



The Main Issues and Perspectives of The Administrative and Legal Regulation of The Higher Education Reform in Ukraine

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Abstract

This article explicates the relevance of the higher education reform in Ukraine in order to achieve its compliance with the European and world educational standards. It also characterizes the importance and key tasks of the legal and administrative support of such reform. The generalizations of the researches carried out in the specified sphere are also studied. It notes the importance of ensuring non-discriminative access to educational services by applicants with special educational needs as an important aspect of protecting their rights and freedoms as a key requirement of the Bologna Process. Based on an analysis of innovative methods of the administrative activity in the article, the urgency of forming the state-public form of management of higher education is defined. It analyses the current regulatory and legal support for the management of higher education, as well as the introduction of the institution of educational ombudsman principles of the relevant state educational policy. It aims to supplement and improve the legal acts in order to ensure democracy, transparency and the inclusion of elements of corporate governance. The problems of regulating the activities of the National Higher Education Quality Assurance Agency were noted, and proposals were made to address them. The most pressing problems of research of the processes of higher education reform, which require an appropriate legal regulation, are identified. Among them are: ensuring the protection of the rights and freedoms of participants in the higher education process including gender equality, systemic restructuring of management model of higher education; and improving procedures related to ensuring the educational services' quality.

Keywords: higher education; administrative and legal regulation; human rights and gender equality; educational services quality.

Introduction

The Eurointegration processes that encompass all sectors of public life in Ukraine are also relevant in the context of reforming higher education in Ukraine and the corresponding administrative and legal regulation of these procedures. Laws and bylaws adopted in the last five years are of importance for this. At the same time, the legislative process in regulating the higher education reform calls for further development. This is why it is useful to analyze and generalize societal relations in the sphere of higher education, to review its current regulatory grounds, and identify the ways to further improve the regulatory grounds of the educational sphere with regard to the European higher education area's norms and standards.

Scientific hypothesis of the research

The Eurointegration course of the Ukrainian higher education reform is an adequate response to the globalization challenges. The legal regulation of the mentioned reform will allow the formation of the corresponding legal grounds and aligning higher education with the international standards with a goal of its complete integration to the European higher education area.

Methods of the research

In connection with the above, a comparative legal analysis of Ukrainian legislation was conducted, with regard to the European Union standards. The legislation in effect regulating public relations in higher education was analyzed using the formal legal method, and the relevant proposals were made for updating and improving the legislation. Possible outcomes of implementing the proposed updates were modeled using the prediction method. The hermeneutical method was used to study and explain the content and the peculiarities of the laws and bylaws that regulate various aspects of the Eurointegration processes in the higher education sphere.

These methods were applied in combination with the general logical methods and techniques, such as analysis and synthesis, generalization, analogy, etc., which enabled conducting an optimal research for identifying problems that can be resolved by improving the current legislation.

Analysis of the actual material

The Eurointegration-oriented fundamentals of the higher education reform in Ukraine are crucial and require studying. So researchers of different fields, in particular, the legal experts, focused their attention on it. Organizational, legal, pedagogical and content-related aspects of Ukraine's integration to the European Union higher education area were studied in the works by N. L. Huberska, I. M. Zarubinska, S. A. Kalashnikova, O. I. Kozievskaya, V. I. Luhovyi, S. M. Nikolaenko, Y. M. Rashkevych, O. V. Spivakovskiy, O. O. Masalitina and others. In particular, they studied the problems of changes caused by globalization in the educational sphere, reasons for emergence, goals and instruments of the Bologna process were identified, particularly the changes focused on achieving the standards of student-centered learning as the main feature of Europe-bound transformation of the higher education. The research addressed the issues related to regulating the procedures of competence-based teaching and assessment of the higher education curricula. Normative, organizational and methodological grounds were laid for introducing the European credit transfer and savings system in Ukraine. The theoretical foundation was developed to implement higher education cycles, qualification frameworks, securing the quality of higher education, deployment of international academic mobility, and participation in the European Union's international programs for modernizing higher education. Theoretical fundamentals were laid to restructure the systems of education and its new standards, and organizational, academic and legal support was developed for conducting the reform related to the integration into the European

higher education system. The Gender Equality Implementation Strategy in the education sector was developed under the name «Education: Gender Dimension – 2023», whose draft was approved at the Government committee meeting in January 2018.

