



PRESENT PROBLEMS IN STATUTORY REGULATION OF HIGHER EDUCATION IN UKRAINE

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Summary

The article defines civil legislation on granting of privileges at receipt in higher educational institutions and the allocation of social grants. The adjustments proposed at the legislative level, regulations in the development of a mechanism for the appointment and payment of scholarships.

Key words: disadvantaged social group, privileges, bursary, scholarship, statutory instrument, responsibility, state budget.

Аннотация

В статье определено гражданское законодательство относительно предоставления льгот при поступлении в высшие учебные заведения и назначении социальных стипендий. Предложены корректировки на законодательном уровне нормативно-правовых актов в части разработки механизма назначения и выплаты стипендии.

Ключевые слова: социальные незащищенные слои населения, льготы, социальная стипендия, академическая стипендия, нормативно-правовой акт, ответственность, государственный бюджет.

Statement of the problem.

According to the working conditions of current classification of professions, mining labor applies to be a work in unusual and dangerous conditions. There are manufactures, works, professions, positions and characteristics underground, at works with especially dangerous and hard working conditions in the list № 1. Professional risk of mining labour is conditioned with hard and harmful conditions and high level of professional diseases. Work at coal mines as an underground object is always related to enormous life and health risks.

In line with the Cabinet of Ministers of Ukraine Resolution № 237 "On approval Procedure determination class of professional risk production by type of economic activity" dated 8 February 2012, coal mining – the highest level, 67 risk class [1]. In accordance with the Constitution, article № 1, Ukraine is a social state [2], that is why our government must support disadvantaged social groups, who cannot compete with other applicants entering the higher educational institutions because of the physical development, property status etc. [3].

State of research. Many Ukrainian scientists, as O.A. Hrishnova, B.V. Derevaynko, S.D. Dimitriyev, F.V. Zinov'yev, V.S. Kalinichenko, A.Y. Samartseva and others devoted their studies to relations of educational sphere so far. Their works laid the groundwork for overcoming

the wide range of problems that exists in educational sphere. The present day situation needs new researches to create new ideas and recommend changes to the business, civil, administrative practices and legislation.

The purpose and objectives of the researches. And that is why the aim of the paper is to develop recommendations on improvement of legislation on the ground of analysis of legislation on exemption during entering higher educational institutions and setting bursaries.

Research methods that have been used in the article are the methods of analysis and comparative legal method and others that are necessary to obtain scientific results.

Basic material. Equal access to education – is European slogan that penetrated into Ukrainian educational area after joining Bologna system and it strengthened with implementation of EIT (External Independent Testing). In our reality equal access coexists with branchy system for applicants entitled to benefits which set on the legislative level [4].

Experts think that benefits during entering higher educational institution which has existed since Soviet times should be abolished. The government can provide benefit-entitled citizens with comprehensive social support [5].

Majority of current privileges were implemented at the time without testing and testing results didn't determine

person's entry to higher educational institution. Chernobyl cleanup veterans were given preliminary privileges in 1991, disabled people of group I and II – 1992, war veterans and disabled war veterans – in 1993, orphans – in 1994, miners and miners' children – in 2002, prize-winners of All-Ukrainian contests (Olympiad) – in 2008 [6].

In today's environment in accordance with the terms of entrance to the higher educational institutes in 2003 (as before) entrants on preferential basis are given only 25% of state-funded places [7].

Ukraine is in the list of countries with a high level of property differentiation and also a high level of poverty. It is characterized with increasing of minimum subsistence level, and living-wages don't provide approaching according to the standards of European Social Charter. It conditions factual limited opportunities for the potential students with low income to get higher education [8].

In 2013 as in previous years there are people to enroll at the University non-competitively: children, whose parents died during combat actions, orphans and children (up to 23 years old), children without parental care, disabled children, disabled people of group I and II; Chernobyl disabled children and children up to 18 years old whose parents died because of Chernobyl disaster; children of died miners, disabled miners of group I and II and miners with minimum of fifteen



years experience; children whose parents died at coal mining enterprises (during entering mining specialties only); children of servicemen and law enforcement agency workers who were killed in the line of duty; members of miners families and mine rescuers who died because of the Zasyadko mine disaster [7].

In accordance with article 5 of the Law of Ukraine “About raise of prestigiousness of miner’s work” miners with minimum 3 years experience underground and also within 3 years after getting secondary education whose parents are miners with a minimum 15 years underground working experience or whose parents died because of the accident at the enterprise or got injured and became invalids of group I and II, are enrolled to the Universities non-competitively. They can choose specialty themselves and study publicly-funded. They are given rooms in the hostels and a bursary equal to the amount of a living-wage [9]. In accordance with article 7 of the Law of Ukraine “On the state budget of Ukraine for 2016” living-wage per one person a month since the 1 of January is 1 330 grivna, since the 1 of May – 1 399 grivna, since the 1 of December – 1 496 grivna [10].

