

Education as a Category of Private Law

Elena V. Kobchikova

Associate Professor, Department of Civil Law, Kazan (Volga Region) Federal University, Associate Professor, PhD in Jurisprudence; mix-les@mail.ru

Timofei G. Makarov

Associate Professor, Department of Civil Law, Kazan (Volga Region) Federal University, Associate Professor, PhD in Jurisprudence; timamakarov@mail.ru

ABSTRACT

The present paper considers the category “education” as a category of private law. The authors established the relationship of private law with educational legal relations, revealed that the specific feature of educational legal relations is the combination of public and private principles in them, and it is also noted that education is an interdisciplinary field. Despite the predominantly public law (administrative) nature of educational legal relations, they also have a private law component which was the object of this study. The article analyses private legal relations in the field of education, explores the concept of educational services, describes the features of an educational agreement, shows the place of this agreement among other agreements on the provision of services. At the same time, the authors note that an educational agreement is one of the agreements for the provision of actual services, which determines its legal nature.

Keywords: Private law, public law, educational organization, student, educational contract

M. Yu. Chelyshev noted: “Practice presses for legal science to study the problems of consistency, including in the civil law sphere. Such a need is to no small degree conditioned by the substantial development of comprehensive, intersectoral legal regulation, including civil legal means”¹. In view of the above, the cross-sectoral links in the field of education deserve in-depth study and analysis. The adoption of the Federal Law dd. December 29, 2012 No. 273-FZ “On Education in the Russian Federation” (hereinafter — the Law on Education) resulted in the actualization of the interest in the topic of legal regulation of educational activities.

Paragraph 4 of Art. 4 of the said law states: “The norms governing the relations in the field of education and contained in other federal laws and other regulatory legal acts of the Russian Federation, law and other regulatory legal acts of the constituent entities of the Russian Federation, legal acts of local self-government bodies must comply with this Federal Law and cannot restrict the rights or reduce the level of the provided guarantees in comparison with the guarantees established by this Federal Law.”

The law on education tells us about the predominantly administrative-legal nature of relations in the field of education. Public (state and municipal) educational services previously excluded from the current legislation have received an effective mechanism for their provision².

Among the articles “revived” in the new Law on Education, it is primarily necessary to highlight the articles that institutionalize the legal status of the teacher (Articles 46-48), contractual regulation in the field of education (Article 54 of the Law), the economic foundations of education (Ch. 13 of the Law).

Back in 1985, G. A. Dorokhova noted that the norms of different legal branches being built into the system of legal regulation of education receive a new “citizenship”, that is, they essentially become the norms of educational law³.

Something similar actually happened with the new Civil Code of the RF which included articles of a public law nature, such as articles on licensing of certain types of activities, rules on bankruptcy, etc.⁴

It is interdisciplinary approaches that have determined the specifics of an educational agreement, allowing it to be considered as a civil law agreement with elements of public law⁵.

The interdisciplinary nature of individual categories sometimes has negative consequences leading to an extensive interpretation of the law enforcement practice. In this regard, in this paper we study education to a greater extent as a category of private rather than public law.

¹ Chelyshev M. Yu. The System of Interbranch Ties of Civil Law: Civil Law Research. Extended abstract of dissertation of Dr. of Sciences. P. 3.

² See: Public Services and Law: Scientific and Practical Guide // ed. Tikhomirov Yu. A. M., 2007. P. 160.

³ Dorokhova G. A. Legislation on Public Education (Theoretical Problems of Improvement). M., 1985. Pp. 13–14.

⁴ See: Syubareva I. F. The Legal Regime of Property of Educational Organizations in Modern Russia. M., 2016. P. 55.

⁵ See: Kazakov V. P., Revnova M. B. Features of the Agreement on the Provision of Educational Services // Legal thought. 2001. No. 5. Pp. 46–51.

