ministry of Defense of Ukraine, the State Enterprise "Inforesurs", explained the formation of a student registration card in the EDBO, as well as the procedure for determining the sequence of obtaining education. In its explanations, the Ministry emphasized that: "...to fill in information about a full-time or dual education student regarding whether or not, based on the data contained in the EDBO, the current education violates the sequence defined by part two of Article 10 of the Law of Ukraine "On Education", the following algorithm is used to determine the sequence of education (clarifications on the algorithm are in Appendix 2 to the letter): if the student information contained in the EDBO, in particular, in the Register of Education Documents,

has a valid education certificate with a level not lower than the level of the current full-time or dual education, according to which the Student card is formed (according to the table of level sequence), the box “Based on the data contained in the EDBO, the current education does not violate the sequence defined by part two of Article 10 of the Law of Ukraine “On Education”” has “Yes, violates” [10, p. 2]. It is seen that the explanations provided by the Ministry of Education and Science of Ukraine are fully and absolutely consistent and correlated with the provisions of paragraph one of part three of Article 23 of the Law of Ukraine dated October 21, 1993 No. 3543-XII.

At the same time, in further explanations (in terms of the algorithm for determining the sequence of education), the Ministry emphasizes that: "the following education is not considered a violation of the sequence: 1) if the student was resumed or transferred from another educational institution (in the history of current education, the first status is "Resumed", "Resumed (from another educational institution)", "Transferred (from another educational institution)"), and the previous education (record of which in the status "Dismissed from educational institution") was at the same level as the current education (similarly, if the current education is under the OPS of a junior bachelor, and the previous one is under the OCD of a junior specialist, or the current education is under the OS of a bachelor (based on the PZSO), and the previous one is under the OS of a master (based on the PZSO)). At the same time, in the records of previous education, the year of the start of education should not be less than the year of the start of the current education. As an exception, the year of commencement of studies is not compared if the person was expelled before the date of commencement of studies or with the reason “For failure to comply with the requirements of the curriculum and schedule of the educational process (after enrollment, did not start classes within 10 days)” [10, p. 3]. At the same time, in the examples given to the cited explanations, the Ministry of Education and Science of Ukraine notes: “... the student enrolled in 2021 to obtain a bachelor’s degree and was expelled in 2023. In 2024, they re-enrolled (were enrolled) to obtain a bachelor’s degree. The Student Card will indicate “Yes, vio-

lates”” [10, p. 3].

Based on the algorithm for determining the sequence of obtaining education for the formation of a student card in the EDBO, substantiated and explained by Letter dated 03.06.2024 No. 1/9758-24, those persons who, in particular, were enrolled in higher education institutions according to the results of the 2024 enrolment on Bachelor and Master courses (or as of the date of entry into force of the Law of Ukraine dated 11.04.2024 No. 3633-IX, obtained these educational degrees), but were previously expelled from higher education institutions before completing higher education course for the same (or equivalent) educational degrees on the grounds provided for by the Law of Ukraine "On Higher Education" dated 01.07.2014 No. 1556-VII (hereinafter referred to as the Law of Ukraine dated 01.07.2014 No. 1556-VII), actually lost the right to obtain a conscription deferral during mobilization, since in the EDBO Student Information box “Based on the data contained in the Unified State Electronic Database on Education, the current education does not violate the sequence defined by part two of Article 10 of the Law of Ukraine “On Education”” had “Yes, it violates”.

We believe that the algorithm for determining the sequence of obtaining education for this category of higher education students, formulated by the letter of the Ministry of Education and Science of Ukraine dated 03.06.2024 No. 1/9758-24, directly contradicts the provisions of Article 5 of the Law of Ukraine dated 01.07.2014 No. 1556-VII, which leads to a direct violation of the right of such persons, regulated by paragraph one of part three of Article 23 of the Law of Ukraine dated 21.10.1993 No. 3543-XII, based on the following.

