

## **LEGAL REGULATION OF THE SUBVENTION FOR THE PROVISION OF STATE SUPPORT TO PERSONS WITH SPECIAL EDUCATIONAL NEEDS IN UKRAINE**

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## **LEGAL REGULATION OF THE SUBVENTION FOR THE PROVISION OF STATE SUPPORT TO PERSONS WITH SPECIAL EDUCATIONAL NEEDS IN UKRAINE**

**Abstract.** The article analyzes the legal regulation of the subvention for providing state support to persons with special educational needs in Ukraine. The essence of interbudgetary transfers, their types and peculiarities of legal regulation of the procedure for their provision have been studied by lawyers. At the same time, the issue of providing some intergovernmental transfers remains outside the attention of scholars. One of these transfers is a subvention for providing state support to persons with special educational needs, although it has been enshrined in the current budget legislation since 2018. In view of the above, the purpose of this article is to analyze the legal regulation of the subvention for providing state support to persons with special educational needs in Ukraine.

It is emphasized that when establishing the appropriate mechanism for providing such an interbudgetary transfer, the legislator does not specify which levels of education are concerned and in which institutions such education can be obtained by persons with special educational needs (this refers to the form of ownership of a higher education institution, its organizational and legal form, etc.) We consider this approach constructive, as it ensures the principle of equality in the exercise of the right to education.

**Keywords:** interbudgetary relations, interbudgetary transfers, subvention, state support, special educational needs.

### **Author's contribution**

The author made a full contribution to writing the article independently. The author independently selected the literature, analyzed it and drew conclusions.

### **Disclosure statement**

The author has not any competing financial, professional, or personal interests from other parties.

## **INTRODUCTION**

Interbudgetary relations in the country are realized through the provision of appropriate interbudgetary transfers. According to the Budget Code of Ukraine, grants and subventions may be provided between budgets of different levels, which are also differentiated into certain types. Traditionally, a subsidy is defined as the allocation of funds from the budget to cover planned losses or to balance the lower budgets of enterprises and organizations. It is general in nature, as its essence lies precisely in its untargeted nature and provision in cases of excess of expenditures over budget revenues, and is not subject to return to the budget from which it was provided (the term itself comes from the Latin word *dotatio* - gift). A subvention is a form of financial assistance from the state to local authorities, which is provided to ensure that they implement specific measures or programs on the basis of co-financing (Financial law: textbook / edited by O. Dmytryk ..., 2022, p. 168). At the same time, the Budget Code of Ukraine contains a slightly different definition of a subvention.

Thus, clause 48, part 1, Article 2 of the above legal act provides that a subvention is an interbudgetary transfer to be used for a specific purpose in accordance with the procedure determined by the body that made the decision to grant the subvention. In view of the above, we note that subventions are characterized by the following features: (1) they are

intergovernmental transfers; (2) they are provided for a specific purpose; (3) they are provided in accordance with the established procedure (most often, such procedure is regulated by acts of the Cabinet of Ministers of Ukraine).

It should be emphasized that the Budget Code of Ukraine contains a rather extensive list of subventions. Thus, Article 97 of the mentioned legal act lists the following subventions among the transfers that may be provided from the state budget to local budgets: subventions for the implementation of state social protection programs; subvention for the implementation of investment projects; educational subvention; subvention for the provision of state support to persons with special educational needs; subvention for financing measures of socio-economic compensation for the risk of the population living in the territory of the observation zone; a subvention for financial support of construction, reconstruction, repair and maintenance of public roads of local importance, streets and roads of communal property in settlements; other additional subsidies and other subventions. As you can see, the list of subventions is open and can be expanded, depending on the needs that require funding and are important for the state and Ukrainian society.

## **THEORETICAL FRAMEWORK**

The essence of interbudgetary transfers, their types and peculiarities of legal regulation of the procedure for their provision have been studied by such lawyers as: A. S. Glusenko, O. O. Dmytryk, Z. I. Peroshchuk, K. O. Tokarieva, and others. At the same time, the issue of providing some intergovernmental transfers remains outside the attention of scholars. One of these transfers is a subvention for providing state support to persons with special educational needs, although it has been enshrined in the current budget legislation since 2018. In view of the above, the purpose of this article is to analyze the legal regulation of the subvention for providing state support to persons with special educational needs in Ukraine.

