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Features of licensing in the activities of higher education institutions

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Abstract. *The purpose of the research* is to determine the features of licensing the activities of higher education institutions. *Methods.* In the course of the research general scientific methods and approaches, system approach, general logical research methods (analysis, synthesis, generalization, comparison) were used. *Results.* The article considers key research on the development of education licensing in the country. The essence and significance of the concept "licensing" are described, which allowed to identify its key elements used in most types of management in the licensing of activities. The normative-legal acts are analyzed. It helped to define bottlenecks in the legislation to which first of all it is necessary to pay attention at reforming of the education system. This allowed us to propose a number of measures that in one way or another help to carry out the licensing process. It is determined that in the field of higher education licensing is subject to both educational activities of higher education institutions at a certain level of higher education and educational activities under educational programs of professional qualifications for which additional regulation is required. It is proved that the licensing of educational institutions is a state-directed influence on the subjects of educational activities through a system of restrictions and established minimum requirements to ensure the proper quality of educational services according to higher education standards. *Practical meaning.* Based on the analysis of scientific works of domestic scientists and the legislation of Ukraine, the main differences are characterized. The key problems observed in the field of education, in particular in the licensing system of educational activities, are highlighted. *Prospects for further research.* The obtained results determine the need for further assessment of the use of licensing conditions for higher education institutions, in particular to study the experience of foreign countries and identify those standards that are most acceptable to Ukraine and implement them in domestic law.

Keywords: education, quality of education, government regulation, licensing, competitiveness.

JEL Classification: I22.

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Особливості ліцензування в діяльності вищих навчальних закладів

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Анотація. Мета статті є визначення особливостей ліцензування діяльності вищих навчальних закладів. **Методи.** В ході дослідження використано загальнонаукові методи та підходи, системний підхід, загально логічні методи дослідження (аналіз, синтез, узагальнення, порівняння). **Результати.** У статті розглянуто ключові дослідження питань розвитку ліцензування освіти в країні. Охарактеризовано сутність та значимість самого поняття «ліцензування», що дозволило виокремити ключові його елементи, які застосовуються у більшості видах господарювання при ліцензуванні виду діяльності. Проаналізовано нормативно-правові акти, які дозволили визначити вузькі місця в законодавстві на які в першу чергу потрібно звертати увагу при реформуванні системи освіти. Це дозволило запропонувати низку заходів, які в той чи інший спосіб допомагають здійснювати процес ліцензування. Визначено, що у сфері вищої освіти ліцензуванню підлягають як освітня діяльність закладу вищої освіти на певному рівні вищої освіти, так і освітня діяльність за освітніми програмами, що передбачають присвоєння професійної кваліфікації з професій, для яких запроваджено додаткове регулювання. Доведено, що ліцензування діяльності освітніх закладів це спрямований з боку держави вплив на суб'єкти освітньої діяльності через систему обмежень та встановлених мінімальних вимог задля забезпечення належної якості надання освітніх послуг згідно стандартів вищої освіти. **Практичне значення.** На основі проведеного аналізу наукових праць вітчизняних науковців та законодавства України охарактеризовано основні розбіжності та виділено ключові проблеми, які сьогодні простежуються в сфері освіти, а зокрема в системі ліцензування освітньої діяльності. **Перспективи подальших досліджень.** Отримані результати визначають необхідність подальшої оцінки використання ліцензійних умов для закладів вищої освіти, зокрема вивчати досвід зарубіжних країн і виділяти ті норми, які є найприйнятливіші для України та імплементувати їх у вітчизняне законодавство.

Ключові слова: освіта, якість освіти, державне регулювання, ліцензування, конкурентоспроможність.

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1. Introduction.

Today, the implementation of state policy in the field of higher education is ensured through the harmonious interaction of national systems of education, science, art, business

and the state to ensure sustainable socio-economic development, preservation and development of higher education and improving its quality, expanding opportunities for higher education and lifelong learning, developing

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the autonomy of higher education institutions and the academic freedom of participants in the educational process.

Depending on the founder, a higher education institution may act as a state, municipal, private or corporate and in accordance with paragraph 1 of Article 27 of the Law of Ukraine "On Higher Education" may operate in one of such statuses as a budgetary institution, non-profit institution higher education, in-house institution of higher education (*The Verkhovna Rada of Ukraine, 2014*). However, regardless of its organizational form, all higher education institutions, without exception, must be licensed for educational activities.

