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THE MAIN WAYS OF ORGANIZATIONAL AND LEGAL FUNDAMENTALS IMPROVEMENT OF THE LEGAL EDUCATION MANAGEMENT IN UKRAINE

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The particular ways of organizational and legal fundamentals improvement of the legal education management in Ukraine, that should be enshrined into the new law of Ukraine "On Higher education" in the context of the extension of the normative legal regulation of academic, regulatory, institutional, personnel and financial fundamentals of the autonomy of higher education institutions, harmonization of the Ukrainian system of lawyers training to the appropriate systems of European countries taking into account the features of the national legal education are suggested in the article.

Key words: legal education, higher education, organizational and legal fundamentals, autonomy, harmonization.

Мартынов Н.П. ОСНОВНЫЕ ПУТИ СОВЕРШЕНСТВОВАНИЯ ОРГАНИЗАЦИОННО-ПРАВОВЫХ ОСНОВ УПРАВЛЕНИЯ ЮРИДИЧЕСКИМ ОБРАЗОВАНИЕМ В УКРАИНЕ / Запорожский национальный университет, Украина

В статье предлагаются конкретные пути совершенствования организационно-правовых основ управления юридическим образованием в Украине, которые должны найти свое законодательное закрепление в новом Законе Украины «О высшем образовании» в контексте расширения нормативно-правового регулирования академических, нормативных, институциональных, кадровых и финансовых основ автономии вузов, гармонизации украинской системы подготовки юристов с соответствующими системами европейских стран с учетом специфики отечественного развития, а также других тенденций развития отечественного юридического образования.

Ключевые слова: юридическое образование, высшее образование, организационно-правовые основы, автономия, гармонизация.

Мартинів М.П. ОСНОВНІ ШЛЯХИ ВДОСКОНАЛЕННЯ ОРГАНІЗАЦІЙНО-ПРАВОВИХ ЗАСАД УПРАВЛІННЯ ЮРИДИЧНОЮ ОСВІТОЮ В УКРАЇНІ / Запорізький національний університет, Україна

У новому Законі України «Про вищу освіту» в контексті розширення нормативно-правового регулювання академічних, нормативних, інституційних, кадрових та фінансових засад автономії ВНЗ, гармонізації української системи підготовки юристів з відповідними системами європейських країн з урахуванням специфіки вітчизняного розвитку, а також інших тенденцій розвитку вітчизняної юридичної освіти повинні:

- 1) Встановити певні критерії для організацій, які мають право контролю за якістю юридичної освіти та за механізмом такого контролю;
- 2) Закріпити принцип партнерства у проведенні Міністерством освіти і науки України перевірок університетів на відповідність акредитації та ліцензії (зміст цього принципу розкривається через обов'язок Міністерства освіти і науки України виявляти порушення законодавчих положень якості освіти: університетам надається період у 1-2 роки (залежно від порушень) на усунення причин та умов порушень, які їх призвели, з метою допомогти цьому університету виправитися вчасно (надаючи матеріальні, технічні та фінансові ресурси для прийняття організаційних заходів, таких, як забезпечення необхідними спеціалістами, залучення юристів з неурядових громадських організацій для вирішення визначених проблем);

