

Artículo de investigación

**LEGAL SUPPORT OF THE SYSTEM OF STATE CONTROL IN THE
PROCESS OF EDUCATIONAL GOVERNMENTAL ORDER**

APOYO LEGAL AL SISTEMA DE CONTROL ESTATAL EN EL PROCESO EDUCATIVO
GUBERNAMENTAL

APOIO LEGAL DO SISTEMA DE CONTROLE DO ESTADO NO PROCESSO DE ORDEM
GOVERNAMENTAL EDUCATIVA

Recibido: 30 de abril de 2019. Aceptado: 6 de junio de 2019

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Abstract

The purpose of the research is to determine the sufficiency of the system of state control of the state needs when implementing an effective educational governmental order as the main instrument for ensuring the constitutional right of citizens to free education in Ukraine. The methodological basis of the research is the positivistic theory of law and functionalism. Hermeneutical and normative and analytical methods were used to find out the content of sources of legal regulation of educational governmental orders; methods of forecasting, legal modeling and analogy of the law contributed to the development of proposals for improving current legislation. The results of the research showed that the system of state control over the process of implementing the educational governmental order in Ukraine is not formed yet. The results of the analysis of legislation showed

Resumen

El propósito de la investigación es determinar la suficiencia del sistema de control estatal de las necesidades del estado al implementar un orden gubernamental educativo efectivo como el principal instrumento para garantizar el derecho constitucional de los ciudadanos a la educación gratuita en Ucrania. La base metodológica de la investigación es la teoría positivista del derecho y el funcionalismo. Se utilizaron métodos hermenéuticos, normativos y analíticos para averiguar el contenido de las fuentes de regulación legal de las órdenes gubernamentales educativas; Los métodos de pronóstico, modelos legales y analogía de la ley contribuyeron al desarrollo de propuestas para mejorar la legislación actual. Los resultados de la investigación mostraron que el sistema de control estatal sobre el proceso de implementación del orden gubernamental educativo en Ucrania aún

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that indirect control in this field is provided only by special financial control bodies to verify the effectiveness of using budget funds in the process of educational governmental order. The work demonstrates systemic violations that have been identified by the supervisory authorities for five years in this field. In order to prevent violations of the law in the field of educational governmental order, as well as to form an effective system of state control at all stages of governmental order, it is proposed to empower the key authorities with appropriate control functions and powers. On the basis of the gaps in law the regulation of control activities that were found in modern legislation, for efficient solution of problems (before the drafting and adoption of the relevant legislative changes by the Parliament) it is considered rational to take as a basis provisions of general norms of legislative acts, which regulate allied legal relations, namely in the field of governmental order.

Keywords: education; educational governmental order; state control; public administration; legal regulation; administrative and financial law.

no se ha formado. Los resultados del análisis de la legislación mostraron que el control indirecto en este campo solo lo proporcionan organismos especiales de control financiero para verificar la efectividad del uso de los fondos presupuestarios en el proceso de orden gubernamental educativo. El trabajo demuestra violaciones sistémicas que han sido identificadas por las autoridades de supervisión durante cinco años en este campo. Con el fin de prevenir violaciones de la ley en el campo del orden gubernamental educativo, así como para formar un sistema efectivo de control estatal en todas las etapas del orden gubernamental, se propone habilitar a las autoridades clave con funciones y poderes de control apropiados. Sobre la base de las lagunas en la ley, la regulación de las actividades de control que se encontraron en la legislación moderna, para la solución eficiente de los problemas (antes de la redacción y adopción de los cambios legislativos relevantes por el Parlamento) se considera racional tomar como base las disposiciones de las normas generales de los actos legislativos, que regulan las relaciones legales aliadas, a saber, en el campo del orden gubernamental.

Palabras claves: educación; orden gubernamental educativo; control del Estado; administración Pública; regulación legal; Derecho administrativo y financiero.

Resumo

O objetivo da pesquisa é determinar a suficiência do sistema de controle estatal das necessidades do Estado ao implementar uma ordem governamental educativa eficaz como o principal instrumento para garantir o direito constitucional dos cidadãos à educação gratuita na Ucrânia. A base metodológica da pesquisa é a teoria positivista do direito e do funcionalismo. Métodos hermenêuticos e normativos e analíticos foram utilizados para descobrir o conteúdo das fontes de regulação legal das ordens governamentais educacionais; métodos de previsão, modelagem legal e analogia da lei contribuíram para o desenvolvimento de propostas para melhorar a legislação vigente. Os resultados da pesquisa mostraram que o sistema de controle estatal sobre o processo de implementação da ordem governamental educacional na Ucrânia ainda não está formado. Os resultados da análise da legislação mostraram que o controle indireto neste campo é fornecido apenas por órgãos especiais de controle financeiro para verificar a eficácia do uso de recursos orçamentários no processo de ordem governamental educacional. O trabalho demonstra violações sistêmicas que foram identificadas pelas autoridades de supervisão por cinco anos neste campo. A fim de evitar violações da lei no campo da ordem governamental educacional, bem como para formar um sistema efetivo de controle estatal em todas as etapas da ordem governamental, propõe-se capacitar as principais autoridades com funções e poderes de controle apropriados. Com base nas lacunas da lei, a regulamentação das actividades de controle que foram encontradas na legislação moderna, para uma solução eficiente dos problemas (antes da redação e adoção das alterações legislativas relevantes pelo Parlamento), considera-se racional tomar como base as disposições de normas gerais de actos legislativos, que regulam as relações jurídicas aliadas, nomeadamente no domínio da ordem governamental.

