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THE ROLE OF LEGAL ACTS IN IMPROVING THE LEGAL REGULATION OF EDUCATIONAL ACTIVITIES

EL PAPEL DE EVALUAR EL IMPACTO REGULATORIO DE LOS ACTOS LEGALES REGULATORIOS EN LA MEJORA DE LA REGULACIÓN LEGAL DE LAS ACTIVIDADES EDUCATIVAS

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ABSTRACT

The state of the educational legislation predetermines the need to improve the quality of its content and the effectiveness of the action. Analysis of world practice shows that both excessive and inadequate regulation of social and economic processes negatively affects the economic development, social and political situation in the country, forming negative trends and low efficiency of state regulation. Various legal instruments are used to reduce the impact of these negative factors, one of which is the assessment of the regulatory impact. At present, the assessment of the regulatory impact is becoming an indispensable element of norm-setting. However, its application requires serious institutional and methodological support, the definition and formalization of the functions of participants and the procedures applied, which determines the feasibility of researching the theoretical foundations, practical experience and best practices for assessing regulatory impact. The purpose of the procedure is to develop an opinion on the achievement of the stated objectives of legal regulation in the process of the regulatory legal act, as well as to assess the positive and negative consequences of the regulatory legal act, and, possibly, the submission of proposals for the cancellation or amendment of a regulatory legal act or its individual provisions.

Keywords:

Education legislation, assessment of regulatory impact, legal consequences, defect of legislation, indicator of realizability.

RESUMEN

El estado de la legislación educativa predetermina la necesidad de mejorar la calidad de su contenido y la eficacia de la acción. El análisis de la práctica mundial muestra que tanto la regulación excesiva e inadecuada de los procesos sociales y económicos afecta negativamente el desarrollo económico, la situación social y política en el país, formando tendencias negativas y baja eficiencia de la regulación estatal. Varios instrumentos legales se utilizan para reducir el impacto de estos factores negativos, uno de los cuales es la evaluación del impacto regulatorio. En la actualidad, la evaluación del impacto regulatorio se está convirtiendo en un elemento indispensable del establecimiento de normas. Sin embargo, su aplicación requiere un apoyo institucional y metodológico serio, la definición y formalización de las funciones de los participantes y los procedimientos aplicados, lo que determina la viabilidad de investigar los fundamentos teóricos, la experiencia práctica y las mejores prácticas para evaluar el impacto regulatorio. El objetivo del procedimiento es desarrollar una opinión sobre el logro de los objetivos establecidos de regulación legal en el proceso de la ley reguladora, así como evaluar las consecuencias positivas y negativas del acto legal regulatorio y, posiblemente, la presentación de propuestas para la cancelación o modificación de un acto legal regulatorio o sus disposiciones individuales.

Palabras clave:

Legislación educativa, evaluación del impacto regulatorio, consecuencias legales, defecto de legislación, indicador de realizabilidad.

INTRODUCTION

The results of the development of the Russian educational system attest to the priority of strategic tools in public policy. In recent decades, the documents of the long-term planning horizon have been developed and adopted: the Concept of Long-Term Social and Economic Development of the Russian Federation for the Period to 2020, The Long-Term Social and Economic Development of the Russian Federation for the Period to 2030, the Order of the Ministry of Education and Science of Russia "Development Education for 2013-2020", the Federal Target Program "Research and development in priority areas of development of the scientific and technological complex of Russia for 2014-2020" and others.

A key role among them is enshrined in the Concept of Long-Term Social and Economic Development of the Russian Federation for the period up to 2020. The program, developed on the basis of the program-target method, is a set of various activities aimed at achieving specific goals and meeting the challenges facing Russian education until 2020. The goal of the state program is to ensure that the quality of Russian education meets the changing needs of the population and the long-term objectives of the development of Russian society and the economy. Within the framework of the state program, sub-programs will be implemented aimed at the development of vocational education, preschool, general education and additional education for children, the development of a system for assessing the quality of education and information transparency of the education system. The Federal Law "On Education in the Russian Federation" (hereinafter referred to as the Federal Law No. 273-FZ) [5] contains three main directions for the implementation of the state program: first, the development of new acts of by-laws that ensure the implementation of the federal law; second, the modification of existing regulatory and legal acts in connection with the entry into force of this law; thirdly, the recognition of legally null and void certain normative legal acts. The implementation of this federal law presupposes a significant work of public authorities to develop a set of by-laws of various nature and content.

