

## Higher Education Organizations as a Subject of Administrative Law

*Goziyev Kozimbek Jovlonbekovich*

*Tashkent State University of Law, Senior Lecturer at the Department of Administrative and Financial Law, Candidate of Legal Sciences*

**Annotation:** The article analyzes the content of relations developing in the sphere of creation and regulation of state and non-state higher educational institutions. Based on the analysis of current national legislation, the features of the management of higher educational institutions are revealed. Particular attention is paid to the issue of providing this field with broad autonomy and freedom. At the same time, the issue of adapting the principles of granting academic independence to state organizations of higher education to modern requirements, interaction between educational organizations and state organizations regulating the sphere, as well as the organization of management based on foreign experience was raised. Proposals and recommendations were developed in areas of research work. As one of the modern solutions to the problem of academic independence of higher educational institutions, the possibility of privatization and independent conduct of activities of state higher educational institutions using the practice of universities in foreign countries was noted. Situations related to licensing and accreditation that arise in the process of organizing and managing educational institutions are also systematically studied, as are situations arising with the government bodies of higher education organizations as subjects of administrative law. The author reveals all the relationships that develop between government bodies and higher educational institutions, in which a higher educational institution is considered as one of the subjects of administrative law, based on the study of current legal and statutory acts and modern trends in the field of public administration of higher educational institutions.

**Key words:** higher education institution, license, give permission, subject, management, academic independence.

### Introduction

The interest in the legal status of Higher Education Institutions (HEIs) and the fundamentals of organizing their activities is closely linked to the ongoing reform processes in the social sphere. Changes in the quality of education are reflected in not only the shortcomings and conditions of state regulation and management of higher educational institutions, but also in the legal status of educational organizations themselves.

Enhancing the effectiveness of reforms implemented in the higher education system, ensuring the academic autonomy of state higher education institutions, and enabling them to independently address issues such as strengthening their material and technical base and managing their own specific administrative processes, lays the foundation for improving their role as independent subjects of administrative law in public relations. This includes their participation in procedures conducted by state authorities, ranging from land allocation to licensing, granting of permits, certification, and accreditation.

In this regard, higher education institutions enter into public legal relations as subjects of administrative law through the norms regulating their relationship with the state, as stipulated in the Law "On Education," as well as through a number of subordinate regulatory acts. These include Presidential Decree No. DP-3276 of September 15, 2017, "On Measures for the Further Development of Non-State Educational Services," Presidential Decree No. DP-4119 of January 16, 2019, "On

Additional Measures to Improve the System of Quality Control in Education," Presidential Decree No. PR-5847 of October 9, 2019, "On the Approval of the Concept for the Development of the Higher Education System of the Republic of Uzbekistan until 2030," and Cabinet of Ministers Resolution No. 470 "On Improving the Procedure for the Attestation and State Accreditation of Public and Non-Public Educational Institutions," among others.

At the same time, the declaration of the year 2023 as the "Year of Attention to People and Quality Education" in the Address of the President of the Republic of Uzbekistan, Shavkat Mirziyoyev, to the Oliy Majlis and the people of Uzbekistan on December 20, 2022, necessitates the exploration of new directions for addressing existing problems in the field of education.

Currently, the consideration of the area under study as an independent subject of administrative law within the sphere of public relations, particularly the participation of educational institutions as legal persons in their interactions with state authorities, requires a comparative analysis. When examining international practices in the education sector, it becomes evident that in many foreign countries, the legal participation of such institutions as subjects of administrative law is regulated by only one or two specific legal norms.

The fact that higher education in our country is regulated by 348 legal documents issued by the state itself serves as evidence of a fully bureaucratic system.

The relationships between educational institutions and authorized bodies in organizing education—such as the attestation of state-owned higher education institutions, their establishment by the head of state or government, licensing, ownership of buildings and facilities, utilization of tax privileges and preferences, registration of non-state educational organizations as legal entities, obtaining permits from relevant authorities for construction, and other related interactions — necessitate a study of the similarities and differences in the participation of state and non-state educational organizations as subjects of administrative law within public legal relations.

