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## DISTANCE LEARNING: LEGAL REGULATION

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### Abstract

The article examines current problems of legal regulation of distance learning in the educational system of Ukraine. The main normative legal documents that regulate legal relations in the field of distance learning are analyzed. Possible directions for improving a legal framework for the introduction of distance learning in the educational institutions of all levels are proposed.

**Keywords:** Distance learning, legal regulation, distance education, information and communication technologies.

Rapid development of the scientific and technological progress, in particular the World Wide Web, electronic and telecommunication technologies, is influencing more and more intensively on the organization of public life, including educational activities. Hence, one of the current approaches to the reformation of modern education is the introduction of distance learning technologies in the educational process. Experts on the strategic educational issues consider distance learning as the system of education of the 21<sup>st</sup> century. At the same time, there is a need to improve normative legal regulation of the educational process. Unfortunately, in Ukraine legislative provision of the education does not correspond to current realities and it does not take into account a well-known fact that the efficiency of the system of education is one of the determining factors of socio-economic development of any state.

Distance learning enables to create systems of mass lifelong education and general exchange of information. It is this system that can most adequately and flexibly respond to society's needs for the training of highly professional specialists. Distance learning proves its effectiveness in training and on-going support of highly qualified specialists in various fields and industries.

The global COVID-19 pandemic has become a catalyst for global processes of digital transformation in all spheres of our life. The role of digital technologies in education is becoming extremely important under such conditions. Among numerous technological advantages, their ability to save human lives and at the same time ensure implementation of the educational process has remained virtually unnoticed. It has accelerated the mass transition to the use of digital technologies in different fields, including education [8, p.95].

Recently, lots of scientific papers in various fields of science have been devoted to the problem of distance learning. Scientists focus their attention on the system

of distance education, and current tendencies indicate further intensification of research in this area. Some issues of legal regulation of distance learning have been examined by domestic and foreign researcher, including Bondarenko V.V., Vavylova A.A., Hannavey G.J., Hubar V.V., Dawes G., Kocherha S.A., Kukhareno V. M., Mazur M.P., Oliinyk A.I., Poliakova L.P., Rupesh R. and others. However, legal aspects of the introduction of distance learning remain insufficiently studied and need further research.

Nowadays, distance learning is a technology that is based on the principles of open learning is widely using computer training programs for various purposes and modern telecommunications. This technology is characterized by high quality training and high cognitive motivation created by the Internet.

Distance learning provides an opportunity to achieve high professionalism and provides a high level of communication. Due to the use of open and computer-based learning and modern means of communication, it is characterized by a significant increase in socially significant motivation, business and cognitive cooperation, self-realization and development, self-affirmation and sociability.

In the system of education, distance learning meets the principle of humanism, according to which a person should not be deprived of the opportunity to study despite poverty, geographical or temporary isolation, social insecurity and inability to attend educational institutions because of physical disabilities, employment or any individual reasons.

Distance learning is practically implemented mostly through the use of specialized information systems, which are called learning management systems or sometimes software and pedagogical systems. As a rule, such information systems consist of sets of modules that provide full-value distance learning. Today, there is a wide range of developed learning management systems that are distributed both commercially

and freely. However, more and more educational institutions prefer well-developed and practically tested systems [13]. For example, common educational platforms that are widely used nowadays are Moodle, Google Classroom, Zoom, Classtime, LearningApps.org. Social networks, messaging services and mobile applications such as Viber enable to create closed groups, communities, chats, to discuss topics, tasks, problems, some information during distance learning.

In Ukraine, distance learning was first introduced by the National Technical University “Kharkiv Polytechnic Institute”, Kharkiv National University of Radio Electronics and Lviv Institute of Management in 1997. In 2000, by the Order of the Ministry of Education and Science of Ukraine, the Ukrainian Center for Distance Education was established at the National Technical University “Kyiv Polytechnic Institute”.