2. Literature review.

A number of scientists deal with the issue of state regulation of education and licensing of educational activities in Ukraine.

The main document that defines the essence of the licensing process in Ukraine is the Law of Ukraine "On Licensing of Economic Activities" which states that in Ukraine 33 types of economic activity are subject to licensing, including educational activities. Moreover, educational activities are licensed taking into account the features defined by special laws in the field of education (*The Verkhovna Rada of Ukraine, 2015*).

B. Derevyanko in his research analyzes the state regulation of educational development and argues that the main effective means of regulatory influence of the state on the activities of educational institutions in order to maintain the quality of educational and other services in the field of education is licensing (*Derevyanko, 2011, pp. 167*).

Researchers T. Lisnicha (*2015, pp. 129*) and A. Bazhenova (*2017, pp. 105*) note that the Law on Licensing uses an approach to the division of types of economic activity into those that are licensed in the general order defined by the Law, and those that are subject to licensing in a special order – in accordance with a special law. Sometimes they are subject to the provisions of special legislation governing relations in the special field. It should be noted

that educational activities are economic activities that are licensed subject to special laws in the field of education.

O. Hrynkevych, researching the competitiveness of education in Ukraine, reports that the licensing of educational activities is one of the conditions for guaranteeing it (*Hrynkevych, 2016, pp. 87*).

O. Kuzmin and M. Yastrubsky, who analyze the quality system of education in terms of regulations and opportunities for their improvement, focus on the licensing of educational activities (*Kuzmin and Yastrubskyy, 2017, pp. 67*).

According to P. Sahlberg, the experience of many countries shows that strengthening the standardization of teaching and learning, as well as licensing of educational activities can lead to counterproductive expectations of strengthening economic competitiveness in the education system (*Sahlberg, 2006, pp. 229*).

3. Methodology.

General scientific methods and approaches, systematic approach, general research methods (analysis, synthesis, generalization and comparison) were used in the study.

4. Research objectives.

The purpose of the article is to determine the features of licensing the activities of higher education institutions.

5. Results and discussions.

The system of mechanisms and tools that regulate the activities of organizations providing educational services in countries around the world allows the state not only to identify positive experiences gained by the educational community, but also to determine the country's position in the international market of educational services, identifying points of further (strategic) development in this direction.

The rapid growth of the market of educational services in the international arena is accompanied by the formation of the market of services in the field of quality assurance of education, and a steady demand for independent external evaluation of the quality of these services.

An analysis of the application of licensing and accreditation mechanisms at all levels of education used for state regulation in this area in some countries has shown that these mechanisms are already partially implemented in the education system in Ukraine.

In Ukraine, the implementation of educational activities requires a procedure of admission – licensing, and obtaining a license requires compliance with a number of requirements, including fire and physical safety, sanitation, logistics and staffing.

Passing the licensing procedure with a single mandatory document is typical for many countries around the world, including Hungary, Germany, Greece, Israel, Spain, Canada, Mexico, Turkey, Finland, France, Czech Republic, Chile, Estonia, South Korea (14 of the 34 OECD countries). At the same time, the mechanism of admission to educational activities in South Korea is close to the Russian Federation, where the right to conduct educational activities is granted under the educational programs specified in the license.

In the literature, the concept of licensing is quite common.

O. Kashpersky believes that licensing is to establish a legal regime for certain types of economic activity only in the presence of special permits (licenses) issued by authorized bodies of state executive power under certain conditions (*Kashpersky, 2009, pp. 117*).

O. Oleynyk argues that licensing is a legal regime of starting and carrying out specific recognized by law types of economic activity, which provides for state confirmation and determination of the limits of the right to conduct business, state control over activities and the possibility of termination activities on special grounds determined by the state (*Oleynyk, 1994, pp. 17*).

At the same time, T. Chervyakova believes that this is a means by which the right to conduct the statutory types of economic activity is realized. It is done by adopting an act of public administration at the request of the stakeholder (business entity). This act establishes the legal capacity of the applicant in the

relevant field, or granting him a subjective right to perform certain actions, as well as subsequent control over this entity of the established requirements and conditions (*Chervyakova, 2010, pp. 161*).

A slightly different approach is presented by L. Shestak, who believes that this is the procedure for issuing permits for certain activities by specially authorized bodies of the state and it is one of the forms of state executive activity, expressed in the form of official recognition by the state certain subjects of rights to conduct certain types of economic activity provided by the legislation of Ukraine. It requires a sufficient level of professionalism and qualification, as well as control over the actual actions in the interests of the individual, state and society (*Shestak, 2005*).