Palavras-chave: educação; ordem governamental educacional; controle estatal; administração pública; regulamentação legal; direito administrativo e financeiro.

INTRODUCTION

The implementation of administrative reform in Ukraine at the present stage has largely covered the educational field at all its levels. In this process, politicians, scientists and educationists, economists and lawyers were faced with tasks aimed at optimizing public administration in this field and financial expenditures, which are allocated from the state budget of Ukraine and make the only financial basis for the implementation of the governmental order for the training of specialists.

Under conditions of political and economic experiments in the educational field, which are accompanied by the dynamic development of national legislation, the reformatting of state institutions (executive bodies) and local self-government bodies, the gradual reduction of the number of state educational institutions, the governmental order needs timely, appropriate and adaptive ensuring of guarantees of organizational and legal character.

To such guarantees in the theory of law and administration (Rabinovich, Khavronyuk, 2004) it is accepted to refer: firstly, institutions, determined by the legislation, are entrusted with the corresponding functions, powers to organize and implement administrative and legal support for the implementation, protection and defense of the interests of participants in the governmental order in the field of education; and secondly, administrative procedures established by regulatory and legal acts (normative, registration, competitive, control, appeal, dispute resolution, etc.).

One of the effective organizational and legal means of ensuring the implementation of the governmental order in the field of education is state control, intended to facilitate both the ordering of the mechanism of legal regulation of such an order, as well as the implementation of legislation requirements (rules, conditions) by relevant subjects.

At the same time, a general overview of the characteristics of the current mechanism of educational governmental order in Ukraine allows to conclude that today there is no effective system or the implementation of state or even alternative (public) control over the processes of formation and performance of the governmental order for the training of specialists for various sectors of the economy of the country at national level. The factors, that indicate such a situation are the following: a high percentage of job

placement of graduates not by profession (more than 50% for the last five years), low salary of graduates during the first employment in the vast majority of budget institutions in almost all sectors of the national economy (especially in medical, educational, public sector, etc.); absence of legal responsibility of the performers of the governmental order, graduates and employers for improper performance of their functions in the process of implementing the educational governmental order etc.

Obviously, politicians, scientists, educationists and employers pay a lot of attention to solve these problems. Thus, every year, the government and the Ministry of Education and Science of Ukraine introduce new requirements for educational institutions for performance of educational activities at public expense, revise the rules of selecting young people for studying under the governmental order; government customers (central executive authorities) try to encourage graduates in various ways to work in the subordinate enterprises, institutions, organizations. Of no less importance is the activity and value of contributions of scientists, in particular, O. Grinkevich, who worked on improving the mechanism of the governmental order for the training of specialists in the management of the competitiveness of higher education in Ukraine (Grinkevich, 2018), I. Kocharyan, who developed theoretical and methodological principles and practical recommendations according to the macroeconomic planning in management of the system of higher education of Ukraine (Kocharyan, 2016), as well as legal specialists, who devoted their works to various aspects of administrative and legal regulation of education field: I. Lytvyn researched the administrative and legal principles of the activity of educational institutions (Lytvyn, 2016), B. Gryshchuk – administrative and legal regulation of professional training (Gryshchuk, 2016), A. Verbitskaya – state policy in the field of higher education of Ukraine in the context of integration into the European educational and scientific space (Verbitskaya, 2017), V. Savishchenko – administrative and legal support for adult education (Savishchenko, 2016), T. Gubanova – administrative and legal status of higher educational establishments of primary and first degree of education (Gubanova, 2018), I. Pyvovar, Y. Pyvovar – legal and organizational prospects for Improvement the placement process of the state order for specialists training (Pyvovar I., Pyvovar Y.,

2018), Y. Pyvovar, I. Pyvovar, J. Iurynets – state and prospects of implementation of the right to higher education for sentenced to imprisonment (Pyvovar Y., Pyvovar I., Iurynets J. 2018) etc. However, it should be noted that there is no research that would contain a thorough analysis of the problems of state control in the process of educational governmental order and, accordingly, would suggest ways of improvement in modern Ukrainian science.

The general purpose of this research is to determine the adequacy of the state control system for state needs while implementing an effective educational governmental order, as well as to develop proposals for the improvement of this system. For this purpose the following tasks are set: to investigate the state of the normative and legal control of the organization of the system of state control in the field of educational governmental order; to examine the status of the entities that are authorized to exercise control powers in the specified field; to analyze the results of the activities of the supervisory authorities in this field.

The methodological basis of the research consists of general scientific and special legal methods of cognition, namely: historical and legal and dialectical methods, through which the legislation in the historical aspect and its regularities was investigated; methods of classification and systematization – contributed to the identification of control powers of the authorities and other entities in this field; hermeneutic and normative and analytical methods were used to find out the content of the sources of administrative and legal regulation of educational governmental order; the methods of formal and logical and system and structural analysis were used in the study and improvement of theoretical and methodological foundations of legal regulation of the control system in this field; methods of forecasting, legal modeling and analogy of the law contributed to the development of proposals for improving existing legislation.

