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MODERN SCIENTIFIC APPROACHES TO DEFINING THE PROVIDERS OF EDUCATIONAL SERVICES IN BUSINESS LAW OF UKRAINE

The author examined the modern scientific approaches to defining the providers of educational services; determined their essence, features, types of such business entities and the legal basis for regulating their business activities. In the article it was found out that the status of provider of educational service according to the Ukrainian commercial law is given to the provider only when the provision of educational services is its main activity. In the article the author separated also the enterprises, other institutions, organizations and individual entrepreneurs which can also provide educational services, but it is not their main activity. It is defined that such types of subjects of business law are also legally allowed to carry out educational activities.

The author concluded that the subjects of educational activities (as full participants of economic relations in the field of social production) are identical to the essence of the educational services provider, and they perform cost-oriented services.

Keywords: educational services, the provider of educational services, business law regulation, the subjects of educational processes, educational institution.

There is no direct reference to the subjects (entities and/or individual entrepreneurs) engaged in the provision of educational services as individual participants of economic relations in modern domestic business legislation, primarily in the current version of the Commercial Code of Ukraine. The providers of educational services are not defined as a separate category.

The application of civil legislation of Ukraine to regulate business (commercial) relations is also inherent. And the field of providing the educational services is not an exception.

In this case, the processes of separation of subjects of educational services are complicated on practice, as well as identification of their essential features and types in order to improve the economic and legal regulation of educational services, improve the quality of such services and liability.

The purpose of this article is to explore modern scientific approaches to defining the providers of educational services in business law of Ukraine. Therefore, this information will be useful in further researches on issues related to the development of recommendations for improving the quality of educational services, responsibilities of the subjects of educational processes, especially businesses that provide educational services.

Analysis of modern scientific approaches to classification of national regulations that determine relations in the educational sphere, was conducted by the Ukrainian scientist R.V. Shapoval, who has pointed out the regulations aimed at the following¹:

- improvement of the education governance system;
- standardization of educational services, licensing, accreditation, i.e. guaranteeing and improving the quality of educational services;
- humanization and democratization of education, reorientation of the learning process towards personality development.

In general, the author agrees with the classification proposed above, but it should be noted that there are almost no laws aimed at regulating any of these fields in particular. Such a division can be made at the level of bylaws and, in particular, in departmental acts. The laws usually contain norms generally aimed at regulating all these areas to a certain extent. In addition, the proposed classification can be supplemented

¹ Шаповал, Р.В. (2011). Правове регулювання освіти в Україні. *Форум права*, 1.

by regulations, which are aimed at regulating the establishment and termination of legal bodies providing educational services, the organization and resources required for the provision of educational services, etc. Ukrainian laws and regulations, that contain the above-mentioned norms and norms of the first and especially those of the second group (according to the classification proposed by R.V. Shapoval) form the basis of the business law characteristics of providing educational services in Ukraine.

In addition, the application of the norms of the Civil Code of Ukraine is also inherent in the regulation of some business relations. The field of educational services provision is not an exception. The norms of civil law can be applied to legal entities and individual entrepreneurs, to service provision contracts, civil liability, joint activities, etc.

Scholars specializing in civil law emphasize that educational relations are a sphere where both private and public interests are manifested. The society is interested in the comprehensive development of its citizens, especially in matters that concern the level of professional qualifications. In view of this, the state delegates the powers related to the control over the quality of education, to educational institutions. In particular, educational institutions certify the level of education obtained by subjects of education, i.e. students. Educational institutions are endowed with such powers, regardless of who they were founded by or at whose expense their statutory activities are carried out. Thus, the educational institutions are endowed with civil legal personality and competence¹.

The private law component is indicated, first of all, by the initiative of educational institutions themselves (as subjects of providing educational services), and by the initiative of students to enter into educational relations. Even if the desire to receive an educational service is expressed not directly by the future student, but by his legal representative, in principle, nothing changes. In both cases, it is a matter of expression of will aimed at concluding a contract for provision of educational services².

The possibility of educational institutions to enter into contractual relations is determined by their status of a legal entity. All educational institutions, from preschool to institutions of higher education, are endowed with the rights of a legal entity by the legislation of Ukraine. This endowment is the recognition of the civil and legal personality of these organizations, which is realized, first of all, in connection with their main activity – the provision of educational services. Clearly, the same status is necessary for the property support of the statutory activities of educational institutions, but first of all – for the possibility of provision of educational services³.

