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THE INTERNATIONAL PROGRAMMATIC LEGAL REGULATION OF THE PROCESS OF HIGHER EDUCATION IN UKRAINE

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The author proves that bilateral international programmatic acts are an important source of development and a regulator of relations in the sphere of higher education. This is brought to light by the author in the official sources of the program in the availability of common features in the tasks and structure which vary in meaning. Bilateral programmatic acts cover the questions surrounding academic exchanges, the conditions of study for citizens of other parties, the exchange of information in the field of higher education management and its activities and the implementation of cooperation between universities.

As proven in the article, there are practically no bilateral educational programs of Ukraine from developed countries which contain the most powerful potential in the field of higher education, the total amount and dynamics of approval of bilateral programs in the field of education is unsatisfactory.

The author notes that programmatic legal regulation is critical in the formation of international mechanisms for influencing relations in the field of higher education. Domestic and foreign experience shows that relevant bilateral programmatic acts can be concluded at either intergovernmental or interagency levels as well as between central authorities and foreign institutions with special status.

These types of programs are considered by the parties to be an additional, more thorough and, at the same time, a more flexible normative regulator, which is primarily used to streamline academic exchanges and the implementation of relevant scholarships by program participants. A particular role is played by program projects that provide the state with international technical assistance for the specific needs of higher education institutions. At the same time this kind of financing is occasionally provided by separate program agreements involving the nation and the relevant intergovernmental organization as a party. Such project approval agreements are ratified by the laws of Ukraine.

Key words: academic exchanges, diploma recognition, higher education, bilateral programs, inter-university cooperation, right to education.

МІЖНАРОДНЕ ПРОГРАМНО-ПРАВОВЕ РЕГУЛЮВАННЯ ПРОЦЕСУ ВИЩОЇ ОСВІТИ В УКРАЇНІ

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Автор доводить, що двосторонні міжнародні програмні акти є важливим джерелом розвитку та регулятором відносин у сфері вищої освіти. Це з'ясується автором в офіційних джерелах програми за наявності загальних рис у завданнях та структурі, які різняться за значенням. Двосторонні програмні акти охоплюють питання, що стосуються академічного обміну, умов навчання для громадян інших сторін, обміну інформацією у сфері управління вищою освітою та її діяльності та здійснення співпраці між університетами.

Як доведено у статті, майже немає двосторонніх освітніх програм України з розвинених країн, які містять найпотужніший потенціал у галузі вищої освіти, загальний обсяг та динаміка затвердження двосторонніх програм у галузі освіти незадовільний.

Автор зазначає, що програмне правове регулювання має вирішальне значення при формуванні міжнародних механізмів впливу на відносини у галузі вищої освіти. Вітчизняний та зарубіжний досвід показує, що відповідні двосторонні програмні акти можуть укладатися як на міждержавному, так і на міжвідомчому рівнях, а також між центральними органами влади та іноземними установами зі спеціальним статусом.

Ці види програм розглядаються сторонами як додатковий, більш ретельний і, в той же час, більш гнучкий нормативний регулятор, який використовується в першу чергу для упорядкування академічних обмінів та реалізації відповідних стипендій учасниками програми. Особливу роль відіграють програмні проекти, які надають державі міжнародну технічну допомогу для конкретних потреб вищих навчальних закладів. У той же час, цей вид фінансування періодично забезпечується окремими програмними угодами, що передбачають участь нації та відповідної міжурядової організації як учасника. Такі угоди про затвердження проекту ратифіковані законами України.

Ключові слова: академічні обміни, визнання дипломів, вища освіта, двосторонні програми, міжвузівська співпраця, право на освіту.

REGULAMENTUL JURIDIC PROGRAMATIC INTERNAȚIONAL AL PROCESULUI DE ÎNVĂȚĂMÂNT SUPERIOR ÎN UCRAINA

Autorul susține că actele bilaterale ale programelor internaționale sunt o sursă importantă de dezvoltare și regulator al relațiilor în domeniul învățământului superior. Acest lucru este clarificat de autor în sursele oficiale ale programului, în prezența caracteristicilor comune în sarcini și structură, care diferă prin semnificație. Actele bilaterale ale programului acoperă aspecte

legate de schimbul academic, condițiile de învățare pentru cetățenii altor țări, schimbul de informații în domeniul managementului învățământului superior și activitățile sale și cooperarea dintre universități.