Protection of the rights of the educational process participants in higher education became the subject of academic analysis conducted by O. O. Kulinich, O. F. Melnychuk, Y. I. Chalyi and others. Issues of the regulatory mechanisms for implementing the constitutional human right for higher education were addressed, as well as the academic grounds for the constitutional and legal mechanism of implementing the Ukrainian citizens' educational rights. The status of the educational service as a civil law juridical entity was established, and the legal peculiarities of a juridical entity in educational relations were established from the position of securing the remedies for their lawful rights and interests. Special attention is turned to securing educational rights for people with disabilities and to the development of inclusive education.

The organizational and legal foundations for the reform, improvement, and democratization of management relations in the sphere of higher education were articulated in the works by O. M. Bandurka, L. A. Hayevska, N. M. Zavorotynska, S. V. Krysiuk, M. N. Kurko, M. I. Lehenkyi, R. V. Shapoval and others. The researchers conducted a comparative legal analysis of centralized and decentralized models of education management, and the latter model proved to be a more advantageous one. The problems of the formation and implementation of the innovative educational management were addressed, and the procedures for administrative, organizational, financial, economic, psychological and pedagogical spheres of innovative education management were explicated. The conditions for the improvement of expediency and flexibility of higher education public administration were identified, and the guidelines for building the governmental mechanism's organizational structures were articulated.

The need to improve the legislation with the goal of a normative regulation of communities' participation in education management was substantiated, and the strategy for the transition to the state-public model of higher education management in Ukraine was determined.

K. B. Levchenko and O. I. Suslova studied the issue of the formation of gender competences of specialists and the introduction of gender approaches in education, which is an important direction for a further improvement of the education system and of the administrative relations in this sphere.

The problems of ensuring the quality of higher education are addressed in the academic studies by V. Y. Bakhrushyn, M. B. Yevtukha, M. Z. Zhurovskiy, H. P. Klimova, H. O. Oborskyi, I. F. Prokopenko, A. A. Sbruyeva, O. V. Spivakovskiy and others. The strategic goals for the higher education reform at the current stage of the social development were established. The importance of securing the quality of higher education, as a key point for European grounds of its modernization was explained. The higher education quality management standards were articulated. The ways of the standardization and certification of higher education quality management procedures were outlined. The global and regional tendencies of higher education development tendencies in the conditions of building a knowledge-based society were summarized.

At the same time, the advancement and the broad scale of the mentioned issues require constant academic research, and the relevant development and introduction of innovative science-intensive technologies into the higher education reform procedures.

The purpose of the article

is to study the academic achievements and practical experience of deploying the European higher education area, and to develop the relevant reform proposals for the regulatory framework that will secure

the incorporation of Ukraine's higher education into this area.

Theoretical provisions of regulatory grounds for the higher education reform in the Eurointegration context

Integration of Ukraine into the European higher education area within the Bologna process framework might be the most important aspect of the educational Eurointegration that calls for researching (The Bologna Declaration, 1999). The Paris Communiqué, approved by the Conference of Ministers for Education of the European higher education area (May 24–25, 2019), pointed out the achievements of European countries in this sphere, and the feasible ways for further development, which, in particular, include deploying institutional autonomy and forming civil responsibility for the development of higher education, securing a high level of higher education quality to comply with the Standards and Guidelines for Quality Assurance in the European Higher Education Area, as well as improving the access to higher education for underrepresented and vulnerable groups (Paris Communiqué, 2018). Emphasizing the latter direction's exceptional importance, the authors of this paper consider it feasible to extend it to the level of the overarching problem of protecting rights and freedoms of the educational process participants in higher education, which, in addition, is based on crucial international documents as in the Incheon UNESCO declaration of 2015, which was adopted at the World Education Forum (World Education Forum 2015, Incheon, Republic of Korea, May 19-22, 2015) (Forum, 2015), the Council of Europe Gender Equality Strategy 2018-2023 (Strategy, 2018), etc.