The lack of research on this field in Uzbekistan, as well as the absence of scientific studies on the participation of educational institutions as separate subjects of administrative law, partially undermines the academic independence of these institutions. Therefore, it is imperative to clearly define the limits of state management in education, enhance university autonomy, develop relevant legal documents, and precisely delineate the powers of governing bodies within the education system. This article examines the areas in which educational institutions manifest themselves as subjects of administrative law and explores the opportunities for their effective organization and management.

Issues related to licensing, permitting, and other sector-specific matters in the public relations between state bodies and foreign scholars, who have conducted scientific research and presented their findings, have predominantly studied higher education institutions in management and organization.

Regarding the significance of higher education institutions as subjects of administrative law, 147 scientific articles and numerous studies by various scholars have been published in the Scopus database, some of which we analyze here. S. Dubrovina (Dubrovina, 2006) and N. Kazarova (Kazarova, 2005) examined the administrative-legal regulation and licensing activities of higher education institutions. Alberto Amaral (Amaral, 2020) studied the interactions between educational institutions and state bodies in countries such as the United States, Canada, and Switzerland. Kirillovykh Andrey (Kirillovykh, 2005) systematically integrated research on the manifestations of higher education institutions as subjects of administrative law, their participation in public relations with local and higher authorities, defended a dissertation on this topic, and explored the effects of decentralization in the state regulation of universities.

## Materials and Methods.

Within the scope of the research, scientific principles essential for all legal sciences were applied, including objectivity, systematicity, determinism, as well as methods such as chronological approach, comparative analysis, formal-legal method, induction, deduction, and other scientific methodologies.

## Results and Analysis

Based on the main content and the object of our article, we focus on highlighting the relationships between state and non-state educational institutions and state authorities as distinct subjects of administrative law during the processes of establishment, management, and structuring. These relationships include permitting, licensing, supervision, coordination, and similar interactions, which are examined through the lens of both national and international experience.

The modernization of higher education is driven by the needs of society and the state, including the effective functioning of the education sector. Higher education institutions are elements of the social institution system, which requires a specific approach to their legal status, primarily in the administrative domain.

In addition to studying various fields regulating the legal status and activities of higher education institutions (such as civil, labor, and other branches of law), the status of higher education institutions as subjects of administrative law can be examined through administrative legal relations (Vladykina, 2003).

Specifically, the Law "On Education" stipulates that higher education institutions are responsible for training highly qualified personnel (Article 11). Educational institutions and their branches in the Republic of Uzbekistan, as well as branches of foreign educational institutions, are established as legal entities. Non-state educational institutions have the right to engage in educational activities from the date of obtaining a license. Educational institutions conduct their activities based on their charters and/or other founding documents (Article 29).

The aforementioned provisions do not provide a comprehensive understanding of the issue we are investigating regarding higher education institutions. They do not reflect the key elements that define the role of universities in the administrative domain, nor do they contain parameters necessary for identifying the distinctive characteristics of universities as subjects of administrative legal relations from the perspective of administrative law.

It is necessary to distinguish the role and position of higher education institutions in public legal relations and administrative law, particularly in administrative-legal relations, by separating the situations defined by the scope and content of their legal status from civil relations.

Foreign scholars approach the concept of higher education institutions (HEIs) primarily from a civil-law perspective, identifying the following elements: 1) having the status of a non-profit organization (Aleixo, Leal, & Azeiteiro, 2018, January 20); 2) licensing (Mause, 2008); 3) implementation of higher vocational education programs (Hendricks, 1975, Summer); 4) possession of state accreditation (Karpen, n.d.); 5) funding by the founder; 6) autonomous management.

Certainly, the establishment of state and non-state higher education institutions as legal entities can be regulated by civil law relations. Article 39 of the Civil Code defines the concept of a legal entity, noting that it may manage economic and operational activities with its own property, fulfill certain obligations, and participate in court proceedings. However, in all cases related to licensing, permitting, and other administrative relations with state bodies concerning their activities, these institutions participate as subjects of administrative law. Therefore, it is possible to disagree with some foreign scholars' views on this matter.

In Uzbekistan, the management and organization of the higher education sector are carried out by the President of the Republic of Uzbekistan, the Cabinet of Ministers, and relevant ministries (including the Ministry of Higher Education, Science and Innovation, as well as other ministries and agencies overseeing higher education institutions within their systems).

The complexity of the system in the field of higher education is evidenced by the fact that, in many cases, the establishment of higher education institutions as separate subjects of administrative law is associated with processes initiated by the head of state.