- 3) Доручити університетам визначати зміст державних стандартів освіти на рівні 30-40% стосовно розподілу часу та відповідних змін у навчальному плані підготовки юристів залежно від ринкових потреб, регіональної доступності їх шкіл права, інше;
- 4) Визначити нове юридичне поняття освітнього процесу як системи організаційних, освітніх та дидактичних заходів, направлених на отримання відповідного освітньо-професійного, освітньо-наукового рівня патріотичного, морального, духовного, естетичного та фізичного розвитку людини (уникаючи усунення понятійних слів щодо освіти) та встановити ставки заробітних плат для керівників установ, які керують практикою студентів;
- 5) У розділі, присвяченому фінансовим та економічним відносинам у сфері юридичної освіти, забезпечити такі правила:
 - а) Закон України «Про державні закупівлі» не повинен застосовуватися до випадків, де університет за власний рахунок купує товари та послуги, які необхідні для забезпечення якості освітнього процесу та до інноваційних товарів, таких, як нове програмне забезпечення вітчизняного виробництва, нові підручники, посібники та інша нова продукція, як визначено у затвердженому Міністерством освіти і науки України переліку товарів та послуг.
 - б) неможливість вилучення земельних ділянок державних та муніципальних університетів без згоди засновника, контрольною радою та зборів університету та у відповідності до Земельного кодексу України;
 - в) право університетів, не залежно від власності, на постійне використання земель для того, щоб відповідно до Земельного кодексу України виконувати свої встановлені законом заходи.

Ключові слова: юридична освіта, вища освіта, організаційні та правові засади, автономія, гармонізація.

Modern problems of the quality of legal education mean that the current legislation of Ukraine on education (for example, the Law of Ukraine dated 23.05.1991 "On Education", State National Program "Education. Ukraine of XXI century", approved by the Resolution of the Cabinet of Ministers of Ukraine № 896 of 03.11.1993, the National Doctrine of Education Development, approved by the Decree of the President of Ukraine of 17.04.2002 № 347, Convention on the Recognition of Qualifications concerning the Higher Education in the European Region of 01.04.1997 p., ratified by the Law of Ukraine of 03.12.1999, № 1273) [1] slightly reflects the content of social relations in this area on their rule of law. Therefore, the public administration legal education becomes inefficient with such a rule of law. The situation of the legal education in Ukraine and its trends require deep deliberation, an objective assessment and new approaches on the part of the bodies of power that are able to the reform of education on the principles of democratization, humanization, entering on the equal rights in the European and international living space of high standards. As A. Halchynskiy fairly said "The inability of the authority to form a structural transformation strategy makes itself futureless" [2, 2].

Domestic scholars of administrative law are: V. Aver'yanov, A. Bandurka, V. Bevzenk, V. Bonyak, I. Golosnichenko, V. Zhuravskiy, V. Kovalenko, Y. Kozlov, I. Koliushko, T. Kolomoyets, V. Kolpakov, A. Komzyuk, R. Kuibida, A. Kuz'menko, W. Kurylo, R. Miller, A. Minchenko, N. Nyzhnyk, N. Onischenko, K. Romanenko, A. Svyatotsky, S. Stecenko, N. Suhytska, A. Shkolyk, L. Yuzkov and others, who are paying as much attention to both general theoretic aspects of administrative law and to general problems of public administration, management features of the socio cultural sphere, including the legal education, the development prospects of the legal education and other issues. However, scientists have not properly analyzed ways to improve organizational and legal basis of the management in the field of the legal education in Ukraine.

The purpose of this article is the need of the formulation of specific ways to improve the organizational and legal fundamentals of the legal education in Ukraine, which should find legislative consolidation in the new Law of Ukraine "On Higher Education" within the context of legal regulation of academic, regulatory, institutional, human and financial principles of autonomy of higher education institutions, the harmonization of Ukrainian system of the training lawyers with relevant systems of the European countries with taking into account the specificity of the national development.

The reform of the institution of the legal education envisages the efficiency improvement of the positive qualities of future lawyers (physiological and spiritual) that are necessary to them for healthy living in the society, an important component of which is the ability to socially useful work in the field of law. The trends of the reform became the national legislation harmonisation on education with the Education Law of Europe (for instance, with the Sorbonne Declaration of 25.05.1998, the Joint Declaration of the European Ministers of Education of Europe "European Space of the Higher

Education" of 19.06.1999), the bringing in line with the rules of international law (the Convention against Discrimination in Education dated 14.12.1960 and others) and the display in it the trends of the humanity development (globalization and glocalization, economic regionalization etc.). Taking into account these trends in the law-making and law enforcement it complicated by the specifics of the historical and cultural development of the Ukrainian nation in whole (which engenders problems of the determination of the level of integration in the European legal system and the unification of the national education, etc.) and of each specific area of knowledge in particular (in this case of the legal education). The oversaturation of the domestic and some foreign labour markets by lawyers, elementary legal ignorance of ordinary citizen in Ukraine and other features of the legal education in the current development of our society make it difficult to address its problems effectively and are making actual the work on such a task, requiring great attention of scientists.

