

УДК 340.1

DOI 10.24147/2542-1514.2017.1(4).14-27

ПРАВОВОЕ РЕГУЛИРОВАНИЕ В СФЕРЕ ВЫСШЕГО ОБРАЗОВАНИЯ В РОССИИ (ИСТОРИКО-ПРАВОВОЙ АСПЕКТ)¹

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Российское высшее образование основано на европейской модели высшего образования. В Российской империи высшее образование регулировалось государством, но допускалась университетская автономия. Действовали Общие университетские уставы.

В нормативно-правовом обеспечении высшего образования в советский период выделено три этапа: 1917- первая пол. 1930 гг.; вторая пол. 1930-х гг. – первая пол. 1950-х гг.; вторая пол. 1950-х гг. – 1980-е гг.

На первом этапе государство регулировало только политически и идеологически важные образовательные отношения. Многие вопросы централизованно не регулировались. В 1930-е усиливается государственное воздействие на высшее образование. В нормотворческую деятельность включаются партийные органы. Установленные нормы мало менялись до конца советского периода. В 1960-е годы начинается либерализация образовательного законодательства, которая продолжалась до конца советского периода.

Ключевые слова: история государства, история права, образовательная политика, высшее образование, история университетов, образовательное законодательство, университеты России.

LEGAL REGULATION IN THE SPHERE OF HIGHER EDUCATION IN RUSSIA (HISTORICAL AND LEGAL ASPECT)

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The purpose of article is to analyze the evolution of legal regulation of higher education in Russia since the beginning up to the beginning of reform in modern conditions.

Characteristics of the problem field. Higher education is studied in various aspects (sociological, cultural, historical, economic). An independent institute of educational law is distinguished in the legal science. Serious transformations of higher education in the Russian Federation have actualized the need for understanding the domestic experience of legal regulation. The state policy in the sphere of higher education and the evolution of educational legislation are studied in historical and legal studies.

The methodology. The narrative method is the method of description. It is necessary for the reconstruction of past events and phenomena. The narrative method is supplemented by a chronological method. The formal legal method is applied to the interpretation of norms. The

¹ Статья подготовлена при поддержке Благотворительного фонда В.Потанина, грант 2017 г. для преподавателей магистратур.

sociological method establishes the links between state policy, regulatory legal regulations and the social result achieved. The comparative method is used fragmentarily.

Results. Higher education is a relatively new social institution. In the European tradition it took shape during the Middle Ages. The completed model was formed in the XIX century in Germany.

The Russian Empire used the German model. Higher education was regulated by the state. The main regulations governing educational relations at the university were the General Charters. These Charters reflected the autonomy of universities.

Three stages are identified in the legal and regulatory framework of higher education in the Soviet period: 1917 - the first floor 1930; second floor 1930's - the first floor 1950's; second floor 1950's. - 1980's.

At the first stage the state regulated only politically and ideologically important educational relations. Many questions were not regulated centrally. In the 1930s the state impact on higher education was growing. The consignments are included in norm-setting activities. The established norms changed little until the end of the Soviet period. In the 1960s the liberalization of educational legislation began, which continued until the end of the Soviet period.

Conclusions. Higher education as a special social Institute took shape in the medieval period. The German model, tested in the early nineteenth century with the establishment of the University in Berlin, had a huge influence on the genesis of modern higher education.

Key words: history of the state, history of law, educational policy, higher education, history of universities, educational legislation, universities of Russia.

Информация о статье:

Дата поступления – 19 сентября 2017

Дата принятия в печать – 10 октября 2017

Дата онлайн-размещения – 20 декабря 2017

Article info:

Received – 2017 September 19

Accepted – 2017 October 10

Available online - 2017 December 20

1. **Introduction.** The aim of the work is to study the evolution of the legal regulation of higher education in Russia from the time of its origin and to the beginning of reforms in modern conditions.

Characteristics of the problem field: higher education is studied in various aspects (sociological, cultural, historical, economic). In the legal science an independent institute of educational law is distinguished. Serious transformations of higher education in the Russian Federation have actualized the need for comprehending the domestic experience of legal regulation, its objective evaluation and possible use of successful practices. In modern science, the history of the emergence and development of universities in the Russian Empire [1, 2, 3], the formation of a corporation of teachers [4, 5] and students [6, 7] is well studied, the Soviet period of Russian higher education has not yet received such a detailed description and analysis. Huge factual material has been accumulated in publications devoted to the history of individual universities, the creation of which took place in the USSR. In historical and legal studies, state policy is studied in the sphere of higher education, its implementation in legislative regulations, and the sources of law containing norms regulating educational relations are analyzed [8]. Of particular interest is the genesis of legal education, on the example of which general trends in the normative support of educational activity are traced [9, 10].