## **METHODOLOGY**

The methodological basis of the scientific article was the general and special scientific methods of cognition: dialectical, formal-logical. The dialectical method was applied in the characterization of relevant legal phenomena and processes. With the help of the formal-logical method, individual provisions of the current legislation on the researched issues were analyzed.

## **RESULTS**

Before proceeding to consider the legal regulation of the subvention for the provision of state support to persons with special educational needs, we believe it is advisable to find out who belongs to the circle of such persons. Thus, clause 20 of part 1 of Article 1 of the Law of Ukraine "On Education" stipulates that a person with special educational needs is a person who needs additional permanent or temporary support in the educational process in order to ensure his or her right to education. When characterizing subventions, it is crucial to identify the subvention administrators; the areas of use of funds received as a particular subvention; and the criteria that are taken into account when determining the amount of the relevant subvention. In our opinion, these characteristics allow us to form an idea of the nature and purpose of the respective subvention.

According to part 1 of Article 103-3 of the Budget Code of Ukraine, the subvention for providing state support to persons with special educational needs is aimed at providing state support for education to children who are blind and visually impaired, deaf and hearing impaired, with severe speech disorders, mental retardation, musculoskeletal disorders, intellectual disabilities, complex developmental disorders (including autism spectrum disorders) in educational institutions. In the above provision, the legislator specifies the main purpose of the subvention under study (support for persons with special educational needs) and lists the disorders or diseases that may be supported by the subvention. In fact, it is about providing an opportunity to realize the right to education guaranteed to everyone by the Constitution of Ukraine.

We would also like to emphasize several other aspects that, in our opinion, deserve attention. Firstly, in the above legal provision, the legislator does not specify what levels of education are meant and in which institutions such education can be obtained by persons with special educational needs (it refers to the form of ownership of a higher education institution, its organizational and legal form, etc.) We consider this approach to be constructive, as it ensures the principle of equality in the exercise of the right to education. This aspect is extremely important in the context of practical achievement of both national and modern European values and priorities.

Secondly, the analyzed provision of the Budget Code of Ukraine, as well as other legislative provisions, refers to persons with special educational needs. At the same time, the aforementioned part 1 of Article 103-3 first refers to the provision of state support to persons with special educational needs, and then to children with relevant health problems. In our opinion, determining the circle of persons with special educational needs who can receive appropriate educational services at the expense of a subvention in this situation is fundamental. The fact is that according to Article 6 of the Family Code of Ukraine, Article 1 of the Law of Ukraine "On Protection of Childhood", and the provisions of the Civil Code of Ukraine, a child is a person under 18 years of age (before reaching the age of majority). Based on the interpretation of the category "person", we state that it does not have an appropriate link to age (Academic Explanatory Dictionary of the Ukrainian ...) and, accordingly, its use significantly expands the list of those covered by the subvention.

It is noteworthy that clause 3 of the Procedure and Conditions for Providing Subventions from the State Budget to Local Budgets for State Support to Persons with Special Educational Needs regulates this issue somewhat differently. Thus, the subvention is aimed at providing state support to persons with special educational needs who receive education in preschool education institutions (except for compensatory type preschool education institutions (nurseries), baby homes, preschool education institutions (orphanages) of the residential type), general secondary education institutions (except for special schools, sanatorium schools, training and rehabilitation centers), vocational (vocational-technical) education institutions of state and municipal ownership, namely for children who are blind and visually impaired, deaf and hearing impaired, with severe speech disorders, mental retardation, musculoskeletal disorders, intellectual disabilities, and complex developmental disorders (including autism spectrum disorders).

In view of the above, we state that the procedure for granting the analyzed subvention defines the list of persons covered by this subvention more correctly. In our opinion, it is quite logical that the legislator provides state support for the right to education to all persons with disabilities, regardless of age, and at the same time focuses on supporting children. From the new perspective, we assume that current legislation provides for different components and levels of education in the education system. According to Part 1 of Article 10 of the Law of Ukraine "On Education", the integral components of the education system are: 1) pre-school education; 2) complete general secondary education; 3) out-of-school education; 4) specialized education; 5) vocational education; 6) professional higher education; 7) higher education; 8) adult education, including postgraduate education. Without going into a detailed analysis of each of these components of education, we note that the current legislation provides for different levels of education, which are usually obtained at different age intervals.