For example, based on the Decree No. 386 dated October 5, 2022, by the President of the Republic of Uzbekistan, the Namangan Textile Industry Institute was established, with its main areas of activity and specialties defined. Furthermore, the buildings and facilities of the Namangan Entrepreneurship Organization Technical School located at 17, Janubiy Aylanma Yo'li Street, "Gulobod" mahalla, Namangan city, along with the relevant territory, were provided free of charge under operational management rights for the institute's activities.

What distinguishes this type of administrative law subject from others is that all its directions are strictly defined by the head of state, and any subsequent changes or additions are carried out according to a special procedure.

If state higher education institutions are established by the head of state or government, their distinction—and in a certain sense, their advantage—over non-state higher education institutions lies solely in the fact that they undergo attestation and accreditation, while not participating in other administrative relations. This, in turn, negatively affects competition in the quality of education.

In contrast, the experience of foreign countries shows a different approach to the establishment of higher education institutions.

In many countries around the world, state authorities regulate the market entry of new higher education service providers. Through licensing in the higher education sector, they ensure that academic programs meet minimum quality standards. Such government intervention to ensure quality is generally accepted (Pechar & Park, 2017).

Additionally, there is a practice whereby regional local councils and active citizens participate in the establishment and registration of higher education institutions for regional economic development, followed by approval from the Senate.

For example, on July 3, 1855, Andrew Reeder, the mayor of Lawrence, Kansas, together with regional legislators and active citizens, organized a meeting to establish a state university. They approved the charter of the University of Kansas, and the educational institution began full operations in 1869. (An Act to incorporate and provide for the institution and support of a University in Kansas Territory, 1855).

Non-state higher education institutions, which more actively participate as subjects of administrative-legal relations, differ from universities established by the head of state in that they primarily apply to state service centers for state registration as limited liability companies and thereby enter into administrative-legal relations, subsequently registering with tax authorities.

This represents the initial stage of administrative relations. Following this stage, according to current legislation, they must participate in auctions to acquire land plots and submit the necessary documents to local government authorities.

Subsequently, regarding the licensing of non-state higher education institutions, the main administrative-legal relationship is governed by the Resolution No. 241 of the Cabinet of Ministers dated March 27, 2018, and the order of the Ministry of Justice dated October 27, 2023, registered

under No. 3467 in the Unified State Services Register. According to these regulations, applications and accompanying documents for obtaining a license can be submitted to the Ministry of Higher Education, Science, and Innovation of the Republic of Uzbekistan.

Since all these processes constitute administrative-legal relations between state bodies and private entities, rather than civil relations, both state and non-state higher education institutions are considered full-fledged subjects of administrative law.

At this point, it is important to address a particular issue: according to the Law "On Education," the accreditation of an educational institution is carried out by a competent state authority based on attestation. A non-state educational institution acquires the status of a legal entity and the right to engage in educational activities only after passing state accreditation in the manner prescribed by the Cabinet of Ministers of the Republic of Uzbekistan.

As a result, a problematic cycle emerges: obtaining a license requires having the status of a legal entity, yet according to the law, this status is granted only after accreditation. Accreditation, in turn, can only be obtained after proving that the quality of education meets established standards and requirements.

For the administrative-legal relationship concerning the licensing by non-state higher education institutions, the electronic system [license.gov.uz](http://license.gov.uz) is utilized to submit the relevant directions and a series of specified requirements. Additionally, in accordance with the Regulation approved by the Resolution No. 80 of the Cabinet of Ministers dated February 21, 2022, titled "On approval of the unified procedure for licensing certain types of activities through a special electronic system," the applicant must submit an application to the administrative body along with a set of documents. These include comprehensive information about the legal entity, consent of the license applicant to comply with licensing requirements and conditions, information on vehicles, teaching staff, electronic copies of curricula and educational programs, as well as data confirming fulfillment of 11 other established criteria.

Subsequently, the licensing authority charges a fee equivalent to twice the base calculation amount for reviewing the application, and the review process takes up to 30 days. If all requirements are met, the license is granted to the applicant upon payment of a fee equivalent to ten times the base calculation amount. This clearly constitutes an administrative-legal relationship.

