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TÍTULO: Cuestiones legales para la regulación de la transformación de las escuelas superiores en la República de Kazajstán.

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RESUMEN: El autor presta especial atención a las ideas prácticas de los sistemas de educación superior y de posgrado y revela la esencia y características del proceso educativo en la República de Kazajstán. Se llevó a cabo un análisis teórico-legal de las relaciones legales, formado sobre la base de la legislación sobre educación y las principales direcciones de su mejora. Se prestó atención a los organismos y medios de administración estatal del sistema educativo, se dio una caracterización del estatus legal de las organizaciones educativas en varios niveles y se realizó un análisis comparativo del apoyo legal a la educación en la República de Kazajstán y países extranjeros. El documento intentó realizar estudios exhaustivos sobre la formación y el desarrollo del proceso educativo en la República de Kazajstán.

PALABRAS CLAVES: derecho, educación, transformación de las escuelas superiores, autonomía de las escuelas superiores, el sistema educativo de Kazajstán.

TITLE: Legal issues for the regulation of higher schools' transformation in the Republic of Kazakhstan.

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ABSTRACT: The author pays special attention to the practical ideas of the higher and postgraduate education systems and reveals the essence and features of the educational process in the Republic of Kazakhstan. Conducted a theoretical-legal analysis of legal relations, formed on the basis of legislation on education and the main directions of its improvement. Attention was paid to the bodies and means of state administration of the education system, given a characterization for the legal status of educational organizations at various levels, and carried out a comparative analysis of legal support of education in the Republic of Kazakhstan and foreign countries. The paper made an attempt to carry out comprehensive studies of the formation and development of the educational process in the Republic of Kazakhstan.

KEY WORDS: law, education, transformation of higher schools, autonomy of higher schools, the education system of Kazakhstan.

INTRODUCTION.

This paper has tries to carry out a comprehensive study of the formation and development of the educational process in the Republic of Kazakhstan. It disclosed the essence and features of the educational process in Kazakhstan. A theoretical-legal analysis of legal relations, formed on the basis of legislation on education, and the main directions of its improvement has been carried out.

Moreover, the paper paid attention to the bodies and means of state administration of the education system, gave a description for the legal status of educational organizations at various levels, and carried out a comparative analysis of the education legal support in the Republic of Kazakhstan and foreign countries.

The basic constitutional and legal principles for the protection of the citizens' rights and freedoms to education in the transition to a new stage of development of the educational system of the Republic of Kazakhstan have been determined. The paper in the end offers the ideas about the need to improve and further develop the educational process in the context of reforming the Kazakhstan educational system.

DEVELOPMENT.

Relevance of the research topic.

The right to education is a constitutional establishment that forms the basis of the legal status of an individual; it is civil society with its capabilities that should become a true guarantor of the individual's constitutional rights, including in the field of education. Measures of the state support of education should be combined with the strengthening of the non-governmental organizations' role in ensuring the compliance of educational activities with the needs of the individual and the world community (100 steps of 5 institutional reforms, December 9, 2016).

The role of the educational system in the political, socio-economic, technical, technological and cultural development of the state is well known. It is the scientific and educational potential that ensures a decent image of the country and its place in the world community, determines the status of a person in society.

Education as a purposeful process of enriching an individual and groups of people with fundamental and applied knowledge corresponding to the modern level of development, covers the whole system of relations developing between the state and the individual, the state and educational organizations,

teachers and students, etc. These relations are governed by the social norms of society and above all rules of law, as participants in educational relations are endowed with appropriate rights and obligations.

Legal norms determine the nature of the educational process, fix the structure of the educational system, establish the legal personality of educational organizations, teachers and students; regulate relations in the educational system management, its financial support; regulate the principles of the educational process organization, allowing to ensure the realization of the rights and interests of all its participants. The topic of this study is becoming increasingly relevant in connection with the reforms carried out in the system of higher education. Based on these reforms, various innovations are being introduced, which, in turn, require scientific substantiation and research.

Gap in the literature.