Attention is drawn to the fact that the decisive importance for the Ukrainian society is first of all specialists who have a higher legal education. Problems with the quality of their training is the most complicated part (while studying at universities and advanced professional training during accomplishment of legal activity) and require immediate resolution. Therefore, it is advisable to concentrate mainly on the reform of higher education.

Among individual measures aimed at improving the quality of education, which are now partially implemented, are the recent approval of the Regulation "The national ranking evaluation system of a higher education institution", which provides the unification of criteria for determining the quality of education at a higher education institution, namely: processing similar information submitted by a higher education institution on its activities in a unified state electronic database (before the system implementation, rankings of a higher education institution compiled by NGOs on the basis of separate criteria: assessment of alumni, employers, a higher education institution web site visits and so on.) [3].

But most of the reforms in the education sector, including legal education, were not realized. A number of proposals for improving the organization and legal management of legal education contained in the registered draft laws at the Verkhovna Rada of Ukraine on higher education, namely: 1) № 9655 of 28.12.2011, the initiator (author) – M. Azarov, the Cabinet of Ministers of Ukraine 2) № 9655-1 of 30.12.2011, the initiator (author) – A. Yatsenyuk, L. Orobets 3) №9655-2 of 06.01.2012, initiator (author) – Y. Miroschnichenko.

One of the areas of improving the law legislation, disclosed in the above draft laws, should be the provision of more autonomy to higher education institutions. The theme tune of this aspect of the reform of organizational and legal management of legal education, we consider in S. Abakumov's words: "The authority is not interested in building the infinite growth of powers that are used autocratically. To be effective, the highest state authority doesn't need to interfere decisively everywhere" [4, 33-34]. The need to provide real autonomy to higher education institutions, which has been practiced long ago by leading universities of Europe and is a tool of improving the quality of education, introduction of competition of higher education institutions and their responsibility for their performance, said the President of Ukraine Viktor Yanukovich in his speech at the meeting of the Public Humanitarian Council in August 2010.

The term «a higher education institution's autonomy» is defined differently in the regulations. In the Declaration "On academic freedom and university autonomy" of 10.09.1988 was stated that autonomy is a right of a higher education institution, regardless of a state and other social forces to make decisions on internal management, finance, administration to set its own course of action in education, research, teaching and other related activities [5]. In the Erfurt Declaration "To the responsible university of the twenty-first century" of March 1-2, 1996 there is indicated that the state must respect academic freedom and autonomy, where the last refers to the right of independent academic institutions on the independent choice of the methods for the tasks realisation assigned to them, or defined by them [6].

In the draft law №9655 a higher education institution's autonomy is defined as a set, specified by the law, of legal rights and responsibilities of universities on performing of educational, scientific, economic and other activities, self-selection and placement of the staff in order to create the conditions necessary for obtaining of higher education and qualification by citizens. The draft law №9655-2 contains a brief concept of "university autonomy": university autonomy and independence in decision-

making on its activities in the extent provided by its statute and the law. The authors of the draft law №9655-1 do not define the term at all [7].

V. Tatsiy identifies types of higher education institution's autonomy: 1) academic – it is shown in the right of a higher education institution to develop their own curricula, programs, research areas, etc. 2) regulatory – opportunities independently develop statutory documents, accept and implement local regulations, 3) human resources – to prepare independently the manning table, to set the number of employees, to recruit faculty, etc. 4) financial [8]. We can also identify an institutional type (a right to form structural units, etc.) and other types of university autonomy. This classification of autonomous rights of higher education institutions helps to present their system and content schematically. Their specification is presented both in the writings of scientists and in perspective legislation.

