

PRIVATE-LAW STATUS OF A LEARNER IN THE SYSTEM OF HIGHER EDUCATION

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Abstract. Within the framework of this article, the private-law status of a student is examined within higher education system. The authors conclude that the private legal status of a student is represented by his rights, duties and responsibilities arising from the contract on the provision of paid educational services. After the study, the authors come to the conclusion that the responsibility of a student within an educational organization of higher education can arise if a student violates the legal obligations that are included in the content of his private legal status, for example, if a student does not fulfill his obligation to master the educational program conscientiously and to fulfill the educational plan. In this case, a student violates not only the obligation established by law, but also the duty fixed in the contract of paid educational services which he signed, since the corresponding obligation is always present in the latter. The measure of this responsibility is the termination of an education contract and the expulsion of a student from the organization that carries out educational activity. The termination of the contract for paid provision of educational services and the expulsion of a student from a university is the measure of private legal (contractual) liability applied to the student who does not fulfill the obligations of a relevant contract. On the basis of the abovementioned, the authors summarize that in connection with the expansion of contractual education in higher education institutions, education agreements must be drawn up with an obligatory consideration of all changes in educational legislation. The provisions of these contracts must not contradict the norms of legislation to form the private legal status of a student properly.

Keywords: Private law, status, student, system, higher education.

1. INTRODUCTION

In accordance with the Art. 26 of the universal declaration of human rights "higher education should be equally accessible to all on the basis of the abilities of everyone" (*The Bologna Declaration*, 1999). At present, the system of higher education undergoes numerous transformations, caused by the change of social-economic formation in our state. Nowadays higher education is regarded by many people as the basis for the successful implementation of entrepreneurial activities. The obtaining of the necessary amount of knowledge and skills within the walls of educational institutions of higher education provides graduates with the opportunities for professional development and improvement.

The level of an expert is one of higher education levels. According to expert programs they prepare mainly the professionals in the sphere of this or that type of security, which is related with the provision of law and order and the tranquility in a state.

The bachelor's and master's degrees are introduced into the national educational legislation in connection with the accession of our country to the Declaration on the creation of the European Higher Education Area (Bologna Declaration) (Colin & Christopher, 2004) in 2003. The process of convergence and harmonization of higher education systems in Europe got the name of Bologna Process in order to create a single European space of higher education. This process is "an intergovernmental attempt to create the basis for a mutual recognition of degrees (*On Education in Russian Federation*, 2012, p. 79). Russia accession to Bologna process gave a new impetus to the improvement of national higher education, opened the opportunities for the participation of students and university professors in joint projects with European universities.

The "Bachelor-Master" training system has been tested already in the educational space of Russian Federation and has shown its advantages and disadvantages, as well as any other social and legal system. After the obtaining of the Bachelor's qualification, university graduates usually do not stop there and enter the magistracy, and some of them continue to study at a post-graduate school,

which according to the Federal Law "On Education in Russian Federation" (*On Protection of Consumer Rights*, 1996) (hereinafter - the Law on education) has also become the level of higher education.

For some of the entrants, the private interest of higher education obtaining is connected with the desire to carry out entrepreneurial activity successfully, for someone - with the desire to serve the state and carry out the tasks of state significance.

In connection with the foregoing, the study of a student private legal status in the system of higher education seems relevant and significant from the theoretical and practical point of view.

2. METHODS

The leading methods for the study of a student private legal status determination in higher education are the dialectical method and the intersectoral method of legal research. The dialectical method justifies the interconnection and the interdependence of processes connected with the legal regulation of educational relations. The intersectoral method makes it possible to combine civil law and administrative legal means, to correlate private law and public law principles in the legal status of a student within the higher education system during the examination of a private legal status of a student.

2. RESULTS

The relations that arise and develop between a student and an educational organization of higher education are complex ones. Of course, this kind of social relations can be called an educational one. The structure of these relations has the norms of various legal branches, first of all, the norm of constitutional and administrative law, and, undoubtedly, the norms of civil (private) law.

Private law relations are based, first of all, on the principle of legal equality of the parties - the fundamental principle of civil law (Article 1 of RF Civil Code) (Narutto, 2012). The legal equality in the relations "a student - a university" is present in the process of higher education obtaining on a contract basis. The essence of contractual relations between a student and an educational institution is reduced to the provision of paid services by a university, the result of which is a high-quality

higher education in the relevant direction, which allows a graduate to find a job and do what he likes. The agreement on the provision of paid educational services is a compensated contract, by the virtue of which an educational institution provides the service for a consumer citizen (a student) training in the acquisition of skills and knowledge. At the same time, a potential student does not conclude this agreement with the direct executors (teachers and support staff of a university), but with the main educational organization of higher education represented by its rector. These contractual relations are covered by the Civil Code of Russian Federation and the RF Law "On protection of consumer rights" (Martin, 2015).

Thus, a student can be considered as a customer (a service recipient), and an educational organization can be regarded as an executor (a service provider). Legal equality in their relations is expressed in mutual rights and obligations, as well as in mutual responsibility. The rights, the duties and the responsibilities of a student, resulting from the contract for the provision of paid educational services, constitute his private legal status. Let's consider each of these elements separately.

The first element of the private legal status of a student is his rights. The rights of students are indicated in art. 34 of the Law on education. These include the rights to the participation in the development of their professional education content; the choice of elective subjects; the deferment from conscription; the respect for human dignity; free expression of one's own views and beliefs; the participation in the management of an educational organization; the familiarization with the documents regulating the implementation of educational activities; the appealing of educational organization acts; the participation in research and innovation activities under the guidance of scientific and pedagogical workers and a number of others.

