



LAW ASPECTS OF PUBLIC ADMINISTRATION MANAGEMENT BY THE MINISTRY OF EDUCATION AND SCIENCE OF UKRAINE IN SECTOR OF HIGHER EDUCATION

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Summary

The legal issues of the Ministry of Education and Science of Ukraine as an organ of government in higher education are studied, the stages of its development are considered. Suggestions for the improvement of the legal support of the Ministry of Education and Science of Ukraine are substantiated. The Ministry of Education and Science of Ukraine a number of important tasks related to the modernization of public administration, particularly through decentralization of management in higher education redistribution of functions and powers between central and local executive authorities, local governments and universities.

Key words: higher education, universities, state police in the sphere of higher education, state management in sphere of higher education, Law of Ukraine "About Higher Education", Ministry of Education and Science of Ukraine.

Аннотация

В статье исследованы правовые вопросы становления Министерства образования и науки Украины как органа государственного управления в сфере высшего образования, выявлены этапы его развития. Выделено четыре основных исторических этапа формирования и развития Министерства образования и науки Украины. Проанализированы основные нормативно-правовые акты, что регулируют деятельность Министерства образования и науки Украины. Обоснованы предложения касательно усовершенствования правового обеспечения деятельности Министерства образования и науки Украины.

Ключевые слова: высшее образование, высшие учебные заведения, государственная политика в сфере высшего образования, государственное управление в сфере высшего образования, Закон Украины «О высшем образовании», Министерство образования и науки Украины.

Formulation of the problem.

Realization of state policy in higher education sphere, the leading role in which implementation belongs to the bodies of state government (the Cabinet of Ministers of Ukraine), central executive authority in the field of education and science (Ministry of Education and Science of Ukraine), state branch authorities, to which administration higher education institutions, the National Agency for Quality Assurance in Higher Education belong. In this system of the organs in the focus is the Ministry of Education and Science of Ukraine as the main body of the central executive power to form and implement the national policy in education and science, and therefore it directs and coordinates activities in this area other executive authorities. In fact, the Ministry of Education and Science of Ukraine is the body of sectoral competence, which provides direct control of educational activity in the country, leading the national education system, and therefore legal issues to ensure its activities are important and require careful study.

Analysis of recent researches.

Public administration in higher education in Ukraine, particularly in terms of an improvement of the main body in the system of central executive

authorities to ensure the development and implementation of state policy in education and science – the Ministry of Education and Science of Ukraine and its interaction with public management organizations in higher education, is studied by many scientists. Among them we can mention V. Andrushchenko, T. Bogolib, R. Valieiev, N. Huberska, M. Dudka, M. Zgurovsky, Y. Krasnyakov, V. Kremen, O. Melnychuk, S. Nikolaienko, O. Postupna, I. Sikorska, V. Tatsiy, R. Shapoval, Y. Shemshuchenko etc. Despite a broad interest of the scholars to the functioning of the system of bodies carrying out public administration in higher education, we consider appropriate in the context of above mentioned to carry out an analysis of formation and development of the Ministry of Education and Science of Ukraine and legal support of its operations, which will serve further improvement of governance in higher education.

The purpose of the paper is an analysis of the development of the Ministry of Education and Science of Ukraine as a body of state government in higher education with the definition of stages in its formation and development, based on the competencies which present central executive body has been endowed in different periods of time and several

proposals for further improvement of governance in higher education, particularly in terms of legal support of the Ministry of Education and Science of Ukraine are substantiated.

The description of major research.

The process of formation and development of Ministry of Education and Science of Ukraine has several stages. In our opinion, there are following four stages.

1st stage (1991–2000) – the formation of the central executive body of management in education – the Ministry of Education of Ukraine. The legal basis for the establishment of state authority in the field of education – the Ministry of Education of Ukraine, which was to centralize management in education, create a unified system of education for all its levels, was provided by the Decree of the President of Ukraine "About Establishment of the Ministry of Education of Ukraine and the Elimination of the Ministry of National Education of Ukraine and Ministry of Higher Education in Ukraine" dated 12 December 1991 No 2 (repealed) [1]. Creation of the Ministry of Education of Ukraine which provided an association of all spheres of educational activities would certainly have a positive impact on the further reform of the national education system. By the time the issues of the implementation by



the Ministry of Education of Ukraine of its authorities were regulated by the Regulation on the Ministry of Education of Ukraine approved by the Cabinet of Ministers of Ukraine "Issues of the Ministry of Education of Ukraine" dated 08 July 1992 Number 384 (repealed) [2], according to which the Ministry of Education of Ukraine was defined as the central executive body subordinated to the Cabinet of Ministers of Ukraine, which implements government policy on national education.

