



Zhytomyr Ivan Franko State University Journal.
Pedagogical Sciences. Vol. 1 (104)

Вісник Житомирського державного
університету імені Івана Франка.
Педагогічні науки. Вип. 1 (104)

ISSN (Print): 2663-6387
ISSN (Online): 2664-0155

TERTIARY EDUCATION

ПЕДАГОГІКА ВИЩОЇ ШКОЛИ

UDC 378.091:340.134

DOI 10.35433/pedagogy.1(104).2021.15-27

DEVELOPMENT OF NATIONAL LEGISLATION IN HIGHER EDUCATION ESTABLISHMENT MANAGEMENT

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The article studies the main stages of development of national legislation regulating the management of a higher education establishment. It conducts the analysis of the works of modern scientists having dealt with the issues of regulating the activities of a higher education establishment in various aspects, issues of management information defining and systematizing, problems of legal regulation in the higher education establishment management and certain aspects of its statutory and regulatory support by international and foreign legislation, theoretical and practical aspects of administrative and legal regulation in Ukrainian education in the context of European integration.

The paper analyzes and highlights three main periods of national legislation development on the higher education establishment management. The first stage of development of legislation on the higher education establishments management (XIX – 1920) is associated with the adoption of the Provisional rules about the higher education establishments management of the Ministry of public education of August 27, 1905 and legislative acts regulating the higher education establishments management.

The second stage of development of legislation on higher education (1920-1990) is associated with the fact that during the existence of the USSR, the management of higher education had its own peculiarities, as far as the political system of Soviet government and the state apparatus differed from the modern state democratic structure, and on its territory there were state bodies that existed only under the communist regime. Higher education management was carried out centrally by legislative acts of both the republican and all-union levels, in the complete absence of

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autonomy of higher education establishments. Third stage of development of the national legislation on higher education management is characterized by the reform of the higher education system on the basis of adopted legislative and bylaws, especially, Ukraine's Higher Education Act of 2014, the creation of conditions for the autonomy of the higher education establishment management, the introduction of bodies and institutions for monitoring the higher education quality standards and recommendations of the European Union.

Key words: *management, higher education, legal aspects, development of education, management activities, law, act, resolution, national legislation.*

РОЗВИТОК НАЦІОНАЛЬНОГО ЗАКОНОДАВСТВА СФЕРИ УПРАВЛІННЯ ЗАКЛАДОМ ВИЩОЇ ОСВІТИ

І. А. Вербовський, І. В. Новіцька

У статті розглядаються основні етапи розвитку національного законодавства, що регулює управління закладом вищої освіти. Здійснено аналіз праць сучасних науковців, які займалися питаннями регулювання діяльності закладів вищої освіти в різних аспектах, питаннями визначення і систематизації управлінської інформації, проблеми правового регулювання управління закладом вищої освіти та окремими аспектами його нормативно-правового забезпечення міжнародним та зарубіжним законодавством, питанням теорії і практики адміністративно-правового регулювання освіти України в умовах євроінтеграційних процесів. Проаналізовано та виділено основні три періоди розвитку національного законодавства про управління закладом вищої освіти. Перший етап розвитку законодавства про управління закладами вищої освіти (XIX – 1920 рр.), пов'язаний з прийняттям Тимчасових правил про управління вищими навчальними закладами Міністерства народної освіти від 27 серпня 1905 р. та законодавчих актів, які регулювали питання управління закладами вищої школи. Другий етап розвитку законодавства про вищу освіту (1920-90-ті рр.), пов'язаний з тим, що за період існування СРСР управління вищою школою мало свої особливості, оскільки політична система радянської влади, державний апарат відрізнялись від сучасного демократичного устрою нашої держави, а на її території діяли державні органи, які існували лише в умовах комуністичного режиму. Управління вищою освітою здійснювалось централізовано законодавчими актами як республіканського, так і загальносоюзного рівнів, у повній відсутності автономії закладів вищої освіти. Третій етап розвитку національного законодавства про управління вищою освітою характеризується реформуванням системи вищої школи на основі прийнятих законодавчих та підзаконних нормативно-правових актів, зокрема, Закону України «Про вищу освіту» 2014 року, створенням умов для автономізації управління закладом вищої освіти, запровадження органів та установ із контролю за забезпеченням якості вищої освіти до стандартів і рекомендацій Європейського Союзу.