A lexical and grammatical analysis of the provisions of the legal norm, enshrined in paragraph one of part three of Article 23 of the Law of Ukraine dated 21.10.1993 No. 3543-XII, gives grounds to state quite reasonably that the legislator, when formulating its construction, in terms of regulating the right to exemption from conscription during mobilization, for a special period of students of professional (vocational-technical), professional pre-higher and higher education, who study full-time or receive dual education, proceeded from the presence of a set of the following legal facts: obtaining

by such a person a level of education that is higher than the previously obtained level of education in the sequence determined by part two of Article 10 of the Law of Ukraine "On Education" dated 05.09.2017 No. 2145-VIII.

The preamble to the Law of Ukraine "On Education" dated 05.09.2017 No. 2145-VIII states that this Law regulates social relations arising in the process of implementing the constitutional human right to education, the rights and obligations of individuals and legal entities participating in exercising this right, and also determines the competence of state and local self-government bodies in the field of education. Part two of Article 10 of the specified Law regulates that the levels of education include: preschool education; primary education; basic secondary education; specialized secondary education; first (initial) level of professional (vocational and technical) education; second (basic) level of professional (vocational and technical) education; third (higher) level of professional (vocational and technical) education; professional pre-higher education; initial level (short cycle) of higher education; first (bachelor's) level of higher education; second (master's) level of higher education; third (educational-scientific/educational-creative) level of higher education.

Part four of Article 5 of the Law of Ukraine No. 1556-VII of 01.07.2014 directly establishes that a bachelor's degree is an education degree obtained at the first level of higher education and awarded by a higher education institution as a result of the successful completion by a higher education student of an educational and professional program made up of 180-240 ECTS credits. To obtain a Bachelor's degree on the basis of a junior bachelor's degree or on the basis of professional pre-higher education, a higher education institution has the right to recognize and transfer ECTS credits, the maximum number of which is determined by the higher education standard. At the same time, a Master's degree is an education degree obtained at the second level of higher education and awarded by a higher education institution (scientific institution) as a result of the successful completion by a higher education student of the relevant educational program. A Master's degree is obtained according to an educational-professional or educational-scientific pro-

gram. The educational-professional program of Master's training includes 90-120 ECTS credits, while the educational-scientific program includes 120 ECTS credits. The educational-scientific program for the Master's degree must include a research (scientific) component of at least 30 percent (part five of Article 5 of the cited Law).

As directly follows from the provisions of parts one and two of Article 7 of the Law of Ukraine dated 01.07.2014 No. 1556-VII, a document on higher education completion is issued to a person who has successfully completed the relevant educational program and passed the certification. The following types of documents on higher education are established for the relevant degrees: junior bachelor's diploma; bachelor's diploma; master's diploma; doctor of philosophy/doctor of arts diploma. An integral part of the junior bachelor, bachelor, master, doctor of philosophy/doctor of arts diplomas is a European-style diploma supplement, which contains structured information about the completed studies. The diploma supplement provides information about the results of the individual's studies, educational components, grades received and the number of ECTS credits obtained, as well as information about the national higher education system of Ukraine (part five of Article 7 of the Law).

According to Part Twenty-Three of Article 1 of the Law of Ukraine "On Education" dated 05.09.2017 No. 2145-VIII, the level of education is a completed stage of education, characterized by the level of complexity of the educational program, a set of competencies, which are determined, as a rule, by the education standard and correspond to a certain level of the National Qualifications Framework.

Paragraph three of clause 3 of the Regulation on the procedure for expulsion, interruption of studies, renewal and transfer of persons studying in higher education institutions, and granting them academic leave [11], approved by the order of the Ministry of Education and Science of Ukraine dated 07.02.2024 No. 134, registered with the Ministry of Justice of Ukraine on 08.04.2024 under No. 509/41854, establishes that expulsion from the list of students implies the loss by a person of the status of a higher education student in the manner specified by these Regulations, which results in the termination of the

rights and obligations of a higher education student.

