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ECONOMIC AND LEGAL ASPECTS OF THE FUNCTIONING OF UKRAINE EDUCATION SYSTEM AT THE CURRENT STAGE

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ЕКОНОМІКО-ПРАВОВІ АСПЕКТИ ФУНКЦІОНУВАННЯ СИСТЕМИ ОСВІТИ УКРАЇНИ НА СУЧАСНОМУ ЕТАПІ

The article considers a few questions of development of the educational system in Ukraine, in particular, some economic- and organizational-legal aspects of its functioning at the present stage. It is underlined that the optimization of state regulation, the improvement of legal mechanism, the extending of public participation in the management and further development of academic freedom and autonomy of universities, the improvement of education governance and management etc. are of great importance.

The main regulatory and legal acts that determine the organization and functioning of the educational sector in Ukraine are considered and analyzed. These are the Constitution of Ukraine, the Laws of Ukraine “On Education”, “On Higher Education”, the National Doctrine of Education Development (approved by the

Decree of the President of Ukraine on April 17, 2002), the Higher Education Development Strategy for 2021–2031, the Law of Ukraine on the Fundamental Principles of State Supervision (Control) in the Field of Economic Activity, the decrees of the President of Ukraine and program documents: “On the Regulations on the National Institution (Institution) of Ukraine” on 16 June 1995, the State National Program “Education” (“Ukraine of the XXI century”), the National doctrine of Education Development, which outline the system of conceptual ideas, views, strategic directions, principles, and specific ways to reform and develop the educational sector.

It is emphasized that the system of the legal acts and legislation regulating education in Ukraine makes it possible to ensure the compliance of educational-proficiency level of specialist training with requirements of the modern society and economy, and the labor market in Ukraine. At the same time, a number of issues such as adaptation of the Ukrainian legislation to the European standards and principles; excessive centralization of universities management; bureaucratic procedures; cumbersome, inflexible management structures of universities; strengthening university autonomy, increasing their accountability and transparency haven't been solved. An acute problem is education financing. The factor constraining the development of education is a lack of science-based standards for logistical and financial support, as well as the standards for government orders for specialist training.

Practical recommendations for reforming higher education, overcoming complexities and shortcomings in this area, building and strengthening the legal framework, developing education from the perspective of the modern market economy on both the content of training and the form of the organization and management of educational processes are proposed.

Розглянуто деякі питання розвитку системи освіти в Україні, зокрема окремі економіко- та організаційно-правові аспекти її функціонування на сучасному етапі. Підкреслено, що велике значення мають оптимізація державного регулювання, удосконалення правового механізму, розширення участі громадськості в управлінні та дальший розвиток академічної свободи та автономії університетів, удосконалення управління освітою тощо.

Проаналізовано основні нормативно-правові акти, що визначають організацію та функціонування освітньої галузі в Україні: Конституція України, Закони України «Про освіту», «Про вищу освіту», Національна доктрина розвитку освіти (затверджена Указом Президента України від 17 квітня 2002 р.), Стратегія розвитку вищої освіти на 2021–2031 роки, Закон України «Про основи державного нагляду (контролю) у сфері господарської діяльності», укази Президента України та програмні документи: «Про Положення про Національну заклад (установу) України» від 16 червня 1995 р. Державну національну програму «Освіта» («Україна XXI століття»), Національну доктрину розвитку освіти, в яких викладено систему концептуальних ідей, поглядів, стратегічних напрямів, принципів і конкретних шляхів реформування та розвитку освітньої сфери.

Наголошується, що система нормативно-правових актів та законодавства, що регулюють освіту в Україні, дозволяє забезпечити відповідність освітньо-кваліфікаційного рівня підготовки спеціалістів вимогам сучасного суспільства та економіки, ринку праці в Україні. Водночас, ряд питань, таких як адаптація українського законодавства до європейських стандартів і принципів; надмірна централізація управління університетами; бюрократичні процедури; громіздкі, негнучкі структури управління університетами; зміцнення автономії університетів, підвищення їх підзвітності та прозорості не вирішено. Гострою проблемою є фінансування освіти. Фактором, що стримує розвиток освіти, є брак науково обґрунтованих стандартів матеріально-технічного та фінансового забезпечення, а також стандартів державного замовлення на підготовку спеціалістів.