This conclusion is based on the analysis of the provisions of the Constitution of Ukraine (Article 53), as well as Article 3 of the aforementioned Law "On Education": everyone has the right to quality and accessible education. The right to education includes the right to receive lifelong education, the right to accessibility of education, the right to free education ... . Ukraine creates equal conditions for access to education. No one shall be restricted in the right to education. The right to education is guaranteed regardless of age, gender, race, health status, disability, citizenship, nationality, political, religious or other beliefs, skin color, place of residence, language of communication, origin, social and property status, criminal record, as well as other circumstances and characteristics. Therefore, this issue needs to be further specified.

After we have considered the circle of people who are eligible for funding of relevant services (classes, etc.) related to the realization of the right to education, we will focus on what expenditures can be financed from the funds received as a subvention for providing state support to people with special educational needs. It should be emphasized that the list of such expenditures is exhaustive, i.e., only those areas that are directly provided for by the budget legislation are financed with such funds. In particular, Art. 103-3 of the Budget Code of Ukraine includes expenditures for: (1) remuneration of specialists on the basis of civil law contracts for

conducting (providing) psycho-pedagogical and correctional and developmental classes (services) in accordance with individual development programs for persons with special educational needs who receive education in inclusive classes (groups) of preschool and general secondary education institutions (except for compensatory type preschool education institutions (nurseries), children's homes, boarding type preschool education institutions (orphanages), special schools, sanatorium schools, and educational and rehabilitation centers);

provision of psycho-pedagogical and correctional and developmental services to ensure the educational process of persons with special educational needs who receive education in inclusive and special classes (groups) of out-of-school, vocational (vocational-technical) and professional higher education institutions of state and municipal ownership. In this case, the list of specialists who conduct classes and (or) provide these services is approved by the Cabinet of Ministers of Ukraine);

(2) purchase of special means of correction of psychophysical development, which allow mastering the curriculum, for persons with special educational needs who receive education in inclusive and special classes (groups) of preschool and general secondary education institutions (except for compensatory type preschool education institutions (nurseries), children's homes, boarding-type pre-school education institutions (orphanages), special schools, sanatorium schools, educational and rehabilitation centers), out-of-school, vocational (vocational-technical) and professional higher education institutions of state and municipal ownership. The typical list of special means of correction of psychophysical development is approved by the central executive body that ensures the formation and implementation of state policy in the field of education;

(3) equipping classrooms and/or resource rooms in relevant educational institutions and inclusive resource centers to provide psychological and pedagogical, correctional and developmental services to persons with special educational needs (purchase of methodological, educational and software, items, materials and equipment, including long-term use). From the above, we can see that the Budget Code of Ukraine regulates three main areas of funding from the funds received as a subvention: remuneration of specialists and purchase of the so-called material and technical support.

However, clause 4 of the Procedure and Conditions for Granting Subventions from the State Budget to Local Budgets for Providing State Support to Persons with Special Educational Needs (hereinafter - the Procedure) defines a slightly different list of expenses that can be financed by the said subvention. Below is a list of them:

(a) conducting (providing) additional psycho-pedagogical and correctional and developmental classes (services), as defined by an individual development program, for persons with special educational needs who receive education in inclusive classes (groups) of preschool and general secondary education institutions, as well as for persons with special

educational needs who receive general secondary education in vocational (vocational-technical) education institutions simultaneously with the acquisition of vocational (vocational-technical) education qualifications.