Ключові слова: *управління, вища освіта, правові аспекти, розвиток освіти, управлінська діяльність, закон, акт, постанова, національне законодавство.*

Introduction of the issue. Legal regulation is one of the strategic modernizing directions of the educational establishment management activities. It is the development of new regulatory documents and improvement of existing ones in education that will contribute to the high-quality organization of the education and

compliance with all state regulations to improve the management effectiveness in accordance with new conceptual approaches.

Having joined the main international human rights treaties, Ukraine has accepted an obligation to respect universal human rights, in particular, to ensure the right to education,

including children with special educational needs.

Currently, the issue of upholding the right to quality education as well as changing the strategy of highly-qualified personnel training is particularly essential. Higher education establishments are of great importance in Ukrainian educational policy formation. New teaching methods and technologies, higher education applicants' needs and the principles of modern education require contemporary teacher of a new generation eligible to develop necessary professional competencies. Besides, the specialist should possess a regulatory framework for high-quality organization of conducting the educational process and providing educational services. The quality of a today's head of an education establishment training requires their knowledge of all regulatory documents and constant monitoring of the important changes made at the state level, as well as timely response to them. These contradictions became the basis for the topic of our research.

Current state of the issue. The research aims to study the historical development of national legislation regulating the management of a higher education establishment, to reveal its drawbacks and benefits being in force or having been unreasonably canceled for one reason or another, and to identify norms to be improved.

The outline of unresolved issues brought up in the article. A. Aleksyuk, V. Bykov, B. Gaevsky, L. Karamushka, V. Knyazev, S. Krysyuk, V. Mayboroda, A. Monayenko, S. Petkov, N. Protasova, V. Tokarev, I. Zyazyun and others deal with issues of regulating the higher education establishments activities in various aspects.

Many thorough scientific works of national and foreign scientists are devoted to the issue of educational establishment management. The scientific works of V. Bondar,

L. Danilenko, Yu. Konarzhevsky, V. Maslov, O. Orlov, N. Ostroverkhov, V. Pikelnaya, T. Shamova, G. Yelnikova on the definition and management information systematization are of great importance. The problems of legal regulation of the higher education establishment management and certain aspects of its regulatory support by international and foreign legislation are revealed in the works of V. Averyanov, A. Berlach, Yu. Bityak, V. Belous, I. Borodin, N. Bortnik, A. Dmitriev, V. Gritsenko, M. Kelman, S. Kivalov, T. Kravtsova, P. Patsurkovsky, S. Petkov, A. Selivanov, V. Shkarupa, S. Yesimov, I. Zharovskaya. I. Khomishin's scientific heritage studies the theoretical and practical aspects of administrative and legal regulation in Ukrainian education in the context of European integration. The research of W. Parpan presents the directions of the educational and scientific process development in the European Union countries and the United States of America.

The aim of research is to analyze the development of national legislation regulating the higher education establishment management.

Results and discussion. Higher education is an important tool for the development of society, and the changes having taken place in the education system throughout the history of mankind, its quality and content, the higher education management, have directly affected the life not only of human civilization as a whole, but also of particular countries as well.

Studying the historical development of Ukrainian legislation regulating the higher education establishment management and the stages of its formation makes it possible to improve these norms. The development of higher education legislation is not only related to the general stages of education legislation development, but also has its own peculiarities.