It should be noted that in our country, both economic and social policies depend on how the education system functions. Art. 43 of the Constitution of the Russian Federation institutionalizes the right to education. According to the Federal Law dd. December 29, 2012 No. 273-FZ "On Education in the Russian Federation", education is a single purposeful process of upbringing and teaching being a socially significant benefit.

Successful preparation and implementation of target programs in the field of education using budgetary funds, conducting an expert assessment of the achieved indicators are certain to increase the efficiency of educational organizations throughout Russia. Vocational education in the Russian Federation is characterized by the long and difficult adaptation of graduates of educational organizations to the labor market, as well as significant investments by employers in additional vocational education of the graduates. All this testifies to the fact that the vocational education system should have proper legal regulation, including by the norms of private law, since it is the citizen who is the customer of high-quality professional educational services.

According to Art. 101 of the Law on Education, educational organizations have the right to carry out educational activities using the funds of individuals and (or) legal entities under agreements on the provision of paid educational services. The new law on education pays much attention to the contractual provision of education. But nevertheless, the current problems in the field of education tell us that the legal regulation of educational relations is certain to have shortcomings that can negatively affect the development of a citizen and society as a whole.

The evolution of the educational system in Russia is always related with changes of the qualitative characteristics of the society. Information technologies, global digitalization is transforming the world around us. This conditions the urgent need to change educational approaches and technologies. However, rapid development of education is

unthinkable without proper legal regulation, including by the norms of private law. This is what ensures the interest in the legal problems of reforming education at all levels which, it should be noted, has been taking place throughout the recent years.

The combination of public and private principles in educational legal relations is their specific feature. In this regard, worthy of attention is the position of I. A. Pokrovsky who pointed out that there can be no strict delimitation between private and public law⁶. During the period of the Soviet Union, educational legal relations were almost completely public, but the collapse of the USSR led to cardinal transformations in all areas of public life and influenced the establishment of a new market type of economy. The transition from an administrative-planned to a market economy contributed to the emergence of a private component in the education system as well. In this system characterized by a subordinate (imperative) approach, coordination (dispositive) principles gradually started emerging, a typical example of which may be said to be the area of contractual regulation of educational legal relations⁷.

In his days, well-known jurist O. S. Ioffe pointed out that the problem of legal relations is the most complex and at the same time the least developed in the legal science⁸. The reasons for disputes may be both objective and subjective, which is related to the historical aspects of changes in legal relations. One of the domestic experts in the field of educational law V. M. Strykh is of the opinion that education is not an area falling under civil law regulation. According to him, an educational agreement should be regarded as a quasi-document. Therefore, in his opinion, educational relations are a special type of legal relationship different from any other legal relationship (civil, administrative and others)⁹. Scientist V. A. Belov tends to be of the same opinion¹⁰.

Famous civil lawyer E. A. Sukhanov considers educational legal relations to be a kind of administrative and legal ones. But these legal relations lack any state coercion inherent in administrative law; therefore, it does not seem possible to agree with the position of E. A. Sukhanov¹¹.

A significant share of educational relations is now characterized by private legal features. However, the regime of their legal regulation should be certainly based on the public-law approach. In the field

⁶ See: *Pokrovsky I. A. The Main Problems of Civil Law* // I. A. Pokrovsky. 3d Ed. M., 2016. P. 102.

⁷ See: *Belov V. A. Civil Law: Actual Problems of Theory and Practice* // Belov V. A., Babaev A. B.; under the general. ed. V. A. Belova. M., 2015. Pp. 438–440.

⁸ See: *Ioffe O. S. Legal Relationship in Soviet Civil Law*. Leningrad : Publishing House of Leningrad State University, 1949. Pp. 32–35.

⁹ See: *Strykh V. M. Educational Services and Educational Legal Relationships: Controversial Views and True Reflection* // *Journal of Russian Law*. 2010. No. 4. Pp. 71–72.

¹⁰ See: *Belov V. A. Civil Law*. Vol. II. Common part. Persons, Benefits, Facts: Textbook for Bachelors // Belov V. A. M., 2014. P. 135.