RESULTS AND DISCUSSIONS

As a result of studying the issue according to the availability of an appropriate legal basis in the educational sphere for the establishment and functioning of the state control system in the field of educational governmental order, it was determined that for the formation of this system in 1995 some normative acts were adopted, namely: the Law of Ukraine "On State Order for Satisfaction of Priority State Needs" of

December 22, 1995, No 493/95-VR (VRU, 1995, invalid) and a number of resolutions of the Cabinet of Ministers of Ukraine on its implementation. Thus, Article 2 of the aforementioned law was entitled "Formation of the governmental order and control over its implementation", paragraph 1 of part 2 of which stated that "for the purpose of organizing work related to the formation of the governmental order, the placement of products supply for public needs and control over their implementation, the Cabinet of Ministers of Ukraine determines and approves the list of government customers, the amount and structure of the governmental order" (VRU, 1995, invalid). At the same time, the control function in the field of forecasting and the formation of a governmental order by the legislator was not assigned to any of the state bodies. There was no clarifying on this issue under the Resolution of the Cabinet of Ministers of Ukraine "On the Procedure for the Formation and Placement of Governmental Order for the Supply of Products for State Needs and Control over Their Implementation" of February 29, 1996, No 266, which, by its name, should contain the content of the legal provisions even the basis of control powers of authorized bodies.

Nowadays, the services of training specialists under the governmental order, according to the par. 5 part 5 Art. 2 of the Law of Ukraine "On Governmental Order" of December 25, 2015, No 922-VIII (VRU, 2015b), belong to a separate category of services, which peculiarities of procedures for the purchase of goods are determined by a separate law (in the context of the subject of our research, the Law of Ukraine "On Creating and Placing Governmental Orders for Training of Specialists, Scientific, Teaching and Worker Staff, Advanced Training and Retraining" (VRU, 2012c). The same (special) category includes, in particular, unirradiated fuel elements (coated particles) for nuclear reactors; oil or oil products; postal services, postage stamps and marked envelopes; telecommunication services, including retransmission of radio and television signals (except for mobile communication services and Internet service providers); goods and services, which are performed in accordance with the programs of the Global Fund to Fight AIDS, Tuberculosis and Malaria in Ukraine, which are carried out in accordance with the law; energy services. However, while the comparative analysis of the provisions of the special laws regulating the peculiarities of the procurement of the specified groups of goods, works and services, it is revealed in some of such laws

availability, in other absence of norms governing the control relations in the mentioned areas of public procurement. Thus, in the Law of Ukraine "On the peculiarities of the procurement of unirradiated fuel elements (coated particles) for nuclear reactors" of December 9, 2011, No 4101-VI, is a corresponding Article No 4 "Appeal and Control Over the Purchase of unirradiated fuel elements (coated particles) for nuclear reactors" (VRU, 2011). As to the control activities of authorized entities in the field of procurement of other goods, works and services, for example, in the Laws "On the Specifics of Government Procurement of Postal Services, Postage Stamps and Stamped Envelopes", "On Implementation of the Global Fund Programs to Fight against AIDS, Tuberculosis and Malaria in Ukraine", "On Introducing New Investment Opportunities, Guaranteeing the Rights and Legitimate Interests of Business Entities for Large-Scale Energy Modernization", there are no special regulations (VRU, 2012a, 2012b, 2015a).

It should be noted that even in a special law that regulates the sphere of educational public procurement there are no legal provisions according to the control performing. Therefore, based on the legal gap that emerged in modern legislation for the operational solution of the problem it is considered rational to take as a basis the provisions of general norms of legislative acts regulating allied legal relations, namely in the field of public procurement. Let us give the arguments of such a proposal.

Control Bodies in the Mechanism of Public Procurement

Article 7 of the Law of Ukraine "On Public Procurement" No 922-VIII is entitled "State Regulation and Control in the Field of Procurement" and accordingly contains provisions on the relevant bodies authorized to perform the specified functions. The part 1 of the same article states that the Ministry of Economic Development and Trade of Ukraine (hereinafter – the Ministry of Economic Development and Trade) is responsible for regulating and implementing state policy in the field of procurement within the limits of the powers determined by the law. In addition, in part 4 of Article 7 it is established that the regulatory authority of state regulation in the field of procurement also carries out the Authorized Agency.

In accordance with part 1 of Article 8 of the same law, the functions of the Ministry of Economic Development and Trade are the following:

- 1) development and approval of the regulatory and legal acts necessary for the implementation of the Law No 922-VIII;
- 2) analysis of the functioning of the public procurement system;
- 3) preparing and submitting, not later than April 1 of the year, following the reporting fiscal year, to the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Accounting Chamber of Ukraine of the annual report, which contains the analysis of the functioning of the public procurement system and generalized information on the results of the implementation of procurement control;
- 4) generalization of procurement practice, including international one;
- 5) studying, generalizing and spread of world experience on procurement issues;
- 6) ensuring the functioning of the web portal of the Authorized Agency and the information resource of the Authorized Agency;
- 7) filling the information resource of the Authorized Agency;
- 8) interaction with the public on the issues of improving the system of public procurement;
- 9) organization of procurement meetings and seminars;
- 10) international cooperation in the field of procurement;
- 11) development and approval of: a tender documentation sample; a provision sample on a tender committee or an authorized person (persons); order of determination of the subject of procurement; order of placing information on public procurement; forms (annual procurement plan, announcement of performing a procurement procedure (announcement of performing public sale, announcement of performing a competitive dialogue), a register of received competitive proposals, a protocol of opening tenders, a protocol of consideration of tender proposals, a notice on intention to conclude a contract; a report on the results of conducting procurement procedures; a notification of amendments to the contract; a report on the performance of the procurement contract; a report on concluded contracts;
- 12) provision of generalized responses according to the implementation of the law on public procurement;
- 13) provision of free of charge consultation on procurement issues on the Authorized Authority's information resource;
- 14) development of training programs sample on the organization and implementation of procurement;
- 15) cooperation with state bodies and public organizations in preventing corruption in the field of procurement;
- 16) informing the public about the policy and rules of public procurement;
- 17) authorization of electronic platforms (VRU, 2012c).

