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Student academic freedom: The experience in Ukraine and the USA

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This article focuses upon the comparative analysis of student academic freedom in Ukraine and the USA. Academic freedom in the USA is an ideological expression rather than a legal right. It is not secured in the Constitution or any act of legislation. This right is proclaimed in the Declaration of Principles on Academic Freedom and Academic Tenure, Statement of Principles on Academic Freedom and Academic Tenure, Statement on Professional Ethics, Joint Statement on Rights and Freedom of Students, Statement on Academic Rights and Responsibilities, and Academic Bill of Rights. On the contrary, the right of students' academic freedom is stated in the Law of Ukraine "On Education" and "On Higher Education". There is a necessity to clarify and interpret the right of academic freedom in Ukraine by universities rather than by act of legislation.

Keywords: professor, institutional autonomy, higher education, university, Ukraine, USA

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INTRODUCTION

Comparing Ukrainian and American experience in the sphere of education is of academic interest because various independent international organizations, having analyzed statistics by many criteria, have concluded that the USA is the world leader in the educational services market. There are four international generally recognized university rankings. According to the Academic ranking of world universities, 46 of 100 best universities of the world are located in the USA, Great Britain holds the second place – only 8 out of 100 best universities are located here (Academic Ranking... 2018). According to QS ranking, 31 of 100 best universities are located in the USA, while Great Britain holds the second place – only 18 universities out of 100 (QS World... 2019). According to Times-Thomson Reuters ranking, 25 out of 50 best world universities are under the USA jurisdiction (The World University... 2019). According to Webometrics, 60 out of 100 best world universities are located in the USA (Webometrics Ranking... 2018). Besides, “Universitas 21”, the global network of the leading research universities of the world, recognized in 2012 the USA as a state with the best higher educational system in the world. Ukrainian system of education is nowadays in the process of modernization and reforming, which requires borrowing positive foreign experience in the sphere of education. Meanwhile, it’s worthwhile to remember that a specific national model of education has historically formed up in Ukraine, therefore one should borrow foreign experience carefully and only after its detailed and thorough analysis. Certain provisions of American system of education and practices of its implementation are inferior to our national ones and thus are unacceptable for us, while others are interesting and require research and implementation. Implementing foreign or international standards into the national system of education provides not only for studying regularities of world standards development as well as those of specific national educational systems, but also for considering Ukrainian national traditions and customs, mentality and ideology.

Securing academic freedom of the educational process participants at the level of legislation is one of the novelties of the educational reform in Ukraine. According to paragraph 3, part 1, Article 1 of the Law of Ukraine of 5 September 2017 “On Education” academic freedom is self-sufficiency and independence of the educational process participants in the process of carrying out pedagogical, educational research, academic and/or innovation activities, based upon the principles of freedom of speech, freedom of thought and creative work, spreading knowledge and information, free manifestation and use of academic research results providing for restrictions stipulated by the legislation (Law of Ukraine... 2017). Paragraph 3, part 1, Article 1 of the Law of Ukraine of 01.07.2014 “On Higher Education” contains a similar definition (Law of Ukraine... 2014). Academic freedom is freedom, which is guaranteed by the state to all members of the academic community with the aim of providing for fulfillment of pedagogical, research, academic and teaching tasks imposed upon them, i.e. it is a specific permission for universities to carry out their duties to the community. P. Albach believes that the post-Soviet countries have reached a reasonable degree of academic freedom, though not to the full. These countries at least recognize something called “academic freedom” and declare adherence to it (Albach 2001).

The aim of this article is viewed as a complex comparative investigation of academic freedom in the sphere of education in Ukraine and in the USA, determine the possibility, expediency and prospects for implementing positive US experience into the educational system of Ukraine.

METHODOLOGY

In accordance with the aim and with due regard of the object and the subject of investigation general scientific methods (dialectical, formal and logical, systemic and structural, etc.) as well as special research methods (comparative, historical, etc.) were applied. Thus, dialectical and historic methods allowed for determining the genesis of the academic freedom of students as participants of the educational process. Systemic and structural method was used for identifying the place of academic freedom in the system of higher education. Comparative method was used to analyze academic freedom of students in Ukraine and in the USA. Formal and logical method was used to

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formulate theoretical provisions and conclusions as far as the place and importance of academic freedom of students is concerned.