Запропоновано практичні рекомендації щодо реформування вищої освіти, подолання складнощів і недоліків у цій сфері, розбудови та зміцнення законодавчої бази, розвитку освіти з позиції сучасної ринкової економіки як щодо змісту навчання, так і щодо форми організації та управління освітнім процесом.

Keywords: *educational resources, education, legal mechanism, market conditions, state regulation.*

Ключові слова: *освітні ресурси, освіта, правовий механізм, ринкові умови, державне регулювання.*

Introduction. Qualitative changes in the economy due to the emergence and spread of new technologies and production processes also determine the high dependence of further development of each country on the ability its citizens to acquire, transfer new knowledge in both the manufacturing sector and everyday life. Knowledge is a central element in the current paradigm of production. That is why changes in education are one of the decisive factors of socioeconomic progress in the current market conditions. This conditions the strategic importance of educational resources for the state and society and therefore the need to monitor and control the process of their formation and development.

Hence it is logical and natural to provide proper state regulation of the educational sector, in particular, improvement of the organizational- and institutional-legal bases of the education system, which also presumes the optimization of legal mechanism, the expansion of public participation in the management and further development of academic freedom and autonomy of universities, the improvement of the situation in educational management etc. with the indispensable retention of state influence and public support in various forms.

Literature review. Among the wide range of the scientific issues being considered by economic theory, educational issues occupy a special place because under current market conditions a society that possesses significant educational potential and has qualified educational resources is able, through appropriate institutional levers, to quickly activate the factors stimulating qualitative structural upgrades of the economy and obtain positive general economic outcomes within a short time period.

That is why a lot of attention has been paid to the issues of the functioning of the education system by national economic science. Specific issues of education development are considered in the works of Philip H. Coombs, F. Machlup, T. Schultz, G. Becker, B. Weisbrod, E. Denison, P. Robinson, E. Kohn, M. Bayer, S. Strumilin, V. Zhamin, S. Kostanian, V. Komarov, B. Remennikov, H. Bashnianyn, V. Zhuravskyi, M. Zghurovskyi, S. Zlupko, I. Kaleniuk, K. Korsak, K. Levkivskyi, S. Trubych, T. Finikova, M. Shkil, H. Shchekin et al.

Problem. The qualitative changes in the economy due to the emergence and spread of new technologies and production processes also determine the high dependence of further development of each country on the ability of its citizens to acquire, transfer new knowledge in both the manufacturing sector and everyday life. Knowledge is a central element in the current paradigm of production. That is why changes in the education area are one of the decisive factors of socioeconomic progress in the current market conditions. This conditions the strategic importance of education for the state and society, and therefore the need to monitor and control the process of its modernization and development.

Hence, it is logical and natural to provide proper state regulation of the educational sector, in particular, improvement of the organizational- and institutional-legal bases of the education system, which also presumes the optimization of legal mechanism, the expansion of public participation in the management and further development of academic freedom and autonomy of universities, the improvement of the situation in educational management etc. with the indispensable retention of state influence and public support in various forms.

Basic material. Since Ukraine's independence, there have been significant changes in the organization, management, and governance of education, its financial and economic mechanism. The new foundations for the legal organization and functioning of the educational sector in Ukraine were laid down. In particular, the Constitution of Ukraine, the Laws of Ukraine "On Education", "On Higher Education", "On Scientific and Scientific-Technical Activities", "On State Forecasting and Development of Economic and Social Development Programs of Ukraine" (on March 23, 2000, No. 1602-III), Resolution of the Cabinet of Ministers of Ukraine "On the development of forecast and program documents of economic and social development and drawing up projects of the Budget Declaration and the state budget" (on April 26, 2003, No. 621 as amended on April 17, 2019, No. 335), Regulations on the Ministry of Education and Science of Ukraine (Decree of the Cabinet of Ministers of Ukraine on October 16, 2014, No. 630), the National Doctrine of Education Development (approved by the Decree of the President of

Ukraine on April 17, 2002, No. 347/2002), the Decree of the President of Ukraine “On the Goals of Sustainable Development of Ukraine for the Period Until 2030” (on September 30, 2019, No. 722/2019), etc.