It should be noted that an exemplary list of additional psychological, pedagogical and correctional and developmental classes (services) for persons with special educational needs in educational institutions is regulated by law. It includes the following classes and services: rhythmic, speech development, physical therapy, social and household orientation, developmental correction, spatial orientation, development of auditory, visual, tactile perception of speech and pronunciation, vision correction, correction and development of psychophysical functions, use of elements: kinesiotherapy, animal therapy (hippo-, canis-, felino-, ornitho-), art therapy (iso-, drama-, fairy tale-, music-, film-, sand-, game-, cartoon-, photo-, color-, plasticine-, dance-, psychogymnastics), occupational therapy, ergotherapy, aromatherapy, Montessori therapy, etc., logorhythmic, and others. It should be emphasized that this list is exemplary, i.e., indicative, and open-ended. However, the question arises as to who can expand this list and how this is realized from a legal point of view.

In addition, Annex 5 to the Procedure sets out the list of specialists who conduct (provide) additional psychological, pedagogical, correctional, and developmental classes (services) with persons with special educational needs in educational institutions. It should be noted that the legislator has regulated only the list of fields of knowledge and specialties in which specialists must have an appropriate degree of higher education (educational qualification level) or an appropriate professional qualification. These are: 01 Education/Pedagogy (012 Preschool Education, 013 Primary Education, 016 Special Education, 017 Physical Education and Sports), 02 Culture and Arts (024 Choreography, 025 Musical Art), 05 Social and Behavioral Sciences (053 Psychology), 22 Health Care (227 Physical Therapy, Occupational Therapy) as well as professional qualifications, for example: occupational therapist, physiotherapist, physiotherapist, physiotherapist and sports medicine, primary school teachers, preschool teachers, correctional education teacher, teacher of defectology, speech therapist, rehabilitation teacher, practical psychologist, psychologist. It seems quite logical that persons with special educational needs due to a relevant health condition will additionally receive classes and/or services with a specialist who has the appropriate education and/or qualifications and can help the person receiving education improve their reflexes, skills, abilities, etc.

(b) Purchase of special means of correction of psychophysical development, which allow mastering the curriculum, for persons with special educational needs who receive education in inclusive classes (groups) of preschool, general secondary and vocational (vocational-technical) education institutions.

At the same time, the Procedure specifies the percentage of the total amount of the subvention that can be used to purchase the above-mentioned facilities for persons with special educational needs. This limitation is no more than 35 percent of the total amount of the subvention. If an institution has several persons with special educational needs with the same disabilities, it is possible to purchase special means of correction of psychophysical development for joint use, if necessary. The typical list of special means of correction of psychophysical development for persons with special educational needs is approved by an order of the Ministry of Education and Science.

Taking into account the comparative legal analysis of the areas of use of the subvention funds for providing state support to persons with special educational needs, we state that the areas of funding specified in the Budget Code of Ukraine differ from those specified in the Procedure. In particular, part 2 of Article 103-3 of the Budget Code of Ukraine provides for such a funding source as remuneration of specialists on the basis of civil law contracts for the conduct of relevant classes or provision of services. At the same time, such provisions are absent from the Procedure. It is quite logical that the Budget Code of Ukraine regulates the main provisions, and the relevant bylaws and regulations detail them. However, in our opinion, conceptually, these acts should correlate with each other. In this situation, on the contrary, this approach makes it impossible to adequately implement the procedure for granting the subvention under study.

The main subvention administrator is the Ministry of Education and Science of Ukraine, and the subvention administrators for local budgets are structural subdivisions on education and science of local executive authorities and local self-government bodies, which are determined by the decision of the relevant local council on such a budget in accordance with the law. This approach is quite logical given the purpose of providing funds from the state budget to local budgets - support for persons with special educational needs, as we have already indicated in the text, it is about the state's assistance in realizing the right to education for persons with such needs.

At the same time, Art. 31 of the Law of Ukraine "On the State Budget of Ukraine for 2023" of 03.11.2022 No. 2710-IX stipulates that, as an exception to the provisions of part two of Article 103-2 and part three of Article 103-3 of the Budget Code of Ukraine, the distribution of educational subventions from the state budget to local budgets and subventions from the state budget to local budgets for the provision of state support to persons with special educational needs between local budgets is carried out by the Cabinet of Ministers of Ukraine. It should be emphasized that the legislator does not specify the reasons for the introduction of such changes. Most likely, this is currently due to the ongoing martial law introduced in connection with Russia's armed aggression against Ukraine. However, we emphasize that even in peacetime, the law on the State Budget of Ukraine often granted certain powers to the Cabinet of Ministers of Ukraine as exceptional powers.