După cum s-a dovedit în articol, aproape că nu există programe educaționale bilaterale ale Ucrainei din țările dezvoltate, care au cel mai puternic potențial în domeniul învățământului superior, volumul general și dinamica aprobării programelor bilaterale în domeniul educației sunt nesatisfăcătoare.

Autorul observă că reglementarea juridică a programelor este crucială în formarea mecanismelor internaționale de influențare a relațiilor din domeniul învățământului superior. Experiența internă și străină arată că actele relevante ale programelor bilaterale pot fi încheiate atât la nivel interstatal și interdepartamental, cât și între autoritățile centrale și instituțiile străine cu statut special.

Aceste tipuri de programe sunt considerate de părți ca un cadru de reglementare suplimentar, mai amănunțit și, în același timp, mai flexibil, care este utilizat în primul rând pentru a reglementa schimburile academice și implementarea burselor relevante de către participanții la program. Un rol special îl au proiectele de programe care oferă statului asistență tehnică internațională pentru nevoile specifice ale instituțiilor de învățământ superior. În același timp, acest tip de finanțare este asigurat periodic prin acorduri de programe separate, care prevăd participarea națiunii și a organizației interguvernamentale relevante ca participant. Astfel de proiecte de acorduri de aprobare au fost ratificate de legile Ucrainei.

Cuvinte cheie: schimburi academice, recunoașterea diplomelor, învățământul superior, programe bilaterale, cooperare interuniversitară, dreptul la educație.

The study of international legal standards of higher education is a topical and unresolved issue for the domestic juridical science. However, the relevant scientific search cannot be complete without determining the specifics of international programmatic legal regulation in the field of higher education. The mechanisms of international programmatic regulation are of particular importance for securing, developing and implementing international standards in the field of higher education. Although the legal dimension of international programs, particularly in the humanitarian sphere, has been reflected in the research of contemporary scholars such as B. V. Babin, M. O. Baimuratov, M. V. Buromensky, O. O. Grinenko, and V. O. Krolenko among others, programmatic acts on educational issues have not yet become the subject of scientific research. This leads to a topical scientific study which aims to determine the impact of bilateral international program acts on legal standards in higher education. Meanwhile, the key in this should be considered the solution of problems such as the analysis of existing program acts on higher education and the research of their structure, content and regulatory mechanisms.

It is worth noting that B. V. Babin defined the programmatic regulation of international relations as a set of developmental processes, approval and implementation by states and intergovernmental organizations of imperative and advisory (in particular, programmatic) rules as well as prescriptions of programmatic acts in the form of a characteristic feature of the modern international law system. In itself the international program is characterized by this author as an international legal document, which must contain both international legal norms and individual prescriptions for the program as an organizational structure, a complex of measures and a complex of resources [1, p. 428].

The specified researcher pointed out the importance of bilateral interagency programs in particular, which depend, to a large extent, on the level of program regulation application within the work of the central executive body, its management policy, etc. and believes that "certain common trends in the content, structure, form and direction of such acts can be distinguished", a considerable part of which is invested in education. As an example, B. V. Babin cited, in particular, the three-year Ukrainian-French Program for Cultural, Scientific and Technical Cooperation from January 30, 1997 [5; 1, p. 223, 262].

This program indeed follows from the orders of the 1995 Ukrainian-French Agreement, under which joint "small working groups, such as in the education field" were required to "monitor the development of specific programs" and "determine practical actions". At the same time, the 1997 program acknowledges the importance of multilateral programs, including those of the EU, the Council of Europe and the UN, with particular attention to the TEMPUS program [5; 15]. Moreover, B. V. Babin's program contained a separate

section on cooperation in the field of higher education, which also covered the issues of academic exchanges, provided for the development of cooperation in work programs and relevant projects of scientific and technological cooperation within the work of universities. At the same time, B.V. Babin's indication for defining the 1997 Inter-University Agreement with this program as a document defining the responsibility of the university, allows to specify the existing exchanges and should be supplemented by the program [5; 1 p. 224, 225].

The issues of higher education were also regulated in programmatic acts researched by this author, such as the Intergovernmental Ukrainian-Iranian Cooperation Program in the Field of Culture, Education, Science, Sport, Tourism, Mass Media and Youth Exchange from 2004-2006, the Cooperation Program in the field of culture between the Ministry of Culture and Tourism of Ukraine and the Ministry of Culture of the Republic of Serbia from 2009-2011, 2009, approved for the development of the Ukrainian-Yugoslav Agreement in 1996, the Program of bilateral Ukrainian-French cooperation youth policy in 2010-2011, as well as the Cooperation Program in 2005-2009 to the Belarussian-Lithuanian Agreement on Cooperation in Education in 1997 [5; 7; 8; 1, p. 242, 250].

