

ТЕОРИЯ И ИСТОРИЯ ГОСУДАРСТВА И ПРАВА, ФИЛОСОФИЯ ПРАВА

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LEGAL ASPECTS OF ACTIVITY OF INCLUSIVE EDUCATION ENTERPRISES IN UKRAINE

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SUMMARY

The article analyzes a number of problematic issues regarding the legal aspects of the activities of the subjects of inclusive education in Ukraine that need to be settled, and ways of their solution are suggested. It is found that in order to improve the administrative foundations of inclusive education in Ukraine, it is necessary to make: a number of changes and additions to the profile laws in the field of education and their synchronization with the provisions of the specialized laws governing the issues of persons with disabilities; development of a strategy and National Action Plan for the implementation of inclusive education, starting with pre-school educational institutions (early diagnosis and problem correction), general secondary education, vocational education, higher education; redistribution of powers of the ministries, where the Ministry of Education and Science of Ukraine is the leading responsible body for organizing the educational process of persons with special educational needs.

Key words: law, inclusive education, educational institutions, persons with special educational needs, state policy, laws.

ПРАВОВІ АСПЕКТИ ДІЯЛЬНОСТІ СУБ'ЄКТІВ ІНКЛЮЗИВНОЇ ОСВІТИ В УКРАЇНІ

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АНОТАЦІЯ

У статті проаналізовано ряд проблемних питань щодо правових аспектів діяльності суб'єктів інклюзивної освіти в Україні, які потребують врегулювання, запропоновано шляхи їх вирішення. З'ясовано, що з метою вдосконалення адміністративних засад інклюзивної освіти в Україні необхідно провести низку змін і доповнень до профільюючих законів у галузі освіти та їхню синхронізацію з положеннями спеціалізованих законів, які регулюють питання осіб з інвалідністю, а також розроблення стратегії та Національного плану дій щодо впровадження інклюзивної освіти, починаючи з дошкільних освітніх закладів (ранньої діагностики та корекції проблеми), загальної середньої освіти, професійно-технічної освіти, вищої освіти. Необхідно здійснити перерозподіл повноважень міністерств, де провідним органом, відповідальним за організацію освітнього процесу осіб з особливими освітніми потребами, є Міністерство освіти та науки України.

Ключові слова: право, інклюзивна освіта, освітні заклади, особи з особливими освітніми потребами, державна політика, закони.

ASPECTE LEGALE ALE EDUCAȚIEI INCLUZIVE ÎN UCRAINA

REZUMAT

Articolul analizează o serie de probleme cu privire la aspectele legale ale activităților subiecților de educație incluzivă din Ucraina, care trebuie soluționate și sunt propuse modalități de soluționare a acestora. Se constată că, pentru a îmbunătăți fundamentele administrative ale educației incluzive din Ucraina, este necesar să se facă: o serie de modificări și completări la legile de profil în domeniul educației și sincronizarea acestora cu prevederile legilor de specialitate care reglementează problemele persoanelor cu dizabilități; elaborarea unei strategii și a unui plan național de acțiune pentru implementarea educației incluzive, începând cu instituțiile de învățământ preșcolar (diagnostic precoce și corectarea problemelor), învățământ secundar general, educație profesională, învățământ superior; redistribuirea competențelor ministerelor, unde Ministerul Educației și Științei din Ucraina este organul responsabil principal pentru organizarea procesului educațional al persoanelor cu nevoi educaționale speciale.

Cuvinte cheie: lege, educație incluzivă, instituții de învățământ, persoane cu nevoi educaționale speciale, politici de stat, legi.

Introduction. Let's find out the essence of the concepts "subject", "legal entity", "public authorities" and "system". As a result, we will be able to define the concept of "system of state bodies of management of inclusive education of Ukraine".

The powers of the Verkhovna Rada of Ukraine and the President of Ukraine as primary subjects of state policy formation in the sphere of inclusive education are divided into the following groups: 1) powers of the Verkhovna Rada of Ukraine concerning financial support of inclusive education in Ukraine, formation and termination of activity of subjects of inclusive education, supervisory powers;

2) powers of the President of Ukraine to form and terminate the activities of subjects of inclusive education, to determine the competence of executive bodies, to create an inclusive environment.