Systemic analysis of regulatory grounds for the higher education reform in Ukraine

This paper points out a number of important steps made in this direction. First of all, those related to school education. The authors of this paper emphasize both the importance of their extension to higher education and the

search and implementation of new forms of protecting and safeguarding the rights of the educational process participants specifically in higher education, and their regulatory codification. As a positive example of this, the authors mention the anti-discrimination assessment of textbooks and of the curriculum content conducted by the expert group of the Ministry of Education and Science of Ukraine within the framework of the Laws «On the Principles of Prevention and Combating Discrimination in Ukraine» and «On Ensuring Equal Rights and Equal Opportunities of Women and Men». (Law, 2012 & Law, 2005). Based on the expert evaluation results, cases of direct, indirect and hidden discrimination based on race, skin color, political, religious, and other beliefs, sex, age, disabilities, ethnic or social background, citizenship, language, marital and property status, place of residence are identified. The expert evaluation results are articulated in a form of an extended expert opinion and are published on the website of the Institute for Modernization of Education Content. They serve as recommendations for correcting regulations and guidebooks (if deemed discriminatory), which are printed at the expense of the state budget. This practice should be extended to include all teaching aid materials used not only in the secondary education system, but also in the higher education system.

An absolute innovation of the Ukrainian educational legislation, focused on facilitation to create conditions favorable for the implementation of the human right for education, is the introduction of the institute of the educational ombudsman by the Law of Ukraine «On Education» (On Education, Law, 2017). The educational ombudsman is the official of the Cabinet of Ministers, who has a mandate to review complaints on the issues of education and to verify the facts reported in such complaints, to obtain information necessary for his/her activities from educational institutions and from education administration bodies, to make decisions based on the results of the verification pertaining the presence or absence of violations of educational rights,

to give the relevant recommendations, to notify law enforcement agencies, to visit educational institutions and to participate in meetings/conventions of governmental agencies with relevant competencies, to provide consultations for the educational process participants, to participate in counteraction to bullying in the educational institutions, and to represent the interests of individuals in court.

The bylaw (provision) on the educational ombudsman, as well as the procedures and conditions for filing complaints and addresses to this official are approved by the decree of the Cabinet of Ministers of Ukraine (Decree, 2018). The mentioned document stipulates the procedure for assigning and dismissing the official for the ombudsman office by the initiative of the Minister of Education in Science, for the term of five years, without a right to re-assign. Here, it is worth mentioning that designating the Minister of Education and Science as the initiator to nominate the education ombudsman is disputable, as in this case, the ombudsman becomes dependent on the Minister, which can considerably limit the ombudsman's motivation to act in protection of the educational process participants. A more appropriate solution would be a democratic procedure for assigning the educational ombudsman based on the results of an open competition conducted by the Cabinet of Ministers.

The requirements for the applicants for the position of the educational ombudsman also need improvement. Currently, those requirements include: a Ukrainian citizenship, permanent residence in Ukraine in the last five years, five years of work experience in the sphere of education, fluency in the official language, legal competence, and no criminal record. The authors' proposal is to expand these requirements by adding 'absence of administrative sanctions for corruption-related offences'. At the same time, the educational ombudsman was already selected and appointed. The current educational ombudsman, S. I. Horbachov, and his office, besides purely organizational measures, have been

focusing their attention on resolving the issues of fire safety in educational institutions, use of public service announcements to raise the public awareness about the rights of the educational process participants, tenders for textbooks, etc. The educational ombudsman's key sphere of activities is the pressing problem of combating bullying.