In the newly formed Ministry of Education of Ukraine there was the organization and coordination to ensure implementation of the State national program "Education" ("Ukraine XXI Century"), approved by the Cabinet of Ministers of Ukraine dated November, 3, 1993 No 896 [3], prepared together with the interested ministries and departments regulations of the system of education. It should be emphasized that in the Law of Ukraine "On education" dated May 23, 1991 No 1060-XII [4].

2-nd stage (2000–2010) – public administration reform in the education sector, particularly the Ministry of Education of Ukraine was reformed into the Ministry of Education and Science of Ukraine under the Decree of the President of Ukraine "On the Ministry of Education and Science of Ukraine" dated June 7, 2000 № 773/2000, which approved the Regulation on the Ministry of Education and Science of Ukraine (repealed) [5]. According to this Decree the Ministry of Education and Science of Ukraine is the successor of the Ministry of Education of Ukraine and the State Committee of Ukraine on Science and Intellectual Property, and, as it is stated in the Regulation on the Ministry of Education approved by the Decree, the Ministry of Education and Science of Ukraine is a central body of executive power with activity directed and coordinated by the Cabinet of Ministers of Ukraine, the main (leading) agency within the system of central executive authorities to ensure the implementation of state policy in the sphere of education, science and technology, innovation and intellectual property. With the reorganization in 2000 of the Ministry of Education of Ukraine and the State Committee of Ukraine on Science and Intellectual Property into the Ministry of Education and Science of

Ukraine the functions of management of scientific activities of higher education institutions were passed to the Ministry, but their implementation at the appropriate level actually was complicated by saving schemes of the subordination of higher schools not only to ministries but also to other central executive authorities under the legislation on education and higher education, as we have already mentioned in another post [6, p. 265]. However, despite the sparseness of higher education institutions in the context of various subordination to central executive bodies, besides the Ministry of Education, profile ministry as a public body exercises program guidance in higher education. Programs and guidelines, which develops the Ministry of Education and Science of Ukraine is actually the only tool that brings together universities Ukraine (regardless of their affiliation) in a single system and helps to keep single educational space [7, p. 78].

The main feature of this stage: the Ministry of Education and Science of Ukraine has the opportunity to reform its activities according to the Law of Ukraine "On education" dated January, 17, 2002 No 2984-III (repealed) [8], which was one of the basic components of the national legislation on education and established the legal requirements on the organization and functioning of higher education in the state. It should be emphasized that the sphere of higher education received a special law almost the least in comparison with other structural elements of the national education system.

Art. 17 of Law of Ukraine "On Higher Education" dated January, 17, 2002 in the first edition of executive bodies that administer education, called the special authorized central executive body in the sphere of education and science, that the Ministry of Education of Ukraine, and Art. 18 of the Law defines its powers, in particular, stated that the Ministry is involved in shaping public policy in higher education, science and vocational training, which is important because previously in the Regulation of the Ministry of Education, approved by the Decree of the President of Ukraine "About Ministry of Education of Ukraine" dated June 7, 2000 it was only the authority to implement it. Recently the same Law of Ukraine "On Higher Education" from 17 January 2002 to the executive authorities,

which manage in higher education, in addition to the Cabinet of Ministers of Ukraine, were also attributed a central executive body that ensures public policy in education, a central executive body that implements the state policy in the field of education, and other central executive bodies that have subordinated higher education institutions, which coincides with the content of art. 11 of current Law of Ukraine "About Education" dated 23 May 1991, however, raises questions about the feasibility of separation of functions is now at the level of the Law of Ukraine "About Education" because it contradicts the current Law of Ukraine "On Higher Education" dated July 01, 2014 .

In the context of the modernization of governance in higher education, including the state, at the level of the Ministry of Education and Science of Ukraine, it should be mentioned the significance of the national doctrine of education approved by the Decree of the President of Ukraine "On National Doctrine of Education" dated April, 17, 2002 № 347/2002 [9], which identified priorities for the development of national education in the first quarter of the XXI century.