Since that time, centers (institutes) of distance learning have been establishing in the universities of Ukraine, experimental introduction of distance learning has begun. The National Academy of Public Administration under the President of Ukraine and its Regional Institutes in Kharkiv, Dnipro, Odesa and Lviv are the first ones. Sumy State University and Khmelnytsky National Technical University are the first universities that have received permission from the Ministry of Education and Science of Ukraine to conduct an experiment on distance learning. Unfortunately, no significant activity in this area has been observed in Ukrainian universities. Distance learning technologies have been very actively implemented in Vinnytsia Gymnasium No17 since 2005, and today it has more than 12,000 lessons in all subjects for grades 2-11 that are actively used [8, p. 8].

Distance learning is being extremely quickly introduced in all areas of educational activity during the COVID-19 pandemic and it is actively used at all educational institutions of all educational levels.

Under modern conditions of intensive introduction of distance learning in all spheres of education, it is extremely important to improve the normative legal framework that ensures adequate functioning of this form of education.

In Ukraine, the right to access to various forms of education is guaranteed by the Constitution of Ukraine (Article 53) [5]. The right of a person to get education in various forms is provided by the Law of Ukraine “On Education” [4]. According to Article 9 of this Law, an individual has the right to get education in various forms, namely institutional (full-time (including evening), part-time, distance, network); individual (external, family), pedagogical patronage, at the workplace (at work), dual.

In the legal literature and regulations, there are such concepts as “distance learning”, “distance education”, “e-learning”. Some scholars consider these concepts to be similar, while others prove the opposite. There has not been developed a single approach to this terminology by the scholars in the field of law sciences yet.

According to Part 4 of Article 9 of the Law “On Education”, distance learning is an individualized process of study, which occurs mainly through the indirect interaction of distant participants of the educational process in a specialized environment that operates on the basis of modern psychological, pedagogical and information and communication technologies [4].

The term “distance learning” is defined in the Regulations on Distance Learning, according to which distance learning is an individualized process of gaining knowledge, skills, abilities and ways of human cognitive activity, which occurs mainly through indirect interaction of distant participants of the learning process in a specialized environment that operates on the basis of modern psychological and pedagogical as well as information and communication technologies [9].

Since the proclamation of independence in 1991, Ukraine has been gradually developing the system of regulations that contain provisions for the introduction and development of distance learning as a form of education. The process of developing the system of legal regulations on distance learning in Ukraine was initiated by the Law of Ukraine “On the National Informatization Program” of February 4, 1998 No 74/98-VR [3], the decree of the President of Ukraine “On the Measures Aimed to Develop the National Component of the Global Information Network Internet and Ensure Broad Access to This Network in Ukraine” of July 31, 2000 No 928/2000 [16].

In 2000, the Concept of the Distance Education Development in Ukraine was approved by the Resolution of the Ministry of Education and Science of Ukraine [6]. It substantiated the feasibility, purpose, main tasks and expected consequences of developing and implementing such a system.

Tasks, goals and directions of distance learning development in Ukraine were defined in 2007 with the adoption of the Law of Ukraine “On the Basic Principles of Information Society Development in Ukraine 2007-2015” on January 9, 2007 No 537-V [2]. This law became a conceptual basis for the development of the information society in Ukraine and identified the information direction of public policy as one of the priorities in all spheres of society, including education. The main strategic goals of the information society in Ukraine were identified as follows: the use of information and communication technologies to improve public administration, relations between the state and citizens, the formation of electronic forms of interaction between public authorities and local governments as well as individuals and legal entities; protection of information rights of citizens, primarily regarding the availability of information, protection of personal information, support of democratic institutions and minimization of the risk of “information inequality”; improvement of legislation on the regulation of information relations; improvement of the state of information security in terms of using the latest information and communication technologies [2].

One of the achievements of legislation is the adoption of the Strategy for the Development of the Information Society in Ukraine approved by Order № 386-r of the Cabinet of Ministers of Ukraine on May 15, 2013

[14]. In the framework of the Strategy for the Development of the Information Society in Ukraine, the concept of distance education is considered as a form of education obtained using only information and communication technologies.

The strategy stipulates that one of the main conditions for the successful implementation of the state policy in the field of information society development is the provision of education, upbringing, and professional training of the individual for his/her work in the information society.