K. Karchevsky believes that the essence of the concept “licensing” is a legal relationship related to the provision of donations to entities, which meet the established requirements (license conditions), temporary permission to engage in certain types (types) of economic activity, established by law and carried out by specially authorized state bodies by performing licensing actions established by law (*Karchevsky, 2009, pp. 185*).

It should be noted that an important condition of the licensing process is the institution of licensing, which can be defined as a set of administrative and legal norms governing public relations that arise in the process: 1) issuance, renewal, revocation of license; 2) maintaining license files and license registers; 3) exercising control over the observance by licensees of licensing conditions and issuing instructions to eliminate violations of legislation in the field of licensing between the subjects of those economic activities for which the state provides a permitting procedure for its implementation, as well as state authorities or local self-government bodies that perform the functions of providing a permitting mechanism for such types of economic activity.

As already mentioned, the main document is the Law of Ukraine “On Licensing of Economic Activities”, it regulates public

relations in the licensing of economic activities, determines the exclusive list of economic activities subject to licensing, establishes a unified procedure for their licensing, supervision and control in the field of licensing, as well as liability for violations of legislation in the field of licensing of economic activities (*The Verkhovna Rada of Ukraine, 2015*).

This Law defines the functions of the specially authorized body for licensing, which is in accordance with the Resolution of the Cabinet of Ministers of Ukraine of 24.12.2014 № 724 State Regulatory Service of Ukraine, as well as the basic principles of formation, rights and responsibilities of the Expert Appeal Licensing Council, which is a permanent collegial body under the specially authorized body for licensing. Article 6 of the Law also establishes the main functions and powers of licensing bodies. According to the Resolution of the Cabinet of Ministers of Ukraine dated 05.08.2015 No. 609 “On approval of the list of licensing bodies and recognition as invalid of some resolutions of the Cabinet of Ministers of Ukraine” the licensing body of educational activities is the central executive body in education, i.e. Ministry of Education and Science of Ukraine.

It also defines the requirements for the licensing conditions of economic activity, as well as the procedure for registration and submission of documents to the licensing authority and the issuance of licenses by the licensing authority. It should be noted that the Law provides for the departure of paperwork, which is replaced by the ability to submit applications and documents to the licensing authority in electronic form, as well as registration of the license in accordance with paragraph 11 of Article 13 of the Law as a record in the Unified state register of legal entities, self-employed entrepreneurs and public formations.

Undoubtedly, providing the opportunity to submit applications and documents in electronic form is a convenient and modern way to simplify access to business entities to obtain administrative services for licensing economic

activities.

At present, licenses for the right to carry out educational activities are issued electronically (previously issued licenses are reissued electronically), but before the entry into force of the provision on inclusion in the Unified State Register of Legal Entities and Individual Entrepreneurs and Public Associations it is published on the official website of the Ministry of Education and Science of Ukraine and entered by it into the Unified License Register.

The Law of Ukraine “On Licensing of Economic Activities” lays down the foundations of state supervision and control over the activities of licensing bodies in terms of compliance with legislation in the field of licensing, as well as control over the availability of licenses by business entities. It is carried out by the licensing body – the State Regulatory Service of Ukraine. The law determines the control over the licensee’s compliance with the requirements of the licensing conditions, which is carried out by the licensing bodies – the Ministry of Education and Science of Ukraine.

One of the most important changes in the field of licensing is the provision enshrined in paragraph 12 of Article 13 of the Law that the license is issued for an indefinite period. In this case, all licenses for economic activities, listed in accordance with Article 7 of the Law and valid on the date of entry into force of the Law, are considered indefinite. This innovation facilitates the educational activities of higher education institutions and reduces the state’s influence on their activities.

