

A CASE OF THE CONFLICT BETWEEN REGULATIONS OF THE CONSTITUTION AND THE LAWS OF UKRAINE

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Some cases of conflict between the regulations of the Constitution and the laws of Ukraine occur in lawyers' practical experience. Let us pay our attention to a specific example. The article 53 of the Constitution states, "the citizens shall obtain higher education in state and municipal educational institutions by competition".

Basing on this Constitutional regulation, a person who has already obtained higher education on a contract basis may obtain another degree for free. Thus, a citizen, who has already obtained higher education degree on the contract basis, wishes to obtain another higher education degree on a budget competition basis.

However, a person was refused to admission in all higher educational establishments, referring to the law of Ukraine "On higher education", which states, "Educational and qualification level, obtained for the first time, may be free of charge on a competition basis". In this occasion, a phrase "for the first time" has a negative impact on human rights as for obtaining higher education free of charge.

As we see, this law contradicts the Constitution which provides a human right to obtain higher education on a basis free of charge, regardless of the fact whether a person has already obtained a certain qualification level on the contract-paid basis. This clause of the law practically disclaimed a citizens' constitutional right for higher education, since all higher educational institutions were referring to the law of Ukraine "On higher education" and not to the Constitution; though to resolve this juridical conflict we should appeal to vertical structure of legislation. The general rule how to resolve this conflict is to use norms which are legally more powerful. The conflict was resolved in 2016 when the law "On higher education" had been edited saying that "the citizens of Ukraine have the right to obtain higher education in state and municipal educational institutions by competition in accordance with standards of higher education if they obtain a certain degree of higher education on a budget basis for the first time". This phrase states that a citizen may obtain higher education degree free of charge regardless of the fact whether a person has already obtained this educational and qualification level on the contract-paid basis.

Possibly there are certain contradictions between the law of Ukraine "On higher education" and the Constitution especially in the situation of reforms in this sphere. We believe that it is perspective to overcome them by effective legal regulation.

References

1. The Constitution of Ukraine
2. The law of Ukraine "On higher education"