Since the main direction of the information society development was to provide everyone with the opportunity to acquire knowledge, skills and abilities using information and communication technologies in education, upbringing and professional training (Chapter I, paragraph 3), this stimulated the introduction of distance learning.

Support of the development of scientific and educational space, which will be based on the integration of various national multi-purpose information and communication systems has been identified as one of the priority goals. For this purpose, it is necessary to develop methodology for the use of computer multimedia technologies when teaching school subjects, to take into account the peculiarities of operation of information and communication technologies in the systems of training students at the pedagogical universities and retraining teachers; to ensure the priority of training specialists in the field of information and communication technologies; to improve curricula, to start training in the new specialties related to the latest information and communication technologies, to implement the principle of "lifelong education".

The strategy has provided for the development of the system of distance learning and provision on its basis of the effective implementation and use of information and communication technologies at all educational levels of all forms of learning [14].

Since distance learning is impossible without adequate technical means, it is important to provide educational institutions and research institutions with information and communication technologies and required information resources.

Availability of free access to information and communication technologies and information resources, especially in rural areas and hard-to-reach settlements as well as the development of the national scientific and educational information network and information resources in the main fields of knowledge, its accession, in particular, to European scientific and educational networks are one of the priority tasks of the state policy concerning the introduction of distance learning [14].

Strategic objectives defined in this document involve step-by-step informatization of the educational system aimed to meet educational information and communication needs of participants of the educational process; form and implement information educational environment in the system of comprehensive secondary, extra-school, vocational, higher and postgraduate education; develop an information system to support the educational process, a system of information and

analytical support in the field of management of educational institutions, information and technological support for educational monitoring; provide educational institutions with computer systems and multimedia equipment; develop a network of electronic libraries at all educational levels.

To conduct legal regulation of the distance education system, the Strategy has emphasized the necessity to work out and make amendments to the legislation on the issues of informatization and adoption of the Information Code of Ukraine, including a chapter on distance learning. Unfortunately, the Information Code has not been adopted yet [14].

The Program of the Distance Learning System Development 2004-2006 became an important step towards the introduction of distance learning in all spheres of educational activity [12]. To implement the program, the first Regulations on Distance Learning were developed and approved by Order No 40 of the Ministry of Education and Science of Ukraine on January 21, 2004. In 2013, new Regulations on Distance Learning were approved having specified scientific and methodological support and peculiarities of the educational process using distance learning technologies [9].

Another normative document that regulates legal relations when implementing distance learning is the Regulations on the Distance Form of Full General Secondary Education approved by Order No 1115 of the Ministry of Education and Science of Ukraine on September 8, 2020 [10].

As already mentioned, an important legal document that has contributed to the development of distance learning is the Concept of the Distance Education Development in Ukraine, which proclaims the development of the distance education system at the national level.

According to this Concept, the development of the educational system in Ukraine should first of all contribute to "updating the content of education and teaching methods as well as disseminating knowledge; expanding the access to all levels of education, realizing the possibility of its obtaining by a large number of young people, including those who cannot study in higher educational institutions experiencing traditional forms due to the lack of financial resources or physical capabilities, employment, far distance from the cities, prestige of educational institutions, etc.; implementation of the system of long-life education, including secondary, pre-university, higher and postgraduate education; individualization of training within mass education" [6].

According to the Concept, distance education is equivalent to full-time, evening, part-time, distance and external education, and it is implemented mainly through distance learning technologies. Distance learning technologies consist of pedagogical and information technologies.

Pedagogical technologies of distance learning are the technologies of indirect active communication of teachers with students using telecommunication and methodology of individual work of students with the structured educational material presented in the elec-

tronic form. Distance learning information technologies are the technologies for creating, transmitting and storing academic materials, organizing and supporting the academic process of distance learning through telecommunications.

According to the Concept, distance learning technologies can be used not only in distance education, but in other forms of learning as well, including full-time, part-time, and external ones [6].

It is important that the Concept has proclaimed the principles of distance education in Ukraine, namely:

1) Continuity. Provision of distance education of all levels that are accepted in the system of long-life education in Ukraine, i.e. primary, comprehensive secondary, vocational training, higher, additional, post-graduate education.