3-rd stage (2010–2013) – reorganization of the Ministry of Education and Science of Ukraine according to the Decree of the President of Ukraine "On Optimization of Central Authorities" dated December, 9, 2010 No 1085/2010 [10], so that was formed Ministry of Education, Youth and Sports of Ukraine, whose activities are further governed by the regulations of the Ministry of Education, Youth and Sports of Ukraine approved by the Decree of the President of Ukraine "On Approval of the Ministry of Education, Youth and Sports of Ukraine" dated 08 April 2011 No 410/2011 (repealed) [11]. According to the present Regulation the Ministry of Education, Youth and Sports of Ukraine received the status of the main body in the system of central executive development and implementation of state policy in the sphere of education and science, innovation and informatization, intellectual property, youth, physical culture and sports. It should also be noted that since this stage of activities of the Ministry of Education, Youth and Sports of Ukraine in general as central executive authority is governed on the basis of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" (the first



edition of 07 October 2010 No 2591-VI, the current one – from February, 27, 2014 No 794-VII) and the Law of Ukraine “On Central Executive Bodies” of March, 17, 2011 No 3166-VI [12].

4th stage (2013–present time) – optimization of the powers of the Ministry of Education, Youth and Sports of Ukraine and its return to the format of the Ministry of Education and Science of Ukraine on the basis of the Decree of President of Ukraine “On Some Measures on Optimization System of Central Bodies of Executive Power” dated February, 28, 2013 No 96/2013 [13]. The Ministry of Education and Science of Ukraine and the Ministry of Youth and Sports of Ukraine have been reorganized into the Ministry of Education, Youth and Sports of Ukraine and State Service of Youth and Sports of Ukraine. Such changes in the structure of the central executive authorities, as a result of which the above mentioned ministry for almost two years experienced, can't positively influence their effectiveness and generally impede the development of the humanitarian sphere. It should be emphasized that the practice of combining educational and research functions in one public body is common in the world, particularly among neighboring states, Poland has the Ministry of Science and Higher Education, Russia, Estonia, Lithuania, Latvia, Georgia, Kazakhstan – The Ministry of Education and Science. This combination is because it is natural centers of universities to attract talented young people to research and creation of scientific technology. The question of the expediency of a return to the practices of a single central executive authority in the field of education – the Ministry of Education and Science of Ukraine is discussed, particularly at the parliamentary hearings “On the status and legislative support of science and scientific-technical sphere of the state”, which took place on July 2, 2014 [14]. Pursuant to the Decree of the President of Ukraine “On Some Measures on Optimization System of Central Bodies of Executive Power” of February 28, 2013 issued a decree of the President of Ukraine “Issues of the Ministry of Education and Science of Ukraine” dated 25 April 2013 No 240/2013 [15] which approved the Regulation of the Ministry of Education and Science of Ukraine. In order to improve national education system, including higher education, particularly in terms of

modernization of education management also developed a National Strategy for the Development of Education in Ukraine for the period until 2021, approved by the Decree of the President of Ukraine “On the National Strategy for the Development of Education in Ukraine for the period by 2021” of June 25, 2013 No 344/2013 [16].

Currently, determining how to optimize the system of central executive bodies in general and especially the authority of the Ministry of Education and Science of Ukraine, should be guided by the Cabinet of Ministers of Ukraine “On Optimization of Central Authorities” of September, 10, 2014 No 442 [17] and the Cabinet of Ministers Ukraine “On the Approval of the Ministry of Education and Science of Ukraine” dated October, 16, 2014 No 630 [18], which approved the Regulation on the Ministry of Education and Science of Ukraine. According to the Regulations the Ministry of Education and Science of Ukraine is the main body in the system of central executive bodies to form and implement the national policy in education and science, scientific, technology and innovation, transfer (transfer) technology, and provides development and implementation of state policy in the sphere of state supervision (control) over the activities of educational institutions, enterprises, institutions and organizations that provide services in the field of education or conducting other activities related to the provision of services, regardless of their subordination and ownership.