According to the legislation of Ukraine, the right to academic freedom is equally enjoyed by all participants of the educational process, in particular, by academic, scientific and pedagogical staff, university-level students and other persons, who study at the institutions of higher education (hereinafter – IHE). Thus, students are also subject to the right to academic freedom. Securing the right of students to academic freedom is an important condition of implementing student-centric model of higher education, humanistic educational paradigm, which gives students freedom of choice in the process of professional training. Thus, attitude of students towards education acquire positive dimension because they cease to be passive listeners but gain features of active participants of the educational process. The freedom of choice contributes to their increment in activity in the process of professional training. Academic freedom of students forms up skills of making self consistent choice, see the end results of the choice, bear responsibility for the personal choice, determine the importance of the choice for the future professional activity, determine and implement tasks, evaluate their activities. Students' academic freedom is an indispensable component in the process of forming up professionals, who are capable of efficient and creative implementation of tasks.

Academic freedom of students is manifested through the right to choose types, terms, methods, forms and means of education, to choose the type of the educational institution, possibility to participate in forming up the contents of education and acquire knowledge in accordance with personal needs, skills and inclinations. The freedom of choice in the educational and scientific process is implemented due to the set forth academic freedoms of students, which allow learning and conducting research in accordance with personal desires, interests and likings but not due to external compulsion. The principle of free choice of behavior to the extent permissible, discretion, property independence and legal equality of the parties are features of private law relationships, which allow attributing the right to academic freedom to civil rights by its legal essence. Legal and regulatory securing of the principle of the IHE autonomy and academic freedom of the educational process participants indicate the tendency of the civil law impact increase upon relationships in education. We cannot agree the argument of V.M. Syrykh, who claims that minor citation of academic freedoms is not able to bring the top-down governance nature of academic legal relationships into compliance with real equality of the parties, without which any civil law relationships do not and cannot exist (Syrykh 2010). The legal nature of relationships in the sphere of education is a complex one, which includes civil, administrative, economic, employment and land law relationships. While looking for balance between private and public law components in educational relationships one cannot neglect a considerable civil law component (Davydova 2016).

In Ukraine academic freedom of students is manifested, first of all, through the ability of students to choose courses at the higher academic university levels: electives, which reflect the contents of students' freedom to the fullest extent possible. In other words, students participate in the forming up the contents of their education upon condition of meeting the requirements of the state educational standards. Students and other persons, who study at IHE, enjoy the right of forming up their individual curricula and are personally responsible for carrying them out. Individual curriculum, which is an example of academic autonomy of students, contains information on the names and sequence of studying program units (educational subjects), the scope of academic workload by semesters, results of knowledge quality control, handling competence and final state attestation of graduates.

Besides, the right of students for academic freedom is implemented in discussions and conclusions on important issues of the IHE activities, in cases of appealing orders or decisions of the IHE administration. There exist legal precedents of numerous appeals by IHE graduates orders of rectors on issuing diplomas without distinction. Thus, for instance, a graduate of the Interregional Academy of Human Resources Management appealed in the District Administrative Court of Kyiv the decision of the diploma state examination board of 21 October 2008 with regard to issuing to the claimant Legal Studies Master's degree state-recognized diploma without distinction. The Court discharged the mentioned decision of the state examination board and compelled the IHE to issue to

the claimant Legal Studies Master's degree diploma with distinction (Decision of Kyiv's... 2010). A similar object of dispute between the graduate and Kyiv National University of Economics and Trade was in the case considered by Kyiv's District Administrative Court in 2008. The Court took the attitude of the claimant discharging the decision of the diploma state examination board majoring in Marketing with regard to issuing to the claimant state-recognized diploma without distinction and compelled Kyiv National University of Economics and Trade to issue the diploma with distinction (Decision of Kyiv's... 2008).

RESULTS AND DISCUSSION

The process of implementing academic freedom of students is new for Ukrainian educational system and, thus, in practice causes a number of inconsistencies. Thinking over the situation in contemporary Ukraine, it is worthwhile mentioning that academic freedoms of teachers and researchers are implemented to a greater extent in comparison to those of students. There are several reasons of this. Firstly, professional activities of academics have three basic components: educational, methodological and scientific, while academic activities of students comprise academic and scientific work. Respectively, academic freedom of students is narrower in its contents comparing to the academic autonomy of teachers. Secondly, students often lack information on their academic rights and obligations, which leads to a situation in which students remain passive consumers of educational services. Thirdly, in case of conflicts between academic freedom of professors and that of students, administration of IHE and courts most probably will give preference to the former.