Currently, in Uzbekistan, the following legal models can be utilized for establishing foreign universities:

1 A legal entity established in the territory of the Republic of Uzbekistan in the form of a limited liability company enters into a comprehensive business agreement (franchising) with a foreign university. The main condition of this cooperation is that the foreign university receives a specified monetary amount at the end of each academic year for the educational services provided.

Examples of universities established in this form as branches include Turin Polytechnic University, Inha University, and the International Westminster University. Under this cooperation model, the foreign university is fully responsible for the academic and methodological components of the branch, including the quality of education, curricula and requirements, assessment of students' knowledge, coordination and planning of the educational process, recruitment of teaching staff based on selection, professional development of teachers, and awarding diplomas of the foreign university. Therefore, the Vice-Rector and Dean responsible for academic affairs are appointed as representatives of the foreign university.

Within this cooperation framework, the owner of the university is the Uzbek legal entity (or entities) that established it. Consequently, the building, all infrastructure, material and technical support, as well as marketing services of the newly established university are provided by Uzbekistan.



A disadvantage of this form of university establishment is that the foreign partner is not liable for any losses incurred in the university's operations. All economic risks are borne by Uzbekistan. In any case, regardless of the number of applicants admitted, the Uzbek party is obligated to pay the agreed fixed sum to the foreign university.

2. A joint venture is established between a foreign university on one side and the Uzbek party as a limited liability company on the other. This practice exists in Uzbekistan, exemplified by the experience of the Singapore Institute of Management Development located in Tashkent. In this case, the founders of the joint venture contribute a specified charter capital and jointly undertake all measures related to opening a branch of the university, sharing equal responsibility for profits and losses.

In this model, the foreign university's contribution to the charter capital is defined by its responsibility for the quality of education, curricula and requirements, assessment of students' knowledge, coordination and planning of the educational process, selection and professional development of teaching staff, and awarding diplomas of the foreign university. Meanwhile, the Uzbek party contributes by providing the university building, all infrastructure, material and technical support, and marketing services.

A disadvantage of this model is that, over time, foreign investors may increase their share, gaining more management rights and thereby reducing the authority of the Uzbek party in governance and oversight. Additionally, there is no possibility to involve other foreign universities in the branch established as a joint venture.

As a positive aspect, the Uzbek party is not obliged to pay a fixed amount of money annually. Commercial risks are equally shared among the participants. Both parties equally participate in managing the university branch, with decisions made by the governing body of the joint venture.

In Uzbekistan, central government bodies mainly carry out the licensing system for non-state higher education institutions, and a separate license is issued for each type of activity, which differs from some foreign countries. This means that if a university wants to establish a new program, the licensing process must start anew.

We tried to examine the practice of licensing higher education institutions by state bodies in Uzbekistan. However, after reviewing several foreign publications, we found evidence that licenses for higher education institutions can also be issued by non-state, i.e., private firms.

In the United States, the licensing and accreditation of newly established higher education institutions are carried out through two methods: national and regional. These processes are conducted by institutional accreditors (who serve universities within specific regions) and specialized accreditors responsible for licensing certain professions (such as law, medicine, etc.) (Brittingham, 2018).

In non-state higher education institutions, licensing is obtained first, while in state higher education institutions, the administrative-legal relationship as a subject emerges after establishment through attestation and state accreditation processes.

Attestation and accreditation are the main forms of state control in evaluating the activities of educational institutions. They involve determining the compliance of the content, level, and quality of personnel training in educational institutions with state educational standards, requirements, and curricula, as well as granting the right to issue state-approved standard documents to graduates.

In this administrative relationship, higher education institutions participate as subjects of administrative law once every five years and receive individual certificates according to established procedures. The Ministry of Higher Education, Science, and Innovation carry out this process.

For comparison, in the United States, the accreditation process applied by accreditation agencies usually includes several stages. First, the accrediting agency verifies whether it has the authority to accredit the higher education institution applying for certification. (Beales, 1998).

If the educational institution meets the requirements, the college, university, or program provider prepares an independent research report describing the institution's operations, which is then submitted to a panel of experts by the accreditation agency. Based on their conclusions, the relevant sector organizations (whether state or non-state) grant accreditation. For example, in the field of law, accreditation is carried out by the Bar Association (Mause, 2008).

Besides the cases discussed above, higher education institutions can also participate as subjects in administrative relations related to students or staff.