Description of the methods used in the work. The historical and legal perspective implies the use of the narrative method, that is, the description necessary for the reconstruction of past events and phenomena. The narrative is built using the chronological method, that is, the ascent from earlier stages to later ones.

The formal legal method allows to give an interpretation of the norms regulating certain relations in the sphere of higher education. The sociological method is necessary for establishing the connection between state policy, normative legal prescriptions and the social result achieved. A comparative method is used fragmentarily, which is necessary for distinguishing the general and special in Russian higher education, which was formed in the European university tradition.

2. Normative bases for the establishment and functioning of universities in medieval Europe. Higher education is a relatively new social institution. Compared with other spheres of the spiritual life of society (religion, art, law), it has developed already in the period of mature civilization. Institutional design of higher education in the form of a university corporation refers to the period High Middle Ages. The first universities, established in the major cities of modern Italy and France, emerged as a European phenomenon. They in an original way synthesized the ancient tradition of the value of knowledge, spiritual perfection, the study of sciences, on the one hand, and the guild practice of teaching skill, on the other. The obtained organic combination of the general cultural component and specialized professional training and from the time of the Middle Ages to the present in time constitutes the essence of higher education and this distinguishes it from the formation of other levels (for example, secondary) or other programs (for example, vocational training).

European universities were created with the support of the Catholic Church. Others were established by royal authority. In the organization of the third - a big role played by local city government. The university community of teachers and students in accordance with the medieval stratification acted as an independent corporation, relations within which were regulated by legally fixed norms and established customs. However, in ie differences from other professional guilds, norms and rules of conduct within which could materially different in different geographical locations and professional industries, all universities used common methods of organization and activity, and also had similar rights and privileges in relation to the external environment. So, the internal structure was identical, presupposing the allocation of faculties and their specific set. Typical was the migration of a corporation from city to city or even from country to country.

3. Normative bases of functioning of universities in New Time. Having survived the crisis during the transition to a new era, the European university has significantly changed the content of education. University programs focused on the requests of bourgeois economic and political relations, the interests of national states. In the XVII - XVIII centuries. there is a rapid growth of German universities, which become centers for the training of employees, so necessary for the state apparatus of the unifying Germany. As a result, in Germany there was a new type of the University, built on the principle of the unity of research and teaching activities. Each professor was a scientist who involved students in his research. The structure of the university, the principles of the educational process were fixed in the status of the University of Berlin, received from the Prussian King Friedrich Wilhelm on October 16, 1816 [12, p. 51]. Organizational solutions, approved at the creation of the University in Berlin, formed a model of university management personnel staff composition, duration, content and teaching methods. According to the famous researcher of the history of science John Bernal, at the beginning of the XIX century. Germany has established a sort of scientific empire that has engulfed all of Europe, Russia and the United States. For more than 100 years, the German professor has become a model for all scientists in the world. It was that The status of the university as a state institution with corresponding obligations and guarantees from the state was unequivocally entrenched in Germany. The main act regulating relations within the university, as well as with state bodies was the Charter.

4. Normative organization of university education in Russia in the XIX century.

German model as the original was reproduced in the Russian University's. In the XIX century. Four General University Regulations were published: in 1804, 1835, 1863 and 1884. Earlier, in respect of each university and apply their own charter.

The First General Regulations adopted in 1804 reflected the liberal sentiments of Emperor Alexander I and his closest associates, represented mainly by young people of European orientation. The need for a general statute arose in connection with the deployment of Russia's intact second network of universities, the division of the entire country on the territory of the university district. The university was not a single instance, but a systemic phenomenon. Reproducing the German experience, the university was established as a corporation of teachers, officials and students. Introduced university courts, which considered violation of internal regulations and minor offenses of students. Measures were provided for violators, including expulsion from the university. Teaching programs, methods of teaching, the university determined independently.

At the time of publication, the Charter directly concerned only one really functioning university - the Moscow one, since others were yet to be created. The Charter permitted the creation of four faculties: 1) moral and political sciences; 2) verbal sciences; 3) physical and mathematical sciences; 4) medical and medical sciences. The faculties consisted of departments. For example, the faculty of the moral and political sciences included 7 departments, including 3 departments of a legal profile: 1. The rights of the natural, political and popular; 2. Civil and criminal proceedings in the Russian Empire; 3. The rights of the noblest both ancient and present peoples.