Strategic directions, principles, and concrete ways of reforming and developing the educational sector have been identified in the Higher Education Development Strategy for 2021–2031. The document was developed in compliance with the Decree of the President of Ukraine “On the Improvement of Higher Education in Ukraine” (on July 3, 2020, No. 210/2020) and the relevant instructions of the Prime Minister of Ukraine (No. 23502/2/1-20 dated 12.06.2020 and No. 23502/3/1-20 dated June 13, 2020).

The strategy for the development of higher education determines the place of higher education in the society and economy of the country through the formulation of the mission and vision, the main strategic and operational goals and tasks for their achievement, the mechanism of implementation and monitoring, expected results and methods of their measurement [1, p. 3].

The need to improve the quality of educational activities of higher educational institutions and the education quality obtained in them led to the development and adoption of acts such as the National Doctrine for Education Development, approved by the Decree of the President of Ukraine on 17 April 2002, № 347 /2002; the Program of Action for the implementation of the Bologna Declaration in Higher Education and Science of Ukraine, approved by the Ministry of Education and Science of Ukraine on 23 January 2004, № 49, the Decree of the President of Ukraine on 17 February 2004, № 199 /2004 “On measures to improve the higher education system of Ukraine”, the State Program of Development Higher Education for 2005-2007, approved by the Cabinet of Ministers of Ukraine of 08.09.2004, № 1183, the State target scientific-technical and social program “Science in universities” for 2008-2012, approved by the Cabinet of Ministers of Ukraine of 19.09.2007, № 1155.

One of the first steps in restructuring the national level regarding education was the adoption of the State National Program “Education” (Ukraine of the XXI Century). The National Doctrine for Education Development, approved by the

Decree of the President of Ukraine on April 17, 2002, which defined the system of conceptual ideas and views on the strategy and main directions of development of education in the first quarter of the XXI century, was its logical extension [2].

Ukraine is committed to developing a modern education for the 21st century, and it has taken a number of key steps to make this happen. The reforms introduced following the Euromaidan Revolution have generated great optimism by decentralizing and democratizing the education system, while laying the foundations for greater alignment and integration with European norms and standards in education. Despite Ukraine's impressive foundations in and history of education, the system appears misaligned with the changing needs of the economy and the population [3, p. 8]

The Law of Ukraine "On Education" 2017 is designed to overcome education failures and setbacks, bring it to sustainable dynamic development; it is one of the basic components of the legislation of Ukraine on education, which defines the legal requirements for the organization and functioning of the education system in Ukraine, its legal, institutional, financial and other bases.

1. This law, as stated in its preamble, is aimed at regulating social relations arising in the process of realization of the constitutional human right for education, rights and responsibilities of physical and legal persons participating in implementation of this right and establishes powers of the state authorities and bodies of local self-government in the area of education [4].

2. The law also regulates the educational activity in the territory of Ukraine, which, according to Art. 43, performed by institutions of education based on the license issued by a licensing body in accordance with the legislation:

- for institutions of higher, postgraduate, pre-tertiary vocational education, vocational education and training – by the central executive authority in the area of education and science;

- for institutions of preschool and general secondary education – by the Council of Ministers of the Autonomous Republic of Crimea, oblast, Kyiv and Sevastopol City state administrations.

The new Law of Ukraine “On Higher Education”, adopted in 2014, establishes basic legal, organizational and financial principles of operation for higher education system; provides conditions for strengthening co-operation of government authorities and businesses with the institutions of higher education based on the autonomy of the latter, as well as for combining the education with science and production in order to train competitive human assets for high-technology and innovative development of the country, allow self-realisation of personality, and meet the needs of society, labor market and the state in qualified specialists [5]. The Law has undergone many revisions so far, which can make the higher education legislation unstable and the education system vulnerable.

Under the action of these laws private schools also fall. Thus, higher education institution governance structure, the admission and learning rules, the names and types of higher education institutions and their structure, as well the structure of academic degrees, the teaching staff and the name of respective positions and the career growth rules, the rights and responsibilities of students are uniform throughout the country. The only difference between state and non-state educational institutions is the sources of funding and ownership.

