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ASSESSMENT OF CONSEQUENCES OF REGULATORY LEGAL ACTS IN THE FIELD OF EDUCATION

EVALUACIÓN DE LAS CONSECUENCIAS DE LOS ACTOS JURÍDICOS REGLAMENTARIOS EN EL ÁMBITO DE LA EDUCACIÓN

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ABSTRACT

The article considers the regulatory impact assessment of laws and regulations in the sphere of education from the point of view of their legal effects. The author points out defects in educational legislation, general and special kinds of legal effects of laws and regulations in the sphere of education and draws a list of positive indicators of laws and regulations' feasibility.

Keywords:

Regulatory impact assessment, legal effects, defects in legislation, feasibility indicator.

RESUMEN

El artículo considera la evaluación de impacto regulatorio de las leyes y reglamentos en el ámbito de la educación desde el punto de vista de sus efectos jurídicos. El autor señala los defectos en la legislación educativa, los tipos generales y especiales de efectos jurídicos de las leyes y reglamentos en el ámbito de la educación y elabora una lista de indicadores positivos de la viabilidad de las leyes y reglamentos.

Palabras clave:

Evaluación de impacto regulatorio, efectos legales, defecto en la legislación, indicador de factibilidad.

INTRODUCTION

The most important factor in ensuring the national security of any state is qualitative and effective legislation. However, often the legal basis for national security is far from perfect. The Russian Federation, whose legislation has substantial reserves for improvement, is not an exception. Educational legislation is one of the most complex and dynamically developing branches of the Russian legislation. At the same time, it has a number of serious defects that necessitate its monitoring and further development. Such defects seem to include the following:

Firstly, the frequent volatility and the resulting instability of the main Federal Law “On Education in the Russian Federation” and other federal laws governing educational relations. Secondly, the unjustifiable high dynamics of the subordinate legal regulation of educational relations. Thirdly, conflicts of normative legal acts of the federal, regional and local levels in the ratio between themselves and within the appropriate level of legal regulation. Fourthly, the imbalance in the scope of the legal regulation of educational relations, that is, the legality of the legislation when regulating one type of educational relations in excessively detailed regulation of another type of relationship. Fifthly, the widespread practice of duplicating the norms of federal educational legislation at the regional level with a small number of independent norms on issues related to the sphere of jurisdiction of the subjects of the Russian Federation. Sixth, the uncertainty of the content, the vagueness and non statement of certain norms and legal concepts. Seventh, tighten the legal regulation of educational relations, strengthen its imperative and directive, and establish excessive prohibitions and restrictions on subjects of educational activities.

DEVELOPMENT

Each of these defects can be illustrated by specific examples. In particular, for more than a year the contradictions between the Federal Law “On Education in the Russian Federation” and the regional laws on education that came into force since September 1, 2013 remained. Out of 83 subjects of the Russian Federation, only 38 regions used the recommendation to bring their acts in line with the Federal Law “On Education in the Russian Federation” by September 1, 2013. At the same time, all laws of this group of constituent entities of the Russian Federation were adopted in the period from June 3 to August 30, 2013. 18 subjects of the Russian Federation completed the work on bringing the regional legislation on education in accordance with the named Federal Law in the period from September 1 to December 31, 2013. More 10 subjects of the Russian

Federation passed laws on education during the period from January 1 to July 1, 2014, and the rest until the end of 2014. As can be seen, the pace of bringing regional laws on education in line with the federal law differed markedly (Andrichenko, Barankov & Bulaevskij, 2015, p. 36).

The state of the educational legislation predetermines the need to improve the quality of its content and the effectiveness of the action. To this end, various legal instruments are used, one of which is regulatory impact assessment (RIA). RIA should be understood as a systematic process of identifying and assessing the possible consequences (economic, political, social, legal) of introducing, amending and repealing certain norms of legal regulation. In a broader sense, RIA is sometimes defined as “*a process in which the main problems and objectives of regulation are identified, the main options for achieving the goal are identified, and the advantages and disadvantages of each option are analyzed*”. (Plaksin, Bakaev, Zuev, 2013, p. 158)

The object of RIA regulatory legal acts that regulate educational relations have only recently become and the practice of its use is still insignificant. At the same time, this practice allows us to concentrate on the assessment of the consequences of normative legal acts in the sphere of education, and the legal orientation of this publication obliges us to turn to an analysis of the legal consequences.