The studying of the abovementioned powers of the Ministry of Economic Development and Trade of Ukraine as an authorized body testifies, firstly, that they are covered by the sphere of

procurement of goods, works and services within the framework of the tendering procedure for procurement, the meeting of an agreement on procurement and its implementation, and secondly, they do not contain any hint on implementation control function by him, even though Part 2 of Article 8 states that the Authorized Body has the right to carry out actions and to take measures provided by law to perform the functions assigned to it.

The next controlling entity, part 2 of Article 7 of the Law No 922-VIII, defines a central executive body that implements state policy in the field of treasury service of budget funds (State Treasury Service of Ukraine (CMU, 2015a) with a number of special powers. However, their analysis gives grounds to assert that they all relate to the peculiarities of performance exclusively the procedure of the procurement of goods, works and services namely: checks before payment under the procurement contract the existence of a procurement contract, an annual procurement plan and a report on the results of the procedure of procurement, which confirm the performance of procurement procedure, by the results of which a procurement contract has been concluded; takes measures to prevent payments from the customer's account in accordance with the financial obligation under the concluded procurement contract in the following cases: a) absence or incompetence of the required documents established by the legislation provided in paragraph 2 of this part; b) cancellation of the procurement procedure; c) the legal validity of a court decision on the recognition of the results of the procurement procedure invalid; d) for the period of suspension of the procurement procedure; e) presence of a corresponding decision of the appeal body in accordance with Art. 18 of the Law No 922-VIII. However, the analysis of the abovementioned powers of the bodies of the State Treasury Service of Ukraine indicates that they are supervisory and controlling nature, but they cannot be applied to the procedure of governmental order in the field of training of specialists.

Within the limits of the definition of the circle of controlling entities, part 3 of Art. 7 of the Law No 922-VIII indicates on bodies authorized to exercise control over public procurements within the limits of their powers. These include the Accounting Chamber of Ukraine, the Antimonopoly Committee of Ukraine and the Central Executive Authority, which implements the state policy in the field of state financial control – the State Audit Office Service of

Ukraine (hereinafter - State Service) (CMU, 2016).

When studying the status of the legal act of the Accounting Chamber of Ukraine (the Law of Ukraine "On the Accounting Chamber"), the following competencies regarding the implementation of financial control (audit) in the field of educational governmental order were identified:

- carrying out the financial audit and audit of efficiency with regard to ... execution of the governmental order ... at the expense of the state budget (paragraph 9, paragraph 1, part 1, Article 7);
- when carrying out the state external financial control (audit) on the efficiency of the use of the state budget funds foreseen for performance of the governmental order, the Accounting Chamber investigates and evaluates the system of legal, organizational and financial principles of the governmental order, the effectiveness of the formation and execution of the governmental order (part 1 of Art. 13) (VRU, 2015c).

Examples of the results of the control activities of the Accounting Chamber of Ukraine in the field of public procurement during the training of specialists are the relevant reports submitted by it, which became the reason for the adoption of management and political decisions for the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the General Prosecutor's Office of Ukraine, in particular:

- 1) a report on the results of the analysis of the formation, placement and execution of the governmental order for the training of specialists with higher education, approved by the decision of the Accounting Chamber of August 11, 2015, No 1-5 (AChU, 2015b);
- 2) a report on the results of the analysis of the formation and accounting expenses for vocational and technical education at the expense of intergovernmental transfers from the state budget to local budgets, approved by the decision of the Accounting Chamber of December 15, 2015, No 11-5 (AChU, 2015a);
- 3) a report on the results of the audit of the effectiveness of the use of the state budget funds foreseen for the execution of the governmental order for the training of specialists with higher education by the higher medical and pharmaceutical

educational institutions of Ukraine, approved by the decision of the Accounting Chamber of Ukraine of September 13, 2016, No 17-2 (AChU, 2016);

- 4) a report on the results of the audit of the effectiveness of the use of the state budget funds committed to the National Agency of Ukraine for Civil Service for vocational training of civil servants and local government officials, approved by the decision of the Accounting Chamber of Ukraine of March 13, 2018, No 5-3 (AChU, 2018);
- 5) a report on the results of the audit of the effectiveness of the use of the state budget funds committed to the Ministry of Health of Ukraine for training of medical and pharmaceutical personnel by higher educational establishments and the state of use and disposal of objects of governmental property owned by the state material and other assets having financial consequences for the state budget, approved by the decision of the Accounting Chamber of Ukraine of April 9, 2019, No 8-2 (AChU, 2019).