The principles of freedom, discretion and autonomy in the sphere of higher education are characteristic of the USA to a greater degree comparing to Ukraine. Therefore, we believe it to be worthwhile to analyze academic freedom of students of American universities. According to the latest tendencies of development of American educational law, the right of academic freedom is enjoyed not only by teachers but also by students (Kaplin & Lee 2013). Legal aspects of academic freedom of students are less developed comparing to those of professors, however they become topical more and more. In the case *Piarowski v. Illinois Community College* (United States Court... 1985) the court claimed that the term "academic freedom" pertains not only to the freedom of a single teacher but also to the freedom of a student. American Association of University Professors worked out the whole package of documents, which guarantee academic freedom of students in terms of education. In particular, in the document called "Declaration of Principles on Academic Freedom and Academic Tenure 1915" (1915 Declaration... 2015) the Association recognized two components of academic freedom: freedom of professors to teach and freedom of students to learn. The Statement of Principles on Academic Freedom and Tenure 1940 (1940 Statement... 1940) contains the provision of law on the free access of students to education. The Statement on Professional Ethics 1966 (Statement on Professional... 1966) worked out by the same Association, binds professors with responsibility to create incentives for students to learn and protect their academic freedom.

In 1967 representatives of the American Association of American Professors jointly with the Association of American Colleges and Universities, the American Association of Students, National Association of Administrators of Personal Records of Students, National Organization of Women in Education proclaimed Joint Statement on Rights and Freedom of Students, which was approved by five organizations mentioned above, various institutions of higher education and professional associations. The Joint Statement recognizes freedom to teach and freedom to learn as "inseparable parts of academic freedom" and stresses that "students should be encouraged to develop the capacity for critical judgment and to engage in a sustained and independent search for truth". According to the Joint Statement on Rights and Freedom of Students the minimal standard of academic freedom includes freedom of access to higher education; freedom in the classroom (protection of freedom of expression, protection against improper academic evaluation, protection against improper disclosure); freedom of association; freedom of inquiry and expression; student participation in institutional government; student publications; off-campus freedom of students (exercise of rights of citizenship, institutional authority and civil penalties) (Joint Statement... 2015).

Regardless of the fact that the Joint Statement on Rights and Freedom of Students gave a quite

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detailed description of contents of the academic freedom of students, the legal doctrine and court practices have not developed clear legal standards yet. Scientists continue to debate whether students enjoy subjective right to academic freedom. R.B. Standler represents the most radical standpoint and believes that students do not have academic freedom. Students are on campus tolerance, not to create new knowledge. Even in the case of graduate students who are doing research for their dissertations, the topic and methods are approved and periodically reviewed by professors, which is a level of supervision that would be inappropriate for a professor's research. Students are not colleagues of professors (Standler 2000). This kind of understanding is not confirmed either by the legislation, or court practices of the USA, but such judgments are not singular. P. Byrne, having a similar stand, believes that the First Amendment to the Constitution of the USA does not grant students the right for academic freedom (Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances). The term “academic freedom” should be reserved for those rights necessary for the preservation of the unique functions of the university, particularly the goals of disinterested scholarship and teaching. No recognized student rights of free speech are properly part of constitutional academic freedom, because none of them has anything to do with scholarship or systematic learning (Byrnet 1989). The opposite approach is that of W. Metzger, who writes: “obviously, students have a weaker position in the constitutional history of academic freedom compared to professors; the question still is whether this position is weak enough to be ignored. Students are special members of the academic freedom club and in case they are excluded, the world would be anomalous and impoverished” (Metzger 1988).

We believe that it is justified to recognize at the level of legislation, law-making practices and doctrine of private law the right to academic freedom (as a component of personal non-property right of a natural person to freedom) not only for professors but also for students. We believe that it is appropriate to analyze American court practices in the sphere of interpretation of rights of students to academic freedom. Starting from 1950-s the US Supreme Court gradually started to recognize academic freedom of students separately. In one of the first and the most influential court rulings called *Sweezy v. New Hampshire* (U.S. Supreme Court... 1957) judge Earl Warren, while drafting the ruling in the name of the majority of judges, wrote: “Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die”. Further on the Court ruled several times concerning specific rights of students to freedom of speech, publication and peaceful meetings, such as: *Widmar v. Vincent* (U.S. Supreme Court... 1981), *Papish v. Board of Curators of the University of Missouri* (U.S. Supreme Court... 1973). These rulings were based on the provisions of the First Amendment to the Constitution of the USA and extended to all spheres of life, both within and outside the university life. On the other hand, a number of rulings directly underscored specifics of the rights of students, which were not observed in other spheres of life. For instance, in the case *Healy v. James* (U.S. Supreme Court... 1972).