Each department provided the teaching of one subject.

According to V.V. Zakharova, the legal status of Russian universities of 1804 combines the features of both pre-classical and classical models. However, in practice self-management capabilities of universities gradually curtailed. At the end 1820-ies. Crisis moments of the Russian university system were clearly defined, the overcoming of which was associated with the adoption of a new university statute [13, p.125].

In 1835, the second General Charter was issued, which marked the transition to the organization of management of universities on a bureaucratic basis. In the literature it is noted that the Charter restricted university autonomy: the powers of university and faculty councils were being reduced, the management of universities actually concentrated in the hands of the trustees of the educational district. Established petty tutelage for teachers and students. At the same time, it is impossible not to underline the undoubted merits of this document. The charter was distinguished by a high level of legal technique. He clearly differentiated the spheres of powers of the state (trustee) and internal university bodies, consolidated legal education in a proper sense, and not in the moral and political, as it was before. [14, p. 167]. The charter retained the organization of universities by the German type, as a corporation of teachers and students. The educational process was now determined centrally - by the Ministry of Education.

The Charter of 1835 was of great importance for the professionalization of legal education. It fixed the allocation of law faculties as independent and established a new composition of the departments at the faculty.

The introduction of the University Charter of 1863 was closely connected with other liberal reforms of the 1860s. He restored the university autonomy, the university court, secured the rights of elected university bodies, although many of the decisions they made were demanded by the Minister of Education or the trustee of the school district. The Charter had a beneficial effect on the development of legal education. According to E.A. Skripilev, "liberal professors were able to significantly improve the scientific and theoretical level of teaching. Based on Western samples, they began to promote, albeit in cautious terms, the idea of popular representation, constitutionalism, local government, public freedoms" [15, p.82].

The general university charter of 1863 confirmed the autonomy of universities. Universities themselves could create new chairs, increase the staff of professors and teachers. So in the Faculty of Law of St. Petersburg University in 1863, 13 departments were formed . The charter

significantly enriched the curriculum of the law faculty, it included new disciplines that had not been studied previously because of their dangerous content, from the point of view of the authorities.

A well-known researcher of the history of Russian universities, N.N. Zipunnikova notes that in various legalizations of the vast imperial period, we meet special privileges, rights and benefits for persons engaged in scientific and scientific-pedagogical activities. Among them - exemption from postures, police duties, from the payment of so-called apartment money, uncensored and duty-free delivery from abroad of books, manuscripts, periodicals, etc. [16, p.164].

The Fourth General University Charter of 1884 was adopted in the period of the so-called counter-reforms. He stepped up state intervention in the management of universities: the entire university life was placed under the control of the trustees and the inspectors and course supervisors appointed by them. The protective principles were also manifested in the abolition of a number of departments at the Faculty of Law: the history of the most important foreign legislation, the history of Slavic legislation. The study of the constitutions of bourgeois states was excluded, since this contradicted the ideological doctrine of autocracy.

The charter marked the beginning of the subject system of teaching, on the whole determined the content of each academic discipline. The curriculum itself has undergone minor changes. Final graduation examinations were introduced. Knowledge was assessed by a state commission appointed by the Minister of Public Education. So, at the Faculty of Law of St. Petersburg University in the 1912-1913 academic year, nine state exams were planned: the dogma of Roman law, civil law, civil litigation, criminal law, criminal law, commercial law, police law, international law, financial law.

The charter operated until 1917, although at the beginning of the 20th century. under the influence of revolutionary events, the struggle for revision and abolition of the most conservative provisions of this document begins. As a result, in 1910, he was drafted a bill "On the Charter and states Imperial Russian Universities". The draft of the draft statute began with the definition of the university's goals: "Universities are institutions that have their purpose to promote the development of sciences in the Russian state and to communicate Properly prepared, both general and special higher education, as well as promote their preparation for diverse fields of public and community service, requiring scientific training" [17, p. 25].

Contemporaries and researchers have expressed different, including the critical evaluations of university charters. However, it should support the view that, in any case, they were a symbol of the autonomy of the universities [18, p. 381].