On the powers of the Ombudsman of Ukraine. It is noted that there are no provisions on the implementation of inclusive education in Ukraine. In the dissertation research L.I. Miskiv Amendments to the Regulation on the Ombudsman of Ukraine are substantiated, namely [8]:

1) in item 3 (the main tasks of the Commissioner) it is proposed to envisage tasks for the implementation of inclusive education in Ukraine;

2) in clause 4 (rights that the Commissioner has in accordance with the tasks assigned to him) to provide for the right to exercise control and supervision activities for the implementation of inclusive education in Ukraine.

Among the powers of state entities managing inclusive education of Ukraine are the main and auxiliary ones. Thus, according to the analysis of the powers of the executive authorities, it is noted that among them there are no clearly defined tasks for the implementation of inclusive education in Ukraine.

Analysis of recent research and publications. The problems of legal regulation of implementation of inclusive education at the state level in Ukraine are mainly addressed in legislative and regulatory documents (laws, resolutions of the Cabinet of Ministers of Ukraine). An important role in the study of this area was played by L.I. Miskiv: (2014) – Legal problems of inclusive education in Ukraine; (2013) – Executive authorities as subjects of inclusive education in Ukraine.

Purpose of the article: analyze the legal aspects of inclusive education in Ukraine.

Main part. Regarding the powers of the Cabinet of Ministers of Ukraine (hereinafter referred to as the CMU), it should be noted that the Cabinet of Ministers of Ukraine is a leading subject of inclusive education in Ukraine. In this context, a number of resolutions of the Cabinet of Ministers of Ukraine are analyzed, which determine the basics of implementation of inclusion in the educational environment of the state and their impact on the implementation of inclusive education in Ukraine.

Revealing the powers of the Ministry of Education and Science of Ukraine (hereinafter – Ministry of Education and Science of Ukraine), it is justified the need to envisage those concerning the legal, logistical and technical support of inclusive education, as well as giving the Ministry of Education and Science control and supervisory powers for the implementation of inclusive education. Important is the activity of the Department of General Secondary and Preschool Education, the structural unit of which is the department of inclusive education and boarding schools. Also required is the activity of a permanent advisory and advisory body of the Ministry of Education and Science of Ukraine – a working group on pre-school education of children with special needs. Scientists consider it advisable to create in the MES of Ukraine a separate structural unit – the Department of Inclusive Education of Ukraine, which is tasked with implementing inclusive education at all levels [6].

In outlining the authority of the Ministry of Social Policy of Ukraine (hereinafter – the Ministry of Social Policy of Ukraine), we note that the Ministry is responsible for the formulation and implementation of state policy in the field of providing social services to socially vulnerable sections of the population, including persons with special educational needs. It has been found out that the ministry has subordinate educational institutions and vocational rehabilitation centers, which provide education for persons with special needs. Thus, the Ministry of Social Policy coordinates the work of specialized boarding schools intended for vocational, physical and social rehabilitation, as well as the acquisition of working professions and specialties for persons with I, II, and III disability groups. On the example of the Sambir Vocational Technical Boarding Board, permanent training courses for managers and specialists of the system of the Ministry of Social Policy and the State Enterprise "Ukrainian Scientific and Technical Center for Professional Development", additional powers of the Ministry of Social Policy were disclosed.

On the basis of the analysis of the powers of the Ministry of Health of Ukraine (hereinafter – the Ministry of Health of Ukraine), the feasibility is justified: anticipation in the authority of the Ministry of Health of Ukraine of the task of organizing medical care of children with special educational needs; control functions should be added to the functions of the Ministry of Health of Ukraine (regulation of health care of the above category of persons).

While revealing the content of the powers of local state administrations in the system of subjects of inclusive education, it should be noted that local state administrations implement state policy in the field of education at the local level. However, the provisions of the normative acts do not contain norms that specify and define the mechanism of exercising powers in the field of implementation of inclusive education. The scientist (L.I. Miskiv) proposed to amend the Law of Ukraine "On Local

State Administrations” and to state them in the following wording [7, p. 124]:

1) Part 1 of Art. 16 to supplement with a paragraph stating that local state administrations exercise state control over the enforcement of the rights of persons with special educational needs;

2) § 1 h. 1 Art. 22 to supplement the powers to implement state policy in the field of inclusive education;

3) paragraph 3 of Part 1 of Art. 22 to supplement the powers of material and financial support for institutions providing inclusive educational services;

4) paragraph 4 of Part 1 of Art. 22 to supplement the powers to preserve inclusive education institutions and to extend them [7, p. 125].