Compared to the current Law of Ukraine of 17.01.2002 "On Higher Education" (article 29) the draft law №9655 expands the number and details of autonomous rights and self government of higher education institutions, recognising that they are being realised in accordance with the law and include the right: 1) to determine the forms of education and forms of the organisation of education process; 2) to hire pedagogical, scientific, academic and other employees; 3) to establish the rating assessment of educational, research and innovation achievements of those who studying and the rating assessment of teaching, research and academic staff 4) to provide additional educational and other services in accordance with the law, 5) to elaborate and implement independently their own programs of scientific, research, scientific and technological and innovation activity; 6) to introduce independently and terminate specialization, to determine their content and programs of optional subjects, 7) to establish, reorganize and cease the structural units in accordance with the law, 8) to make decisions about teaching of one or more courses in other languages, ensuring the knowledge of people who are studying the appropriate training subject in Ukrainian, 9) to carry out publishing and develop their own printing base, 10) to conduct joint activities, under the relevant joint agreements, with education institutions, research institutions and other legal entities, 11) to participate in the work of international organizations, 12) to introduce its own symbols and emblems, 13) to establish their own forms of moral and material incentives for staff of higher education institutions, 14) to address with the initiative to authorities, which are carrying out management in the higher education sphere, on amending the existing or development of new legal documents in higher education as well as to participate in the projects, 15) to use the lands in accordance to the law, 16) to carry out financial and economic, and other activities in accordance with the law and the statute of the higher education institution, 17) to manage their own revenues, including those obtained by providing additional charged services to obtainers of higher education and to other individuals and legal entities, 18) to open the current and deposit accounts in banks.

Thus, the draft law №9655 provides academic, regulatory, institutional, human and financial autonomy of higher education institutions, and its expansion is determined as a major principle of state policy in the field of higher education. In terms of the content and legal methodology, the disclosure of autonomy of higher education institutions in the draft law №9655 is made much more thoroughly and better than in the current Law of Ukraine of 17.01.2002 "On Higher Education". While there are issues that need to be completed. For example, under the current law of Ukraine "On Higher Education" a higher education institution has the right to use land plots in the manner prescribed by the Land Code of Ukraine (par.12 Part 2 of Art.29), which, in our estimation, is consistent with the Constitution of Ukraine and other laws of our state. At the same time, the in draft law №9655 envisages that such use of the land plots will be carried out in accordance with the law (par.16, Part 2 of Art.27).

The term "law" includes in its content also a subordinate legislation. The cumulative interpretation of this provision of the draft law №9655 and Part 2 of Art.14 of the Constitution of Ukraine, where it is stated that land ownership is acquired and exercised by citizens, legal entities and the State only in accordance with the law – that gives grounds to suggest that this provision of the draft law №9655 is unconstitutional. [9] We also consider that we should support the proposal of V. Tatsiy on the creation of a law group attached to the Council of Rectors of higher education institutions (it also can be done with the attachment to a other institution), which would be specialized in the realisation of problems of academic freedom of scientists and autonomy of university higher education institutions in Ukraine, in order to protect the interests of national education [8].

The drawback of the rule of law on higher education institution autonomy in the Law of Ukraine of 17.01.2002 "On Higher Education" and the draft law №9655 was the consolidation of an exhaustive

list of autonomous rights of higher education institutions that does not end with the words "and other autonomous law of higher education institutions, according to the current laws of Ukraine". However, the draft law № 9655-1 and № 9655-2 don't have such a drawback.

As an important direction of improvement of national legislation on education, including legal, became preservation of the management in higher education sphere by the central executive body on formation and implementation of national policy on education is Ministry of Youth and Sport of Ukraine.