¹¹ See: *Civil Law*. In 4 volumes. Volume 2 // Ed. Sukhanov E. A. M., 2014. P. 62.

of education, the correlation between public-law and private-law elements is not static, it constantly changes depending on the role played by education in the state arena. Having extended private law elements to the field of education the market type of economy has now generated a market of educational services with all the regularities functioning within this market. Educational organizations today have and enjoy significant powers, including in the area of private law.

For further analysis of private law relations in the field of education, it is still necessary to understand what type of private legal relations they refer to. O. S. Ioffe noted that legal relations can be property and personal non-property ones¹². However, the Soviet period is a thing of the past, and already E. A. Sukhanov points out that the foundations of civil law regulation are property rights and rights of obligation¹³. According to V. A. Belov and A. B. Babaev, the priority relations are a group of absolute and relative legal relations which are distinguished by the circle of obliged subjects: this circle is not defined in absolute legal relations, and clearly defined in the circle of relative relations¹⁴. Property relations and legal relations of obligation act as absolute and relative, respectively. The relations of obligation or relative relations are primarily distinguished by their content (the requirement of a certain action). Real or absolute right is distinguished by its object (individually defined thing)¹⁵.

Thus, with regard to civil legal relations in the field of education, it can be concluded that there are relative legal relations in this area, since their subject composition is determined (authorized and obligating parties).

Exploring various scientific approaches, one should first of all pay attention to the dynamics of the transformation of the content of legal relation with account of the changes in the society and the state, the state of affairs in the scientific and technical field, topical social needs and other socially significant aspects of education as a service.

Private legal relations in the field of education are undoubtedly built on the principle of legal equality of the parties (Article 1 of the Civil Code of the RF (Part 1) dd. 30.11.1994 No. 51-FZ). Similar equality in relations such as, for example, the relations of “student — higher education institution” are present in the case of contractual education. The essence of contractual legal relations between a student and a university is the provision of paid educational services, obtaining high-quality education which will enable the graduate to take an appropriate position in the organization in his major (specialty) and effectively carry out professional activities. Under an educational agreement, the educational organization provides the customer with an educational service. It should be noted that this agreement is concluded by the customer not with direct contractors (university teachers), but with the university itself represented by the rector. The Civil Code of the RF and the Law of the RF dated 07.02.1992 No. 2300-1 “On Protection of Consumer Rights” apply to these relations. Based on the foregoing, a student or another learner can be considered to be the customer, and an educational institution is the contractor. Legal equality in these legal relations is manifested in the fact that the parties to the educational agreement have mutual rights and obligations, and bear mutual responsibility to each other.

Strictly speaking, the concept of “educational agreement” mentioned in the Law on Education (Art. 54) is somewhat broader than the concept of “agreement on the provision of paid educational services”. The second concept is used when we are talking about the education received on a paid basis at the expense of the customer. The customer can be a citizen enrolled for training or his legal representative (parent, adoptive parent, etc.). In this case, the educational agreement is a consumer one, and the student can be considered to be the weak party, and therefore he needs increased legal protection. The customer may also be a legal entity or an individual entrepreneur undertaking to pay for the training of the person enrolled for training. In both cases, the agreements are characterized by the non-gratuitous nature and are subject to the Civil Code of the RF. It is just such contracts that we attempted to study in this paper.

It should be noted that the Civil Code of the RF (Art. 779) refers to training services, while the Law on Education (Art. 54) refers to educational services. In this regard, some scholars deny the civil law nature of contracts for obtaining education on a paid basis¹⁶. In this regard, we would like to disagree

¹² See: *Ioffe O. S. Selected Works: in 4 vol. Vol. 2*. SPb, 2014. Pp. 109–112.

¹³ See: *Sukhanov E. A. Property Rights and Rights to Intangible Objects* // *The Herald of Economic Justice*. 2007. No. 7. P. 17.

