

LEGISLATIVE REGULATION OF HIGHER EDUCATION IN UKRAINE

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The article highlights tendencies for further enhancing and developing the legal framework of higher education and analyses The Law of Ukraine «On Higher education» all-up.

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One of the important means and ways of administration influence in the sphere of education is legal control that is the normalizing public relations that is done by the state with the help of law and the set of legal means, their legal confirmation, guidance and development..

Social management and legal control are in a constant interaction. The law regulates the management activity while the latter helps realize rules of law, changing the regulatory requirements into the real behavior of people.

Performance of an effective legal control is possible only when the corresponding legislation of high quality is available. Rules of law that form the legislation in the sphere of higher education have a neutral and a subjective character. The neutrality means that these rules are caused by corresponding social and economic processes of a society development. The subjective character of the given rules is explained by their being the result (product) of public elements creativity. Only the combination of neutral and subjective factors encourage the creation of an effective legal regulation of higher education in Ukraine. That is why each enactment must contribute to general principles of law, be an integral part of legislation, change dynamically taking into account social needs, appearing of new or death of old public relation etc.

It goes without saying that for effective functioning of a higher education system it is necessary to have completeness and perfection of legal framework in this sphere. The adoption of the effective legal framework in the sphere of higher education, changing the laws as well as realization of adopted laws is one of the important factors that can ensure the effectiveness of the realization of the right on education that is stated in Article 53 of the Constitution of Ukraine [1].

As it was stated before legal control is ensured by relevant rules of law which can be conditionally divided into the following groups:

the first group of rules defines the purpose, content and other spatial and hour data of legal control of higher education;

the second group regulates the organization of education management, types, structure of executive power bodies that work in the sphere of higher education and their legal status;

the third group determines the functioning of the sphere of education, its personnel, logistical and financial support etc.

Paragraph 6 of Article 1 of Chapter 92 of Constitution of Ukraine says that only laws of Ukraine define the «bases of education control». To fulfill this rule of the Law of Ukraine a number of relevant legal acts such as Law of Ukraine «On Education» [2], «On Higher Education» [3], «On scientific and technical activity» [4]. State national program «Education» (Ukraine XXI cen.) [5], National Doctrine of education development [6], National strategy of education development in Ukraine for the period till 2021 [7] and other relevant enactments of Verhovna Rada of Ukraine, decrees of the President of Ukraine, enactments and instructions of the Cabinet of Ministers of Ukraine also include legal framework of higher education .

Characterizing in general the legislation in the sphere of higher education it is necessary to say that it is obviously imperfect, develops unmethodically depending upon a political situation and is greatly disordered, contradictory, complicated and sometimes impossible to realize. That is educational legislation is characterized by a number of systemic drawbacks:

- mismatch between Constitution of Ukraine and the principle of the rule of law;
- internal contradiction between legal laws;
- incomplete legal regulation;
- inadmissible degree of administration interference with the learning process.

The aim of the article is to study the legal control of higher education in Ukraine, to analyze the situation and plans of regulatory framework for education.

According to paragraph 2 of Article 26 of Universal Declaration of Human Rights [8] education must facilitate the overall human development, increasing the respect for human rights and fundamental freedoms. That is the ultimate goal of education to facilitate comprehensive and holistic development of a human being using various means and methods of teaching, to train students not only for their future professional activity but to develop their intellectual, sport, artistic, leader skills, to train them to think creatively, generate and realize their own ideas, to be initiative and creative and on the whole to take part in a social and economic development of a society as a highly qualified specialists.

For its effective functioning and development the system of higher education needs versatile software such as legal, personnel, methodological, material and technical, financial and information and so on. This software is possible only when having an effective regulatory framework.