Therein before (in the Section 1.1, when describing the organizational and legal forms of higher education institutions), we proved the ineffectiveness both of the training of lawyers by non-specialised higher education institutions (for example, Academy of Labour and Social Affairs [10]), and the subordination of the higher education institutions not to a single ministry – Ministry of Youth and Sport of Ukraine but to the whole number of other central executive authorities (Ministry of Culture of Ukraine – Kyiv National University of Culture and Art) and NGOs (for example, the Federation of Trade Unions of Ukraine manages the Academy of Labour and Social Affairs [11]).

In the draft law №9655 there are provided such changes in the management of higher legal education: narrowed the system of executive authorities, which subordinate higher education institutions that train lawyers, they are defined: the Prosecutor General's Office of Ukraine, the Security Service of Ukraine, the Administration of State Border Service of Ukraine. In connection with the transfer of authority of the Higher Attestation Commission of Ukraine to the authority of the Ministry of Youth and Sport, there are excluded the section IX "Preparation of scientific and pedagogical employees" and the Art.19 "The Credentials of the Higher Attestation Commission of Ukraine", of the current Law of Ukraine of 17.01.2002 "On Higher Education".

Adoption of standards of higher legal education to the requirements of OCD, the educational and scientific level of higher education institution graduates, an educational content, teaching terms and means of quality education diagnostic in the relevant speciality is also a part of a mechanism to ensure the quality of legal education.

In the draft law №9655 the higher education standards are defined as a set of rules governing the requirements of OCD, educational and scientific level of higher education institution graduates, an educational content, teaching terms and means of quality education diagnostic in the relevant speciality. According to this, we consider that the system "the state and industry standards, standards of higher education institutions" are replaced by the standards that lacking of an administrative hierarchy and reflect only educational and qualification (education and research) characteristics, educational and professional (education and research) programs and diagnostic tools of education quality diagnostics.

This horizontal approach to defining the essential standards of higher education, in our opinion, is reasonable and practically beneficial. Together with the existing division of the standards of higher education in state, sectoral, local (by a vertical principle), the new approach provides the same standards of quality and efficiency, enabling to synthesize the general terms of standards for all professions (or some group) and to separate the training specificity such as a lawyer (specific requirements for traineeship, access to a relevant legal framework in the Internet, etc.), adhering to significant in this regard (education quality) hierarchical relationships between the standards of higher education.

Therefore, based on the analysis of these problems, in our opinion, the new Law of Ukraine "On Higher Education" within the context of extension of normative legal regulation of academic, regulatory, institutional, personnel and financial fundamentals of the autonomy of higher education institutions, harmonization of the Ukrainian system of lawyers training to the appropriate systems of European countries taking into account the features of the national legal education, it is necessary:

- 1) to establish criteria for NGOs eligible to control the quality of legal education, and the mechanism of such control;
- 2) to entrench the principle of partnership in the implementation by the Ministry of Youth and Sport of Ukraine of the check of higher education institutions for compliance with the accreditation and licensing (we are discovering the content of this principle through the duty of Ministry of Youth and Sport of Ukraine at the detection of infringements of legal norms of quality of education: to provide a term in 1-2 years to such a higher education institution

(according to the type of infringement) for the elimination of the infringement, reasons and conditions that are assisted and to help such a higher education institution to eliminate the infringement in due time (by providing material, technical and financial resources to take organizational measures, such as providing required experts, involvement of NGOs, lawyers to resolve the identified problems);