The second element of the private legal status of a student is his duties. The duties of students are fixed in p. 1 of the art. 43 about the Law on Education. These include the conscientious development of the educational program, the attendance of training sessions, the implementation of independent preparation for classes, the fulfillment of local regulatory act requirements, the care for the preservation and the strengthening of one's health, the respect for the honor and dignity of

other students and employees of an educational organization. In accordance with the paragraph 2 of the Art. 43 of the Law on Education "other duties of students are established by the contract of education". Thus, the contract may provide for a number of other duties of a student, based on the specifics of higher education educational organization.

And, finally, the third element of the private legal status of a student is his responsibility in respect of higher education educational organization. This kind of responsibility can arise in the case of abovementioned duty violation by the students, which are included in the content of their private legal status, for example, if a student does not fulfill his obligation to master the educational program and fulfill the curriculum (paragraph 2 of article 61 of the Education Law) conscientiously. In this case, a student violates not only the obligation established by the Education Law, but also the duty set by the contract on the provision of educational services, concluded with him, since the corresponding obligation is always present in the latter. The measure of this responsibility is the termination of the education contract and the expulsion of a student from the organization that carries out the educational activity. The judicial practice knows a lot of disputes between students and universities, which are associated with their expulsion. The interesting examples of relevant court cases are presented in the work by Narutto S.V. "The status of a university student in the materials of judicial practice." Narutto S.V. is the professor, the Doctor of Law at MSJA named after O.E. Kutafin.

Example 1. The statement of the Moscow City Court issued on October 20, 2011 according to the case No. 33-33496: "Following the suit by K. to SEI HPE "Moscow State Medical-Stomatological University" in connection with her expulsion due to her debts, the court concluded that the university had the grounds for the expulsion of K. who had academic arrear. The court expressed rather curious position, which should be noted: the presence of a record in student's record book about the test passing is not sufficient proof of the actual passing of the test on the subject if the academic record contains the statement that the test was not passed (Simeon, 2015, p. 62).

Example 2. Cassation resolution of the St. Petersburg City Court № 3112 issued on March 9,

2011. The agreement on the training of a higher education expert was terminated with the student M.U. This student was expelled from SEI HVE "St. Petersburg Humanitarian University of Trade Unions" due to her violation of the Regulation on the final certification of university graduates, according to which "the use of plagiarism in the thesis work is unacceptable." Since the student M.U. was used plagiarism in her thesis work, the court recognized the validity of the university on her expulsion [7, pp. 62-63].

Thus, the cancellation of the contract for the paid provision of educational services and the expulsion of a student from the university is a measure of private-law (contractual) liability applied to the student who does not fulfill the obligations of a relevant contract.

4. DISCUSSION

In the last decade, we have witnessed the number of students increase in higher education system, the growing internationalization in the academic sphere and a significant reduction of public spending on higher education (Simeon, 2015, p. 1).

Today, when students are taught at universities, one of the key problems for them is the quality of a feedback from the faculty. The right to freely express one's own views and convictions is more declarative now and does not work actually in the educational process. A constant monitoring and the supervision of educational activities restrict free thinking, make the communication between students and teachers difficult (*Cassation resolution of St. Petersburg City Court*, 2011, p. 15) and, of course, affect the private legal status of a student.

As we noted, the Law of Russian Federation "On the protection of consumer rights" is extended to contractual relations between a student and an educational organization of higher education. However, since the contract on the provision of paid educational services can not fully fall under the scope of Chapter III of RF Law "On the Protection of Consumer Rights", than by the virtue of Art. 39 of the above-mentioned law, it will apply to the relations arising from the contract, with respect to general rules (on the right of citizens for information provision, on the compensation for moral harm, on alternative jurisdiction), and the legal consequences of this contract terms violation

will be determined by the treaty itself, which should not contradict the provisions of RF Civil Code.

The contract of educational services paid provision is the agreement of accession (par. 1, Article 428 of RF Civil Code). This provision is confirmed by judicial practice. The Cassation resolution of the St. Petersburg City Court No. 33-1379/2011 issued on February 2, 2011 (The Civil Code of Russian Federation, 1994) stated that the agreement on the training of an expert with a higher education is the contract of accession.

The use of the contract of accession simplifies the procedure of a contract conclusion for an educational organization of higher education. But as was indicated in the Cassation resolution of St. Petersburg City Court issued on February 2, 2011, the possibility of influencing the content of the civil law contract limits the freedom of contract. At that it is necessary to observe the principle of proportionality, according to which "a citizen as a weak party in these legal relations needs special protection of his rights, as the European Court of Human Rights has pointed out repeatedly" (The Civil Code of Russian Federation, 1994)

5. CONCLUSIONS

Summarizing the above-mentioned, we can draw the following conclusions:

1. The private legal status of a student in the higher education system is made of his rights, duties and responsibilities, set in the agreement of paid educational services he has concluded with an educational organization of higher education.
2. The provisions of this agreement duplicate the provisions of the Law on Education and detail the legal status of a student.
3. If the obligations specified in the Law on Education are not fulfilled, a student automatically violates the education contract, which leads to the dissolution of the latter and a student's expulsion from an educational organization.

6. SUMMARY

In connection with the expansion of contractual education at higher education institutions, education agreements must be drafted with due regard of all changes in educational legislation. The provisions of these agreements must not contradict the norms

of legislation, so that a student's private legal status is formed properly.

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