Simultaneously, it should be added that international education programs can also be asymmetrical. An example of such an act is the Education and Science Cooperation Program between the Ministry of Education and Science of Ukraine and the Swedish Institute for the years 2001-2003, dated 8 August 2001, which Ukraine defines as a legal document and published in the Official Gazette of Ukraine. The content of the program was to ensure direct cooperation between universities, academic exchanges, scholarships for studying, the organization of conferences and seminars, language learning and language teacher training, the granting of "guest scholarships" by the Swedish Institute and "national higher education scholarships". For a number of events the program was credited with giving priority to "applicants already in contact with the host academic institution". The general and financial provisions for the implementation of this program were determined by a separate annex thereto [8].

Specific applications to this Ukrainian-Swedish program have been the careful regulation of material and financial provision by the parties involved to the conditions of short-term visits, scholarships and summer schools. In particular, it was indicated that passage was paid by the guiding party and that, for visits and scholarships, Ukraine should provide Swedish scholars with free accommodation in a hostel as well as a scholarship. At the same time, the Swedish Institute had to provide participants with free accommodation and daily allowances of at least 200 kronor, and for scholarship recipients a monthly stipend of at least 7,000 kronor to cover the cost of living and meals. For language teachers, the host parties have

undertaken to provide salary for the university teachers, pay other allowances and / or "provide housing in accordance with existing internal financial provisions" [8].

It is interesting to compare such a cooperation program with the activities of the Program of cooperation in the field of youth policy between the State Committee of Ukraine for Family and Youth and the Ministry of Education of the Russian Federation in 2003, for which six individuals from Ukraine were invited to the "Russian Student Spring - 2003" festival in May 2003, where the conditions for appropriate interaction were very briefly regulated [14]. This practice of programmatic regulation of relations in the field of education makes it possible to take a critical approach to the thesis of B. V. Babin, who says that the conclusion of interagency programs is usually envisaged in the relevant bilateral agreements and that most interagency programs have a mostly short duration, which the researcher himself explains by the frequent rotation of central authority leadership [1, p. 262].

Amongst the identified programmatic acts adopted by Ukraine regarding higher education, it is worth mentioning the Educational Exchange Program between MESU and the Ministry of Human Resources of Hungary for 2016-2018 on February 24, 2016 and the Intergovernmental Ukrainian-Israeli Program for Cooperation in the Fields of Education, Culture, Youth and Sports for 2019-2022 from August 19, 2019 [6; 8]. The Ukrainian-Hungarian 2016 program is particularly based on the bilateral intergovernmental agreement on cooperation in the field of culture, education and science from April 4, 1995 and on the bilateral Protocol on cooperation in the field of education and science between the ministries of the participating states from 2015-2017, dated December 19, 2014. Individual articles of the 2016 program resemble the instructions of bilateral interagency agreements on academic exchanges [6].

So, for the article 2 and article 3 programs, the Ukrainian side must annually provide up to 35 scholarships for Hungarian students to study in the fields of humanities, social sciences and technical studies in Ukrainian higher education institutions and, according to such distribution, include 30 scholarships annually for bachelor's and master's programs and five more for graduate school. Likewise, the Hungarian side has pledged to provide up to one hundred scholarships annually for Ukrainian students to continue their studies in Hungary. Of these scholarships, 40 of them are related to bachelor's and master's programs in humanities, social sciences and technical and medical fields of study. Another 20 scholarships are related to master's technical and medical "full cycle" programs and another 40 to postgraduate studies in "any field interest" [6].

At the same time, unlike the bilateral agreements mentioned above, the 2016 program paid special attention to the language training of future scholars. For its article 4 prior to the beginning of the Bachelor's degree program in the Ukrainian language, Hungarian students had to undergo a one-year preparatory course, with payment for the course preparation done at their own expense in accordance with the legislation of Ukraine. Hungarian applicants for master's programs in Ukrainian educational institutions were required to have an understanding of the studied language at a level determined by the host institution. Simultaneously, Ukrainian students, having similar obligations to study in Hungary, received a preparatory course in Hungarian on the same scholarship terms as the study itself, at the expense of the host state [6].