We are focusing our attention in assessing advantages and disadvantages of rules of law in education taking into account that different forms of social deviations and mass amateurism are increasing, the development of social processes are unpredictable, all forms of life are being complicated, radical changes of production needs are taking place, the demand for high-tech activities is increasing; all this require high level of professionalism, competence and creativity the necessity of development of the national system of continuing education for life and awareness of Ukraine's desire for European integration.

The first in the history of Ukrainian statehood, adopted by Verhovna Rada Law «On higher education» is of great significance for developing legal framework for higher education. It secured legally the principles of state police in education, set legal, financial, organizational and other bases of higher education functioning in particular defined its structure, the systems of standards in this sphere, the structure of management on all levels, the aim and main tasks of a higher educational establishment as the main unit of the branch, the bases of its functioning while organizing academic, educational and scientific work. The Law and in particular next supplements pay great attention to financial and economic relations in higher education in conditions of market economy. Though now Law of Ukraine «On higher education», does not fully solve the problem of reforming national higher education according to European demands and society development needs.

Speaking about the drawbacks of present edition of Law Ukraine «On higher education» we should say the following:

- the lack of legislative support of the concept of autonomy of a higher educational establishment, academic mobility, academic freedom and external evaluation;
- the number of principles on which the state policy in the sphere of higher education is based on should be added by the principles that would declare:
 - establishing conditions for education for life;
 - worthy social and economic support for the staff of higher educational establishments;
 - the development of the autonomy for educational establishment and their academic freedoms of the participants of the learning and educational process etc.;
- a very contradictory is the content of article 5 of the Law according to which the language of studying at higher educational established is determined by another legal act;
- the old structure of higher education, the system of standards of higher education and determining the levels of accreditation for higher educational

establishments which do not fully meet the demands of Bologna declaration and national framework of qualifications;

- the documents on higher education are revealed vaguely;
- the lack of legal standards that would support the legal status of state electronic databases in which there must be the information about higher educational establishments in Ukraine and documents on education they deliver;
- article 16 of the Law reveals the system of higher education from the point of view of its institutional structure but does not reveal from the point of view of its functional structure;
- article 17 of the Law, we think, does not count all individuals that are empowered to perform management in the sphere of higher education;
- the controversial is the fact that the contents of paragraph 1 of article 18 document the powers of Central body of executive power to provide creating state policy in the sphere of education and the contents of paragraph 2 the powers of central body of executive power document the realization of state policy in the sphere of education; both paragraph describe the powers of one and the same body, the Ministry of education and science of Ukraine;
- article 19 of the Law document only state monitoring higher education but in present conditions is not enough. It would be better to document legal opportunities for public monitoring this sphere;
- in article 21 of the Law, in our opinion, it would be right to change the word «owner» into the word «establisher» and count individuals who can be establishers of educational establishments;
- the Law lacks standards which will regulate the quality of higher education;
- main tasks of a higher educational establishment (article 22 of the Law) don't reveal the means to develop students comprehensively, to realize the skills and gifts to foster students patriotically, legally, ecologically, to advocate the healthy lifestyle and the ability to think freely, to organize themselves in present conditions;

- article 26 of the Law do not fully document the powers of a national higher educational establishment;
- the Law lacks the article that fixes the status of a research university;
- article 27 of the Law do not document students' guarantees after graduating from the university and getting the corresponding document on education when a higher educational establishment is reorganized or liquidated;
- article 28 of the Law which regulate the licensing of educational activity and its directions, specialties and higher educational establishments accreditation, does not pay much attention to legal regulation of the procedures of receiving these documents (license and certificate);
- article 29 of the Law documents very limited rights on autonomy and self-government of a higher educational establishment;
- the limits on autonomy and self-government of a higher educational establishment are strengthened in article 31 of the Law and the majority of problems that higher educational establishments have to solve are empowered to state bodies;
- the Law lacks the list of bodies of controlling a higher educational establishment and the list of recommended activity directions that vice-heads of a higher educational establishments must fulfill;
- article 33 of the Law lacks fixing the legal status of a head of an education and science institute and qualification demands leaders of an institute and leaders of faculties must possess;
- article 34 of the Law does not clearly regulate the formation of the scientific council of a higher educational establishment;
- article 35 of the Law does not document who has and who does not have the right to be a member of Supervisory Board;
- article 36 of the law does not document the recommended structure and the competences of working bodies especially refers to rector's office;
- article 37 of the Law does not regulate the number and rules of representatives at a conference (meetings) of a labour collective;