¹⁴ See: *Belov V. A. Civil Law: Actual Problems of Theory and Practice* // *Belov V. A., Babaev A. B.; under the general. ed. V. A. Belova. M., 2015. P. 354.*

¹⁵ See: *Civil Law: Textbook. In 2 Vol. [Grazhdanskoye parvo: uchebnik. V 2 tomakh]* // *Ed. Gongalo B. M. Vol. 2. 2nd ed., M., 2017. Pp. 255–258.*

¹⁶ See: *Sirikh V. M. On the Legal Nature of an Educational Contract with a Condition for Paying Students the Cost of Training* // *Law and Education*. 2002. No. 4. Pp. 68–83.

with this position. It follows from the Law on Education itself that education is a “process of upbringing and teaching” (Art. 2). The training service is, therefore, a kind of an educational service and, of course, is of the civil nature.

Like any other service, the educational service has no materialized result. This service involves formation of the competencies, knowledge, abilities and skills that must be formed in the consumer of such a service during its provision. Obtaining a diploma, certificate or another document on education cannot be considered to be a materialized result, since the document only testifies to the receipt of one or another level of education. Attention should also be paid to such a characteristic of the service in the field of education as the lack of the guarantee on the part of the obligated party concerning the achievement of the expected result.

The expected result is beyond the scope of the contractual relationship. The subject of the agreement on education is the process of providing educational services, but not its result, because the latter directly depends on the personal qualities of the consumer. As a result of receiving education of the same level, one consumer will acquire the necessary knowledge, skills and abilities in full, while another consumer will obtain them only partially. In this regard, the issue arises about the lack of educational services, which is extremely hard to prove. In their scientific papers P. M. Khodyrev and E. A. Khodyreva give examples of court cases in which plaintiffs (customers) tried to bring defendants (contractors) to civil liability due to detection of shortcomings in the educational services provided to them.

Example 1. M. and GOU VPO South Ural State University SEI of HPE entered into an agreement on the provision of educational services. This agreement did not specify the consequences of violation of its terms (Resolution of the Presidium of Chelyabinsk Regional Court dated 12.24.2008). M. (the plaintiff) filed a lawsuit against the South Ural State University (the defendant) on enforcement of the implications of the defendant's improper performance of the agreement, namely, poor-quality provision of the educational services. “The plaintiff linked the quality of the educational services with such criteria as the non-compliance of the taught educational material with the requirements of the educational standard, the introduction of the subjects not established by the standard without the student's consent. However, the defendant referred to the fact that the educational program, according to which the plaintiff was trained, met the requirements of GOST. Student M. was given the necessary minimum of knowledge, and the rest of the knowledge was to be acquired through the student's independent work. In its turn, the court pointed out that the educational material read to the plaintiff by the university teachers, as well as the number of the subjects studied and their sections, could not attest to the quality of the service provided by the defendant. The subject of the agreement concluded by the parties for the provision of educational services was the implementation of the plaintiff's training in the agreed specialty, and not the number of the lectures delivered on academic subjects. Upon completion of training and successful attestation of the mastered educational material, the student was issued a diploma of higher education that meets the state standard. The diploma was assessed as evidence confirming the proper fulfillment of the terms of the agreement by the defendant”¹⁷.

Example 2. S. filed a claim against K. I. Skryabin Moscow State Academy of Veterinary Medicine and Biotechnology. Federal State Educational Institution of Higher Professional Education. (The ruling of Moscow City Court dd. July 1, 2010 in case No. 33-16602.) The plaintiff asked to oblige the defendant to carry out her training according to an individual plan at the intramural-extramural department to obtain a second higher education with the Veterinarian qualification because according to the training results she was awarded a narrower qualification of a “veterinarian — biochemist”. The claim was rejected, since S. has no complaints about the quality of education, her training was provided in strict accordance with the specialty specified in the agreement, the “biochemist” qualification complies with the state educational standards and state accreditation. The discrepancy between the quality of education and the social and personal expectations of a person cannot become the basis for meeting the above requirement¹⁸.