The urgent problems to consider are those of the general democratization of the higher education management system both on the national scale and in each higher education institution separately. First of all, this encompasses transition from the state-owned to state-public forms of higher education management and implementing innovative managerial forms and methods. Reform is required for the very management model of higher education, which should secure its competitiveness on the Ukrainian, European and international labor markets, encourage investments into the educational sphere, and become a foundation for the improvement of the quality of educational services by changing the motivation of all of the educational process participants. To legislatively support the mentioned innovations, the draft on amendments to the Law of Ukraine "On Higher Education" introducing changes to the management system for higher educational institutions was developed and filed for consideration by the Verkhovna Rada of Ukraine (Draft Law On Higher Education, 2018). The main idea of the proposed legislative changes is re-aligning the higher education management system by dismantling the authoritarian command and control models and deploying democratic and transparent ones, and including elements of corporate governance. The administrative, legal and organizational aspects of the draft provide for the redistribution of powers between the administrative structures of higher educational institutions by means of giving more power to supervisory boards and academic boards, a clearer regulation of activities of the institution's executive body and for activities of the financial director, which is the position introduced not as an imperative requirement, but as following

the position and wishes of higher educational institutions.

The authors of the draft law believe that its approval and implementation will help make higher educational institutions more robust, enhance their administrative and organizational potential, and secure transparency, effectiveness, and high quality of university educational services by universities.

The draft itself provides for the amendment of Section 7 «Managing a higher educational institution», and expanding it with new articles 34-1 (Executive body of a higher education institution), 34-2 (Financial director), and 41-1 (Council of young researchers). The amendments provide for the extension of powers of the supervisory board of an educational institution (approval of the institution's development strategy, control over the institution's economic activities and over the elections of the head, approval of nominees for the position of the financial director, approval of the budget and of annual reports, etc.), and updating the procedures for its formation. A considerable focus is on the democratic and transparent procedures of the formation and operation of supervisory boards. It proposes to task the academic boards mainly with the issues of setting the content and quality of curricula and scientific research, educational and research activities of the higher educational institution. The draft is innovative, first of all, in its focus on the normative definition of the administrative and legal status of the executive body of an educational institution and on the introduction of the position of the financial director, as well as on regulating the legal relations that emerge as a result of this.

The draft continues the strategy focused on further strengthening the role of student self-government in organizing the process of education, and in the entire functioning of the institution in general. Of special note is the proposed innovation concerning the introduction of the young researchers' council, whose introduction is seen as a

deployment of research activities in the community of students.

This draft also amends the procedure of electing the head of a higher educational institution, by changing the share of votes required to elect a candidate. The draft law stipulates that two thirds of the total number of the voters should vote for a candidate to elect him or her as the head of the institution without any further conditions. If no candidate makes it to this threshold, the supervisory board retains the right to make this decision and can either ask the founder to appoint one of the candidates that received over a quarter of the votes, or to declare the elections void.

It is also proposed to align the regulation of the appointment procedures with the legislation in effect that stipulates a special validation process for people who are candidates for offices that have the status of "responsible" and "especially responsible", as well as for the offices with increased corruption-related risks.

For the first time, the anti-crisis management procedure is stipulated, the procedure of the implementation of which is supposed to be approved by the Cabinet of Ministers of Ukraine. At that, the founder is granted a right to assign, based on the supervisory board's motion and under the term-limited labor agreement, the acting head of a higher educational institution for implementing the anti-crisis management measures, for the term not exceeding two years. Certain limitations are set: the person who is assigned to the position for anti-crisis management may later run for the head of the institution but can be elected only with at least two thirds of the votes during the elections. To improve the transparency of the election procedure, the draft stipulates that it is possible to incorporate public control over the procedures at all the stages of the elections.

At the same time, the authors emphasize that the implementation of the innovations listed above will require the amendment of the powers of the central government body of the executive power in the sphere of education and science, and of other

agencies that have higher educational institutions in their sphere of competence. These amendments are also included in the content of the draft law.

When evaluating the viability of the innovations proposed, the authors quote the opinion of O. V. Spivakovskiy: «The proposed draft for amending the Law «On Higher Education» is focused, first of all, on improving the effectiveness of management of higher educational institutions, their autonomy, and their internal self-regulation. Mutual reinforcement of different administrative chains should take place by means of rational and measured distribution of powers, combination of the elements of democracy and effective control by key internal and external stakeholders. The draft authors are convinced that this amendment of the legislation will facilitate the institutional solidification of the institutions and the improvement of the academic sphere in general» (Spivakovskiy, 2018).