5. **Regulation of higher education in Soviet Russia.** The change of the political system after the Revolution of 1917 radically changed the vector of educational policy and legislation. Education, including higher education, was seen as an important intellectual and ideological means of educating the new man. Already in the 1920s there was a model of state influence on higher education, which in spite of the subsequent evolution, reorganization and renaming of the institutions responsible for higher education, has been preserved until the end of sovets to th period. D A management structure of universities in the People's Commissariat of Education (NPC) created a special unit, after a series of renaming in 1921 received the title of General Directorate of vocational schools and higher education institutions (Glavprofobr). Glavprofobr mainly engaged in organizational, material and financial issues of Soviet higher education. For ideological leadership January 20, 1919 in the National Club was formed the State Academic Council, the status of which has been specified in the Regulation adopted in 1921 [2]. It carried out the appointments of faculty members, develop and approve curricula, he gave permission for the publication of textbooks. Thus, it achieved a high degree of state regulation and control over the universities. At the same time liquidated fairly representative in pre-revolutionary Russia the private education sector. We take other organizational solutions aimed primarily against humanitarian and social science training. For example, abolished the legal, stories co-

philological faculty. Created instead Faculty of Social Sciences, which included economic, legal and socio-pedagogical department, in view of the short training period (3 years), at ideologized programs could not provide quality training.

Significant changes in the management of higher education took place in the 1930s. They have become part of a comprehensive reform of higher education, which is now estimated to be an important factor in accelerating the modernization and technological progress, improve the country's defense. In 1933 the All-Union Committee for Higher Technical Education (since 1936 transformed into Vsesoyuzny Committee on Higher Education at the People's Commissars of the USSR). Glavprofobr was abolished, based on it formed the USSR State Committee for Vocational and Technical Education.

The next stage of transformation in higher education management refers to the post-war period. In 1946, during the ministerial offices instead of the All-Union Committee on Higher Education created the Ministry of Higher and Secondary Special Education of the USSR. During the so-called "Khrushchev" reforms aimed at updating of federal relations, the reduction of the administrative apparatus, the ministry gave the Union-republic status and gave him and secondary special education management.

The regulatory framework of higher education in the Soviet period can be divided into three relatively distinct phases: 1917 - 1930; 1930s – 1950s; 1950s - 1980s.

As already noted, the first step was the nationalization of higher education. Universities got a three-pronged objective: a) to create a cadre of professionals in various branches of scientific - technical activities; b) to prepare researchers for the work of the scientific - technical and production facilities; c) to disseminate scientific knowledge among the broad proletarian and peasant masses.

All faculty members belonged to the category of scientists, which included professors, teachers and researchers. The right to engage in teaching activities were persons known for their scientific work, thus overriding mandatory presence and degree of protection of dissertations.

Regulatory maintained access to higher education, which is concretized in the free education and scholarship provision, democratization rules for admission to the ban to conduct the entrance test, the opening of the network operating departments (for pre-treatment to the development of professional programs), the introduction of part-time and evening classes which were absent in the Russian Empire.

In 1922 a few other acts related to high school, were left outside the scope of legal regulation of many important issues, which were solved universities themselves.

Fundamental importance for the fate of high school was Decree of the USSR Central Executive Committee September 19, 1932 in "On the training programs and operation in higher education and colleges" , approved by the district on e of the Politburo of the CPSU (b) [4]. The document stated the achievements of Soviet education, let's statistics confirming the progressive increase in the number of universities and colleges, students and pupils. Theoretical training was planned to combine the continuous production practice, which could be carried out directly in production or in the educational laboratories and workshops.

Increased demands on the level of training students , introduced mandatory e exams. Increased control over the quality of learning material, so entering the exam session two times a year. Changing teaching methods, condemned brigade-laboratory method of learning, increased personal responsibility of students for its academic excellence.

As a result, all planned objectives were met. The first model charter was issued February 27, 1934 On the basis of the university to develop and adopt its own charter. The Charter of the university describes its organizational structure, indicated a higher body, defining the powers of the Institute management, the Faculty, departments and individual teachers. It established the following forms of study with a teacher: a) lectures, conducted by professors and associate professors; b) practical trainings; c) Manufacturing Practice.

Academic hour duration was 45-50 min., with a break between sessions of 10-15 minutes. All classes are held at a fixed schedule provides for the continuity of the learning process throughout

the day. Academic high school schedule has been approved for the entire academic year and published before the end of the current academic year.

The number of subjects studied in the semester, as a rule, should not exceed six, and the number of subjects studied on a daily basis - three.