A notable place among higher education institutions is occupied by those which have been bestowed the status of “National”. The regulations of the national institution approved by the Decree of the President of 16 June 1995. The status of “National” is granted to an institution that has achieved the strong performance in its activities on the use of the intellectual potential of the nation, the realization of the idea of national revival and development of Ukraine, the implementation of the official language and is a leader among the industry establishments. To ensure the functioning of a national institution and monitoring its activities, a supervisory board is created, the personal staff of it is approved by the government and funding is allocated by separate regulations established by the Cabinet of Ministers of Ukraine [6].

The establishment, reorganization and liquidation of the institution of higher education is defined by the Law of Ukraine “On Higher Education” and by the

relevant resolutions of the Cabinet of Ministers of Ukraine and is implemented by the compulsory procedures for licensing and accreditation.

The decision on the establishment, reorganization (merger, accession, division, transformation) or liquidation of the institution of higher education shall be made:

- 1) for state-property institutions – by the Cabinet of Ministers of Ukraine;
- 2) for municipal-property institutions – by the relevant local governments;
- 3) for private-property institutions – by individuals and/or legal entities in accordance with the law, including religious organizations having the statutes (provisions) registered as stipulated by the legislation [5].

Separate legislative solution requires the problem of postgraduate education in training, retraining, and second higher education, which is now mainly carried out at the expense of individuals and businesses, usually on the job.

The activities of state supervision (control) bodies over subjects of educational activity (business subjects in the field of education), which are educational institutions of all forms of ownership in accordance with the Law of Ukraine “On education” (Art. 22), are regulated by the Law of Ukraine on the Fundamental Principles of State Supervision (Control) in the Field of Economic Activity [7].

It is mandatory for all areas of education and educational institutions of all forms of ownership to be supervised (controlled) by

- licensing authorities,
- fiscal policy implementation bodies,
- bodies of supervision (control) for ensuring the safety of life, in particular, compliance with laws on man-made and fire safety, civil protection and sanitary legislation,
- labor inspection bodies,
- other bodies of state supervision (control) over all components of the business entity's activities, which any entities of educational activity are.

The Law of Ukraine “On Education” (adopted in 2017) started creating a system for ensuring the quality of education in Ukraine. The State Service for the Quality of Education in Ukraine (SSEQU) is responsible for the functioning of this

system in general secondary, preschool and out-of-school education. It acts as both a body for ensuring the quality of education and a body of state supervision (control) over the activities of educational institutions and other subjects of educational activities.

The main supervision (control) measure on the part of the SSEQU and its territorial divisions is an institutional audit - a comprehensive external audit and evaluation of the educational and management processes of an institution of education (except for institutions of higher education), another subject of educational activity, ensuring its effective operation and sustainable development.

According to the law on Higher education, the system used by the institution of higher education to ensure the quality of educational activities and quality of higher education (internal quality assurance system) is now evaluated by the National Agency for Higher Education Quality Assurance or accredited by it independent entities for higher education quality evaluation and assurance upon the institution's request in order to determine the system's compliance with the requirements for higher education quality assurance system approved by the National Agency for Higher Education Quality Assurance [5].

The National Agency for Higher Education Quality Assurance has fairly broad powers:

- forming the requirements for higher education quality assurance system, elaborating provisions on accreditation of educational programs and submitting them for approval to the central executive authority for education and science;
- analyzing the quality of educational activities conducted by the institutions of higher education;
- conduct the institutional accreditation;
- conducting accreditation of educational programs used to train higher education applicants;
- forming quality evaluation criteria for educational activities (including scientific achievements) conducted by Ukrainian institutions of higher education, which can determine the ratings of Ukrainian institutions of higher education;

- accrediting the independent entities for higher education quality evaluation and assurance, as well as maintaining their register, etc.

Thus, the education legislation regulating the functioning of higher education in Ukraine makes it possible to ensure the compliance of educational-proficiency level of specialist training with requirements of the modern society and economy, and the labor market in Ukraine.

However, the issue of adaptation of Ukrainian legislation to the principles in force in the European educational space is unresolved. There are still unresolved problems related to excessive centralization of HEIs management (it is most acutely palpable in allocating resources, choosing research topics by units), bureaucratic procedures, cumbersome, inflexible management structure of HEIs. The issue of strengthening the autonomy of HEIs, the democratization of their life, including the right of managers, Academic Boards to independently form the staff list, and make amendments to the budget is unresolved. Despite the rise of the social importance of the development and modernization of postgraduate education in Ukraine, a legal framework for the effective implementation of its functions in this sphere is not yet formed.