Among the qualifying features that distinguish educational relations from other legal relations, some researchers determine their tripartite nature^{4,5}. According to these authors, the composition of subjects involved in educational legal relations is determined by the simultaneous participation of three parties:

- the educational institution;
- the pedagogical composition of the educational institution;
- the subject of education (student).

At the same time, the educators exercise powers to maintain order in the classroom, the application of disciplinary measures, monitoring and assessing the learning results, etc.⁶ However, we consider it appropriate to assess the role of government authorities and the public as individual participants in legal relations in the field of education, and to assess their growing influence on the development of educational services in modern conditions of public relations.

In order to separate and classify the educational services providers, we consider it appropriate to distinguish two terms – “the subject of commercial law” and “business entity”.

According to Article 2 of the Commercial Code of Ukraine, the participants of relations in the field of commercial law are⁷:

- a) business entities;
- b) consumers;

¹ Чалий, Ю. І. (2016). Суб'єкти освітніх відносин. *Право і Безпека*, 2 (61).

² Ibid.

³ Ibid.

⁴ Сырых, В. М. (2001). Предмет правового регулирования образовательного права. *Право и образование*, 3.

⁵ Тицька, Я. О. (2012). Підстави розмежування понять «освітні правовідносини» та «відносини у сфері освіти». *Актуальні проблеми держави і права*, 67.

⁶ Сырых, В. М. (2001). Предмет правового регулирования образовательного права. *Право и образование*, 3.

⁷ *Господарський кодекс України, 2003*, ст. 2 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<https://zakon.rada.gov.ua/laws/show/436-15#Text>> (2020, November, 12).

c) bodies of state power (government authorities) and bodies of local self-government endowed with economic competence;

d) citizens, public and other organizations that act as founders of business entities or exercise organizational and economic powers over them on the basis of property relations.

Thus, all the above participants of relations in the field of business can be considered as subjects of commercial law. It means that the definition of a “business entity” is narrower and covers only the range of persons that are defined as participants in economic relations, carrying out economic activities, exercising economic competences (set of economic rights and obligations), have separate property and are liable for their obligations within this property, except as provided by law (according to the part 1 of Article 55 of the Commercial Code of Ukraine).