When studying the stages of higher education legislation development, it should be noted that the higher education establishment management was regulated to a certain extent by the Russian Empire legislation. In the XIX – early XX centuries, on the Russian Empire territory, with Ukraine being the part of it, the university system establishment took place. This process ended in the reign of Emperor Nicholas I. Moreover, the rules for conducting not only entrance and transfer but also final exams were developed; the Regulation on Awarding Academic Degrees (1819) was adopted, having introduced the course system in education, finally formed with the Statute implementation in 1835. During this period, university, higher military, and religious education was developed. Before the 1905-1907 revolution, all higher education issues of legislative level were decided either directly by the tsar in the order of the Supreme governance, or were sent to the State Duma. After the above-mentioned revolution, the procedure for adopting draft laws on higher education changed. The most important ones passed through the Supreme administrative government body called the Council of Ministers, specifically The Provisional rules on the higher education establishment management of the Public Education Department (1905) [5]; rules in private educational establishments, classes and courses of the Ministry of public education exercising no rights of the 1913's government educational establishments [5].

At the beginning of the XIX century, there were no normative acts or legislations regulating the assessment scale at universities. On the one hand, their absence indicated an undeveloped university education system of the Russian Empire, on the other hand, it gave professors a certain academic freedom based on the subject system of teaching. Each professor formed his

own teaching methods and criteria for assessing students' knowledge, the grade sheet of that time didn't contain unified rating scale, the assessments were purely individual and very diverse.

Regulation on Awarding Scientific Degrees was an important adoption in 1819, having introduced the course system in education of Russian universities [1], and was finally fixed in the Statute of 1835. This Regulation fixed the connection between the received scientific degrees of a valid student and candidate with the classes in the table of ranks, thereby universities became an element of the state apparatus.

Until 1917, the higher education management was under the jurisdiction of a large number of state institutions. Thus, 65 state institutions of higher education as local institutions were part of ten ministries, as well as the Holy Synod, etc. They also supervised 59 non-governmental higher education establishments.

Ministries independently determined their own "academic policy". As a result of this policy, higher education in the Russian Empire of the late XIX-early XX centuries did not have a clearly coordinated system.

The question of the necessity to regulate the higher education management relations became acute in connection with the All – Russian student strike in February-March 1901. The project of subordination of higher education establishments, including religious, military and those having been in the department of the Empress Maria to the Ministry of public education had numerous supporters among the academic teaching staff. After the February Revolution, the Provisional Government's professorial commission for the reform of higher education establishments accepted the Provisional rules about the higher education establishments management of the Ministry of public education of August 27, 1905 [9].

Operational management of higher education establishments was carried out on the basis of statute (regulations) that regulated their internal organization, work schedule, and relationships with management authorities. Statutes for state-owned establishments were issued in the form of legislative acts, for non-state ones were issued in the form of departmental orders. Statutes (regulations) were of two types such as individual and group. For example, the second type included the statutes of Kharkiv Institute of Technology (1885); the statutes of Kiev Polytechnic University of 1898.

A comparative analysis of the statutes indicates fundamental differences in the management organizational principles of higher education establishments subordinating to the Ministry of public education, on the one hand, and to other ministries, on the other. The last carried it out through specially designed education divisions, as well as through industry departments and main departments.

The management of higher education establishments was entrusted to the Department of public education and the Division of industrial schools by the Ministry of public education. State universities were subordinated to the first department, as well as public and private institutes, higher-type courses; engineering and agricultural institutes in New Alexandria (up to and including 1912) were subordinated to the second division.

The trustee of the educational district carried out the day-to-day management of all educational institutions, including higher ones, in the territory of the district. His duties were particularly clearly formulated in the Statute of Universities of 1884, which was in force until the February Revolution. In accordance with such Statue, the trustee of the educational district took care of the University welfare, monitored the quality of

university teaching and the exact implementation of the Higher Education Act by participants in the educational process, stopped illegal actions, brought a suit against the guilty party, filed petitions.