The problems associated with standardization of education are quality of education, unification and adaptability of educational programs, clarity of their content and possibility of practical implementation, recognition of educational documents.

The actual problem is public funding for higher education. The state has not created the conditions for the realization of the full requirements of the educational legislation, relevant resolutions of the Cabinet of Ministers and presidential decrees.

The factors constraining the development of higher education are a lack of science-based standards of logistical and financial support, as well as the norms of state orders for specialist training.

Corruption, including a mass disregard for academic integrity and a high tolerance for academic violations, also poses an ongoing challenge to education quality and the signaling power of credentials. Although corrupt access to the higher

education system has diminished since the introduction of the External Independent Test (EIT) in 2008, other issues persist, such as academic dishonesty and systematic violations of academic integrity principles, including cheating during exams and plagiarism. These instances are commonplace and are not perceived as abuses. Different estimates indicate that at least 25–30 percent of students have directly engaged in academic misconduct or bribery, with a much larger share exposed to and familiar with such practices. Given that higher education is central to public and private sector development and is a primary driver of social mobility, this challenge remains a major concern for the higher education system [3, p. 10]

Economic reform, "the transformation to a more knowledge hungry economy from a manual industrial level require need for problem-solving and innovation adaptations [8, p. 23)", which requires in turn appropriate legislative changes in education, in particular. Here we should mean, first of all, the compliance of Ukraine's educational legislation with the international standards; legal support for innovation development of the education system; harmonizing the legal framework of the educational and scientific fields; using legislation as an instrument of indirect regulation; facilitating the attraction of additional (public and private) funds for fundamental research, developing and implementing new technologies, retraining and improving the staffing qualification; providing the conditions for partnership between science and business, HEIs and industry.

The laws regulating relations in the field of higher education should be democratic and humanistic, encourage creativity, provide a choice of learning models and technologies, facilitate self-determination of participants of the educational process as self-sufficient persons.

The improvement of the educational legislation of Ukraine should be market-directed, focused on the development of education from the viewpoint of the modern market economy on both the content of learning, and the form of organization and management of educational processes. The market orientation of educational laws is a general requirement, norm, and standard of stable development of the state and society. The rules regulating not only choice of an educational institution type, the

content of subjects or courses, but also the nature of the learning process, especially its practical component, should be reinterpreted. The preparation of a person for life and labor in the market conditions should be carried out according to the logic and content of these relations.

Solving the problems arising in the process of functioning of the higher education system demands further improvement and development of the legal basis, including making appropriate additions and changes to the existing laws, the adoption of new laws and other legal and regulatory documents.

Modernizing the economic, organizational and management component of the education system requires taking measures aimed to optimize the use of existing resource possibilities and also attract additional funds to the education system and increase the micro-economic efficiency of educational institutions. The measures aimed at structural rebuilding the educational system, transiting to capitation funding along with a full-scale deployment of education quality control should be implemented in their entirety. At the same time, the creation of the national distance education system based on open knowledge banks, learning and teaching materials, textbooks and assignments should be completed. This will enable students to realize free choice of educational institutions, and to lift the country's educational environment to a higher level.

The effectiveness of education is directly linked to decentralization and regionalization of managing by it. In addition, it is very important that the education system be provided with well-trained and qualified managers who possess necessary information, modern methods of analysis, research, and calculation.

Regional needs for quality education may be well provided by the regional components of state educational standards and programs, the implementation of which should be funded from regional budgets. It is expedient to train specialists from the regional sources of finance, first of all:

- in the areas important for the formation and development of specific features of the regional infrastructure of a given market;

- in the specialties and industries, product prices and profitability of which are regulated at the regional level;
- in the specialties and industries that provide the region budget execution.

The cities that have educational institutions may participate in ensuring the functioning and development of education via direct funding by the city budget, and via indirect funding by providing preferential heat, electricity, gas, water, radio, telephone tariffs, other services, interest-free and preferential loans etc. to educational institutions.

