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PUBLIC ADMINISTRATION INSTRUMENTS TO GOVERN HIGHER EDUCATION INSTITUTIONS: NORMATIVE BACKGROUND IN EUROPE AND UKRAINE

The article suggests a comparative analysis of the European and national practices of appointing rectors of higher education institutions with a detailed consideration of the recent legislative initiatives in Ukraine. The measure of public administration involvement affects the autonomy of the university, determines the vector of further reforms, outlines the prospects for the whole field of the State higher education.

Key words: higher education, university governance, University autonomy, Ukraine, EU.

The problem setting. Nowadays Ukrainian realities in the sphere of higher education demonstrate an extreme need for substantial change of the educational paradigm for its sustainable development. The latest regulatory documents of the European Union (EU) demonstrate the need to do it immediately. According to the models of the EU member-states the higher education institution (HEI) is treated as an open social organization and its effective governance is possible only with the help of the strategic management mechanisms. Thus, the HEI's head acquires a new functional, and his/ her main function becomes a managerial one. The impressive number of leading and competitive HEIs in Europe made us identify the key approaches to the leader selection, nomination, dismissal etc.

Analysis of the latest research and publications. The given papers provide a comparative analysis of the EU member-states practice to the above mentioned issue and the Ukrainian path to reforming the sphere of higher education in this very aspect. The research is based on the materials of the European Universities Association (EUA), Law of Ukraine "On Higher Education" (2014), Bill on Amendments to the Law of Ukraine "On Higher Education" (regarding the improvement of the procedure for the election and appointment of the head

of a higher education institution and his deputy) № 9103.

The main source of information concerning European approach to the nomination and appointment to HEI's leading position is the EUA Survey "University Autonomy in Europe: exploratory study" (2009) by Thomas Estermann and Terhi Nokkala. It provides data on the organizational, financial, staffing, academic autonomies and the perception and trends. We have cited some information concerning executive leadership.

Ukrainian legislative documents on the sphere of higher education have been in great demand to describe national realities. We have considered a valid Law "On higher education" in its provisions related to the phases of rectors' appointment/firing and a new Bill № 9103 on Amendments to the Law of Ukraine "On Higher Education" (regarding the improvement of the procedure for the election and appointment of the head of a higher education institution and his deputy).

The goal of the article is to identify key weaknesses and threats of a newly proposed regulations in the Bill № 9103 on Amendments to the Law of Ukraine "On Higher Education" (regarding the improvement of the procedure for the election and appointment of the head of a higher education institution and his deputy), on the one hand, taking into account national realities and valid legislature and, on the other hand,

compared to the common European practices, and to propose variants for an effective reforming the higher education sphere.

Presentation of the main material.

As mentioned above the paper is a comparative analysis of the approaches and demands to the nomination on Rector's position in HEIs in some European countries and in Ukraine. We have taken into consideration the demands to the candidates' qualification, conditions of being in Office, procedures of selection, appointment and dismissal to compare all these aspects and to conclude the pros and cons.

In Europe the *general selection procedures* fall into four basic categories. The rector may be:

- elected by a specific electoral body, which is usually large, representing (directly or indirectly) the different groups of the university community (academic staff, other staff, students), whose votes may be weighted;

- elected by the governing body which is democratically elected within the university community (usually the senate, i.e. the body deciding on academic issues);

- appointed by the council/board of the university (i.e. the governing body deciding on strategic issues);

- appointed through a two-step process in which both the senate and the council/board are involved.

The first procedure, whereby the rector is elected by a large body, which may be specifically set up for this purpose and represents the different groups of the university community, is the most common. This group consists of countries where the entire university community directly takes part in the election of the rector, like in Greece, or where an electoral body is set up, as is the case in Estonia or Finland, among others. In seven countries, universities select their rectors through a smaller group (such as the senate), and the cooperation of the two main governing bodies is required in five systems. At the other end of the spectrum are those, primarily western European countries, where the rector is appointed by the board. In Germany, the procedure varies according to the state, and ranges from the rector being elected by the members

of the university community, to the rector being appointed by the Ministry of Education. In Norway, the universities may themselves decide on the selection of the rector, and thus in some universities the rector is elected, in others appointed. The selection of the rector may also have to be confirmed, if only formally, by a higher authority. In Iceland (for some of the universities), Romania, Sweden and some Swiss cantons, the appointment of the rector must be confirmed either by the government, or the relevant Ministry. In the Czech Republic, Hungary, the Slovak Republic and Turkey, the appointment is confirmed by the President of the Republic, in Luxembourg by the Grand Duke [3, p. 16–17].

Nowadays Ukrainian practice of appointment of the rector bases at the Law of Ukraine "On Higher Education". The Article 42 of the Law proclaims that the head of the higher education institution (HEI) is elected by secret ballot for five-year term as prescribed by the Law and the HEI Charter.

Eligible are:

- every scientific, scientific-pedagogical and pedagogical staff member of this HEI;

- representatives from among other staff members elected by the relevant employees through direct secret elections;

- elective representatives from the number of students (cadets) who are selected by students (cadets) through direct secret elections [2].