Institutional support priorities for quality of higher education in Ukraine

One of most important requirements for Ukraine's entering the European and international area of higher education is securing proper quality of educational services, and thus it can be considered among the key aspects of the state education policy. At that, the general agenda of improving the quality of Ukrainian higher education centers is around the issues of the development and implementation of the updated contents of education, the standards of educational activities, the introduction and running-in of the quality management system and the assessment of its results. The latter direction requires this education quality assessment system to be theoretically substantiated and legally regulated, transparent and efficient.

Within the European integration framework, securing a proper quality of higher education aligns with the Standards

and Guidelines for Quality Assurance in the European Higher Education Area (ESG), which were adopted by the Ninth conference of Ministers responsible for Higher Education in countries of the European education area, (Yerevan, May 14–15, 2015) (Standards, 2015). These standards and guidelines address the external and internal quality assurance systems and quality assurance agencies. As to the latter aspect, the authors of this document emphasize the significance of the organizational support of these agencies' operation, which has to enable the regularity of their activities towards the achievement of clear and understandable objectives and public exposure as well as the required scope through the engagement of stakeholders. These agencies should possess an official legal status acknowledged by the corresponding governmental agencies, independence and autonomy in their activities, which are achieved through adequate resources at their disposal, both financial and human. Their activities should be made transparent through regular publication of reports and conclusions, internal quality assurance and integrity in their activities. An external assessment of the activities of such agencies is also provided for.

Therefore, these Standards envision both a wide deployment of the higher education quality assurance agencies and the need for a government institution, which would ensure the deployment and operation of such system and oversee it. As to the first aspect, the authors point out that the deployment of such agencies can rely on the principles of centralization and decentralization. While the authors wholeheartedly support the strategy of the Europeanization of education in Ukraine through the decentralization of its management, they point out a caution against superfluities in such processes related to quality assurance of higher education, expressed by experts from the Netherlands. Yet, the researchers also emphasize an exceptional effectiveness of a decentralized system, which allows engaging prominent scientists and cultural luminaries, as well as the general public, into the administrative procedures of

evaluating the quality of higher education (Maassen, 1997).

The governmental support for securing the proper quality of higher education is related to the mandate of the National Higher Education Quality Assurance Agency, which the legislators establish as a standing collegial body, authorized to implement the governmental policy in the sphere of quality assurance of higher education (On Higher Education, Law, 2014). The legislators establish the procedures for the establishment of this body, which, importantly, include the sectoral representation principle and the gender balance principle. This body's legally regulated powers, main requirements to its structure, grounds and areas of its activities, as well as sources of its financing are also stipulated.

The authors emphasized the importance of the application of administrative and legal mechanisms to secure such an innovative principle of the establishment of the body as gender equality. Attention to this point reflects the content and the directions of the governmental policy of the European integration and the extension of representation of various social and demographic groups in the decision-making processes. For example, Article 1 of the Law «On Ensuring Equal Rights and Opportunities of Women and Men» gives a definition for the notion of «gender equality» as an equal legal status of women and men, and equal opportunities for its implementation, which enables people of both genders to equally participate in all the spheres of the society's life (Law, 2005). It also allows for a balanced representation of representatives of both genders in administration and in decision-making: «governmental agencies and bodies of local self-government, enterprises, organizations and institutions. NGOs facilitate a balanced representation of genders in management and in decision-making. To achieve the goal of this Law in their activities, they may use affirmative actions».