Orders from businesses and organizations can take the form of long-term contracts with educational institutions for training and retraining. Within the contract, the company pays for the entire cycle of learning for a particular group of students, thereby getting the right to select senior students for the internships and hiring, and also order necessary special courses and training cycles, taking into account the existing needs. The amount of funding for specialist training for businesses is determined by the institution itself and is not regulated by education management bodies.

The formation and strengthening of positive public opinion among employers and population, the implementation of legal protection of subjects of the educational services market (primarily consumers) from monopoly, from dishonesty in business and false advertising through confirmation of the quality of educational services are of great importance for the development of education. Almost every program decision of the authorities should be accompanied by studying the issues of appropriate educational support and staffing.

Another important factor influencing the development of education is state regulation. As some researchers point out, the main characteristic features of modern Ukrainian higher education system are low efficiency of state regulation; lack of development strategy and its specification; low quality of education; costly mechanism of state funding [9, p. 108].

At the same time, the current stage of society and state development, the new tendencies of the legal management of social processes pose the problem of improving the legal mechanism of the organization of education management.

With the help of state regulation, one may affect the system in the right direction for society. And the main indicator of the government's role in a market socioeconomic situation, especially in ensuring the realization of the constitutional rights of citizens, is the institution of legal regulation.

The content of state influence in the new conditions covers forecasting and planning, organizing and registering function, activity regulation, i.e., establishing the limits of acceptability and prohibitions (the regulation can also be carried out by direct effects, i.e., by direct management, when it comes to objects of state-owned property), and control.

Ukraine has a highly educated population, but the education system needs to focus more on quality over quantity and on meeting the evolving skills needs of the labor market. With this in mind, three dimensions of education are very important: effectiveness, including quality and relevance; equity and inclusiveness; and resource efficiency.

The organization of state regulation of higher education should provide a balance of public and private interests in this area and reflect all the features enumerated above. To ensure the efficiency of the functioning of the higher education system it is also necessary, together with compulsory state support, to preserve the governmental-public management style, to develop university and student self-government, to reflect the creation of regional educational complexes organizationally and regulatorily. This is the task which should be solved by the respective legal mechanism based on the necessary regulatory framework.

Conclusions. The Constitution and education laws and regulations lay the legal basis for the state and public governance of education in Ukraine. And just such governance principles, set by the Constitution and laws, – the people as the only source of power, the division of power into legislative, executive and judicial power, the democratic and republican form of government, the rule of law, human rights and

freedoms and their guarantees as the main duty of the State, political, economic, ideological, and cultural diversity, the legitimacy of governance that manifests in certain legal forms, determine the formation, functioning and development of social relations in education.

These principles define the main purpose and directions to further improve the legislation of Ukraine regarding education. The Ukrainian education should be transformed into an innovative environment where students will learn key skills essential for each modern person to succeed in life, and scientists will have opportunities and resources to conduct research directly contributing to the country's socioeconomic and innovative development.

A good government, responsible society, and competitive economy can be achieved by a cohesive community of creative thinkers, accountable, active and initiative persons. Education institutions are the places where these qualities are nurtured.

The education sector should be capable of offering tools for achieving and maintaining social equality and cohesion, economic development and competitiveness of Ukraine.

All the above-said outlines the theoretical and methodical foundation for justifying principles of state policy in education, the use of new forms and methods of influence adequate to goals, objectives, and functions of education in the modern Ukrainian society. That also suggests the need to improve the legislation in regard to this area and change the economic and legal relations, taking account of the new global, cultural, demographical, socioeconomic political, etc. realities.

Recent history has left Ukraine with two lost opportunities: in 1991, when the country was enjoying its brand-new independence, and in 2004, at the time of anti-government protests that culminated in the Orange Revolution. In both cases, the country could have experienced a significant transformation of its economic structures and processes. But this didn't happen, and for the twenty years up to the 2013–2014 Euromaidan revolution, Ukraine was stuck with an economic system that couldn't choose between the free-market and post-Soviet worlds.

The post-Euromaidan phase can be seen as a new and more successful attempt to break with the rules and habits that have emerged since the end of the Soviet order. The Russian invasion interrupted this potentially successful movement, but paradoxically it can provide plenty of opportunity for rapid post-war reconstruction and recovery of the Ukrainian economy and entry to a new level of socioeconomic advancement. A good education system could play an essential role and become an important tool for achieving success.

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