- 3) to give the higher education institution a right to determine the content of state education standards at the level of 30-40% in the allocation of study time and changes in the curriculum of lawyers training, depending on the market demand, specificity of the region, availability of their own scientific schools of law, etc.);
- 4) to determine in the new law the notion of educational process as a system of organizational, pedagogical and didactic activities aimed at acquiring the appropriate educational and professional, educational and scientific program of specific educational and qualification, educational and scientific level and providing patriotic, moral, spiritual, aesthetic and physical development of the person (avoiding the removal from the notion of words on education), and to entrench the provision on labour payment from the management by the training of students for managers in the place of training;
- 5) in the section devoted to the financial and economic relations in the system of higher education, to include provisions:
 - a) in the following form: "The Operation of the Law of Ukraine «On Public Procurements» does not apply to cases where the higher education institution by its own funds carries out the procurement of goods, labour and services necessary to ensure the qualitative educational process and have innovative nature, and namely: new software of domestic production, new textbooks and other new products as defined in the approved list of promotion Ukraine of goods, labour and services by the Ministry of Youth and Sport";
 - b) on the impossibility of withdrawal of land plots of a state or municipal higher education institution without the consent of the founder, supervisory council and the conference of the higher education institution staff and in accordance with the Land Code of Ukraine;
 - c) on the right of the higher education institution, regardless of ownership, to receive the permanent use of a land, according to the Land Code of Ukraine, to carry out their statutory activities.

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RETROSPECTIVE ANALYSIS OF REGULATORY AND LEGAL ACTS ON COMBATING DOMESTIC VIOLENCE IN UKRAINE

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Article is devoted to the retrospective analysis of regulatory and legal acts on combating domestic violence in Ukraine. The author carried out a fundamental analysis of the Ukrainian legislation and international legal acts that are relevant to the problem, defines the essence of family violence and identifies the subjects that are engaged in its prevention.

Key words: domestic violence, family violence, prevention of domestic violence, the subjects of prevention of domestic violence, forms of domestic violence.

Омельянчик С.В. РЕТРОСПЕКТИВНИЙ АНАЛІЗ НОРМАТИВНО-ПРАВОВИХ АКТОВ ПО ПРЕДУПРЕЖДЕННЮ НАСИЛЛЯ В СЕМЬЕ В УКРАЇНЕ / Запорізький національний університет, Україна

Стаття посвячена проблемі розвитку законодавства України в сфері насильства в сім'ї. Автором проводиться фундаментальний аналіз українського законодавства та міжнародно-правових актів, які мають стосунок до даної проблеми, розкривається сутність насильства в сім'ї та визначаються суб'єкти, які займаються його попередженням.

Ключевые слова: домашнее насилие, насилие в семье, семейное насилие, предупреждение насилия в семье, субъекты предупреждения насилия в семье, формы насилия в семье.

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Проблема насильства в сім'ї набула особливої актуальності з проголошенням України незалежною державою, визнанням людини найвищою суспільною цінністю, забезпеченням і гарантією її прав і свобод, створенням демократичного, гуманного, правового і громадянського суспільства. У світі ця проблема спричинила прийняття численного ряду міжнародно-правових актів різними міжнародними організаціями, учасницею яких є і Україна. У зв'язку з цим, українським законодавцем було також розпочато бурхливу роботу із створення ефективного механізму протидії насильству в сім'ї.

Метою статті є здійснення ґрунтовного ретроспективного аналізу українського законодавства зі створення та розвитку інституту протидії домашньому насильству.

У статті комплексно проаналізовано Закон України «Про попередження насильства в сім'ї» від 15.11.2001 року та підзаконні нормативно-правові акти, прийняті задля ефективного виконання вказаного Закону. Розкрито форми домашнього насильства та суб'єктів із протидії йому. Окремо проаналізовано адміністративно-деліктний та адміністративно-деліктологічний аспекти попередження домашнього насильства. Зокрема, зроблено висновок, що проведення ефективної профілактичної роботи після вчинення адміністративного делікту має стати важливим кроком у попередженні такого злочину в родині.

Значна увага приділена вдосконаленню відповідальності за вчинення насильства в сім'ї. У ретроспективі проаналізована система адміністративних стягнень, доведено, що громадські роботи мають кращий профілактичний ефект із протидії насильству в сім'ї.