Conclusions. On the basis of above mentioned it can be concluded that in the long term the development of national education, higher education institutions competitiveness directly will depend on the efficiency of management in higher education, primarily by the Ministry of Education and Science of Ukraine. Functioning of the Ministry requires clear legal provision, beginning from basic principles, in particular, complying the Art. 11 of Law of Ukraine “On Education” dated May 23, 1991 and Art. 13 of the Law of Ukraine “On Higher Education” dated July 1, 2014 in the recognition of the Ministry of Education and Science of Ukraine as a central executive body that is involved in the formation and implementation of state policy in the sphere of education and science, and the abolition of the Decree of the President of Ukraine “Issues of the

Ministry of Education of Ukraine” dated 25 April 2013 № 240/2013.

References:

1. Про утворення Міністерства освіти України та ліквідацію Міністерства народної освіти України та Міністерства вищої освіти України : Указ Президента України від 12 грудня 1991 р. № 2 (втратив чинність) [Електронний ресурс]. – Режим доступу : <http://zakon2.rada.gov.ua/laws/show/2/91>.
2. Питання Міністерства освіти України : Постанова Кабінету Міністрів України від 8 липня 1992 р. № 384 (втратила чинність) [Електронний ресурс]. – Режим доступу : <http://zakon2.rada.gov.ua/laws/show/384-92-%D0%BF>.
3. Про Державну національну програму «Освіта» («Україна XXI століття») : Постанова Кабінету Міністрів України від 3 листопада 1993 р. № 896 [Електронний ресурс]. – Режим доступу : <http://zakon3.rada.gov.ua/laws/show/896-93-%D0%BF>.
4. Про освіту : Закон України від 23 травня 1991 р. № 1060-XII [Електронний ресурс]. – Режим доступу : <http://zakon3.rada.gov.ua/laws/show/1060-12>.
5. Про Міністерство освіти і науки України : Указ Президента України від 7 червня 2000 р. № 773/2000 (втратив чинність) [Електронний ресурс]. – Режим доступу : <http://zakon3.rada.gov.ua/laws/show/773/2000>.
6. Уложенко В.М. Деякі правові аспекти функціонування вищих навчальних закладів в Україні / В.М. Уложенко // Правове регулювання економіки : зб. наук. праць / відп. ред. В.Ф. Опришко. – Вип. 5. – К. : КНЕУ, 2005. – 268 с.
7. Дудка М.І. Вища школа України: стратегія управління й проблеми реформування : [монографія] / М.І. Дудка. – Х. : Основа, 2002. – 272 с.
8. Про вищу освіту : Закон України від 17 січня 2002 р. № 2984-III (втратив чинність) [Електронний ресурс]. – Режим доступу : <http://zakon3.rada.gov.ua/laws/show/2984-14>.
9. Про Національну доктрину розвитку освіти : Указ Президента України від 17 квітня 2002 р. № 347/2002 [Електронний ресурс]. – Режим доступу : <http://zakon5.rada.gov.ua/laws/show/347/2002>.



10. Про оптимізацію системи центральних органів виконавчої влади : Указ Президента України від 9 грудня 2010 р. № 1085/2010 [Електронний ресурс]. – Режим доступу : <http://zakon2.rada.gov.ua/laws/show/1085/2010>.

11. Про затвердження Положення про Міністерство освіти і науки, молоді та спорту України : Указ Президента України від 8 квітня 2011 р. № 410/2011 (втратив чинність) [Електронний ресурс]. – Режим доступу : <http://zakon4.rada.gov.ua/laws/show/410/2011>.

12. Про центральні органи виконавчої влади : Закон України від 17 березня 2011 р. № 3166-VI [Електронний ресурс]. – Режим доступу : <http://zakon4.rada.gov.ua/laws/show/3166-17>.

13. Про деякі заходи з оптимізації системи центральних органів виконавчої влади : Указ Президента України від 28 лютого 2013 р. № 96/2013 [Електронний ресурс]. – Режим доступу : <http://zakon2.rada.gov.ua/laws/show/96/2013>.

14. Про стан та законодавче забезпечення розвитку науки та науково-технічної сфери держави: парламентські слухання від 2 липня 2014 р. [Електронний ресурс]. – Режим доступу : http://static.rada.gov.ua/zakon/skl7/5session/par_sl/sl0207114.htm.