However, it is worth noting a number of problems in the licensing of educational activities. Thus, one of the main reasons is the inconsistency between the laws governing licensing. The new Law of Ukraine “On Higher Education” adopted in 2014 stipulates (Article 1.1.15) that licensing in the field of higher education is “a procedure for recognizing the ability of a legal entity to conduct educational activities in a certain specialty at a certain level of higher education in accordance with the

standards of educational activities". For each specialty separate standards of educational activities should have been created, which, according to Art. 9.1 of the Law determine "a set of minimum requirements for personnel, educational and methodological, logistical and informational support of the educational process of higher education institutions and research institutions." The licensing procedure provided for a professional examination of the applicant's compliance with the standard of educational activities in the licensed specialty (Article 24.2), which was to be carried out within two months by the National Agency for Quality Assurance in Higher Education. In fact, this meant maintaining the previous procedure of creating a commission of representatives of the relevant specialty, which would directly in the institution to verify compliance with the established requirements. Then the licensee has to apply to the Ministry of Education and Science for a license. At the same time, the Ministry of Education and Science has the right to refuse to issue a license for non-compliance with the standard of educational activities, even if the opinion of the National Agency for Quality Assurance in Higher Education experts is positive (*International Academy of Personnel Management, 2018*).

In less than a year, the Verkhovna Rada of Ukraine adopted the General Law "On Licensing of Economic Activities". Some of its norms are significantly different from the norms of the Law on Higher Education. In particular:

- there are no intermediate examinations: the applicant applies directly to the licensing authority, which within 10 days from the date of registration of the application must decide to issue a license or refuse to issue it (Articles 11-13);

- the grounds for refusal to issue a license are non-compliance with the license conditions, which are not identical in content to the standards of educational activities, and the provision of inaccurate data.

In September 2017, the new Law of Ukraine "On Education" was adopted. At the

same time, the Law on Licensing of Economic Activities clarifies that educational activities are licensed taking into account the features defined by special laws in the field of education (Article 7.1.6). However, this does not solve all the problems, as "taking into account the peculiarities" may relate to certain details, but not to the principles of licensing. The Law on Education also established a general rule for all levels of education that "licensing of educational activities is a procedure for recognizing the ability of a legal entity or individual to provide educational services at a certain level of education in accordance with licensing conditions" (Article 43.1). This removes the problems of developing and maintaining standards of educational activities, but raises new questions (*International Academy of Personnel Management, 2018*):

- in higher education, activities in the specialty at a certain level or only activities at the level regardless of the specialty should be licensed;

- if we choose the first option, how to take into account the specifics of specialties in the licensing conditions;

- whether the requirements for educational standards can be considered as requirements for licensing conditions that take into account the specifics of educational activities;

- to what extent can the general requirements for licensing conditions be supplemented with other requirements arising from the peculiarities of educational activities?

Thus, according to experts, for improving the licensing system in general and the License Terms in particular, first of all, it is necessary to eliminate conflicts between the laws governing the licensing of educational activities, as well as correct errors and inaccuracies in the current version. It is also worth discussing the feasibility of maintaining licensing for each specialty at each level of higher education and the transition to licensing of educational activities only by levels, as provided by the Law of Ukraine "On Education". According to the analysis of the current and all previous editions of the License Terms, it is impossible to

formulate uniform requirements for all and at the same time unambiguous and transparent, as required by the Law on Licensing.

An alternative could be to create separate requirements for each specialty, which would be more in line with the current Law on Higher Education. However, this is problematic in terms of feasibility and, obviously, contradicts the course of deregulation and the practices that exist in the European Higher Education Area. Another alternative is the transition to licensing educational activities in the fields of knowledge. In the more (but not very) long-term perspective, more conceptual issues need to be addressed: where is the limit of appropriate state intervention in the activities of higher education institutions; what exactly needs to be licensed; which requirements may be useful and which may only hinder the development of higher education institutions.

6. Conclusions.

Given the changes that have taken place in the legal field of education and higher education, in particular, today there is a discrepancy between certain provisions of legislation and regulations. Therefore, in order to effectively control the educational activities and regulate the process of licensing the

educational activities of higher education institutions, significant refinement and harmonization of legislation on education and higher education is required.

Development and implementation of clear norms for initiating and conducting educational activities under educational programs, which provide for the training of specialists in the list of specialties, the degree of which is necessary for access to professions for which additional regulation is required. Licensing conditions for educational activities should include the specifics of licensing educational activities under educational programs, which provide for the assignment of professional qualifications, which has additional regulation.

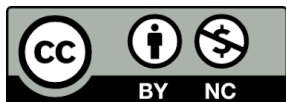
It is also worth paying attention to the formation and implementation of the normative document governing the field examination of licensing of educational activities that provide training for specialists in the list of specialties, the degree of which is necessary for access to professions, for which additional regulation is required.

Also, it is important to develop and implement a document that regulates the procedure for renewal of licenses.

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