Common evaluation was established: 1) unsatisfactory, 2) satisfactorily, 3) excellent.

All universities, except for technical ones (which provided protection of the graduation projects) introduced state examination. Students who have been unable to sustain them, were allowed to re-re-take in the next year.

Entering a single student ID card and a single record book (Matriculation).

Graduates can get two Diplomas degrees. First degree diplomas issued to students who have graduated from institutions of higher education with marks of "excellent" for at least $\frac{3}{4}$ of all things, and for the rest of the marks "satisfactory" and all passed the state examinations or defense of diploma projects as "excellent". Second degree diploma issued to all other students. For holders of the first degree diplomas established some advantages, for example, for admission to graduate school.

On September 5, 1938 People's Commissars of the USSR adopted the new Model charter of the higher education institution [6], which, on the one hand, softened utilitarian technocratic previous statute approach, on the other hand, reflected the requirements set forth in the Resolution of SNK and the Central Committee of the CPSU (b) "On the higher education institutions and to guide higher education " on June 23, 1936

It is achieved through the implementation of the next tasks: a) the organization of educational and methodical process to ensure the preparation of highly qualified specialists; b) ideological and political education of students; c) the creation of high-quality textbooks and teaching aids; g) conducting research; d) increasing the qualifications of teaching staff and training of new scientific and teaching staff ; e) promotion of scientific and technological knowledge and the latest scientific and technological achievements.

Let us note the most important innovations of the Model Regulations.

Significantly expands the list of forms of educational work. It included: a) lectures of professors or associate professors; b) practical classes in laboratories, offices, workshops, clinics, etc. under the guidance of professors, associate professors and assistants; c) instructional practices; d) self-work of students; e) consulting.

Curricula for each specialties approved centrally.

Student performance is determined by the following degrees of changes (marks): 1) "excellent", 2) "good", 3) "mediocre", 4) "unsatisfactory".

Significantly expanded the list of full-time positions of teaching and educational support personnel. It consisted of a) Professor - Head of the Department, b) the professor, c) Associate Professor of, g) assistant of the department, d) Senior Lecturer, e) teacher g) senior laboratory, h) laboratory and) a senior laboratory assistant.

The presence of a sufficiently large number of teaching and support staff allowed professors and associate professors to concentrate on performing the most complex activities (lectures) and classroom research.

In view of the recovery advanced degrees and have evidence supporting the order of awarding special attention was paid to the training of scientists in graduate school. All graduate students were provided with state scholarships.

States to regulate the organizational structure of universities. Departments, specialties and departments were created and liquidated by decisions of the Union Committee on Higher Education in SNK. This procedure generally maintained until the end of the Soviet period.

The general management of the university was entrusted to the director. His position was not elective.

Dean of the Faculty of pushing I from among professors , but claiming I Commissariat or other authority, the founder of the university.

He acted in a representative body of the university - Higher Education Council . Tips faculties could be formed only in the largest institutions of higher education with the permission of the All-Union Committee on Higher Education in SNK .

The property of higher education institution - building, equipment, inventory, etc. is were state property. Composed of high school means whether allocations I have on the state budget and revenue s of research and training and support institutions.

Formed model of higher schools are fully credited with in the social and political system of the USSR with the absolute dominance of state-owned, planned economy, policy governance. It must be admitted that it has been found adequate system needs a technocratic solution to the organization of higher education. Despite the enormous damage that caused in the teaching staff and students of unfounded repression, losses in the Great Patriotic War, ideologization of education, imbalances in the occupational structure (dominated by technical specialty and limited humanitarian training) to the end of the period clearly manifested impressive results demonstrating the effectiveness of the Soviet model of higher education.

During the follow-up period of the Soviet Higher Education (in the second half of the 1950s -1980s) is actually going to improve and adapt to new realities is already proven and well-established model. Objective favorable action of the State became and continued expansion of the network of universities, their more balanced distribution across the country, the opening of new specialties, associated primarily with the achievements of scientific and technological revolution. Entrance exams in high schools provided the inflow of the most prepared for the training of students. Scholarship support, availability of hostels, recreation centers and other measures of financial support remained higher education as a significant social elevator. With about the government also maintained the prestige of research and teaching activities.

There has been no fundamental changes in the types of legal acts relating to higher education. At March 21, 1961 The Council of Ministers approved the Regulations on institutions of higher education of the USSR and also acknowledged repealed model charter institution of higher education in 1938 [7]. Universities have had to develop new regulations, guided by the newly published position.