Special attention should be paid to the analysis of higher education management in Western Ukraine, which was part of the Austro-Hungarian Empire. In the XIX – early XX centuries, higher education on those lands was under the control of Polish local authorities. Education activities were carried out by such well-known higher education establishments as Lviv University, Chernivtsi University (1875), and the needs of industrial and technological progress in the last quarter of the XIX century made it necessary to open a polytechnic institute in Lviv [4]. Thus, Lviv University had broad management autonomy. According to the Diploma of January 20, 1661, signed by King Jan II Casimir, Lviv Jesuit College was granted "the academy dignity and a university title" with the right to teach all university disciplines, as well as the right to award bachelor's, licentiate's, master's and doctor's degrees. The other European academies were the role models for the university study and the institution itself had the right to build and buy new premises, had its own library, the largest printing house in Lviv.

All other governmental entities operated in Ukraine from the beginning of XX century to the creation of the Ukrainian SSR did not make significant changes in the regulation of higher education.

So, the first stage of development of legislation on the higher education establishments management (XIX – 1920) is associated with the adoption of the Provisional rules about the higher education establishments management of the Ministry of public education of August 27, 1905 and legislative acts

regulating the higher education establishments management.

The legal status of higher education establishments consideration, its legal regulation from the point of view of historical and legal approach requires a significant rethinking of the Soviet government's internal policy, which makes it possible to analyze the regulatory acts approved by the Bolsheviks in the field of higher education management.

The socio-economic life of Ukrainian society and its legal status in the Soviet period significantly differed from the pre-revolutionary one. The Soviet government immediately launched the Sovietization, in particular, on the educational reform in higher education in 1919, wide opportunities were created for workers and peasants to receive higher education (the Council of People's Commissars of the Ukrainian SSR' Admission to Higher Education decree of March 2, 1919). In accordance with the decree, entering higher education establishments, not only certificates of secondary education, but also any other documents were forbidden except for an identity card and age. Continuing the policy of higher education Sovietization, which was aimed at eliminating university autonomy, the authorities adopted the USSR's resolution of People's Commissariat of Education of March 11, 1919 "On the Organization of Higher Educational Establishments Management" [6].

Having analyzed the regulatory acts adopted by the Soviet government from 1920 to 1930, we can conclude that higher education establishments were completely deprived of autonomy, and academic freedom in Ukraine was eliminated. It was prohibited to form any representative bodies for the higher education management. The head of a higher education establishment could only be a Rector- communist, who was recognized by the authorities, while the

professorial commission was recognized not only as absolutely unnecessary, but also considered useless and superfluous [2].

The Soviet government made class-based higher education, accessible only to certain categories of employees, such as workers and peasants. Thus, the new rules of higher education and technical schools recruitment were defined by the USSR' Central Executive Committee Curricula and Schedule of Higher Education and Technical Schools resolution of 1932. Regulation of the unified system of testing the knowledge of applicants for higher education was introduced by the USSR' resolution of Central Executive Committee of September 19, 1932, and it determined that credit sessions were held twice a year; it also established the need to write a graduation thesis (in the final year of study for each student), furthermore in higher technical schools there was a diploma project with obligatory public defense [25]. By the beginning of the 1930s, the Soviet government unified the higher education system within the USSR.

For a long period of time, the norms governing the higher education establishments management remained almost unchanged. It was due to the years of war and reconstruction, when provisional norms were adopted.

The educational reforms of the 1970s and 1980s introduced teaching staff certification and created conditions for continuing education. On June 28, 1974, the Ukrainian SSR Public Education Act was adopted, which defined the system of public education in the Ukrainian SSR, which included preschool education; general secondary education; extracurricular education; vocational and technical education; vocational secondary education; higher education (Article 5). Under Article 8, the management of the public education case was carried out by the highest bodies of state authorities and state administration bodies of the USSR

and the Ukrainian SSR, as well as local parliamentarian council and their executive committees [26].

Therefore, the second stage of development of legislation on higher education (1920-1990) is associated with the fact that during the existence of the USSR, the management of higher education had its own peculiarities, as far as the political system of Soviet government and the state apparatus differed from the modern state democratic structure, and on its territory there were state bodies that existed only under the communist regime. Higher education management was carried out centrally by legislative acts of both the republican and all-union levels, in the complete absence of autonomy of higher education establishments.