Further analysis of legislation allowed to establish that the State Audit Service and its territorial bodies have been granted the widest control over the state sector of the economy. Thus, Art. 7-1 provides order for the monitoring of public procurement during the performance of the procurement procedure, the conclusion of a procurement contract and its execution. At the same time, the legal analysis of the powers provided in the legislation, in particular, the regulatory and legal act defining the legal status of this body (CMU, 2016), as well as the control measures carried out by it and its territorial units, allowed to conclude that these authorities do not have the right to apply these powers to carry out inspections of the procedures for performing educational governmental order. After all, the competence norms do not take into account the peculiarities of the procedures for the formation, placement and performance of educational public contracts, the circle and powers of specific subjects in these procedures, which differ significantly from the general procedure for public procurement of goods, works and services, etc. Instead, effective control measures on the side of the State Service in the field of public procurement remain checks on compliance with budget discipline (budget legislation) by educational institutions and other institutions (performance of governmental order) as budget funds managers of second and third

levels and governmental customers as main managers of budget, which are carried out in form of the state financial audit, inspection on the planned and unscheduled (on behalf of law enforcement agencies and courts) basis.

Among the wide range of authorities that potentially contribute to the effective implementation of educational governmental order, consider the Antimonopoly Committee of Ukraine as an appeal body for the purpose of impartial and effective protection of the rights and legitimate interests of persons, involved in participation in procurement procedures. As part of this public body, a permanent administrative board for dealing with complaints of violations of legislation in the field of public procurement is set up. The procedure for the activity of the permanent administrative board (collegium) is established in accordance with the Law of Ukraine "On the Antimonopoly Committee of Ukraine" of November 26, 1993 No 3659-XII (VRU, 1993), unless otherwise provided by Law No 922-VIII (VRU, 2015b).

Thus, it should be noted that the Law No 922-VIII establishes control powers only to clearly defined bodies (directly to the subjects of financial control: the Accounting Chamber, the State Treasury Service of Ukraine, the State Audit Service of Ukraine, as well as other subjects of control, for example, the Antimonopoly Committee of Ukraine, which apply only to the field of the execution of a governmental order in the form of public procurement. The latter, as it follows from the law, is carried out through the public procurement procedure, which is interpreted in the legal document as an purchase by the customer of goods, works and services in accordance with the procedure established by the Law of Ukraine "On Public Procurement".

Consequently, we can conclude that in the status documents of these bodies (except for the Law of Ukraine "On the Accounting Chamber") there is no direct authority for the implementation of the governmental order in general as well as in the field of training of specialists.

However, for the efficient functioning of field of the governmental order, including the field of education, there is clearly insufficient control over the financial part of the order. There is the need for complex control over the governmental order that would cover all its stages: the formation, placement and performance (including the stage of compulsory employment of a "budget" graduate in the interests of the

state), as well as components: finance, personnel, other resources and management.

At the same time, analysing the competence of the authorities, we found the absence of a norm with the direct assignment of a control function to one or another authority at the stage of formation (forecasting, planning) of the governmental order. We consider that in the Law of Ukraine No 5499-VI (VRU, 2012c) the Ministry of Economic Development and Trade partly within its powers has the right to demand indirectly:

firstly, the submission by the State Statistics Service of Ukraine, other central executive bodies, the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol City State Administrations, the National Academy of Sciences of Ukraine, Sectoral Academies of Sciences, and other budgetary institutions, the Joint Representative Body of All-Ukrainian Trade Unions and Trade Union Associations, the Joint Representative Body of Employers Party at the National Level of statistical data and estimated figures by September 15 of the current year;

secondly, the submission by governmental customers of the proposals for the governmental order draft for the year following the year under planning and the next two budgetary periods in both physical and value terms, taking into account the criteria for the formation of the governmental order, the medium-term forecast, as well as the corresponding justification by December 1;

thirdly, the submission by governmental customers of the proposal for the governmental order draft for the year under planning with the determination of figures of the average annual number of persons, the indicative average cost of training of one qualified worker, specialist, postgraduate student, doctoral student, as well as the amount of expenditures envisaged by the state budget for these purposes, and the corresponding justifications, etc. within ten working days after the entry into force of the Law "On the State Budget of Ukraine" for the relevant year.

At the same time, the absence of direct powers of this central government authority, even on the stated issues, leads to systematic violations of the legislation by the relevant parties to a legal process of educational governmental order. For example, according to the results of the inspection, the Accounting Chamber of Ukraine

identified a long process of obtaining and agreeing of proposals from customers by the Ministry of Economic Development and Trade, which in turn led to the approval of the amounts of governmental order violating the prescribed terms. In particular, in 2013, in violation of the CMU Resolution "On Approval of the Procedure for the Formation and Placement of Governmental Order for the Supply of Products for State Needs and Control over Their Implementation" of February 29, 1996, No 266, the amounts of governmental order were approved by the CMU Resolution "On Approval of the Procedure for the Formation of Governmental Order for Training of Specialists, Scientific, Teaching and Worker Staff, Advanced Training and Retraining" only on May 20, 2013, No 362. In 2014, in violation of the CMU Resolution No 306 of April 15, 2013, the amounts of governmental order were approved by the CMU Resolution No 212 only on June 11, 2014. In 2015 the relevant Resolution was adopted on July 1, 2015 No 462 (AChU, 2015b). A similar practice of delaying the deadlines continued in 2017, 2018, 2019 (the corresponding Resolutions were adopted only on July 12, 2017 (CMU, 2017), July 11, 2018 (CMU, 2018), and in 2019 – it was not adopted before submission of this article for publication).