The conditions of the internship were stated in the articles 11 and 12 for the programs of 2016, under which the Ukrainian side was to provide Hungarian scholarship holders with a free course of study, accommodation in a hostel, medical care in accordance with Ukrainian law and a monthly stipend on the same terms as for Ukrainian students. The Hungarian side had to provide similar

conditions, but the provision of the hostel could be replaced with monthly financial support for accommodation, and the monthly stipend had to be calculated separately, given that at the time of signing the program, the bachelor's and master's scholarships amounted to 40,460 Hungarian forints, while postgraduate studies amounted to 100,000 forints per month [6].

It also added in the 2016 program that its parties should facilitate further cooperation between higher education institutions, conclude direct cooperation agreements, exchange students and faculty, and create joint programs between higher education institutions. In doing so, the program envisaged both the possibility for the parties to change the quantitative requirements of the academic exchange approved in the program on the basis of mutual consent according to existing needs, and the possibility of changing the program itself. In addition, it was indicated that in the event of termination of this program in 2016, its provisions will continue to be implemented in relation to existing programs and projects until their completion [6].

The 2019 Intergovernmental Ukrainian-Israeli program also provided for academic exchanges through scholarships, but to a lesser extent. In particular, the Israeli side has undertaken to annually provide one scholarship for modern Hebrew summer courses and two specialized scholarships for one academic year (eight months) each for undergraduate or graduate students wishing to study at an Israeli university. At the same time, the Ukrainian side had to provide two scholarships annually for one academic year (ten months) to Israeli undergraduates. The difference was in the ways of informing about future scholarships, since the Israeli side provided for the publication of its news on this issue (application deadline, age requirement, required documents, application forms, grant details, etc.) on its Foreign Ministry website, and Ukraine - on informing on scholarships from "the Israeli side through diplomatic channels". The conditions for changing scholarship exchanges were not specified in the program, the only relevant caveat was that "the granting of scholarships depends on the budgetary framework of the parties" [9].

Additionally, the 2019 program addressed aspects of cooperation between higher education institutions. In addition to the general thesis on facilitating the exchange of publications, research materials and other information in the field of higher education, the program requires the consent of the parties to support the participation of three scholars in national and international conferences, seminars and other similar events held in both countries during its period of validity for up to five days. The program also involved cooperation between the parties in promoting the study of the culture, language and contemporary history of each state in their respective higher education institutions, the publication of manuals that promote racism, anti-Semitism and xenophobia to counter prejudice and stereotypes.

The 2019 program in particular focused on the Holocaust and the need for special attention "on the research and educational work related to the tragic fate of the Jewish community of Ukraine during the Nazi occupation during World War II." The program emphasized the need to support the work of educational institutions at all levels, including universities, aimed at combating racism and anti-Semitism. Specific attention was paid to the Stockholm Declaration of 2000 and UN resolution 60/7 of 01 November 2005 on International Holocaust Remembrance Day. Specific measures included the involvement of Ukrainian educators in a three-week July course for English speakers on Holocaust History and Anti-Semitism organized by Yad Vashem, a Memorial to the Martyrs and Heroes of the Holocaust in Jerusalem [9].

A separate area of program regulation is the financing of program projects in higher education. However, such funding is sometimes secured by separate program agreements involving

both the party and the state. An example is the Loan Agreement on the Equal Access to Quality Education in Ukraine Project between Ukraine and the International Bank for Reconstruction and Development (hereinafter - IBRD) on September 5, 2005. It is noteworthy that this project agreement was ratified by a procedure similar to the approval of international treaties by the Law of Ukraine No. 3255-IV of December 21, 2005 [2].

The 2005 Credit Agreement No. 4780-UA provided for the provision of 86 million 587 thousand dollars to Ukraine for the implementation of the project. The goal of the project was to support Ukraine in its "efforts to ensure equal access to quality education and to improve the effectiveness of the education system to prepare Ukrainian graduates for the knowledge society." The project envisaged teacher learning activities that included upgrading the continuing education system by training approximately one hundred and twenty teachers who would be able to represent new approaches to education, provide appropriate training without interruption and become a force for renewal in their respective institutions [2].

Within the sphere of improving the learning process, the Project proposed to establish a comprehensive national policy and institutional framework to carry out a systematic assessment of educational achievements and to ensure quality through the establishment of a national center for the evaluation of educational and quality achievement. Such project activities covered the identification of the work and institutional implications of an appropriate national assessment system. The Project also envisaged conducting a national study of student achievement, including carrying out two related assessments, extracurricular exams and the creation of training modules for student achievement evaluation [2].