Among the auxiliary state entities implementing inclusive education are the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine (hereinafter – the Ministry of Regional Development of Ukraine) and the Ministry of Finance of Ukraine (hereinafter – the Ministry of Finance of Ukraine). Concerning the mandate of the Ministry of Regional Development of Ukraine, the results of the work of this ministry are determined, the main achievements are determined, which significantly influence the level of inclusive education implementation, among which the development of state building norms and standards for the design of educational institutions aimed at creating conditions for teaching children with special needs are important. From the analysis of the powers of the Ministry of Finance of Ukraine, it follows that the Ministry is responsible for financing and controlling the costs of implementing and implementing inclusive education. In the context of the above, it is concluded that the special normative and legal acts of the Ministry of Finance of Ukraine do not provide a mechanism for financing inclusive education and do not determine the expenditures for the implementation of inclusive education in Ukraine.

Implementation of inclusion in the educational space of Ukraine requires clear actions not only of state bodies as direct subjects of implementation of state policy, but also of other partners to which local self-government bodies and public associations belong.

Based on the analysis of the Law of Ukraine “On Local Self-Government in Ukraine”, a “System of local self-government bodies” is characterized. It has been determined that the executive bodies of village, settlement, city councils (hereinafter – executive bodies) are the direct subjects of implementation of inclusive education on the ground. The content of the powers of executive bodies in the field of education was disclosed, taking into account their division into self-governing and delegated ones. As a result, it is substantiated that Art. 32 of the Law of Ukraine “On Local Self-Government in Ukraine” should be supplemented with subparagraph 10 of item “a” and should read in the following wording: “promoting the creation of an inclusive educational environment on the ground” [1].

By determining the place of public associations in the system of subjects of inclusive education, the legal status of public associations in Ukraine is analyzed. It is proved that public associations should be considered as a consultative and advisory entity for the implementation of inclusive education. Non-governmental organizations have the opportunity to significantly influence social and political processes in the area of protection of the rights and freedoms of citizens, in particular for persons with special educational needs.

On the basis of the European Research Association’s analytical report, possible activities of public associations in the

field of inclusive education were identified and the shortcomings in the activities of public associations in Ukraine were highlighted. Activities include:

– preparation and participation in educational campaigns; providing medical and counseling assistance to parents and children;

– public examination of bills; providing information support, legal counseling for parents; lobbying for inclusion in the authorities;

– participation in the development of new approaches to financing education; organizational assistance to schools and kindergartens; participation in drafting bills.

Defects in the activities of public associations in Ukraine include: fictitious work of registered organizations (~ 62%); local level of action (city and district (~ 68%), oblast (~ 14%), city (~ 18%); limited activity (education and training (~ 18%), medical advice (~ 19%), legal issues and social protection for children with special needs (~ 8%) [8, p. 59].

Let’s define the list of public organizations that are active lobbyists and participants in building an inclusive educational environment in Ukraine. These include the All-Ukrainian Foundation, the National Assembly of the Disabled People of Ukraine, the All-Ukrainian Charitable Organization, the Ukrainian Child Welfare Foundation, and the AIC Computer and Information Technology Development Charitable Foundation.

Let’s consider the importance and place of international organizations in the system of subjects of inclusive education in Ukraine. The list of universal and specialized international organizations that should be considered as subjects of inclusive education is highlighted. Universal organizations are the author of the United Nations (UN), the Council of Europe (CE) and the European Union (EU). To the special – the International Labor Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO).

The impact of the UN on the development and implementation of inclusion in the educational systems of states, including Ukraine, has been revealed through an analysis of the activities of the UN Secretariat, namely: the United Nations Development Program (UNDP) – an organization to assist developing countries; The United Nations Children’s Fund (UNICEF); The Office of the High Commissioner for Refugees (UNHCR); The United Nations Middle East Agency for Palestinian Refugees and Work Organization (UNRWA); The United Nations Center for Human Settlements (UNCCD); The United Nations Industrial Development Organization (UNIDO); World Bank (WB).

By analyzing projects, regulations, organizational measures of the ILO, UNESCO, WHO, we need to determine the content of their activities in the field of inclusive education and provision [2].

The basic tendencies of protection of the rights of persons with special needs and formation of inclusive policy within the framework of normative acts adopted by the Council of Europe are studied. The provisions of the European Convention on Human Rights do not provide for “disability” as a basis for non-discrimination. The Council of Europe has a consistent policy on the socialization of persons with special needs.