2) Democratization. Provision of equal opportunities for all educational institutions that will be included in the system of distance education in solving regulatory, legal, educational and methodological, financial and economic issues concerning the functioning of the distance education system.

3) Integration. Formation of a virtual electronic library of distance learning courses, data banks and knowledge bases with copyright protection.

4) Globalization. Openness of information resources and organization of educational processes for all participants of the distance education system with the use of telecommunication networks (p. 4).

The main purpose of creating a system of distance education is to ensure nationwide access to educational resources through the use of modern information technologies and telecommunications networks and to provide conditions for citizens to exercise their rights to education.

Emphasizing crucial social signification of the development of the distance education system, it should be noted that implementation of this system would solve a number of urgent problems, namely raising the level of public education and the quality of education; realization of the population needs for educational services; increasing social and professional mobility of the population, its entrepreneurial and social activity; preservation and renewal of knowledge, personnel and material-and-technical potential accumulated by the domestic educational system; formation of a single educational space within the world community.

The system of distance education should ensure the formation of legal, organizational, educational, methodological, information and telecommunication, material-and technical, personnel, economic and financial support, implementation and development of both distance education and distance learning for individual courses or blocks of courses; organization and development of distance education in any areas of training: humanitarian, economic, legal, natural, engineering, military, agricultural, etc.; application of distance technologies not only in distance education, but also in all forms of education including full-time, part-time, and external; introduction of distance learning technologies at all levels as full education (secondary, vocational, pre-university, higher and postgraduate), vocational training and psychological support through distance

learning of socially vulnerable groups, e.g. the unemployed; individuals with physical disabilities: individuals deprived of liberty; servicemen for a fixed period, etc.; support of professional orientation and self-determination of future professionals; implementation of distance learning technologies for retraining and advanced training of personnel in the field of entrepreneurship; state and municipal administration, customs and tax services, financial and banking system; teachers of secondary schools, vocational and higher education institutions, etc.; formation of the state electronic library of distance courses (normative disciplines); improvement and development of telecommunication infrastructure for the implementation of distance education technologies; acceleration of the export of the latest distance technologies abroad in order to strengthen the economic base and increase the prestige of education in Ukraine in the international arena (paragraph 3).

According to the Concept, the organizational structure of the distance education system has begun to form in Ukraine. At different times, the organizational structure of the distance education system of Ukraine included the Council for Monitoring the Development of Distance Education under the Cabinet of Ministers of Ukraine, the Coordinating Council of the Ministry of Education and Science of Ukraine for Distance Education, the Ukrainian Center for Distance Education based on KPI, regional centers in Kharkiv, Lviv, Odesa, Dnipropetrovsk, Khmelnytskyi. Today, the Department of Higher Education of the Ministry of Education and Science of Ukraine, the Ukrainian Institute of Information Technologies in Education, structural subdivisions of some educational institutions deal with the organization and implementation of distance education. However, currently in Ukraine there is no single coordination center for the formation and implementation of the state policy in the field of distance education.

The development of projects of the normative legal framework for the functioning of distance education was entrusted to the Ukrainian Center for Distance Education, which was established by Order No 293 of the Ministry of Education and Science of Ukraine on July 7, 2000 "On the Establishment of the Ukrainian Center for Distance Education". Now it is the Ukrainian Institute of Information Technologies in Education of the National Technical University of Ukraine "KPI" [7, p. 22].

One of the main normative documents providing legal regulation in the field of distance learning is the Regulations on Distance Learning, which defines basic principles of organization and implementation of distance learning in vocational training, higher educational institutions, postgraduate educational institutions or structural subdivisions of higher educational institutions, scientific and educational-and-scientific institutions carrying out postgraduate training.

Distance learning is defined as an individualized process of acquiring knowledge, skills, abilities and ways of human cognitive activity, which occurs mainly through the indirect interaction of distant participants during the learning process in a specialized environ-

ment that operates on the basis of modern psychological, pedagogical, information and communication technologies [ 9].