The US Supreme Court stressed that by recognizing the right of students to freedom of association we “reaffirm this Nation's dedication to safeguarding academic freedom”. In the case *Rosenberger v. Rector and Visitors of the University of Virginia* (U.S. Supreme Court... 1995) the court connected the right of students to freedom of speech and academic freedom of students and gave historical evidence of this connection. According to factual allegations of this case the University of Virginia denied financing printing publication of the “Great Awakening” Christian journal to the students’ organization. All students of the University were obliged to make specific payments for funding activities of various students’ organizations each semester, while registered organizations could use the money for partial covering of their expenses. Ronald Rosenberger and other students wanted to publish the “Great Awakening” philosophical and religious journal, which was properly registered. The manager of the foundation denied financing printing of the journal on the grounds that it promulgated and supported religion. The students filed the lawsuit against the university, claiming that the defendant groundlessly limits their right to freedom of speech and confession of faith. The Supreme Court ruled that such denial was discriminative and violated the

right of students to free expression of their views. Specific meaning and application of the First Amendment to the students allows the university to perform its mission, provides for the implementation of its function of enlightenment. By expressing discontent towards certain views, the university risks to stifle free speech in one of the vital centres of intellectual life and in the sphere of higher education. Though the ruling mentioned is based upon the right to freedom of speech, it is of a substantial importance in the context of forming up the doctrine of academic freedom of students as it stresses upon the freedom to learn and not only upon the freedom of speech.

Issues of the academic autonomy of students and teachers gained such a level of topicality at the beginning of the 21st century that stakeholders drafted the Academic Bill of Rights (Academic Bill... 2015), which was submitted for consideration to the legislatures of several states: California, Colorado, Florida, Georgia, Indiana, Ohio, Pennsylvania, while two states (Georgia and Pennsylvania) even adopted this document. In June 2005 the American Council of Teachers and other institutions of higher education made a Statement on Academic Rights and Responsibilities (Statement on Academic... 2005), which contains five principles of intellectual pluralism and academic freedom. According to the first principle American higher education is characterized by a great diversity of institutions, each with its own mission and purpose. This diversity is a central feature and strength of their colleges and universities and must be valued and protected. According to the second principle colleges and universities should welcome intellectual pluralism and the free exchange of ideas. Such a commitment will inevitably encourage debate over complex and difficult issues about which individuals will disagree. Such discussions should be held in an environment characterized by openness, tolerance and civility. The third principle proclaims that Academic decisions including grades should be based solely on considerations that are intellectually relevant to the subject matter under consideration.

Neither students nor faculty should be disadvantaged or evaluated on the basis of their political opinions. Any member of the campus community who believes he or she has been treated unfairly on academic matters must have access to a clear institutional process by which his or her grievance can be addressed. According to the fourth principle the validity of academic ideas, theories, arguments and views should be measured against the intellectual standards of relevant academic and professional disciplines. Application of these intellectual standards does not mean that all ideas have equal merit. The responsibility to judge the merits of competing academic ideas rests with colleges and universities and is determined by reference to the standards of the academic profession as established by the community of scholars at each institution. The fifth principle states that government's recognition and respect for the independence of colleges and universities is essential for academic and intellectual excellence. Because colleges and universities have great discretion and autonomy over academic affairs, they have a particular obligation to ensure that academic freedom is protected for all members of the campus community and that academic decisions are based on intellectual standards consistent with the mission of each institution.

American Academic Bill of Rights and the Statement on Academic Rights and Responsibilities are not regulatory acts in terms of the continental law, however the fact that these documents exist testifies to the increased interest of American public towards academic freedom of educational process participants, students in particular, which is a pattern for succession in Ukraine (Academic Bill... 2015, Statement on Academic... 2005). Addressing the contents of academic freedom of students, it is worthwhile to agree with Macfarlane B. (Macfarlane 2010), who subdivides the component parts into those passive and active. Negative (passive) rights are indispensable from the bearers of rights, for instance the right to life, the right to freedom of speech. Third parties should refrain from violating rights of the bearers. Positive (active) rights (the right to education, employment and minimal salary) provide for the responsibility of the third parties to take certain active actions. Third parties are viewed as, first of all, professors and teachers and educational institutions. It becomes necessary to re-frame academic freedom of students from the negative mode into the positive one.

Student academic freedom: the experience in Ukraine and the USA

CONCLUSIONS

On the basis of the mentioned above, it is possible to conclude that in the USA, in contrast to Ukraine, there is no normative consolidation of the right of students to academic freedom. Meanwhile, this right is embedded into documents drafted by non-governmental organizations, in particular in the Declaration of Principles on Academic Freedom and Academic Tenure 1915, Statement of Principles on Academic Freedom and Tenure 1940, Statement on Professional Ethics 1966, Joint Statement on Rights and Freedom of Students 1967, Academic Bill of Rights, Statement on Academic Rights and Responsibilities. Our national system of education requires expanding the contents of the right of students to academic freedom in two directions. Firstly, not at the level of legislation, but at the level of local acts of single universities, which would be practical implementation of institutional autonomy, granted to them by the Laws of Ukraine “On Education” and “On Higher Education”. Secondly, it is worthwhile to expand the contents of academic freedom with a positive component, i.e. to bind the third parties with an active obligation to provide for implementation of the right of students to academic freedom.

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