By analyzing the provisions of international acts, Ukrainian legislation, a series of studies of national public and international organizations, the works of domestic and foreign scientists, we will determine the list of problematic issues that need to be settled, and ways of solving them are proposed. Such issues include [3]:

1. A wide range of legislation governing the socialization of persons with special needs: lack of a clear mechanism for the implementation of inclusive education; lack of a unified approach to understanding the terms used in the educational process by persons with special educational needs. The adoption of a separate regulatory act is inappropriate;

2. The need for inclusive education at all levels of education in Ukraine. The development of a strategy and National Action Plan for the implementation of inclusive education, starting with pre-school institutions (early diagnosis and problem correction), general secondary education, vocational education, higher education;

3. Different accountability of educational institutions (special and general) and unregulated cooperation of line ministries. The reallocation of powers of the ministries is justified, where the Ministry of Education and Science of Ukraine should be designated as the leading responsible body for organizing the training of persons with special educational needs;

4. The need to review the mechanism of public funding for educational institutions providing inclusive educational services. There is a need to analyze the norms of the Budget Code of Ukraine and to legislate a system of incentives for local budgets, to redistribute the subordination of educational and rehabilitation institutions;

5. Introduction of broad educational work among the population on the necessity and positivity of the introduction of inclusive education. Because one of the barriers to inclusive education is public opinion. It is necessary to study the education campaign in Montenegro [4];

6. Implementation of a single national database of electronic statistics on education for persons with disabilities. Ukraine does not have a unified system of accounting for persons, in particular children, who need special education conditions. It is necessary to develop a single national database of statistical electronic data in the access mode of the line ministries (Ministry of Social Policy) and the State Statistics Service of Ukraine;

7. The need to create a system of resource centers for material and technical support for inclusive education in Ukraine. Given the principle of decentralization of power, the creation of such a system of centers should be envisaged in the regions, which will allow to resolve the issue of providing educational establishments with special equipment and technical means; adaptation of the architectural environment of educational institutions for the needs of persons with special needs; provision of transport services for persons with special needs; resource centers will be able to serve as information sources for the real situation on the ground (in each individual school);

8. The issue of reducing the network of special educational institutions and the creation of resource centers for inclusive education on their basis. Using statistical analysis, we note that the number of special education institutions in Ukraine is gradually decreasing. The introduction of inclusive education should not completely exclude the functioning of special educational institutions, which should be used as resource centers for training of personnel [5];

9. Creating an effective system for evaluating the quality of education, including inclusive ones. There are world-class systems for assessing the quality of education, which are classified by management – centralized and decentralized systems for determining the quality of education. Administrative and legal support of the category “quality of education” in the Ukrainian educational space requires practical action (speeding up the updating of the educational legislation of Ukraine, revising the

organizational principles of the implementation of educational management).

Conclusion. 1. The main subjects of inclusive education formation in the world dimension, in particular in Ukraine, are international governmental organizations, under the auspices of which a number of organizational and legal measures have been taken in the field of protection of the rights of persons with special needs, including the introduction of inclusive education in national educational institutions, systems.

2. The legal aspects of the implementation of inclusive education in Ukraine include: lack of a clear legal mechanism for the implementation of inclusive education; lack of a unified approach to understanding the terms used in the education process by persons with special educational needs; the need for inclusive education at all levels of education in Ukraine; different accountability of educational institutions (special and general), unregulated cooperation of line ministries; the need to revise the mechanism of public funding for educational institutions providing inclusive educational services; introduction of broad educational work among the population on the need and positivity of inclusive education; implementation of a single national database of electronic statistics on education for persons with disabilities.

3. In order to improve the administrative foundations of inclusive education in Ukraine, it is necessary to make: a number of changes and additions to the profile laws in the field of education and their synchronization with the provisions of specialized laws governing the issues of persons with disabilities; development of a strategy and National Action Plan for the implementation of inclusive education, starting with pre-school institutions (early diagnosis and problem correction), general secondary education, vocational education, higher education; redistribution of powers of the ministries, where the Ministry of Education and Science of Ukraine is the leading responsible body for organizing the educational process of persons with special educational needs; to include in the National Action Plan proposals for the introduction of inclusive education, the provision on the need to carry out an educational campaign involving the media.

Prospects for further research are an in-depth study. The introduction of inclusive education should not completely exclude the functioning of special educational institutions, which should be used as resource centers for training of personnel, scientific research in the field of education for persons with special needs.

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