Regarding the impact of martial law on the legal regulation of the budget process (in particular, issues related to the distribution and use of subventions for state support for persons with special educational needs), it should be noted that the Resolution of the Cabinet of Ministers of Ukraine "On Amendments to the Procedures and Conditions Approved by the Resolutions of the Cabinet of Ministers of Ukraine of January 14, 2015 No. 6 and February 14, 2017 No. 88" of 26.03.2022 No. 365 allowed to allocate the remaining funds for the educational subvention and the subvention for persons with special educational needs from the state budget to local budgets for territorial defense measures, meeting the food

needs of the civilian population, evacuation/removal/movement of civilians from the area of hostilities and dangerous areas to safe places, in particular, for payment for transportation services, fuel and lubricants, arrangement of places of accommodation for citizens who left their place of residence due to hostilities.

These changes are reflected in the Procedure. In particular, in clause 11 of the Procedure, the legislator chose a reasonable approach and, while preserving the essence of such an interbudgetary transfer as a subvention, noted that the subvention balances at the end of the budget period are kept on the accounts of the respective local budgets and used in the next budget period, taking into account the intended purpose of the subvention. At the same time, the subvention balances are allowed to be used for the above expenses, payment for other measures aimed at supporting the civilian population under martial law.

Under the conditions of martial law in Ukraine, the distribution of the subvention under study was carried out on the basis of the Order of the Cabinet of Ministers of Ukraine "On the Distribution in 2023 of Subventions from the State Budget to Local Budgets for the Provision of State Support to Persons with Special Educational Needs" of January 6, 2023, No. 16-p, the Annex to which defines the appropriate amount of funds for the relevant budget. Thus, the total amount of subvention (consumption expenditures) for 2023 is UAH 304595.3 thousand. For example, the regional budget of Kyiv region received UAH 21843.6 thousand, the regional budget of Kharkiv region - UAH 10160.1 thousand, the regional budget of Mykolaiv region - UAH 7623.4 thousand, etc. In this situation, the question arises as to what criteria are used to calculate such amounts for the respective budgets. According to part 3 of Article 103-3 of the Budget Code of Ukraine, the law on the State Budget of Ukraine approves the amount of the said subvention separately for the budget of the Autonomous Republic of Crimea, regional budgets, budgets of Kyiv and Sevastopol in accordance with the number of persons with special educational needs.

The distribution of subventions for the provision of state support to persons with special educational needs is carried out between local budgets in accordance with the procedure determined by the Council of Ministers of the Autonomous Republic of Crimea, regional state administrations in accordance with the number of persons with special educational needs, and is approved by the decision on the budget of the Autonomous Republic of Crimea, the decision on the regional budget (Budget Code of Ukraine, P.3 Art. 103-3). In view of the above, we note that the relevant authorities have discretion in calculating the amount and distribution of funds. In our opinion, in addition to the number of persons with special educational needs who receive state support, other criteria should be included in determining the amount of subvention for a given year, such as the average cost of services (classes) provided (conducted), their approximate number per person, a certain reserve, etc.

## CONCLUSIONS

To summarize, it should be noted that persons with special educational needs should be provided with opportunities for socialization, personal development, integration into society and proper ways of interacting with the team in educational institutions. However, given that the legal mechanism for providing the intergovernmental transfer under study is imperfect, not all founders of educational institutions use the subvention funds effectively, and therefore not all persons who receive the appropriate educational level receive quality services in a timely manner. In order to ensure the effective realization of the right to education by people with special needs, improve the quality of educational services and the efficiency of budgetary funds, we consider it expedient to improve the mechanism for providing and distributing subvention funds at the regional level.

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## ПРАВОВЕ РЕГУЛЮВАННЯ СУБВЕНЦІЇ НА НАДАННЯ ДЕРЖАВНОЇ ПІДТРИМКИ ОСОБАМ З ОСОБЛИВИМИ ОСВІТНИМИ ПОТРЕБАМИ В УКРАЇНІ

**Анотація.** У статті проаналізовано правове регулювання субвенції на надання державної підтримки особам з особливими освітніми потребами в Україні. Підкреслено, що, встановлюючи відповідний механізм надання такого міжбюджетного трансферту, законодавець не конкретизує, про які саме рівні освіти йдеться і в яких закладах таку освіту можуть здобувати особи з особливими освітніми потребами (йдеться про форму власності закладу вищої освіти, його організаційно-правову форму тощо). Вважаємо такий підхід конструктивним, оскільки він забезпечує принцип рівності у реалізації права на освіту.