For example, the Tashkent City Administrative Court, acting as an appellate instance, reviewed the complaint filed by the applicant D. Hamdamov against the defendant, Tashkent Finance Institute, regarding the actions stated in the letter dated May 17, 2022. The applicant requested the court to declare these actions unlawful and to oblige the Tashkent Finance Institute to admit him for studies. The Tashkent Interdistrict Administrative Court, by its decision dated July 7, 2022, dismissed the applicant's claim.

The applicant, dissatisfied with this decision, filed a petition with the appellate instance.

According to the case files, the applicant D. Hamdamov was admitted in 2018 to Tomsk State University of Radio Engineering and Control Systems in the Russian Federation's state budget system, specializing in Economics. In July 2020, he submitted documents to transfer to the Taxation and Tax Policy program at Tashkent Financial Institute. On September 15, 2020, the Ministry of Higher and Secondary Specialized Education recommended his transfer after he scored 63 points on the entrance test. On May 10, 2022, the applicant D. Hamdamov submitted an application to the Ministry of Higher and Secondary Specialized Education of the Republic of Uzbekistan, and on the same day, by correspondence letter No. 10-5/4-660, his application was forwarded to the Tashkent Financial Institute for consideration.

By letter No. 30/1183 dated May 17, 2022, the Tashkent Financial Institute rejected the application of the applicant D. Hamdamov. Dissatisfied with this decision, the applicant D. Hamdamov filed a complaint with the court.

The judicial panel upheld the decision of the court of first instance to dismiss the application, stating that according to Clause 9 of the Regulation approved by the Resolution No. 393 of the Cabinet of Ministers dated June 20, 2017, a refusal to transfer or reinstate a student may be issued if the applicant, recommended for enrollment on a tuition contract basis, fails to make the payment within the established timeframe, or if the student's personal file (academic transcript) is not submitted within the prescribed deadlines, as well as in other cases stipulated by law.

According to the aforementioned correspondence No. 10-5/4-660, the applicant D. Hamdamov scored a total of 63 points in item 2 of the specialty code 5230800, Taxes and Taxation. However, in accordance with the established procedure stipulated by the Regulation, he failed to submit the application properly, did not pay the tuition fee under the contract within the prescribed deadline, and did not provide the student's personal file (academic transcript) within the designated timeframe. Therefore, pursuant to Articles 189 and 219(1) of the Code of Administrative Procedure, the appellate complaint was dismissed in accordance with the court's decision.

Higher education institutions may participate as subjects of administrative law in relations concerning their registration, licensing, as well as in matters related to the management and supervision of higher education institutions [15, p. 84].

Based on a comparative analysis of national legislation and scholarly works from the aforementioned foreign countries, it is necessary to highlight several positive aspects regarding the significance of higher education institutions as distinct subjects of administrative law, irrespective of the category of the universities, and their relations with state bodies from an administrative-legal perspective.

Currently, in developed countries, two types of recognition of higher education institutions as subjects of administrative law are practiced: first, based on licensing — where higher education institutions are registered as legal entities to commence their activities, with the establishment of their facilities and material-technical base; second, based on accreditation — implemented through the opening of branches of reputable state or non-state educational institutions operating in foreign countries.

Furthermore, recognizing higher education institutions as distinct subjects of administrative law helps reduce the burden on civil legal relations and allows for the concretization of administrative-legal relations.

Decentralizing administrative interactions between educational institutions and state bodies—specifically, transferring oversight from the Ministry of Higher Education, Science, and Innovation to the private sector—contributes to alleviating the workload of government agencies and fosters a healthy competitive environment among educational institutions.

This, in turn, supports the creation and growth of scientific innovation, facilitates the financing of innovative research programs, enhances the administrative-legal autonomy of organizations within the sector, and positively impacts the international reputation of educational institutions.

Higher education institutions represent both “external” and “internal” parties as subjects within a specific system of administrative-legal relations. In the first case, these relations arise through the performance of state functions delegated to the educational institution, thereby establishing relations of authority and subordination. In the second case, the educational institution is viewed as a participant exercising the role of an equal subject.