Legal regulation of the higher education process in the science of constitutional and administrative law has not yet been the subject of special study. It is possible to note individual studies in which questions of educational law were to some extent considered. These are the dissertation research of M.S. Beibitov on the topic "Self-management in higher educational institutions of the Republic of Kazakhstan (organizational and legal problems)" and the research work of R.R. Sultanov on the topic "Organizational and legal issues and the implementation of the constitutional right to education in the Republic of Kazakhstan", a scientific monograph edited by the group of authors such as A.K. Sagintaeva, D.M. Hartley, P.D. Eckel, F.N. Zhakypova, M.K. Orunkhanov, D.S. Günger, D.N. Bilyalov, R.S. Apergenova, D.A. Aben on the topic "Corporate Governance: Higher schools of Kazakhstan", B.O. Altynbasov, N. Myrzatayev, K Tastekeev, I. Saktaganova " Organizational and Legal Aspects of Fee-based Education in the Republic of Kazakhstan", the article by team of authors S.K. Amandykova, N.I. Khairmukhanmedov, D.B. Osmanova "Corporate Governance in Higher schools of Kazakhstan" and others.

The object of the research is social relations in the field of higher education in the Republic of Kazakhstan and legislation regulating this system. The subject of the research is the constitutional and theoretical foundations of higher education law and legislation, public administration of higher education, as well as the relations that develop in the organization and implementation of the higher educational process.

The purpose and objectives of the study.

The purpose of this work is to identify problems, features, development trends and legal regulation of higher education, as well as the development of scientifically based theoretical and methodological foundations of higher education law as a key factor in the modernization and improvement of higher education legislation in the Republic of Kazakhstan.

Realization of the research goal required the following tasks:

- To characterize and explore the current state of higher education and legal relations with a special character of dynamic development, which are the basis for the formation of higher education law as an integrated branch of law with its specific subject, methods and principles, as well as theoretically justify these categories of higher education law.
- To determine the theoretical and practical significance of the legislation systematization of the Republic of Kazakhstan on education, since the analysis and processing of existing regulations, the grouping of legal regulations according to a certain scheme, the creation of an internally unified system of acts are necessary conditions for the effectiveness of lawmaking activity, contribute to the elimination of gaps, obsolescence and contradictions in the current legislation.
- To establish the legal basis for the activities of university complexes that implement educational programs at various levels in order to improve the efficiency and quality of the educational process, use intellectual, material and information resources to train specialists and conduct research in priority areas of education, science, technology, and social development.

- To determine the legal nature of the relationship between the direct manager and the founder in the management of a private educational institution, since the current legislation approves the existence of private educational institutions, but does not provide for a legal relationship between the owner and the direct manager of the educational organization. This, in turn, leads to a certain ambiguity in the competence of the immediate supervisor and owner of the school (Amandykova S.K., Khairmukhamedov N.I., Osmanova D.B., Myrzataev N.D., 2014).

The theoretical basis of the study.

The conclusions are based on the study of the conceptual provisions of constitutional law, administrative law, as well as pedagogy, philosophy, history, sociology. Of great importance in writing the work was the Development Strategy “Kazakhstan -2050”, on which the goal of the higher education system was to ensure the creation of a national education model and its integration into the international educational space.

Methods.

As a methodological basis of this study we used both general and special methods of cognition such as analysis, synthesis, generalization, system and structural, comparative legal, logical-legal, historical, statistical, and sociological and others.

The regulatory basis for the study was the provisions of the Constitution of the Republic of Kazakhstan in 1995, with the amendments and addendums in 2017; international treaties and covenants ratified by the Republic of Kazakhstan; current legislation of the Republic of Kazakhstan in the field of education.

Theoretical and practical significance.

The main theoretical provisions and practical conclusions provide an opportunity to improve the existing national legislation and develop new regulatory acts that regulate social relations in the

framework of the higher educational process. Conclusions and suggestions made as a result of the study can be used in the modernization and further improvement of the higher educational process at various levels of education (Amandykova S.K., Khairmukhamedov N.I., Osmanova D.B., Myrzataev N.D., 2014).