At the same time, the total number (full membership) of scientific, scientific-pedagogical and pedagogical workers of the HEI should be not less than 75 percent of the total number of persons entitled to participate in elections; the number of elected representatives from other HEIs is up to 10 percent, and the number of elected representatives from the number of students (cadets) is at least 15 percent of the persons entitled to participate in the elections [2].

Elections are recognized to have taken place if they have taken part in more than 50 percent of the total number of persons eligible to vote, each with one vote and voting in person.

The founder (founders) or the authorized body (person) concludes a contract with a person (a candidate) who has gained more

than 50 percent of the votes for five-year term during not more than one month from the day of election [2].

Qualifications of the rector. Provisions regarding the rector's required qualifications are often defined by law (in about two-thirds of the 34 countries included in the analysis). For a minority, this is not the case, and restrictions as to who may be eligible generally stem from the university's statutes or from common practice [3, p. 17].

In a majority of cases the rector is expected to be a full or associate professor. In fifteen cases he/she must come from the university in question. Only in a few cases (mainly in northwestern European countries) can the rector come from outside academia. This is consistent with those systems where the rector adopts a role closer to that of a chief executive officer (CEO) of a company. In a number of countries such as Austria, Finland, Denmark or Lithuania, the rector is also expected to demonstrate managerial skills.

Valid Law of Ukraine "On Higher Education" states that a candidate for the position of HEI's Head has to be a citizen of Ukraine, speak fluently the state language, have an academic rank and doctoral degree and not less than 10-year work experience at scientific and pedagogical positions. The same person cannot rule the HEI more than two terms [2].

But in late September, 2018 the Verhovna Rada of Ukraine (Ukrainian Parliament) registered a Bill on Amendments to the Law of Ukraine "On Higher Education" (regarding the improvement of the procedure for the election and appointment of the head of a higher education institution and his deputy) under the number 9103. Among other it adds the requirements that the rector is expected to be a full or associate professor along with a doctoral degree. Moreover, the candidate must have not less than 10-year work experience at scientific and pedagogical positions after been nominated as a professor, but the above-mentioned length of experience may include (but not more than 5 years) work at the senior positions in HEI. It leads to the fact that taking into account academicians age statistics and existing regulations on terms and conditions for the degrees and ranks the HEIs heads will be

60+ years old! As for the effective governance and up-to-date operative decision-making it is not as adequate age as needed [1].

Likewise, academic degrees of doctor and professor do not guarantee at all "sufficient level of knowledge and professional experience" for the university leadership. However, it surely means that the candidate for the university's highest post has spent almost all the professional career in the scientific and teaching spheres. There is a significant risk that appointed at such basis HEIs leaders will be from academic and teaching staff without experience in managing business entities, internationalization, the commercialization of results and cooperation with employers and business. And it will be for worse since nowadays the HEIs are progressive economic entities actively involved in the country's economy and international activities.

The term of office. The rector's term of office is usually stated in the law, either as a fixed length which is mandatory, or as a maximum period (in Latvia, universities are free to set shorter terms in their statutes). The most common term of duration for the rector's office is four years (as is the case in at least half of the countries). However, it is interesting to note that the rector does not always have a fixed term of office. In England, for example, vice-chancellors can be appointed for an indefinite period, which reflects a more managerial approach to the function than in the majority of European countries (it is important to note, however, that there is no strong correlation between the mode of selection of the rector and the type of term in office chosen; appointed rectors can also have a fixed term in office). In two-thirds of the cases the term is renewable at least once, sometimes under different modalities (extension by 50% of the term of office, non-direct renewability but possible reelection of former rectors, etc.) [3, p. 17].

Nowadays Ukrainian legislature previews that the rector is elected for five-year term. There is a legal norm that the same person cannot be the HEI's head more than two terms [2, Art. 42].

Mentioned above Bill № 9103 proposes to amend this article and formulate it as follows: "the same person cannot be the HEI's head more than two terms in raw". Such

condition can easily be overcome as in political practice of Russia when the President changed the places with the Prime-minister and returned to the Office in one term break. So it leads to virtually endless governance of the universities by the same people.

Dismissal is a key indicator to assess the rector's accountability to the institution and to other stakeholders. In most cases, it is the same body that selects and dismisses the rector. There are, of course, exceptions. In Spain the rector is elected by an electoral council but is dismissed by the university senate. In Bulgaria he/she is elected by the general council but dismissed when 50% of the staff calls for new elections. In a handful of countries, the dismissal of the rector must be confirmed by a higher authority (like in the Czech Republic or Greece), whereas in others the dismissal may actually be initiated by the relevant higher authority, usually the ministry, based on cases of gross misconduct (Hungary, Poland, Portugal, Sweden, Turkey). In Italy, the rector cannot be dismissed during his term. In Lithuania, the rector is expected to present his report to the board and senate, who must conduct a vote of confidence. After two unsuccessful votes, the rector is obliged to resign [3, p. 17].

In Ukraine the HEI's head may be dismissed from the position by the founder (founders) or his/ her authorized person(s), as well as in connection with the adoption of the decision on the rector's dismissal by the higher collegiate body of public self-government, which elected the rector to the office on the basis of the legislation on labor, for violation of the HEI's Statute and/or the terms of the contract [2].