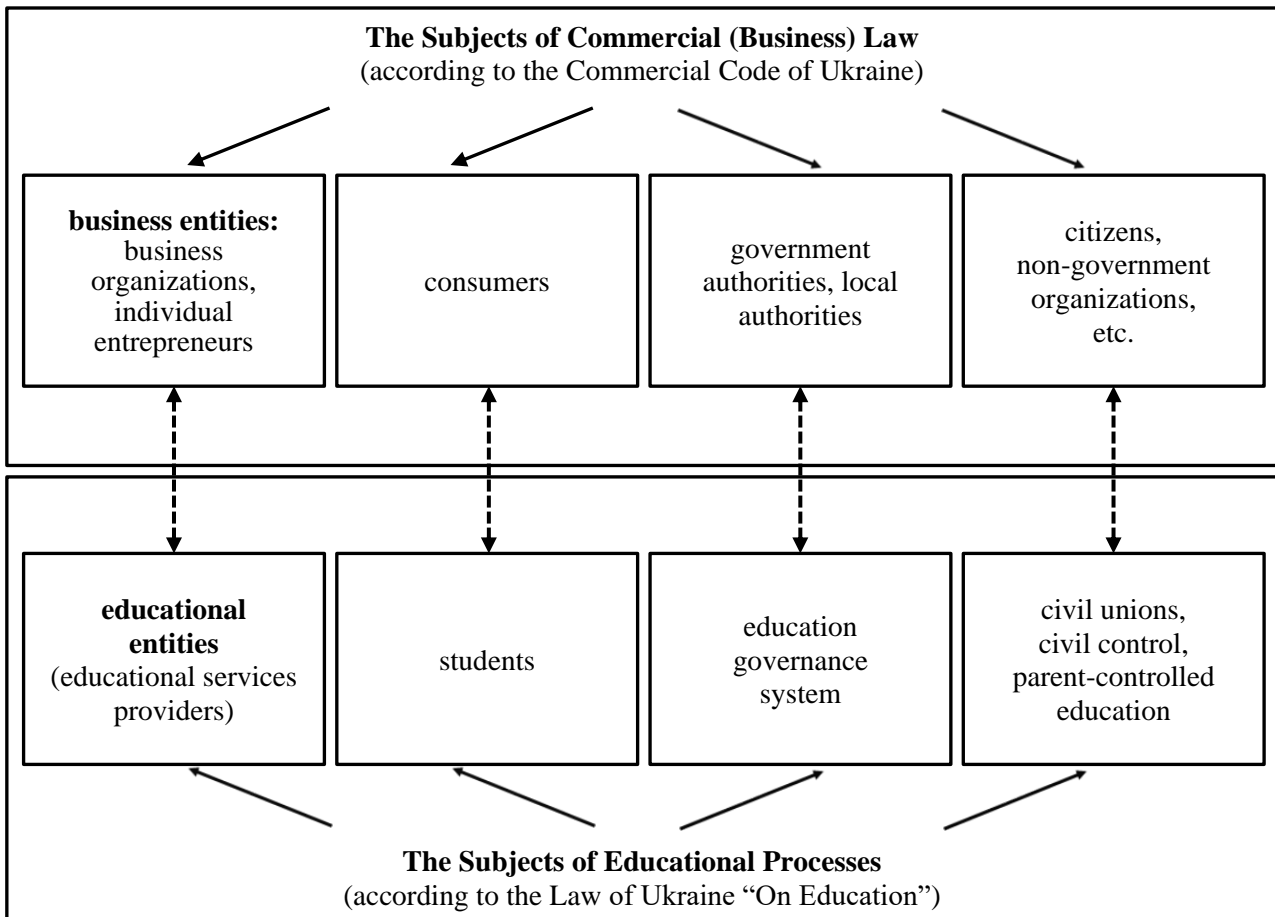


Fig. 1. The Subjects of Educational Process and Their Interaction with Commercial Law

Source: designed by the Author according to the Ukrainian law.

Analyzing the modern Ukrainian educational legislation, which also regulates relations in the field of educational services, we can find out a clear structural relationship (interaction) between economic legislation and the participants of the educational process. The Law of Ukraine “On Education” from 05.09.2017 No. 2145-VIII does not give a separate definition of participants (subjects) of the educational process. Nevertheless, they can be clearly defined from its provisions: subjects of educational activity, students, governing bodies in the field of education and bodies of civic self-government (Fig. 1).

If we extrapolate the definition of business entities and/or individual entrepreneurs on the activity of providing educational services, we can single out the subject of providing educational services – educational services provider. According to Article 1 of the Law of Ukraine “On Education”, the educational services provider is an individual entrepreneur or a legal entity (an educational institution, enterprise, institution, organization) that carries out educational activities.

According to part 3 of Article 22 of the Law of Ukraine “On Education” , “an educational institution, depending on the founder, may act as state, municipal (local), private or corporate owned”.

In addition to the educational institutions, it is also important to study other types of educational service providers, which are also determined by the Law of Ukraine “On Education”, such as enterprises, institutions, organizations and individual entrepreneurs, which may also carry out educational activity aimed at organization, provision and implementation of the educational process within the framework of formal and / or informal education (Fig. 2)¹.

Modern scholars of business law, such as an Academician, Doctor of Law, Prof. Shcherbyna V. S. proves that a separate type of business entities are also the separate structural units (branches, representative offices, etc.) of the business entities, formed by these business entities to provide some economic activities. Business entities exercise their economic competence on the basis of property rights, economic management rights and the right of operational management in accordance with the definition of this competence in business law².

Nevertheless, there is an opposite position adopted by the Ukrainian laws. Thus, part 6 of Article 55 of the Commercial Code of Ukraine provides the right to open branches, representative offices and other separate divisions, but without the creation of a separate legal entity³.

The civil legislation, in particular part 2 of Article 95 of the Civil Code of Ukraine, also defines that branches and representative offices are not separate business entities. They are endowed with the property of the business entity that created them, and act on the basis of its articles of association⁴.