With the declaration of independence of Ukraine, the main directions of development of higher education were deideologization and humanization of the education, as well as the transition from elitism to massification. Creating the private-sector higher educational establishments can be identified as the main feature of the development of higher education in the 90s of the twentieth century.

The expansion of the higher education establishments network became possible with the introduction of diversification of funding sources for such establishments.

The beginning of the creation of the legislative basis of the Ukrainian higher education system was Ukraine's Education Act adoption in 1991, Academic and Scientific and Technological Activities Act as well as the approval of the State National Program Education in Ukraine of the XXI century.

During the first 10 years of Ukraine's independence, the education branch was largely reformed. The key aspect in the sphere of education reform was Ukraine's Education Act adoption in 1991. This Act laid the foundation for

reforming the national education system in accordance with academic traditions and current best practices of European higher education. Thus, according to the Act requirements, higher education establishments developed and implemented new curricula and educational programs as well as switched to three-stage training (bachelor, specialist, and master). Higher education establishments autonomy in management activities became a valuable acquisition, especially in the organizational and financial principles of their functioning.

It was important to set a multi-level accreditation system for higher education establishments. Thus, technical and training schools were assigned to the 1st level, colleges were assigned to the 2nd level, and institutes, academies and universities were assigned to the 3rd or 4th level (Cabinet of Ministers of Ukraine Approval of the Regulations on Accreditation of Higher Education Establishments and Specialties in Higher Educational Establishments and Higher Technical Schools). All the above-mentioned establishments were included in the higher education system, and the introduction of licensing and accreditation procedures ensured state control over their educational activities.

In order to improve the quality control system of higher education in accordance with European standards, Ukraine has established a system of state management authorities in this area, specifically, the Ministry of Education and Science of Ukraine; ministries, national agencies and services, and subordinate educational establishments; local state executive authorities, local self-government bodies, and subordinate education management bodies.

Characteristic of the third period of development of the national higher education system was the adoption of a number of bylaws aimed at improving the administrative regulations, and

therefore management in this area. Subsequently, we can distinguish the following acts of that period:

– resolution of the Cabinet of Ministers of Ukraine about The Approval of the Regulations on the Academic Teaching Staff Training № 309 of March 1, 1999 [22]; Documents on Education and Academic Titles № 1260 of November 12, 1997 [14]; The Approval of the State Higher Education Establishments Regulations № 1074 of September 6, 1996 [20], The Approval of the Regulations on Educational and Qualification Levels (a Degree System of Education) № 105 of January 20, 1998 [21], The List of Directions and Specialties in Which Specialists Are Trained at Higher Education Establishments Corresponding to the Educational Qualification Levels № 507 of May 24, 1997 [28], The Development of State Standards of Higher Education № 1247 of August 7, 1998 [30], The Approval of the List of Positions of the Academic Teaching Staff № 963 of June 14, 2000 [19], The Activities Licensing for the Provision of Educational Services № 1019 of August 8, 2007 [24], The Approval of the National Qualifications Framework № 1341 of November 23, 2011 [18] and others;

– Decrees of the president of Ukraine about The National Doctrine of Education Development [23]; Measures to Improve the Higher Education System of Ukraine of February 17, 2004 [23]; Ensuring the Further Development of Higher Education in Ukraine of September 25, 2008 [15]; The National Strategy for the Development of Education in Ukraine up to 2021 of June 25, 2013 [27] and others;

– Acts of central executive authorities: orders of the Ministry of Education and Science On Conducting a Pedagogical Experiment on the Credit-Modular System of Organizing the Educational Process №48 of

January 23, 2004 [29], On Approval of Licensing Conditions for the Provision of Educational Services № 847 of December 24, 2003 [16], On Approval of the Action Program for the Implementation of the Provisions of the Bologna Declaration in the System of Higher Education and Science of Ukraine for 2004-2005, the decision of the Ministry of Education and Science Board about Improving the Effectiveness of Higher Education and Science as an Effective Development and Integration into the European Community, orders of the Ministry of Education and Science On Approval of the Strategy for Ensuring the Quality of Higher Education in Ukraine and Its Integration into the European and World Educational Community up to 2010, On the Introduction of the European Credit-Transfer System in Higher Education Establishments of Ukraine, The State National Program Education (Ukraine of the XXI century) [13], etc.