The purpose of distance learning is to provide educational services through the use of modern information and communication technologies when teaching at certain educational or educational-and-qualification levels in accordance with the state educational standards; according to the programs for training citizens for admission to educational institutions, training of foreigners and advanced training of employees (p. 1.4).

Hence, the objective of distance learning is to provide citizens with the opportunity to exercise the constitutional right to education and professional qualification, advanced training regardless of gender, race, nationality, social and property status, type of occupation, worldview, party affiliation, religion and attitude to it, state of health, place of residence in accordance with their abilities (p.1.5).

Distance learning in vocational schools, higher educational institutions, postgraduate educational institutions or structural subdivisions of higher educational institutions, scientific and educational-scientific institutions carrying out long-life education is implemented through the use of distance learning as a separate form of learning and using distance learning technologies to provide learning in various forms.

It should be noted that the introduction of distance learning should be coordinated by the relevant executive authorities (Ministry of Education of Ukraine, education management body, etc.) and it requires availability of appropriate staffing and technical support (paragraph 2.2).

To implement distance learning, educational institutions can create distance learning centers as their separate structural units.

The academic process under distance learning is carried out in the following forms: individual activities; training sessions; practical training; professional and practical training; controlling.

The main types of distance learning classes are as follows: lectures, seminars, lessons, practical classes, laboratory classes, consultations, etc. Lectures, consultations, seminars, lessons are conducted with students (pupils) offline synchronously or asynchronously according to the curriculum [9].

Educational materials, communication between the subjects of distance learning during distance learning classes are provided due to the synchronous or asynchronous transmission of video-, audio-, graphic- and textual information.

Distant practical classes, which involve execution of some practical (final test) work, may be asynchronous. Some practical tasks can be performed synchronously, which is determined by the syllabus of the course.

Laboratory classes are conducted offline in the specially equipped training laboratories or distant use of appropriate virtual simulators and laboratories.

Other types of training sessions during the educational process may include business games, project im-

plementation in groups, etc. These types of training sessions can be conducted on-line or offline both synchronously and asynchronously, as determined by the curriculum.

The Regulations also specify the peculiarities of organization of the educational process with the use of distance learning technologies (e.g. professional and practical training, training of people with special needs, etc.) [9].

As for the provision of distance learning, it includes scientific and methodological support (methodological (theoretical and practical) recommendations, criteria, tools and quality control systems for distance learning, didactic and methodological content of web resources) and system hardware (hardware (personal computers, network equipment, power supplies, servers, equipment for video conferencing, etc.); information and communication support; software; web resources of academic courses (programs).

The Regulations stipulate that web resources of academic courses may provide methodological recommendations for their use, sequence of task performance, peculiarities of control; curriculums, thematic plans, class schedules; video and audio recordings of lectures, seminars, etc.; multimedia lecture materials; terminological dictionaries; practical tasks; virtual laboratory works; virtual simulators with methodical recommendations on their use; tests to carry out controlling, testing with the automated check of results, testing with the check performed by the teacher; electronic libraries, etc.

It is also provided that an educational institution may create its own web resources or use other web resources that can be monitored at this educational institution [9].

The mechanism for providing full general secondary education through distance learning is determined by the Regulations on the Distance Form of Full General Secondary Education approved by Order No 1115 of the Ministry of Education and Science of Ukraine on September 8, 2020 [10]. The Regulations have significantly improved the conceptual apparatus of distance learning. Therefore, the terms “electronic educational resources”, “e-learning environment”, “e-learning platform”, “distance learning management system”, etc. have been defined.

The Regulations specify the main criteria for the organization of distance learning. First of all, distance learning is carried out in accordance with the educational program of the educational institution and should ensure compliance with the state educational standards. However, if necessary, distance learning can be organized according to the individual curriculum.

Application of electronic educational platforms for online communication services and tools in a particular educational institution is approved by the pedagogical council. Educational institutions can use the state information and telecommunication system (electronic educational platform), technical capabilities of which can provide distance learning [10].

During distance learning the educational process may include the following elements: educational (including practical, laboratory) classes, correctional and

developmental classes, webinars, online forums and conferences, individual activities, research, search, project activities, educational games, consultations and others forms of organization of the educational process defined by the educational program of the educational institution (curriculums of certain courses (integrated courses) (p.6).