The state of 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 the assessment of regulatory impact (ODS). The main purpose of the examination is to identify in the current regulatory legal acts provisions unreasonably hampering the conduct of entrepreneurial, investment and other socio-economic activities, with subsequent cancellation or adjustment of such provisions. The

ODS reveals the consequences (economic, political, social, legal) of introducing, amending and repealing certain legal regulations. In a broader sense, ODS 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". Examination of existing normative legal acts is carried out by special authorized bodies (for example, the Ministry of Economic Development of Russia, the Ministry of Education and Science of the Russian Federation, etc.).

The main advantages of ODS include: 1) broadening the subject area of the assessment; 2) the evaluation is carried out by the developers of draft normative legal acts; 3) the creation of an official website for the conduct of ODS projects of regulatory acts - regulation.gov.ru, which allows potential addressees of legal regulation to express their opinion on the drafts of regulatory decisions being developed by the authorities; 4) Examination of existing regulations for the presence of excessive requirements and (or) restrictions in the implementation of entrepreneurial and investment activities; 5) consolidation of mandatory implementation of the ODS procedure with respect to draft normative legal acts of the subjects of the Russian Federation.

Russia's modern educational legislation is far from perfect, it has a number of serious defects that necessitate its monitoring and further development. Such defects seem to include the following.

DEVELOPMENT

First, the frequent volatility and the resulting instability of the currently fundamental Federal Law "On Education in the Russian Federation" and other federal laws that regulate educational relations. 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. In addition, for 4 years of the Federal Law "On Education in the Russian Federation" of December 29, 2012, No. 273-FZ, it underwent 24 revisions, four of which were adopted before the effective date of the said Law (until September 1, 2013).

Secondly, the unjustifiably high dynamics of the subordinate legal regulation of educational relations. If we analyze the statistics of subordinate legal regulation in the constituent entities of the Russian Federation after the entry into force of the Federal Law No. 273-FZ, then in Sverdlovsk and Ryazan regions more than 4 thousand acts were accepted, in the Moscow region and Moscow more than 3 thousand acts, in the Stavropol Territory, Chelyabinsk and Tambov regions. There are about 2 thousand Tambov regions.

Thirdly, 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 with the excessively detailed regulation of another type of relationship.

For example, secondary vocational education is mainly regulated by Federal Law No. 273-FZ, and the training of scientific and pedagogical staff in graduate school, in addition to it, the Labor Code of the Russian Federation, RF Government Decree No. 409 of 05.05.2014 "On Approval Rules for granting leave to persons admitted for the degree of candidate of science or doctor of sciences", Order of the Ministry of Education of Russia from 27.03.1998 No. 814" On approval of the Regulations on the preparation of scientific and pedagogical and scientific personnel in the postgraduate professional system vocational education in the Russian Federation" and many others. In addition, the bulk of regional educational legislation is devoted to scholarship, not paying due attention to such topics as improving the quality of educational services, the development of the information library network, etc.

Fourthly, the widespread practice of duplicating the norms of federal educational legislation at the regional level with a small number of independent norms on issues referred to the sphere of jurisdiction of the subjects of the Russian Federation. The regional legislation is monotonous, since the Law of the Moscow Region of July 27, 2013 No. 94/2013-OZ "On Education" and the Law of St. Petersburg of July 17, 2013 No. 461-83 "On Education in St. Petersburg" identical character with respect to each other.

CONCLUSIONS

There are also other shortcomings, in particular the conflict of laws and regulations of the federal, regional and local levels in the ratio between themselves and within the appropriate level of legal regulation.

Thus, improving the quality of management, the level of socio-economic development of the region, preventing inefficient use of resources and the negative impact of regulatory decisions, ODS procedures can become an effective instrument of regional policy. 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. ODS is a set of procedures that allows the developer of regulatory decisions to consider the widest possible range of possible regulatory measures in the drafting process, assess the costs and benefits of both regulators (entrepreneurs, citizens) and budgets of all levels, offer the most effective solution, and evaluate its possible consequences. The Institute for Regulatory Impact Assessment is an economic tool structured in a specific system of procedures. One of the important elements of this system is the procedure of public consultations.

The use of tools such as ODS, public consultations, expertise allows achieving important results:

- To ensure the selection of the most effective options for making regulatory decisions in the field of education;
- To make the regulatory decisions that are being made to be executable for subjects of educational law;
- To limit the unreasonable costs of public authorities in the field of educational activities;
- Reduce the risks associated with the introduction of a new regulation of educational relations;
- To increase the trust of citizens in the state's decisions in the field of education.

The systematic use of ODS in the regulatory legal acts of the educational sphere will reduce their inefficiency, ensure effective implementation, which will contribute to a more qualitative legal regulation of educational relations at the present stage of development of the Russian state.

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