The only new documents are internal regulations that universities should have developed independently on the basis of the Model Regulations and approval by the Ministry of Higher and Secondary Special Education of the USSR by agreement with Trade Unions

In general, the structure of the Regulations on institutions of higher education of the USSR reproduces the structure of the Model Charter. There were sections of the students, teaching staff, educational support and administrative staff of higher education institutions, academic affairs, etc. Systematized position previously disparate rules governing the establishment and operation of the technical colleges, universities, branches of teaching and counseling centers.

Regulations on institutions of higher education of the USSR, approved by the USSR Council of Ministers January 22, 1969 did not introduce fundamental changes in the earlier documents, but only specify and complement it.

The final significant act of the Soviet era became the RSFSR Law of February 2, 1974 "On Public Education". Law has confirmed that higher education institutions carry out their activities based on the provisions of the higher educational institutions of the USSR, approved by the Council of Ministers, and regulations that are developed in accordance with this Regulation each institution and approved by the ministry, state committee or agency in which submission It is a higher education institution.

In recent publications positively assessed the activity of the Soviet state in the field of higher education, which eventually provided him with a sufficiently high level [19, p. 177].

6. Legal regulation of higher education in the Russian Federation in 1990s

In the Russian Federation, regulatory support of higher education has undergone significant changes. It strengthens the legal regulation of public relations related to higher education. In 1992 the law "On education" was adopted, in 1996 the Federal law "On Higher and Postgraduate

Professional Education" it adopted. Many of the rules were eventually integrated into the Federal law "On Education in the Russian Federation".

State regulation of higher education acquired form other than previously used in the Russian Empire and in the USSR. In the Russian Federation on educational activities subject to licensing, which originally had a license urgency. Actions of the federal state educational standards, compliance with which is strictly necessary. Monitoring the implementation of this requirement is carried out in the state accreditation of educational programs. In general, the control and supervisory functions in relation to higher education institutions by the Federal Single Service for Supervision of Education and Science (Rosobrnadzor). Rightly pointed out that the implementation of standards defined the main directions and terms of creation of the legal, educational and methodical base of educational process, curriculum development [20, p.167].

7. **Conclusions.** Higher education as a special social institution which took shape in the Middle Ages. A huge impact on the genesis of modern higher education has had a German model, test at the beginning of XIX century. It has been reproduced in the Russian Empire. Higher education was regulated by the state, but at the same time permitted university autonomy. The main acts regulating educational relations at the University, are the general statutes.

The regulatory framework of higher education in the Soviet period can be divided into three relatively distinct phases: 1917 - 1930; 1930s – 1950s; 1950s - 1980s.

Legal regulation in the period of the Soviet state was intended to reformat the system of higher education and its content in accordance with the tasks of socialist construction. Since the state resources were limited, the main efforts were directed at eliminating and overcoming the most visible signs "burzhauzности" education. Therefore democratized the rules of admission to higher education, access to teaching positions, drastically reducing the humanitarian sector of higher education. Many questions of interschool activities were not regulated centrally.

In 1930 it begins strengthening state influence at the highest e of education. In the standard-setting activities included party bodies. Increasing the number of normative legal acts, their content becomes more systematic and norms of different acts are interrelated. The circle of relations regulated by the state. There is a new type of document which is a provision on higher education and the model charter of the higher education institution. In fact formed regulatory support higher education, which did not change till the end of the Soviet period.

The liberalization of the political regime entailed standard fastening certain universities autonomy, democratization of interschool relations. At the end of the Soviet period, there is an understanding that the government should consider asking in the first place, the requirements for learning outcomes, allowing independence in the organization and content of training activities.

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<p>Библиографическое описание статьи</p> <p>Ящук Т.Ф. Правовое регулирование в сфере высшего образования в России (историко-правовой аспект)/ Т.Ф. Ящук // Правоприменение. – 2017. Т. 1, № 4. – С. . – DOI 10.24147/2542-1514.2017.1(4).14-27</p>	<p>Bibliographic description</p> <p>Yaschuk T.F. Legal regulation in the sphere of higher education in Russia (historical and legal aspect). <i>Pravoprimerenie = Law Enforcement Review</i>, 2017, vol. 1, no. 4, pp. . – DOI 10.24147/2542-1514.2017.1(4).14-27 (In Russ.).</p>