It should also be noted that the Ministry of Economic Development and Trade Order "On Approval of Forms of Information Submission on the Figures of the Indicative Average Cost of Training under the Governmental Order of One Qualified Worker, Specialist, Postgraduate Student, Doctoral Students, Student" of December 4, 2013, No 1429 (MEDTU, 2013) determined the forms for submitting information about the figures of the indicative average cost of training under the governmental order of one specialist in particular. At the same time, as it was established by the inspection conducted by the Accounting Chamber of Ukraine for the Ministry of Economic Development and Trade, none of the governmental customers submits their proposals according to the forms developed by the Ministry. At the best case, in the submitted proposals in 2013, 2014, and 2015, the figure of the indicative average cost of training of one specialist was indicated without identifying its components (AChU, 2015b). In other cases, the audit identified that, in particular, such governmental customer as the Ministry of Health of Ukraine does not apply the "Methods for Calculating the Indicative Average Cost of Training of One Skilled Worker, Specialist, Postgraduate Student, Doctoral Student" approved by the CMU Resolution of May 20,

2013, No 346 (CMU, 2013). As a result, the de jure training of one bachelor student costs the country twice as expensive as the training of one specialist student. In addition, the Ministry of Health of Ukraine, when submitting proposals to the governmental order draft for the training of specialists, scientific, teaching and worker staff, advanced training and retraining (before the Law of Ukraine "On the State Budget of Ukraine for 2015" came into force), did not indicate the real amounts of the required governmental order and linked the indicated figures with the last year's funding amounts, that is, with the figures of 2014. At the same time, the real needs of the Ministry of Health of Ukraine sector were indicated only in reference. Consequently, it was established that the Ministry of Economic Development and Trade received for the generalization practically similar figures of the needs of specialists from year to year. At the same time, the proposals to the governmental order draft for the training of specialists, scientific, teaching and worker staff, advanced training and retraining for the years 2015-2017 contained only data on the indicative average cost of training of one specialist according to the specified education and qualification level as the average arithmetic value of the established amount of financing and the average annual contingent of specialists (AChU, 2016).

At the same time, violations of the law in the field of governmental order of specialists may be either from the bodies submitting statistical data, estimated figures, or by the authorized bodies responsible for drawing up relevant legal documents. An example is the unsatisfactory practice of formation of the educational governmental order by the Ministry of Health of Ukraine, which is verified, in particular, by the Accounting Chamber of Ukraine audit (it was determined that in 2017 and 2018 the Ministry of Health of Ukraine did not follow the requirements of regulatory and legal acts (Article 2 of the Law No 5499, paragraphs 6, 9 and 11 of Order No 306) regarding the submission to the Ministry of Economic Development and Trade of proposals to the governmental order draft in physical and value terms, estimated figures of the needs of the industry for the specialists by types of economic activity, and estimated average cost for training under governmental order of one specialist for the planned year) (AChU, 2019). Thus, despite of the reports of the Ministry of Health of Ukraine on shortage of personnel caused by the lack of staffing in health care institutions of more than 20.1 thousand medical positions, the availability of part-time employed 19.8 thousand medical positions, nearly 50

thousand of doctors of retirement and great retirement age, the annual staff turnover of about 6 thousand professionals in the industry and the request to take into account the information provided during the planning of the governmental order for 2014-2016 to the Cabinet of Ministers of Ukraine, the Ministry of Economic Development and Trade, the Ministry of Finance of Ukraine, the proposal of the increasing the amount of the governmental order for training of specialists up to 6220 persons in 2015, up to 7720 persons in 2016 was ignored. By providing to the Ministry of Economic Development and Trade the medium-term forecast for the needs of specialists and worker staff at the labor market for 2015-2018 and 2016-2019 by the Ministry of Health of Ukraine, the first body has assessed the need for health care and social assistance workers to be about 3 thousand persons in 2015 and about 5,6 thousand persons in 2016. The data presented by the Ministry of Economic Development and Trade to the Ministry of Health of Ukraine in the form of a medium-term forecast did not coincide with the real needs of the industry. It should be noted that the information about the need for doctors in the field of training is provided to the Ministry of Health of Ukraine by the state enterprise "Register of Medical, Pharmaceutical, and Scientific and Teaching Workers of the System of the Ministry of Health of Ukraine", which was established by the Order of the Ministry of Health of Ukraine of September 27, 2005 No 494 for the development of the Single Information Space for the Health Care System of Ukraine, creation of favorable conditions for Ukraine's integration into the world information space, provision of managers of all levels with analytical information on personnel management and implementation of the Ministry of Health of Ukraine Order "On Measures Regarding the Implementation of the Register of Medical, Pharmaceutical, and Scientific and Teaching Workers of the System of the Ministry of Health of Ukraine" of March 10, 2004, No 129. According to the provided analytical data, the average number of staffing level of specialists in the medical service in 2016 in Ukraine was 78.1 % .To increase the staffing level of all national institutions with physicians up to 100% in the long term (by 2023) the amount of admission to the higher educational establishments of the Ministry of Health of Ukraine in 2016 should have been 11 785 persons (full number of vacant positions in health care institutions); for the staffing of all national institutions by pediatricians, the admission should have been 1661 persons; specialists in medical psychology – 55 persons; specialists in medical and

preventive care – 2 846 persons. That is, in order to provide all healthcare institutions with specialists, the real amount of admission in 2016 should have been about 16 292 persons (AChU, 2016). Consequently, in fact, the indicators brought by the Ministry of Economic Development and Trade to the Ministry of Health of Ukraine in the form of a medium-term forecast contributed to the formation of a "distorted" amount of governmental order for the training of medical and pharmaceutical professionals, which was drawn up without taking into account the actual need for doctors.