As is known, typical legal consequences may be: 1) inadmissibility of adopting a normative legal act with a negative conclusion about RIA; 2) the need to amend other normative legal acts regulating educational relations; 3) adoption of new regulatory legal acts; 4) cancellation of the current (effective) normative legal act (acts); 5) adjusting the practice of applying the law; 6) preparation of concretizing and supplementary acts of lower legal force level, etc. For example, in the first year after the entry into force of the Federal Law “On Education in the Russian Federation” for the purpose of its implementation, 440 normative acts adopted in different years by the federal educational administration body and accepted about 400 orders of the Ministry of Education and Science of Russia.

There are also more large-scale legal consequences of the implementation of regulatory legal acts, which, according to Yu.A. Tikhomirov, can be expressed in assessments by citizens and their associations of the provisions of regulatory legal acts; In changes in the types of lawful and unlawful behavior; In the degree of implementation of acts; In the dynamics of offenses; In changes in the level of legality in the regions, in the sectors of the economy and social sphere (Tikhomirov, 2010, p. 147).

At the same time, in the framework of RIA, attention is focused on the special kind of consequences established in the Rules for Conducting by Federal Executive Bodies Regulatory Impact Assessments of Draft Normative Legal Acts, Draft Amendments to Draft Federal Laws and Draft Decisions of the Eurasian Economic Commission, approved by the RF Government Resolution December 17, 2012 №1318. According to clause 27 of the Rules, conclusions on the RIA are made about the presence or absence of provisions introducing excessive duties, prohibitions and restrictions for individuals and legal entities in the field of entrepreneurial and other economic activities or facilitating their introduction, as well as provisions resulting in unreasonable expenses. Physical and legal persons in the sphere of entrepreneurial and other economic activities, as well as budgets of all levels of the budgetary system of the Russian Federation, whether or not there is a sufficient justification for the solution of the problem by the proposed method of regulation.

CONCLUSIONS

Accordingly, the legal criteria for the admissibility or inadmissibility of the relevant regulatory legal act, including regulating educational relations, are: A) provisions introducing excessive duties, prohibitions and restrictions for individuals and legal entities in the field of entrepreneurial and other economic activities; B) provisions conducive to the introduction of such redundant duties, prohibitions and restrictions; C) provisions that lead to the emergence of unreasonable expenses of individuals and legal entities in the field of entrepreneurial and other economic activities; D) provisions that lead to the emergence of unreasonable expenditures of budgets of all levels of the RF budget system; E) presence or absence of sufficient justification for the solution of the problem by the proposed method of regulation. A few examples of the implementation of RIA with regard to normative legal acts in the field of education testify to the effectiveness of the above criteria for determining the legal consequences of relevant normative legal acts.

In addition, compliance with these criteria is the key to the effective operation of the normative legal act in the field of education and, on the contrary, their ignoring generates a negative implementation of the normative legal act. It seems that positive indicators of feasibility are, in particular, adequate concretization of the provisions of the normative legal act in the acts lower in legal force, that is, their compliance with the higher, low quantitative indicators of law enforcement acts that contradict the norms of the legal act, the lack of acts of prosecutorial response to the requirements. The abolition of a normative legal act,

or the introduction of amendments and additions to it, the absence of precedents for challenging an act in court, the absence of facts of the recognition of certain norms of the act as unconstitutional. Opposite situations indicate a negative implementation of regulatory legal acts, which is due, *inter alia*, to the lack of conduct of RIA for their procedure. Most indicative in this regard are the decisions of the Supreme Court of the Russian Federation on the recognition of certain provisions of normative legal acts in the field of education as invalid.

Thus, the assessment of legal consequences should become an obligatory component, both in the process of adopting a normative legal act regulating educational relations, and in monitoring the application of already existing normative acts in the field of education. The systematic use of RIA in the regulatory legal acts of the educational sector will reduce their inefficiency and ensure effective implementation. In turn, this will contribute to a more qualitative legal regulation of public relations and the creation of a solid foundation for the national security of the Russian state.

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