The Bill № 9103 provides new rules related to the dismissal of the rector. The threat is hidden in the clause concerning appointment of the HEI's head substitute in case of early termination of authority. Thus, if the HEI's head violates the law and/ or the terms of the contract, the founder has the right to terminate the contract before its end date, but, according to the norm of the Bill, will not be able to appoint the acting manager for the period before new election. Instead, two candidates are proposed by the HEI's Academic Council, one of them will be chosen by the Conference of the staff, and the founder is obliged to approve this

candidature. It rudely violates and restricts the rights of founders not only of the private HEIs, but also the public ones. This can, in fact, be seen as a mechanism for the staff to gain control and usurp the power [1].

Additionally, another provision of the Bill may paralyze the work of any HEI. It declares that the HEI's deputy rector (Vice-rector, Vice-president) is elected by the Academic Council of the institution by the majority of votes from its membership on the basis of proposals from the HEI's Head. Consequently, newly elected head will not be able to appoint own team of deputies and will be forced to work with the deputies approved by the HEI's Academic Council.

Conclusion and proposal. A study of internal academic and administrative structures showed that those universities which were relatively free to decide their own structure formed the majority. The minority had their structures shaped to a greater or lesser extent by law.

As far as leadership is concerned, the shift towards a CEO-type leader in certain western European countries appears to go hand in hand with a greater autonomy in management and structure. These more 'managerial' leaders are selected by a board, may be external to the institution and report to the governing bodies. At the other end of the spectrum are the more traditional, eastern European or Mediterranean countries, where the rector typically is an academician selected by the internal academic community amongst the professors of the university in question, chair of the university's governing body, with term and qualifications determined in the law. Between these two types falls a range of countries with various combinations of the above.

The traditional European model of university governance has been a unitary one of universities as primarily academic-run organizations. This study shows that nowadays dual governance structures are more common than unitary structures and that these bodies also comprise external members in a substantial number of cases. Their role, though, remains controversial as external "councils" are either seen as showing too little interest in and commitment to university affairs, or considered to have too much control over the academic issues of the university.

The inclusion of external members forms an important part of more autonomous universities' accountability towards their stakeholders and society at large. This will form a crucial part of current and future reforms on governance, as there is a pressing need to find the right degree of accountability by integrating external stakeholders in an efficient and appropriate way, in the light of the mission and the strategic priorities of each and every university.

To be aware of the recent and actual trends in reforming national sphere of higher education we have analyzed closely the Bill № 9103 to decide either it is adequate to the leading world paradigm in administering HEIs or it must be denied by public administration bodies. The best way to conduct a profound survey is through SWOT analysis. As for us there are no strengths and opportunities, only threats and weaknesses. The negative feedback concerns all the amendments.

It is absolutely obvious that the Bill is lobbying and will keep worsening the situation in higher education. Preserving the caste of senior management representatives is a typical problem of self-regulated bureaucratic systems. The requirement "doctor plus professor" is considered to be an artificial barrier, practically making it impossible to take part in competitions on the position of HEI's Head for the specialists and managers who are in peak abilities providing chance for those who has never left the HEI's wall which will undoubtedly form a closed access model.

Regarding the qualification requirements, it is worth to note that the main ones are absent in the Bill. It is the requirement of time

for a potential rector first of all to be good in management, international cooperation, be aware of business processes in companies and organizations which are ready to employ the university graduates or become strategic partners of the institution. For this purpose, it is better to introduce another requirement instead of having a compulsory title of professor – the MBA certificate of one of the leading business schools.

So, the Bill is going to worsen the situation in the higher education field in Ukraine. We would provide some recommendations concerning ways to reform the field and get positive output: first of all, to withdraw the discussed Bill; further to involve experts of leading stakeholders to advise and to take an active part in amending the valid legislation of Ukraine in the field of education and science; to hold a series of discussions in order to form a vision of the Ukrainian HEIs development in light of the global context.

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Костюк Т. О. Державні інструменти контролю за управлінням закладами вищої освіти: нормативна база у Європі та Україні

Стаття присвячена компаративному аналізу європейської та вітчизняної практики призначення ректорів закладів вищої освіти з урахуванням останніх законодавчих ініціатив в Україні. Доведено, що ступінь залучення органів державного управління впливає на автономність університету, визначає вектор подальших реформ, окреслює перспективи для всієї галузі вищої освіти.

Ключові слова: вища освіта, керування університетом, автономія ЗВО, Україна, ЄС.

Костюк Т. А. Инструменты государственного управления руководством высших учебных заведений: нормативные документы в Европе и Украине

Статья посвящена компаративному анализу европейской и отечественной практики назначения ректоров высших учебных заведений с учетом последних законодательных инициатив в Украине. Доведено, что степень вовлеченности органов государственного управления влияет на автономность университета, определяет вектор дальнейших реформ, обуславливает перспективы для всей области высшего образования.

Ключевые слова: высшее образование, управление университетом, автономия вуза, Украина, ЕС.