At the same time, the key recipient of the project funding was identified not by the higher education institutions but by the MESU and its central unit, which also provided for the formation of a separate structure, "which will handle the coordination of the Project and the Program and will be supported by a team of technical assistance consultants." The Project's program also envisaged "conducting a media campaign to create a favorable information environment for reforming the education and implementation of the Project" and "providing information support to certain types of activities envisaged by all components of the Project" [2].

The project likewise envisaged the creation of an information management system in the education field. For this, it was proposed that "the introduction of such policy analysis and data-driven decision-making practices in education on all levels" be ensured through the system. The creation of a "central management database", as stated in the Project Program, will allow decision-makers to central and regional levels of education management to "input, process and access data" [2].

Another noteworthy aspect is the Financing Agreement between Ukraine and the European Investment Bank of December 19, 2016, put into place for the implementation of the project "Higher Education of Ukraine" and ratified by Law of Ukraine of November 8, 2017 No. 2186-VIII [3]. It is interesting to note that, in order to support the project in question, a similar agreement for the same amount (160 million euros) between Ukraine and the Nordic Environmental Finance Corporation (hereinafter - NEFCO) was signed a year later, ratified by the law of Ukraine on June 20 2018 No. 2467-VIII [3].

It is worth adding that the primary donor of the project, the European Central Bank, is an EU institute, but NEFCO is an international intergovernmental financial institution established in 1990 by five Nordic European countries (Denmark, Iceland, Norway, Finland and Sweden) which are not even members of the EU. As NEFCO's goal is to have a positive environmental impact, the organization only finances and implements green growth and climate projects, prioritizing projects in Eastern

Europe, the Baltic Sea, and the Arctic and Barents regions [16].

Based on the technical description, this five-year project was to cover the repair work at the existing educational, research and support facilities of a number of state higher educational establishments in Ukraine in order to increase their energy efficiency and make other investments in educational equipment not related to the energy efficiency component. The goal of the project was to reduce operating costs and improve the quality of facilities for teaching, training and research at universities. The energy efficiency component included energy-efficient investments in thermal protection structures, air-conditioning and heat ventilation systems, electrical work and modernization of heat supply systems [12].

The primary version of the project allowed for indicative cost sharing relating to the energy efficiency component and the non-energy efficiency component, which aimed to "improve teaching conditions overall". No more than 15% of the total eligible investment cost should be spent on non-energy-efficient measures. It was also stated that such allocation should be "acceptable" and that the first phase of the project would only provide energy efficiency with a total investment of 81 million euros across seven universities. The funds should particularly be provided to the National Technical University "Kharkiv Polytechnic Institute", the National Pedagogical Dragomanov University, Lviv Polytechnic National University, Poltava State Technical Yuri-Kondratyuk-University, Chernihiv National University of Technology, Sumy State University and Vinnytsia National Technical University [12].

According to the original ratified version of the project, Ukraine, as a borrower, had to act through MESU and monitor the economic development of the project in detail, its social, environmental and human rights impacts, as well as other aspects surrounding implementation that may occasionally be required by the IBRD. At the same time, the IBRD has reserved the right to publish reports on the implementation of the project and its sub-projects financed by the IBRD [13]. It should be noted that the next version of the project, ratified in 2018, provided NEFCO with virtually the same powers as the IBRD in the original version, while maintaining the five-year project implementation deadline and the seven Ukrainian universities that were to receive technical assistance within the framework of the project. The beginning of the project was postponed by its parties for 2018 [13]. Unlike the original version of the project, this version, ratified in 2018, provided for non-energy-related costs only up to 10% of the funding. Notably, the project contained reservations about the impossibility of financing a number of university costs at its expense, such as land and building acquisition, maintenance, other operating costs, the acquisition of secondary assets, the acquisition of licenses, patents and trademarks [13].

In this manner, it is worth reaching the following conclusions. Programmatic legal regulation is critical in the formation of international mechanisms for influencing relations in the field of higher education. Domestic and foreign experience shows that relevant bilateral programmatic acts can be concluded at either intergovernmental or interagency levels as well as between central authorities and foreign institutions with special status. These types of programs are considered by the parties to be an additional, more thorough and, at the same time, a more flexible normative regulator, which is primarily used to streamline academic exchanges and the implementation of relevant scholarships by program participants. A particular role is played by program projects that provide the state with international technical assistance for the specific needs of higher education institutions. Potential mechanisms for improving international programmatic regulation in the sphere of higher education should be the subject of separate scientific research.

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