An example of another violation by the Ministry of Economic Development and Trade, revealed during the audit by the Accounting Chamber of Ukraine, is the discrepancy between the information contained in the medium-term forecast of the need for specialists and worker staff in the labor market, in particular, for 2014-2017 and 2015-2018, which has been notified to governmental customers by letters dated November 1, 2013, No 4803-17/38181-07 and October 30, 2014, No 4803-14/38025-03. Four separate calculations of the needs for specialists and worker staff in the labor market by types of economic activity and professional groups in 2014-2017 and 2015-2018 respectively were added to these letters. Thus, according to the findings of the Ministry of Economic Development and Trade, by 2015, according to the letter No 4803-17/38181-07, the average term need for training of specialists with higher education and worker staff was 151241 persons. However, according to the letter No 4803-14/38025-03, this need for the year 2015 was already 54100 persons. That is, for a year, according to the estimates of the Ministry of Economic Development and Trade, this need has radically changed – it has decreased by three times. There was no justification for the system of calculations provided by the Ministry to the supervisory authorities. Nevertheless, in the adopted Resolution of the Cabinet of Ministers of Ukraine "On the Governmental Order for Training of Specialists, Scientific, Teaching and Worker Staff, Advanced Training and Retraining of Personnel for State Needs in 2015" of July 1, 2015, No 462 (CMU, 2015b) the number of positions for the governmental order with higher education in 2015 was 13,511 persons, which is three times the state need (according to the Ministry of Economic Development and Trade of Ukraine latest estimates in 2014).

Moreover, the fact that, on the one hand, in the above-mentioned letters of the Ministry of Economic Development and Trade, it is indicated

that from 2014 to 2018 the greatest need of the state will be the training of specialists under governmental order in the fields of wholesale and retail trade; repair of motor vehicles and motorcycles; agriculture, hunting, forestry, fisheries and fish farming; industry, construction; transport, warehousing, postal and courier activities; health care and social assistance; public administration and defense, compulsory social insurance. At the same time, on the other hand, training of specialists under governmental order in the field of IT technologies, energy, and law is not discussed in this medium-term forecast. Although from year to year, these categories of specialists are reflected in the indicators of the Ministry of Economic Development and Trade during the formation of the governmental order (AChU, 2015b).

However, the lack of control powers in the above bodies leads to uncontrolled process of placement of the governmental order for the training of specialists, and as a consequence, to the violation of the legislation in this area and the unlawful spending of budget funds. Thus, the Accounting Chamber of Ukraine during the audit found abuses (AChU, 2015b, 2016, 2018, 2019) concerning in particular:

- placement of the governmental order by some governmental customers without having their own higher education establishments (hereinafter – HEE) for training specialists in HEE of other governmental customers. In particular, in 2013, the Ministry of Finance of Ukraine, not having its own HEE, placed the governmental order for training of specialists at the National University of State Tax Service;
- absence of an open discussion on the providing the number of state-funded places between higher educational establishments, as evidenced by the minutes of meetings of competition commissions (in particular, the Ministry of Education and Science of Ukraine);
- absence of record-keeping (in particular, in the Ministry of Health of Ukraine) of discussion of the proposals of the participants, which calls into question the implementation of the principles of fair competition, openness and transparency, objective and unbiased evaluation of the competition proposals of the participants;
- the decisions made by the competition commission on the selection of the performers of the governmental order for training of specialists, scientific, teaching

and worker staff, advanced training and retraining of personnel without the proper quantity of the participants, which are, as a result, not legally valid;

- the appointment by the performers of the governmental order of establishments without running a competition (for example, the National Agency of Ukraine for Civil Service appointed the institution of the state educational establishment of postgraduate education "Training Center of Retraining and Professional Development of Financial Monitoring in the Sphere of Combating Legalization (Laundering) of Proceeds from Crime and Terrorist Financing"
- loss of state contracts between performers of the governmental order and governmental customers or their formal conclusion, as well as the absence of registration of concluded state contracts (for example, the National Agency of Ukraine for Civil Service did not conclude a state contract with the performer of the governmental order – a subordinate institution the All-Ukrainian Center for the Development of Civil Servants and Local Self-Government Officials in 2017; the Ministry of Health of Ukraine, despite compliance with procedures selection of the performers of the governmental order in 2017 and 2018, carried out the placing of the governmental order for training of specialists formally, consisting of undetermined value and / or physical indicators of the governmental order in agreements with the performers of the governmental order, as well as non-drawing up of acts of performed work).

These and a number of other violations indicate that many governmental customers have the systems of competitive selection of performers of the governmental order that are imperfect and do not provide conditions for the competitive placement of the governmental order.

Analyzing the practice of previous years regarding the implementation of the placement of the governmental order by governmental customers through a simplified (non-competitive) procedure, the supervisory authorities also revealed a number of violations. Here are the main ones.