- article 38 of the Law reveals a very limited list of rights and powers of students' self-government of a higher educational establishment;
- the Law lacks the rules that would regulate the legal status of scientific societies, post-graduates, doctoral students and young scientists;
- article 39 of the Law does not have such a demand for a head post of a higher educational establishment such as a not less than 5-year experience of working as a head, time and period of a contest announcement for the post of a leader of a higher educational establishment, maximum stay as head of a higher educational establishment for one and the same person. According to this article the owner or an authorized representative has the final word which, in our opinion contradicts the principles of the autonomy of a higher educational establishment;
- article 40 of the Law documents the vague demands to a candidate for the post of head of faculty and head of an education and science institute, moreover, these demands are absent;
- article 44 of the Law does not mention external evaluation and applying to a higher educational establishment on its basis, there are no rules that would make it impossible to obtain Master's degree or Philosopher doctor degree out of competition;
- article 45 of the Law, giving the list of reasons for unrolling does not mention the following grounds such as finishing the education or violation of internal regulations of a higher educational establishment;
- the Law lacks the article which will regulate the issue of practical training of people who study at higher educational establishments;
- article 49 of the Law does not have a clear rule for hours of work for scientific and pedagogical staff;
- The list of rights for pedagogical and scientific staff is very limited by article 50 of the Law;
- article 53 of the Law lacks the logical distribution of people who study at a higher educational establishment, who seek of higher education and other people who study at higher educational establishments;

- article 54 of the Law does not have moral and financial incentives for students' progress in sport, culture, education, public activities; there are no rules that would regulate free practice at enterprises, institutions and organizations and pay when working according to the law;

- article 57 of the Law lacks the rules which would set payments for scientific degrees and titles;

- article 61 of the Law lacks such a tendency as an innovative activity and its legal regulation;

- the Law lacks the rules which would regulate the procedure of integration of scientific, scientific and technical, and innovative activity of higher educational establishments and research institutions of National Academy of Science of Ukraine and specialized academies;

- article 63 of the Law documents securing the property only as operational management that limits greatly the fulfilling the tasks provided by Statute of a university, there are no issues on land use, depositing прописані питання землекористування, having current and deposit accounts in banks, there is no right to possess the objects of intellectual property, created using own funds or funds of state or local budgets etc.;

- article 64 of the Law, we think, has the wrong rule saying that the amount of budget financing is calculating taking into account that not less than 180 students will study at higher educational establishments of the third and the fourth level of accreditation per each 10, 000 people. Besides, this article does not mention grants as a possible sources of financing higher educational establishments;

- the Law lacks the rules that would clearly regulate the procedure of making, placement and fulfilling the state order etc.

Conclusions.

In order to adapt legislation in the sphere of higher education to European demands and make the legal framework of higher education meet te needs present-day needs of economics and its innovative development which is an urgent

adoption of a new edition of Law «On higher education». To achieve it we advise to rework, bring to the regulatory framework of European standards and the needs of modern Ukraine the current law on higher education and three new bills such as bill № 1187 (Kivalov S.V., Kaletnik G.M., Soroka M.P.), bill № 1187-1 (Yatseniuk A.P., Klychko V.V., Tiagnybok O.Ya., Grynevych L.M., Orobets L.Yu., Pavlenko P.M., Rosenko P.V., Sych O.M., Farion I.D.) and bill № 1187-2 (Baloga V.I., and M.Z. Zurovskyi).

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