Ukraine's Education Act adoption on January 17, 2002 was a new turning point in reforming of higher education activities in the context of European integration [12]. By this legislative act, the citizens had the constitutional right of the state to higher education. However, this Act had significant drawbacks that hindered the provision of higher education establishments with more complete autonomy, in accordance with the requirements of the Bologna Process, mainly, in management and finance. In addition, this regulatory act did not solve the issue of practical training low level of future specialists.

The adoption background of a new Education Act of July 1, 2014 was Ukraine's election of the European development direction, signing in 2014 The Association Agreement between Ukraine and the European Union (EU), provided for clear obligations to adapt the Ukraine legislation on higher education to EU legislation [10],

bringing it in line with European standards and the development needs of modern society [11].

Modernization of licensing and accreditation procedures has the primary importance and necessity. Currently, state administration bodies have managed to create a unified system of legal relations regulation in higher education establishments, based on state and industry standards of higher education, licensing, accreditation and certification procedures, as well as control over the organization of higher education establishments' activities. The legal backgrounds of these processes are the following normative legal acts as resolution of the Cabinet of Ministers of Ukraine On the Creation of a Unified State Electronic Database on Education №752 of July 13, 2011 [8], resolution of the Cabinet of Ministers of Ukraine №1187 of December 30, 2015 with amendments and additions On Approval of Licensing Conditions for Educational Activities [17], etc.

Pursuant to Article 17 of Higher Education Act, the National Agency for Higher Education Quality Assurance (Agency) was established. The legal status of the Agency as a permanent board for the implementation of state policy in quality assurance of higher education is determined by articles 17-18 of the Act 2014 [11], resolution of the Cabinet of Ministers of Ukraine № 244 of April 14, 2015 On the National Agency for Higher Education Quality Assurance Formation [31]. The external higher education quality assurance system in Ukraine is currently at the harmonization stage of the national higher education quality assurance system with the standards and recommendations of the European Community.

One of the directions of state policy in higher education management is the establishment of criteria for individuals applying for the position of head of a

higher education establishment. Above all, such individuals should have proper managerial abilities, an impeccable reputation, as well as high personal qualities and professional achievements. Thus, paragraph 10, Part 3, Article 42 of the Act [11] defines that the founder (Ministry of Education and Science of Ukraine) enters into a contract with a person (candidate) chosen as the head of a state-owned establishment, where not only the higher education establishment's performance targets is determined, but also the time frame for achieving and mechanisms of its checking is shaped. In case of signing the contract, the person must ensure the achievement of it in the position of head.

The current, third stage of development of the national legislation on higher education management is characterized by the reform of the higher education system on the basis of adopted legislative and bylaws, especially, Ukraine's Higher Education Act of 2014, the creation of conditions for the autonomy of the higher education establishment management, the introduction of bodies and institutions for monitoring the higher education quality standards and recommendations of the European Union.

Conclusions and research perspectives. Consequently, our research carries out a part of historical excursion and analysis of the national legislation development on the higher education establishment management, which can be divided into three stages (periods):

– the first stage of development of legislation on the higher education establishments management (XIX - 1920) is associated with the adoption of the Provisional rules about the higher education establishments management of the Ministry of public education of August 27, 1905 and legislative acts

regulating the higher education establishments management;

– the second stage of development of legislation on higher education (1920-1990) is characterized by total regulation of the activities, specifically, the management of higher education establishments, and the complete absence of their autonomy;

– the third stage of development is characterized by the formation of a current higher education system, the harmonization of higher education with EU legislation, the expansion of the autonomy of higher education establishments, etc.

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Received: February 16, 2021

Accepted: March 12, 2021