The considered examples of the court cases confirm the fact that the requirements set to the educational organization of higher education is related with the difficulties of the plaintiff's proving the defect of the educational services provided to the plaintiff. In the first example, the defect of the educational services, according to the plaintiff, was manifested in the form of inadequate quality of the service, that is, its non-compliance with the requirements of the educational standard. In the second example, the

¹⁷ Khodyrev P. M., Khodyreva E. A. Compensation for the Damage Caused by Poor Quality of Higher Education: Prospects for the Legislative Control // Bulletin of Udmurt University. Series Economics and Law. 2011. Issue 4. P. 161.

¹⁸ Khodyrev P. M., Khodyreva E. A. The Quality of Education and the Issues of Responsibility of the University to the Student // Vector of science TSU. Series: Jurisprudence. 2012. No. 3 (10). P. 67.

plaintiff expected to be awarded a broad qualification, while she was awarded a narrow qualification. In her opinion, that was the defect of the educational services. Neither in the first nor in the second example was it possible to prove the defect of the educational service, and, therefore, the educational institutions of higher education were not brought to civil liability.

It should be re-emphasized that civil relations in the field of education are relative. They are distinguished by the long-term interaction of the parties, the correlation of public and private interests, as well as the presence of a certain level of the subjects' intellectual development.

It has to be said that educational services refer to the group of actual services. The concept of educational services can be formulated in accordance with the economic and pedagogical content of the educational process. Services provided in the educational system may be subdivided into educational services in a broad and narrow sense, depending on the personality of the contractor, the volume and nature of the service, and the specific features of the procedure of their provision. The very process of obtaining education is covered by the concept of an educational service in the narrow sense.

The objects of civil law are the services that primarily satisfy the person's private interests. This makes it necessary to regulate the relations involving the provision of such services by the norms of educational and civil legislation. Other educational services are publicly funded and satisfy public interests apart from private ones. Legal regulation of the provision of such services is carried out exclusively by the norms of educational legislation. In this regard, it is to be re-emphasized that the Civil Code of the RF extends its effect to the paid educational service agreement. The concept of an "educational agreement", as we have already noted, has a broader scope.

Considering the place of an educational agreement among other service agreements, it should be noted that it refers to agreements for provision of actual services. This agreement differs from transactions of legal actions and from transactions of actual and legal actions. The specific features of the subject of the transaction make it possible to delimit it from other transactions of actual actions, in particular, from a consulting service agreement, an information service agreement and others.

Two options are possible in conclusion of an educational agreement. If the customer acts as an offeror, the agreement is concluded according to the general rules stipulated by the Civil Code of the Russian Federation. When an educational organization acts as an offeror, this means organization of paid courses, seminars, lectures, etc. The offer in this case is subject to the rules on a public offer. The educational agreement is concluded by joining the pre-formed conditions. Such an agreement has the nature of a joinder agreement.

Considering the content of the agreement under study, it should be noted that the main obligations of the customer are the obligations to pay for the service and personally participate in its consumption. At the same time, an important issue is that of the methods and terms of payment, as well as of changing the price of the agreement. In particular, the agreement specifies the need to warn about the increase in tuition fees not later than one semester in advance. The right to demand that the contractor should fulfill the relevant duties is an undoubted right of the customer.

In our opinion, analyzing the forms of liability it should be said that its main form is reimbursement of the damages. Along with reimbursement of the caused damages this educational agreement may apply payment of a penalty. In this case, the penalty must definitely be a fine. It is the penalty that provides additional protection for the rights of consumers of educational services.

Within the framework of ensuring the private law in the educational system, there is a problem of interaction between the state and the society during the education reforming period. The interaction of the society with the state is due to the actualization of public interest in innovative technologies in the educational system, as well as the desire of a significant share of our society to regulate and control the processes taking place in education. The modern education management system cannot fully ensure the influence of the public on the management decisions in the field of education. Consideration of the interests of the public should serve the basis for the development of private law regulation of relations in the field of education.