15. Питання Міністерства освіти і науки України : Указ Президента України від 25 квітня 2013 р. № 240/2013 [Електронний ресурс]. – Режим доступу : <http://zakon4.rada.gov.ua/laws/show/240/2013>.

16. Про Національну стратегію розвитку освіти в Україні на період до 2021 року : Указ Президента України від 25 червня 2013 р. № 344/2013 [Електронний ресурс]. – Режим доступу : <http://zakon4.rada.gov.ua/laws/show/344/2013/page>.

17. Про оптимізацію системи центральних органів виконавчої влади : Постанова Кабінету Міністрів України від 10 вересня 2014 р. № 442 [Електронний ресурс]. – Режим доступу : <http://zakon4.rada.gov.ua/laws/show/442-2014-%D0%BF>.

18. Про затвердження Положення про Міністерство освіти і науки України : Постанова Кабінету Міністрів України від 16 жовтня 2014 р. № 630 [Електронний ресурс]. – Режим доступу : <http://zakon2.rada.gov.ua/laws/show/630-2014-%D0%BF>.

ПРАВОВЫЕ ВОПРОСЫ АДАПТАЦИИ ЗАКОНОДАТЕЛЬСТВА УКРАИНЫ К ЗАКОНОДАТЕЛЬСТВУ ЕВРОПЕЙСКОГО СОЮЗА В СФЕРЕ ТАРИФНОГО РЕГУЛИРОВАНИЯ

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Summary

The article examines terms and conditions of the Association Agreement between Ukraine and the EU concerning tariff regulation of foreign trade. The provisions on the rates of import and export duties, procedure and timing of their change or cancellation, reason, procedure and basic requirements for the application of the trade safeguard measures are analyzed. The national legislation of Ukraine regulating relevant relationships is investigated and the need of changes in national legislation with a view to its adaptation is established. Special attention is paid to novelties and unusual terms and conditions, which reflection to the national legislation, can benefit the legal regulation.

Key words: Association Agreement between Ukraine and the EU, tariff regulation, duty, custom duties, trade safeguard measures.

Аннотация

В статье исследуются положения Соглашения об ассоциации между Украиной и Европейским Союзом, касающиеся тарифного регулирования внешнеэкономической деятельности. Анализируются положения по ставкам ввозной и вывозной пошлины, порядок и сроки их изменения или отмены, порядок, основания и основные требования к применению защитных мер торговли. Изучается национальное законодательство Украины, регулирующее соответствующие отношения, и устанавливается необходимость внесения изменений в национальное законодательство с целью его адаптации. Особое внимание уделяется новеллам и нетипичным положениям, отражение которых в национальном законодательстве может принести пользу правовому регулированию.

Ключевые слова: Соглашение об ассоциации между Украиной и Европейским Союзом, тарифное регулирование, пошлина, специальные пошлины, защитные меры торговли.

Постановка проблемы. Процесс адаптации законодательства Украины к законодательству Европейского Союза (далее – ЕС) начался с момента подписания первых соглашений между Украиной и ЕС. Началом взаимоотношений между Украиной и ЕС стало подписание Соглашения о партнерстве и сотрудничестве между Украиной и ЕС от 14.06.1994 [1]. Данное Соглашение не затрагивало темы вступления Украины в Европейское сообщество, а имело целью налаживание доброжелательных и мирных контактов со страной бывшего Советского Союза.

Ввиду расширения границ ЕС и устойчивого курса на интеграцию в Европейское сообщество, усилия отечественных политиков и лидеров государства были направлены на проведение переговоров о вступлении Украины в

ЕС. Как следствие, вместо Соглашения о партнерстве и сотрудничестве между Украиной и ЕС от 14.06.1994, было подписано Соглашение об ассоциации Украины с ЕС (далее – Соглашение от 2014 г.). Целью соглашения от 2014 г. является изменение вектора по партнерству и сотрудничеству на политическую ассоциацию и экономическую интеграцию [2]. Важной составляющей Соглашения от 2014 г. является раздел IV «Торговля и вопросы, связанные с торговлей» (далее – раздел IV). Раздел IV по своему содержанию является торговой сделкой, которая направлена на создание зоны свободной торговли.

Актуальность темы исследования подтверждается необходимостью адаптации законодательства Украины к законодательству ЕС с целью обеспечения надлежащего функционирования зоны свободной торговли.