The right on a bursary is also provided with article 51 of the Law of Ukraine “On Education”. It is mentioned that pupils, students, cadets, trainees, residents, postgraduate students, and doctorate candidates have right on scholarships and hostels provided by the Cabinet of Ministers of Ukraine [11]. Payment and setting of bursaries for this category of students are held in accordance with “The Procedure of setting and payment of scholarships” approved with the Resolution of the Cabinet of Ministers of Ukraine on 12 of July 2004 № 882 (the Procedure №882) [12].

In accordance with provision of the code 1 clause 8 pointed by the Procedure № 882 for fixing problems with setting and deprivation of scholarship or bursary (including controversial), provision of material assistance for students, participating, encouragement of the best students for academic achievements, participating in social, sport and scientific activities. Educational enterprises set up scholarship committees. The committee follows the Laws and other statutory instruments, which determine rights and duties of the students [12]. The scholarship is paid only to the successful

students. Otherwise they can be expelled. Nowadays contract basis students who pay a fee are reluctant to be expelled without their permitting or suspension of payments [13, p. 223–224]. On the other hand a governments-subsidized student studying can be expelled rather quickly.

In accordance with the Procedure № 882 paragraph 4 clause 8 a director of the educational institution approves the register of people for scholarship.

The Procedure applies to governments-subsidized students studying at educational institutions and scientific establishments in the Autonomous Republic of Crimea ownership public educational establishments financed through the corresponding budgets:

- Full-time technical colleges students;
- Full-time University students, but persons studying educational and professional programs and trained as Maters of public administration;
- Students of military Institutes of Civil Aviation and Merchant Marine of Sevastopol National University of nuclear energy and industry;
- VIII-XII form pupils of Specialized secondary music boarding schools and secondary art schools;
- I-II year students of Physical Training Colleges;
- Listeners of Conservatoire Preparation Courses;
- Residents;
- Post-graduate students and doctoral candidates studying with disturbing their employments;
- Students, listeners and adjutants of military higher educational institutions and military training units of higher educational institutions – in the part of setting a bursary, mentioned at subparagraph 1 paragraph 5 of the Procedure № 882.

The Procedure № 882 determines two types of payments-scholarships and bursaries. Scholarships are paid on the basis of the results of the course at colleges and Universities and measured success, bursaries– are based on statutory instruments for getting state benefits and guaranteed for specific categories of citizens.

In accordance with the paragraph 6 of Procedure № 882 bursaries are set to:

- Students and cadets for orphans and children deprived of parental care as

well as students and students of military Universities who lost their parents between the ages of 18 and 23;

– In accordance with the Law of Ukraine “About the status and social protection of the citizens injured with Chernobyl catastrophic crash” University students and cadets are guaranteed to get benefits during setting a bursary;

– University students and cadets from low-income families (in case of getting correspondent public support in accordance with the legislation);

– Students are disabled children and invalids of I-III groups;

– University students and cadets who have families with children in which both spouses or only one of them are full-time University students;

– Mining students whose parents died or became invalids because of occupational injury, professional disease while working at coal mining enterprises [12].

That is, miners with a minimum of three years mining experience as well as within three year period after getting secondary education, persons whose parents are miners with a minimum of 15 years underground coal mine experience or whose parents died because of an accident or became invalids of I-III groups are not entitled to get a bursary in accordance with the Procedure № 882.

Any other method (order) of setting, calculation and payment of bursaries for students – miners’ children doesn’t exist in Ukraine so far.

What is more in accordance with the Law of Ukraine “On the state budget of Ukraine for 2016” rules and regulations of article 5 the Law of Ukraine “About raise of prestigiousness of miner’s work” are applied in accordance with the procedure established by the Cabinet of Ministers and based on the availability of financial resources of state and local budgets and social insurance Fund’s budget. In 2009 a draft law “On introduction of changes to some laws of Ukraine (as to abolition of benefits during entering higher educational institutions)” was registered and included in the agenda [10].

However – it wasn’t adopted on first reading by the Parliament of Ukraine [14]. The draft law offered to abolish out-of-competition entrance to higher educational institutions for combatants on the territory of other countries; victims of



Chernobyl crash; miners with minimum of three years experience, miners' children, whose parents died because of the occupational accidents as well as children of miners-invalids of group I–III. Disabled children and invalids of group I and II will have an advantage only if they don't have contraindications for the profession, as well as children from low-income families where one or both spouses are invalids [15].

Desirability of enactment of the mentioned above bill can be explained with the content of article 53, clause 4 of the Constitution of Ukraine "Citizens have the right to obtain free higher education in state and communal educational establishments on a competitive basis" [2]. Similar provisions are in the Laws of Ukraine "On education" (article 42, clause 3) [11] and "On higher education" (article 44, clause 1) [16]. It means that students should be offered a place based on knowledge not their ethnic or social origins, economic conditions, address or other indications [17].