The scientific novelty of the paper is the followings:

- The definition of higher educational law is formulated, its analysis is given as an integrated branch of law, various branch affiliation of its norms, regulating social relations arising in the sphere of higher educational process between students and educational organizations, as well as relations connected with higher educational activities are shown generally.
- The theoretical and practical necessity of legislation systematization (incorporation and codification) is substantiated, its advantages are shown when using the regulatory framework, to promptly find and correctly interpret the norms of interest.
- The necessity of further improvement of legislation on education to ensure the rights of citizens to university education is grounded.
- The legal status of the higher schools' complex is substantiated and disclosed, its features and advantages are shown and, on this basis, a multi-level education model is analyzed, the necessity of an integrated approach to the organization of higher education with the aim of effective and consistent learning is substantiated.
- The need for further improvement of legislation on education in the management of private educational institutions is justified. At present, educational organizations should be led by professionals of pedagogical activity who can indicate the correct way for the further development of the educational process. Consequently, in Article 44 of the Law of the Republic of Kazakhstan "On Education" it is shown the necessity to clearly distinguish between the specific functions of the owner and the direct head of a private educational institution with regard to pedagogical and other relations.

Approbation of work results.

This study was discussed at a meeting of the Department of “Theory and History of State and Law, Constitutional Law”, which was called “Legal aspects of the higher schools’ transformation into non-profit joint-stock companies in order to implement “the Plan of the Nation of Kazakhstan”. The main theoretical positions and conclusions, obtained as a result of the conducted research, were reported and considered at international and republican scientific-theoretical and scientific-practical conferences. The results of the study were used in the educational process when conducting lectures and seminars in the following modules: “Constitutional law of the Republic of Kazakhstan”, “Constitutional law of foreign countries”, “Comparative law”.

Discussion.

According to the study, the following provisions were made:

1. The constitutional and legal foundations of a higher educational process consist of constitutional and other inter-sectoral legal rules governing social relations arising between higher educational organizations and students (The Constitution of the Republic of Kazakhstan, August 30, 1995).
2. Systematization of educational legislation should be understood as the development and streamlining of legal norms in higher education, which results in a holistic regulation of higher educational relations based on in-depth analysis and revision of all existing norms in this area, eliminating gaps, contradictions and other imperfections of current legislation, creative development of legal regulation mechanisms capable of ensuring the effective operation of educational law norms.
3. In Article 30 of the Law of the Republic of Kazakhstan "On Education", an amendment is proposed, the purpose of which is to oblige local executive bodies in every possible way to assist in providing higher educational institutions on an affordable paid basis (319-III Law of the Republic of Kazakhstan of “On Education”, July 27, 2007).

4. Higher school complexes are a new kind of sophisticated and integrated educational organizations, which include various levels of vocational education that require constant modernization to reflect the transition period of society. The legal status of higher school complexes should be legislatively enshrined (Sultanov, 2006).

5. In the Law of the Republic of Kazakhstan “On Education”, it is necessary to clearly distinguish between the competences of the owner and the direct head of a private educational institution with regard to pedagogical and other relations. The educational institution should be managed by a manager who has a rich teaching experience and a scientific (academic) degree, who independently, clearly and directly controls the higher educational process. And the founder’s attitude to the organization of education should be civil in nature, which, as the owner of a legal entity, expects a certain commercial profit from it (Altynbasov, Myrzatayev, Tastekeev, Saktaganova and Osmanova, 2018).

CONCLUSIONS.

In the result of the study, the following conclusions were made:

1. The content of the categories “educational system”, “educational relations”, “quality of education”, etc. is disclosed, which is a potential opportunity to study the essence and laws of the educational process. It has been established that the reform of the higher education system is fundamentally impossible without a comprehensive and deeply grounded non-state educational policy and should be implemented comprehensively on the basis of a balanced, carefully developed scientific concept, a stable legal framework capable of determining the state of higher education in the republic from the standpoint of its tasks, functions, features and suggest innovative ways and directions for its development and adjustment (319-III Law of the Republic of Kazakhstan of “On Education”, July 27, 2007).

2. The necessity of informatization of higher educational process, which is a condition for its successful development, an important factor in achieving its main goals, improving the quality of higher education graduates, the development of new mechanisms for the formation of their modern scientific world view, corresponding to the conditions and problems of society (Busurmanov, Amandykova, Saimova, Khairmukhanmedov, Zhumanova, 2016).

Based on the theoretical analysis of the subject, methods, principles and sources of educational law, it is defined as an integrated branch of law, the legal norms of which have a constitutional and other branch affiliation and in their relationship regulate social relations arising in the framework of the educational process between students and educational organizations (Busurmanov, Amandykova, Saimova, Khairmukhanmedov, Zhumanova, 2016).