According to part one of the Article 64 of the Law No 2984, the financing of a state-owned HEE is carried out at the expense of the state

budget funds intended to finance the central executive authority, which implements the state policy in the field of education, and other central executive bodies, which have higher educational establishments in their jurisdiction. That is, financing of HEEs included in the system of the Ministry of Education and Science of Ukraine or the system of other central bodies of executive power, which have higher educational establishments under their jurisdiction, is carried out at the expense of the state budget.

However, as established by the Accounting Chamber of Ukraine as a result of inspections, governmental customers, who have HEEs in their system, place their governmental orders in HEEs of other governmental customers. Thus, the Administration of the State Border Guard Service of Ukraine places the governmental order at the National Academy of the State Border Guard Service of Ukraine and at the National Academy of the Security Service of Ukraine for the field of study "legal science" at the same time. Similarly, the Security Service of Ukraine places the governmental order at the National Academy of the Security Service of Ukraine and at the Juridical Personnel Training Institute for the Security Service of Ukraine of the "Yaroslav Mudryi National Law University". In turn, the Ministry of Defense of Ukraine, having its own Military HEEs, also trains officer personnel for the Armed Forces of Ukraine in the military training units of the HEEs of the central executive authorities: the Military Institute of Taras Shevchenko National University of Kyiv; Zhytomyr Military Institute named after S.P. Korolyov of the National Aviation University (S.P. Korolyov Zhytomyr Military Institute of the State University of Telecommunications); the Military Institute of Telecommunications and Informatization of the National Technical University of Ukraine "Kyiv Polytechnic Institute" (the Military Institute of Telecommunications and Informatization of the State University of Telecommunications); Military Training Faculty of the National Technical University "Kharkiv Polytechnic Institute" etc. The State Service of Special Communication and Information Protection of Ukraine places the governmental order at the Institute of Special Communication and Information Security of NTUU "Kyiv Polytechnic Institute", which is a state institution of the State Service of Special Communication and Information Protection of Ukraine and is created on the basis of the Special Faculty of the Security Service of Ukraine and Informatization of NTUU "Kyiv Polytechnic Institute". According to the information provided, the

Institute carries out training of specialists for the needs of the State Service of Special Communication and Information Protection of Ukraine as well as for the staffing of trained specialists of the Security Service of Ukraine, the Foreign Intelligence Service of Ukraine and the Department of the State Guard of Ukraine. Similarly, the Department of the State Guard of Ukraine places the governmental order at the Institute of Management State Guard of Ukraine of the Taras Shevchenko National University of Kyiv, which carries out the training of master students on the specialty "Guard Activities and Security".

The Resolution of the Cabinet of Ministers of Ukraine No 363 stipulates that, according to the results of the competition, the governmental customer concludes a state contract with the performer of the governmental order, which specifies the economic and legal obligations of the parties and regulates the relations between the customer and the performer. However, based on the results of the study and the analysis by the Accounting Chamber of Ukraine of a number of state contracts between the Ministry of Education and Science of Ukraine and higher educational establishments, it has been determined that these state contracts are typical, their subject is an obligation to ensure the full implementation of the governmental order for admission and graduation of specialists approved by the corresponding order of the Ministry of Education and Science of Ukraine in terms of education and qualification levels (degrees), training programs, areas of knowledge, specialties (types of economic activity – for vocational educational institutions), professions and modes of study according to the appendix to the state contract in a given year at the expense of the state budget.

CONCLUSION

The system of state control over the process of implementing the educational governmental order in Ukraine is not properly formed, which contributes to the systematic and routinely continuous violations of law committed by the participants practically at all stages of this process. The scope of the violations leads to unreasonable and inappropriate spending of significant amounts of funds from the State Budget of Ukraine. Only certain control functions are organized and effectively implemented by the special financial control bodies in the state, as a rule in the form of the following (post-operative) state financial audit and are directed mainly towards the detection and prevention of violations of budget legislation at

certain stages of the distribution and execution of the governmental order. Instead, most of the managerial (administrative) procedures that are carried out in practically all stages of the formation, placement and execution (with further job placement and employment of graduates) of the educational governmental order remain uncontrolled.

In order to prevent the above-mentioned and other violations of the law in the field of educational governmental order, as well as to ensure the effective implementation by the authorized entities of their powers at the appropriate stages of the governmental order in the field of education, we consider it expedient to empower: 1) the Ministry of Economic Development and Trade of Ukraine with the state control functions over the process of implementation and the procedure of concluding state contracts by the customers and performers of the governmental order; 2) the Antimonopoly Committee of Ukraine with the function of appealing the procedures for conducting competitions for the selection of the performers of the governmental order, as well as making decisions by governmental customers regarding the application of a simplified (non-competitive) procedure for the appointment of the performers of the governmental order; 3) the State Audit Service of Ukraine with the authority to conduct continuous monitoring of following by the participants of the governmental order in the field of education budget legislation and execution of state contracts. To do this, it is necessary to make a number of changes and additions to the functional law of the implementation of the educational governmental order and the status regulatory and legal acts on the relevant state bodies.

Conclusions and suggestions in this study relate to the higher level of the system of educational state control, and therefore further research can be conducted on issues of other levels of this system, including internal ones, which should be provided at the level of the governmental customers, the performers of the governmental order and employers *financed* from the state budget for the educational governmental order programs.

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