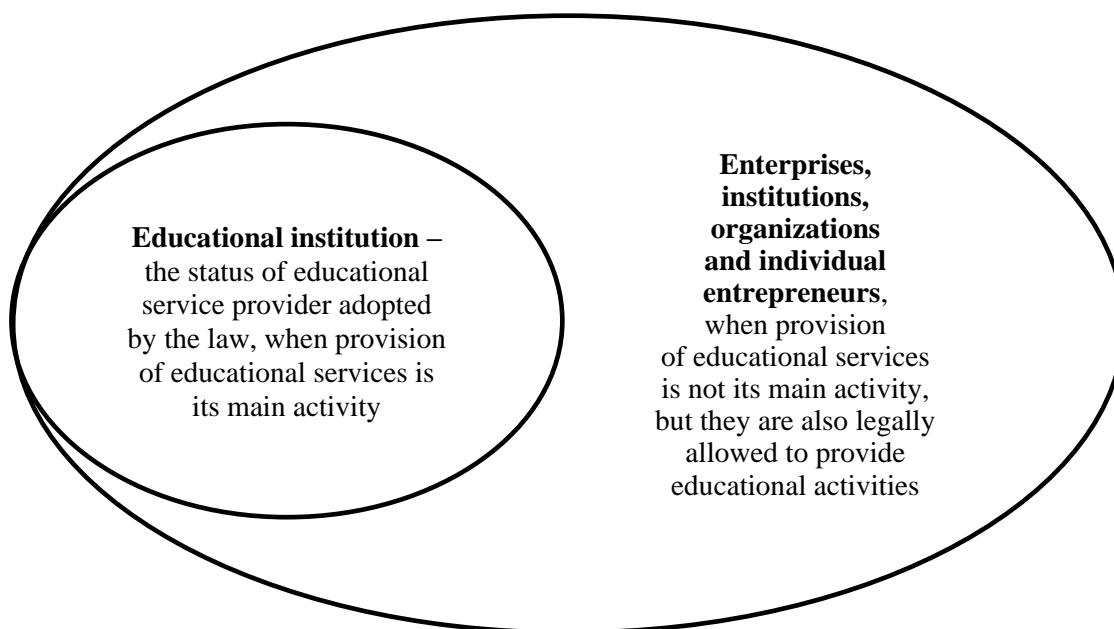


Fig. 2. Business entities, which can provide educational services

Source: designed by the Author according to the Ukrainian law.

In most cases, if the provision of educational services is not the main activity for the enterprises, institutions, organizations or individual entrepreneurs, then they are the educational service providers that do not get the status of an educational institution according to the Ukrainian law. Such businesses are also legally allowed to provide educational services, but do not have the right to certain benefits granted by the current

¹ Закон про освіту, 2017, ст. 22, розд. 3 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<https://zakon.rada.gov.ua/laws/show/2145-19#Text>> (2020, November, 12).

² Щербина, В. С. (2013). *Господарське право*. Київ: Юрінком Інтер.

³ Господарський кодекс України, 2003, ст. 55, розд. 6 (Верховна Рада України). Офіційний сайт Верховної Ради України <<https://zakon.rada.gov.ua/laws/show/436-15#Text>> (2020, November, 12).

⁴ Цивільний кодекс України, 2003, ст. 95, гл. 7 (Верховна Рада України). Офіційний сайт Верховної Ради України <<https://zakon.rada.gov.ua/laws/show/435-15#Text>> (2020, November, 12).

Ukrainian legislation to educational institutions. For example, such business can be a manufacturing enterprise or individual entrepreneur who organizes training sessions, courses, workshops, seminars, designing a separate structural unit for retraining, professional training of their employees, providing educational services for the third parties on a paid basis. In this case, according to the Ukrainian law, there is also a need to obtain a license to provide this type of economic activity and/or some part of this economic activity, which in turn, permits the subject to provide educational services.

Thus, all of the above indicates that the educational service providers are the full separate participants of the economic system that participate in economic relations to provide services that have a price in accordance with Article 3 of the Commercial Code of Ukraine.

Educational institutions whose main activity is the provision of educational services, as well as other legal entities (enterprises, institutions, organizations) or individual entrepreneurs, who do not have the status of an educational institution, start the provision of educational services after obtaining a license to carry out educational services. The separate structural units (branches, representative offices, etc.) of the business entities engaged in the provision of educational services start their economic activities after receiving a license and their integration into structure of the educational institution.

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