3. It is substantiated that the regulation of educational relations at the legislative level is a guarantee of equal rights of citizens and the rule of law in the educational process. The paper substantiates that systematization of educational legislation in the form of codification marks the completion for the forming process of an array of educational law norms as an integrated branch of law capable for effective legal regulation of social relations at the level of contemporary tasks and needs of civil society, the state and the individual (Osmanova, Buleuliev, and Barsukova, 2015).

Management of higher education is the activity of government bodies and non-governmental organizations aimed at improving the efficiency of higher education; process governing the achievement of educational policy objectives. As a means of state administration, licensing, certification and accreditation of higher educational institutions are highlighted. The practical and theoretical essence of these categories is revealed, on the basis of which the main goal of the higher educational process is achieved - the quality of higher education. The analysis of the regulatory framework for licensing, certification and accreditation of educational activities in the Republic of

Kazakhstan was carried out and ways for their improvement were proposed (Osmanova and Kerimkulov, 2013).

4. It is established that in the Law of the Republic of Kazakhstan “On Education” or model rules it is necessary to clearly distinguish between the specific functions of the owner and the immediate head of a private educational institution with regard to pedagogical and other relations. The educational institution must be managed by a manager who has a rich teaching experience and a degree, who independently, clearly and directly controls the educational process. And the founder’s attitude to the organization of education should be civil in nature, which, as the owner of a legal entity, expects a certain commercial profit from it (Hartley and Ruby, 2017).

5. It has been established that in order for the constitutional norms on the rights of citizens to study to be fully implemented, the state must specifically solve a number of urgent issues: first, it is necessary to ensure a higher education system accessible to all citizens, regardless of their financial capabilities; secondly, it is necessary to take under the strict state control the real implementation of the program of higher education; thirdly, it is necessary to target state financing of higher education, as well as to develop a transparent financing mechanism at the republican and local levels; fourth, to move to new methods of education for youth, taking into account the positive aspects of the Soviet higher education method (Altynbasov, Myrzatayev, Tastekeev, Saktaganova and Osmanova, 2018).

6. It is revealed that at present graduates of higher educational institutions are not in demand by society and the economy. This indicates the inconsistency of their educational programs with the requirements of modern social development. The paper presents practical data that confirm the negative realities of modern higher education (Hartley, Eckel and Sagintaeva, etc., 2016).

Analyzing practical data in the field of higher education, a number of problems associated with the educational process and the scientific degree of the teaching staff are revealed. To this end, it is

proposed in the law on education to determine the legal status of a teacher, to provide preferential conditions for a degree for higher schools' employees (Nazarbayev, January 28, 2011).

7. The work substantiates the existence of educational organizations where training is conducted on the basis of several levels of educational programs. It seems that through higher schools' complexes, higher education could more quickly and more organically fit into the framework of the Bologna process, which provides for higher education in a three-level system of education. Within the higher schools' complex it would be easier to harmonize the curricula of secondary and higher vocational education (Electronic Government of the Republic of Kazakhstan, 28 June 2019).

The study examines the concept and value of higher education quality. Traditional methods that ensure the quality of education in today's conditions are no longer enough. New organizational and methodological approaches are needed to solve this problem. In a constantly developing society, the quality management of specialist training should be a multi-level system of organization and control, which would allow constantly and objectively assess the level of training of a future specialist and provide guarantees for the rights of individuals, society and the state (Institute of Legislation and Legal Information, January 19, 2011). Consequently, the first level of control over the quality of higher education is the internal control system; the second level is state and public control (Sagintaeva, Hartley, and Aben, etc., 2018).

Recommendations for using the research results.

- It is proposed to systematize the legislation on education for the convenience of its application.
- Continue the work on further improvement of the higher education system in order to ensure higher educational institutions and legislate.
- In the organization of the educational process requires an integrated approach.

- As an improvement in the legislation on education in the management of private educational institutions, it is proposed to distinguish between the specific functions of the owner and the direct head of a private educational institution with regard to pedagogical and other relations.

Evaluating the effectiveness of implementation.

The introduction of the obtained theoretical results and recommendations will help improve the domestic legal framework in the field of higher education, as well as allow the formation and development of educational law in the Republic of Kazakhstan as a branch of law.

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