Taking into account the above, it should be noted that the expulsion of a higher education student before completing studies at the relevant educational levels on the grounds provided for by the Law of Ukraine No. 1556-VII of July 1, 2014, has as its legal consequence only the loss of the legal status of a higher education student by such a person and does not lead to the completion of the relevant educational level by such a person.

Conclusions. Therefore, the explanations of the Ministry of Education and Science of Ukraine cited above (regarding the violation of the sequence of obtaining higher education by persons who were enrolled in higher education institutions based on the results of the 2024 enrolment to obtain the educational degrees Bachelor and Master (or as of the date of entry into force of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Certain Issues of Military Service, Mobilization and Military Registration" dated 11.04.2024 No. 3633-IX, obtained such educational degrees), but were previously expelled from higher education institutions before completing higher education for the same (or equivalent) educational degrees on the grounds provided for by the Law of Ukraine dated 01.07.2014 No. 1556-VII), formulated in the Letter dated 03.06.2024 No. 1/9758-24 [12], can be considered manipulative and directly contradicting the provisions of the current legislation on education. At the same time, the EDBO Student Information box "Based on the data contained in the Unified State Electronic Database on Education, the current education does not violate the sequence defined by part two of Article 10 of the Law of Ukraine "On Education" should have "No, does not violate".

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ДИСКУСІЙНІ ПРАКТИЧНІ АСПЕКТИ РЕАЛІЗАЦІЇ СТАТТІ 23 ЗАКОНУ УКРАЇНИ «ПРО МОБІЛІЗАЦІЙНУ ПІДГОТОВКУ ТА МОБІЛІЗАЦІЮ»

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***Метою** статті є комплексний аналіз організаційних, правових та практичних аспектів реалізації права на відстрочку від військової служби під час мобілізації, на особливий період у контексті Закону України «Про вищу освіту» від 01.07.2014 № 1556-VII, Закону України «Про мобілізаційну підготовку та мобілізацію» від 21.10.1993 № 3543-XII, та роз'яснень Міністерства освіти і науки України, наданих у Листі від 03.06.2024 № 1/9758-24. **Методи дослідження:** обрана тема наукового дослідження вимагає використання різних наукових методів та підходів для отримання якісних результатів. Тому для вирішення поставлених завдань було використано такі методи дослідження: аналіз; системний метод; аналітичний метод тощо. **Результати:** було встановлено, що студенти закладів вищої освіти, які, зокрема, були зараховані до таких закладів за результатами набору 2024 року на програми бакалаврату та магістратури (або які станом на дату набрання чинності Законом України «Про внесення змін до деяких законодавчих актів України щодо деяких питань військової служби, мобілізації та військового обліку» від 11.04.2024 № 3633-IX були студентами), але раніше були відраховані із закладів вищої освіти до завершення навчання за тими ж (або еквівалентними) освітніми програмами з підстав, передбачених Законом України «Про вищу освіту» від 01.07.2014 № 1556-VII, на підставі Листа Міністерства освіти і науки України від 03.06.2024 № 1/9758-24, фактично втратили право на відстрочку від військової служби під час мобілізації, на особливий період. Це, на думку авторів та згідно з судовою практикою вирішення відповідних справ судами адміністративної юрисдикції, прямо суперечить чинному законодавству про освіту та потребує більш ґрунтовного законодавчого регулювання. **Обговорення:** дотримання основних принципів та положень чинного законодавства про освіту, роз'яснень Міністерства освіти і науки України щодо реєстрації студентів в Єдиній державній електронній базі даних про освіту (далі – ЄДЕБО), а також алгоритму визначення послідовності отримання освіти, наведеного в Листі від 03.06.2024 № 1/9758-24.*

***Ключові слова:** відстрочка від призову на військову службу; алгоритм визначення послідовності отримання освіти; вища освіта; організаційно-правові засади мобілізації; право на освіту; обмеження прав і свобод людини та громадянина в умовах воєнного стану.*

Стаття надійшла до редакції 06.06.2025