Enactment of the bill "On higher education" [16] with retained benefits may lead to offence against article 22, clause 3 of the Constitution of Ukraine "The content and scope of existing rights and freedoms shall not be diminished in the adoption of new laws or in the amendment of laws that are in force" [2]. It should be borne in mind that exemption for one category of people (in particular on non-competitive basis of entrance to higher educational institutions) diminishes extent of rights and freedoms of other people. It is affirmed with the practice of entrance to higher educational institutions, some of them couldn't make their constitutional right to education come true [17].

Universities don't object to abolition of social benefits. Experts admit that students entitled to benefits have as usual poor academic achievements; they are often expelled after the first or second semester. V. Bugrov admits the state has to reconsider current system and introduce other benefits for mentioned groups of entrants, for example, supplementary social benefits, grants to carry out their studies or provide pre-university education to improve the knowledge level of future entrants entitled to benefits. To ensure equal access to education Y. Bolyubash offers to establish quotas on free studying for people entitled to benefits, introduce

training courses for entrants who had difficulty coping with the normal school curriculum for various reasons [4]. If the only main obstacle for entitled to benefits people is lack of finances in state structures we could draw on the experience of the USA where so called voucher system exists that foresees mutual funding of future young specialists' studying by the state and parents [18, p. 346–347].

Conclusions. That is why the main mean that facilitates the improvement of the situation on exemption and payment of bursaries in the field of Ukrainian education may be considered as follows:

– On the legislative level: adjustment of statutory instruments on development of manners of setting and payment of bursaries in accordance with article 5 of the Ukrainian Law "About raise of prestigiousness of miner's work";

– On the legislative level: abolition of benefits during entry into higher education for all groups of entrants including socially unprotected in accordance with real state's needs, annual establishment of quotas for appropriate groups of socially unprotected citizens and they can compete between each other.

It is clear that mentioned recommendations on improvement of the legislation about exemption during admission to higher education and setting of bursaries are not the only possible variant of providing with the principle of social justice in the field of higher education. That is why the researches of the nearest future should study relations in the field of higher education and search of opportunities for qualitative motivation of their participants.

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ОСОБЕННОСТИ И ВИДЫ СОДЕРЖАНИЯ ВСТРЕЧНОГО АДМИНИСТРАТИВНОГО ИСКА

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Summary

The necessity of the use of such elements as the content of the claim. The content of an administrative claim (counter-administrative claim) is a method of court protection of subjective rights, freedoms for which the applicant refers (the defendant) and which (method of judicial protection) can be applied to the administrative court. It was determined that the content of the counter administrative action – or not prohibited provided the Code of Administrative Procedure of Ukraine the way (kind of) judicial protection for which the administrative court refers the defendant to defend their subjective rights, freedoms and interests.

Key words: claim, content of the claim, types of administrative claim.

Аннотация

Обоснована необходимость использования такого элемента иска, как содержание. Содержание административного иска (встречного административного иска) представляет собой способ судебной защиты субъективных прав, свобод, за которой обращается истец (ответчик) и который (способ судебной защиты) может быть применен административным судом. Определено, что содержание встречного административного иска – предусмотренный или не запрещенный Кодексом административного судопроизводства Украины способ (вид) судебной, защиты за которым в административный суд обращается ответчик для защиты своих субъективных прав, свобод, интересов.

Ключевые слова: иск, содержание иска, виды административного иска.

Постановка проблемы. Указав предмет встречного иска, обосновав подачи искового заявления и отметив основания иска, заявитель должен сформулировать его содержание, изложить свои требования к ответчику.

Учитывая исследование предмета и оснований иска, следует согласиться с выводом, что административный иск является требованием о защите и восстановлении прав, свобод или охраняемых законом интересов; административным иском признается правовое требование истца о защите субъективных прав и законных интересов, вытекающее из публично-правовых отношений, основывающееся на юридических фактах и представленное в административный суд для рассмотрения и решения в установленном законодательством процессуальном порядке [1, с. 182; 2, с. 77; 3, с. 260].

Несмотря на развитость учения об иске в гражданском процессуальном праве, проблема понятия, элементов, в том числе и содержания административного иска, встречного административного иска, остается окончательно не решенной, продолжают дискуссии относительно содержания и особенностей толкования этих административ-

но-процессуальных категорий. Так, некоторыми современными учеными ставится под сомнение целесообразность анализа содержания административного иска, поскольку предмет и содержание закреплены законодателем в одном и том же перечне требований, предусмотренном ст. 105 Кодекса административного судопроизводства Украины (далее – КАС Украины). Поэтому высказывается мнение о том, что именно предмет и основание административного иска образуют его содержание и имеют решающее значение для индивидуализации и рассмотрения дела по существу [4, с. 98].

Актуальность темы. Обосновывая существование в структуре административного иска такого элемента, как содержание, другие ученые исходят из того, что иск является требованием истца к ответчику, обращенным через суд. При таком понимании административный иск отражает и требование лица к субъекту властных полномочий, и требование к суду о защите прав человека в отношениях с субъектом властных полномочий. Например, гражданин получил отказ органа Пенсионного фонда Украины о перерасчете пенсии. Он обращается в административный суд