Organization of the educational process should ensure regular and meaningful interaction of distance learning subjects while using forms of individual and collective educational and cognitive activities of students as well as their self-control during learning.

Provision of educational materials, communication between the subjects of distance learning during training and correction-and-development classes, consultations that are conducted remotely are provided through the synchronous or asynchronous transmission of video-, audio-, graphic- and textual information. Teachers independently determine what classes are going to be synchronous or asynchronous. At the same time, at least 30 percent of the study time provided by the educational program of the educational institution is to be synchronous (the rest of the study time is organized asynchronously) [10].

The educational institution is obliged to perform regular monitoring of the learning outcomes of students, as well as to provide them with the support during the educational process. Therefore, the regulations standardize the forms and methods for the assessment of students during distance learning. Thus, assessment of students' learning outcomes is carried out in accordance with the types of assessment practices specified by special laws and in accordance with the criteria defined by the Ministry of Education and Science of Ukraine. Assessment of students' learning outcomes can be done both offline and online using the resources provided by the information and communication (digital) technologies, including video conferencing. Reporting on the classes and learning outcomes of students during distance learning is carried out in accordance with the legislation (in the journal, certificates of achievements). According to the decision of the pedagogical council of the educational institution, organization of distance learning can involve application of the electronic class schedule, electronic class journal/diaries [10].

Accounting of working hours and remuneration of teachers who organize distance learning is carried out in accordance with the legislation in the field of general secondary education. Organization of the educational process during distance learning is carried out within the working hours of teachers, which is determined in accordance with the Law of Ukraine "On Full General Secondary Education".

The duty to control the organization of the educational process during distance learning and control the implementation of educational programs, the method of organizing such control is approved by the pedagogical council of the educational institution. If necessary, the founder and head of the educational institution provide organizational and methodological support of teachers for the implementation of distance learning [10].

The Regulations also standardize the organization of distance education as a separate form for those who cannot attend classes in the educational institutions, e.g. due to health, living in the temporarily occupied territory, etc. or need individualized training (Chapter II). In paragraph 2 of Chapter II it is stated that the organization of distance education is carried out exclusively at the request of students and their parents.

A separate Chapter regulates the mechanism for providing distance learning, which includes training and methodological support as well as system technical support (hardware, information and communication software; general and special software (including the one intended for people with special needs), which must be licensed or based on open source software; technical/service support to ensure on-going operation of the platform for distance learning provided by the experts in the field of digital technologies; electronic educational resources on the courses (integrated courses) needed to provide distance learning; e-journals, etc. [ 10].

Current trends in education development are established primarily at the legislative level, and the latest information technologies are being introduced very rapidly in the field of education. Therefore, a significant drawback is the lack of regulatory support of this process. The legislator does not keep up with the development of information technology, which negatively affects legal regulation of all spheres of public life, including education. However, distance learning is recognized worldwide as the most promising, humanistic and integrated form of education in the modern information society, and therefore it requires adequate regulatory support.

Formation of a sufficiently progressive legislative as well as normative legal framework for education is one of the main factors that can ensure realization of citizens' rights to education. Adoption of a sufficient, effective legislative base for education, timely amendments to existing laws, as well as implementation of laws that have already been adopted is an urgent, important and difficult task. It should be noted that the urgency of the problem of improving the legal regulation of distance learning is explained by the fact that in this case educational activities are concentrated mainly in the information and telecommunications environment. Therefore, the adoption of the Information Code, the draft of which has a separate section that provides for the legal regulation of distance learning, would be an extremely important stage of its improvement.

Over the years of implementation of distance education technologies, scientific and methodological, personnel and production potential, information resources and technologies have been accumulated, there exists telecommunication infrastructure, a number of normative legal documents have been developed, and relevant amendments to the current legislation have been made. Nevertheless, adequate regulation of normative legal relations requires a comprehensive legal document, which would reflect the state policy in the system of distance education, define the status of distance education and establish minimum licensing conditions for its provision.



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