The mechanism of the practical application of affirmative actions is gender quotas –

regulating the ratio of males and females in all decision-making agencies, which is supposed to be used at the formation of the National Higher Education Quality Assurance Agency, and which at the same time can be viewed as a practical implementation of Article 4 of the UN Convention for the Elimination of All Forms of Discrimination against Women concerning temporary special measures (UN Convention, CEDAW, 1979). This article establishes that member countries can use temporary special measures aimed at accelerating the de facto equality between men and women that shall not be considered as discrimination as defined in the Convention, but shall in no way entail, as a consequence, the maintenance of unequal or separate standards. These measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

Clause 5 of the State Social Program on Securing Equal Rights and Opportunities for Women and Men by 2021, approved by the Decree of the Cabinet of Ministers of Ukraine as of April 11, 2018, No. 273, also provides for the necessity to reduce gender imbalance in the sphere of public service and in the human resources sphere (State Social Program, 2018).

A positive example of the application of this norm is the Decree of the Cabinet of Ministers of Ukraine as of August 29, 2018 No. 703 «On approval of the Provision of the competition for the selection of the members of the National Higher Education Quality Assurance Agency», which provides for the adherence to the principles of gender balance during the selection. (Decree, 2018). The Provision approved by this resolution establishes that, according to part one of Article 19 of the Law of Ukraine «On Higher Education», the National Higher Education Quality Assurance Agency consists of 23 persons, who are appointed by the Cabinet of Ministers of Ukraine based on the resolution of the Competition Committee for selecting the members of the National Higher Education Quality Assurance Agency, based on the results of the competition, conducted with the adherence

to the principles of gender balance and sectoral representation. The principle of gender balance is implemented according to the requirements of the Law of Ukraine "On Ensuring Equal Rights and Opportunities of Women and Men": firstly, if the delegating entities listed in clause 3 of this Provision delegate as candidates to the membership in the National Agency more than one person, these people have to be of different sexes. Secondly, the affirmative action is applied to achieve a more balanced representation of women and men in the National Agency – with preference of representatives of the sex that is a minority (clauses 2 and 4 of the mentioned Provision).

At the same time, the implementation of the gender-sensitive approaches into the process of selecting people who will form the National Agency requires its members and all participants of the educational process to have gender competences. For this, it would be reasonable to use the approaches worked out by K. Levchenko and O. Suslova to identify the specialists' gender competences (Levchenko & Suslova, 2019), as well as to secure the integration of the topics of gender into the curriculum programs of specialists of all levels.

The strategic goal of the National Agency's operation is the deployment and support for the functioning of the entire legally-grounded and research-supported quality assurance system for the national higher education, which should be characterized by an active academic and research community, students, employers, professional associations, general public, and mass media. At that, the mentioned system, just as stipulated in the legislation, should cover both internal and external quality assurance institutions of higher education, as well as quality assurance of the operation of the National Agency itself. By identifying, developing and sharing effective and progressive approaches, models, algorithms and technologies for the evaluation of the quality of higher education, the National Agency should facilitate the integration of the Ukrainian system of higher education into the

European and international higher education areas.

It seems feasible to articulate the operation principles of the National Higher Education Quality Assurance Agency, which, in particular, should include professionalism, responsibility, nonpartisanship, openness and transparency. Deployment of the National agency's operation on the foundation of the mentioned principles and their relevant reflection on the operation principles of the system of independent institutions in terms of evaluation and quality assurance of higher education will help advance this sphere to the level of the European and international educational standards.

Conclusions

Analysis of theoretical, methodological, and applied studies of the problematics of administrative and legal grounds for the higher education reform in Ukraine in the context of Eurointegration shows that they are relevant and deserve more attention from the researchers. At the same time, the broad scale and constant development that characterize this sphere, require continuous academic studies to be conducted, as it can improve the higher education in Ukraine and bring it closer to the level of the European standards. Probably, the most urgent of the issues in the mentioned academic research are the issues of protecting rights and freedoms of the educational process participants in the higher education, structural reconstruction of the national higher education's management system, improvement of quality assurance system for educational services, and inclusion of the gender equality principle into the system of education. It is advised to resolve these problems by taking organizational, legal and methodological measures for securing rigorous observance of the constitutional rights of all the participants of the educational process, developing the democratic basis for a higher education organization and its realignment to state-public management, institutional development of governmental bodies and institutions of Ukraine, protecting the

rights and freedoms in higher education, securing the quality of higher education, and the relevant regulatory and legal support for the mentioned innovations.

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