Moreover, in administrative relations within educational institutions, particularly those involving government and management bodies, current legislation provides the foundation for recognizing the sector as a subject of administrative law based on the following:

Firstly, the educational institution constitutes a distinct field of public relations, where the interests of the state, society, and private individuals coexist;

Secondly, in institutional governance, coordination methods increasingly take precedence over relations based solely on subordination and administrative coercion;

Thirdly, contemporary tools primarily aimed at regulation and self-governance characterize the management relations between the state and educational institutions, derived from the existing governance system.

## Conclusion

Considering the status of higher education institutions within administrative-legal relations encompasses both theoretical and practical aspects of university activities.

The modern concept of educational institutions as subjects of administrative law primarily allows them to be understood as social institutions operating in the public sphere. Their role is defined by the significance of the functions assigned to them through state education policy.

In the activities of higher education institutions, being recognized as a subject of administrative law, including registration as a legal entity, provision of land plots and buildings, and possession of licenses and certificates, holds critical importance. This recognition determines the institution’s ability to exercise certain rights and fulfill its obligations.



## REFERENCES

1. Aleixo, A. M., Leal, S., & Azeiteiro, U. M. (2018, January 20). Conceptualization of sustainable higher education institutions, roles, barriers, and challenges for sustainability: An exploratory study in Portugal. *Journal of Cleaner Production*, 172, 1664–1673.
2. Amaral, A. (2020). Federal States, States and Local Policies in Higher Education. In *International Encyclopedia of Higher Education Systems and Institutions* (pp. 431–436). <https://doi.org/10.1007/978-94-017-8905-9>
3. An Act to incorporate and provide for the institution and support of a University in Kansas Territory (1855). In *Laws of Kansas Territory*, 1-2, 783. U.S. sessions 34 Congress.
4. Beales, H. (1998). Licensing and certification systems. In P. Newman (Ed.), *The new palgrave dictionary of economics and the law* (Vol. 2, pp. 578–581). London: Macmillan.
5. Brittingham, B. (2018). US Accreditation and Quality Assurance, International Dimensions. In *Encyclopedia of International Higher Education Systems and Institutions*. Springer, Dordrecht. [https://doi.org/10.1007/978-94-017-9553-1\\_266-1](https://doi.org/10.1007/978-94-017-9553-1_266-1)
6. Cave, M., Dodsworth, R., & Thompson, D. (1992). Regulatory reform in higher education in the UK: Incentives for efficiency and product quality. *Oxford Review of Economic Policy*, 8(2), 79–102.
7. Dubrovina, S. Yu. (2006). *Administrative and legal regulation of educational activity in Russia* (In Russian) (126 p.) [PhD thesis]. Saratov.
8. Hendricks, G. (1975, Summer). University Registration Systems: A Study of Social Process. *Human Organization. Ethnography of Schooling: A Special Issue*, 34(2), 173–181.
9. Karpen, U. (n.d.). Organization and procedures for funding higher education in the federal republic of Germany. *Higher Education in Europe*, 10(1), 114–123. doi:10.1080/0379772850100117.
10. Kazarova, N. F. (2005). *Administrative and legal organization of the mechanism of licensing of educational activity of institutions of higher and secondary vocational education* (In Russian) (p. 35) [PhD thesis]. Khabarovsk.
11. Kiryllovych, A. A. (2005). *Higher educational institution as a subject of administrative law* (In Russian) (p. 26) [PhD thesis]. Chelyabinsk.
12. Mause, K. (2008). Rethinking governmental licensing of higher education institutions. A Bibliometric Review based on Scopus. *European Journal of Law and Economics*, 25, 57–78. doi:10.1007/s10657-007-9036-4.
13. Pechar, H., Park, E. (2017). Higher Education Systems and Institutions, Austria. In J. Shin & P. Teixeira (Eds.), *Encyclopedia of International Higher Education Systems and Institutions*. Springer, Dordrecht. [https://doi.org/10.1007/978-94-017-9553-1\\_365-1](https://doi.org/10.1007/978-94-017-9553-1_365-1)
14. Teixeira, P. J., Shin, J., & Amaral, A. (2020). The International Encyclopedia of Higher Education Systems and Institutions. In *Springer eBooks*. <https://doi.org/10.1007/978-94-017-8905-9>
15. Vladykina, T. A. (2003). Higher educational institution as a subject of civil law (In Russian) (p. 5) [Abstract of PhD thesis]. Ekaterinburg. <https://www.dissercat.com/>