Наголошено на існуванні законодавчої колізії щодо визначення кола осіб, яким може бути надана така субвенція. Так, у деяких законодавчих положеннях йдеться про осіб з особливими освітніми потребами. Водночас у ч. 1 ст. 103<sup>3</sup> Бюджетного кодексу України спочатку йдеться про надання державної підтримки особам з особливими освітніми потребами, а потім - дітям з відповідними порушеннями здоров'я. Автор наголошує, що визначення кола осіб з особливими освітніми потребами, які можуть отримувати відповідні освітні послуги за рахунок субвенції, у цій ситуації є принциповим. На основі порівняльно-правового аналізу напрямів використання коштів субвенції на надання державної підтримки особам з особливими освітніми потребами констатовано, що напрями фінансування, визначені у Бюджетному кодексі України, відрізняються від тих, що визначені у Порядку надання зазначеної субвенції. Зокрема, Бюджетний кодекс України передбачає такий напрям фінансування, як оплата праці фахівців на підставі цивільно-правових договорів за проведення відповідних занять або надання послуг, однак Порядок не містить таких положень. Цілком логічно, що Бюджетний кодекс України регулює основні положення, а відповідні підзаконні нормативно-правові акти їх деталізують. Однак, на нашу думку, концептуально ці акти повинні корелювати між собою. У даній ситуації, навпаки, такий підхід унеможлиблює належну реалізацію процедури надання досліджуваної субвенції. Пропонується внести відповідні зміни до нормативно-правових актів, що регулюють порядок надання коштів у вигляді субвенції на надання державної підтримки особам з особливими освітніми потребами.

**Ключові слова:** міжбюджетні відносини, міжбюджетні трансферти, субвенція, державна підтримка, особливі освітні потреби.

## LEGAL REGULATION OF THE SUBVENTION FOR THE PROVISION OF STATE SUPPORT TO PERSONS WITH SPECIAL EDUCATIONAL NEEDS IN UKRAINE

**Abstract.** The article analyzes the legal regulation of the subvention for providing state support to persons with special educational needs in Ukraine. It is emphasized that when establishing

the appropriate mechanism for providing such an inter-budgetary transfer, the legislator does not specify which levels of education are concerned and in which institutions such education can be obtained by persons with special educational needs (this refers to the form of ownership of a higher education institution, its organizational and legal form, etc.) We consider this approach constructive, as it ensures the principle of equality in the exercise of the right to education.

It is emphasized that there is a legislative conflict regarding the range of persons who can be granted such a subvention. Thus, some legislative provisions refer to persons with special educational needs. At the same time, part 1 of Article 1033 at first refers to the provision of state support to persons with special educational needs, and then to children with relevant health problems. The author emphasizes that determining the circle of persons with special educational needs who can receive appropriate educational services at the expense of a subvention in this situation is fundamental. Based on the comparative legal analysis of the areas of use of the subvention funds for providing state support to persons with special educational needs, the author states that the areas of funding specified in the Budget Code of Ukraine differ from those specified in the Procedure for granting the said subvention. In particular, the Budget Code of Ukraine provides for such funding as remuneration of specialists on the basis of civil law contracts for the relevant classes or services. At the same time, the Procedure does not contain such provisions. It is quite logical that the Budget Code of Ukraine regulates the main provisions, and the relevant bylaws and regulations detail them. However, in our opinion, conceptually, these acts should correlate with each other. In this situation, on the contrary, this approach makes it impossible to adequately implement the procedure for granting the subvention under study. It is proposed to make appropriate amendments to the legal acts regulating the procedure for granting funds in the form of a subvention for providing state support to persons with special educational needs.

**Key words:** interbudgetary relations, interbudgetary transfers, subvention, state support, special educational needs.

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