Education plays a special role in the context of the emergence of the knowledge economy. In the market economy conditions, the mechanism of the educational system is changing: new methods of financing appear, private education develops, tuition fees are charged, and the education management process is transformed. The responsibility for education must be certainly shared among many subjects. At the same time, the educational system should be flexible and adapted to the actual requirements of the society.

The regulation of the educational system is a special economic conduct of the state in relation to educational organizations. The purpose of such regulation is to create conditions for effective economic work of educational organizations.

The role of the state in the regulation of educational relations is the need to determine the results of education that the society and the state want to achieve. However, it must be borne in mind that individual economic entities also have the right to manage the educational process, so the state should act both as a guarantor of the citizens' rights to education and as a guarantor of the private law in the field of education.

References

1. *Belov, V. A.* Civil Law: Actual Problems of Theory and Practice [Grazhdanskoye pravo: aktual'nyye problemy teorii i praktiki] // *Belov V. A., Babaev A. B.; under the general. ed. V. A. Belova. M., 2015. 993 p. (In rus)*
2. *Belov, V. A.* Civil Law. Vol. II. Common part. Persons, Benefits, Facts: Textbook for Bachelors [Grazhdanskoye pravo. T. II. Obshchaya chast'. Litsa, blaga, fakty: uchebnik dlya bakalavrov] // *Belov V. A. M., 2014. 360 p. (In rus)*
3. Civil Law. In 4 volumes. Volume 2 [Grazhdanskoye pravo. V 4 tomakh. Tom 2] // *Ed. Sukhanov E. A. M., 2014. 496 p. (In rus)*
4. Civil Law: Textbook. In 2 Vol. [Grazhdanskoye pravo: uchebnik. V 2 tomakh] // *Ed. Gongalo B. M. Vol. 2. 2nd ed., M., 2017. 654 p. (In rus)*
5. *Dorokhova, G. A.* Legislation on Public Education (Theoretical Problems of Improvement) [Zakonodatel'stvo o narodnom obrazovanii (teoreticheskiye problemy sovershenstvovaniya)]. M., 1985. 157 p. (In rus)
6. *Ioffe, O. S.* Selected Works: in 4 vol. Vol. 2 [Izbrannyye trudy: v 4 t. T. 2]. SPb, 2014. 511 p. (In rus)
7. *Ioffe, O. S.* Legal Relationship in Soviet Civil Law [Pravootnosheniye po sovetskomu grazhdanskomu pravu]. Leningrad : Publishing House of Leningrad State University [Izd-vo LGU], 1949. 144 p. (In rus)
8. *Kazakov, V. P., Revnova M. B.* Features of the Agreement on the Provision of Educational Services [Osobennosti dogovora ob okazanii obrazovatel'nykh uslug] // *Legal thought. 2001. No. 5. P. 46–51. (In rus)*
9. *Pokrovsky, I. A.* The Main Problems of Civil Law [Osnovnyye problemy grazhdanskogo prava] // *I. A. Pokrovsky. 3d Ed. M., 2016. 352 p. (In rus)*
10. Public Services and Law: Scientific and Practical Guide [Publichnyye uslugi i pravo: nauchno-prakticheskoye posobiye] // *ed. Tikhomirov Yu. A. M., 2007. 415 p. (In rus)*
11. *Sukhanov, E. A.* Property Rights and Rights to Intangible Objects [Veshchnyye prava i prava na nematerial'nyye ob'yekty] // *The Herald of Economic Justice. 2007. No. 7. P. 16–31. (In rus)*
12. *Sirikh, V. M.* Educational Services and Educational Legal Relationships: Controversial Views and True Reflection // *Journal of Russian Law. 2010. No. 4. P. 69–79. (In rus)*
13. *Sirikh, V. M.* On the Legal Nature of an Educational Contract with a Condition for Paying Students the Cost of Training [O yuridicheskoy prirode obrazovatel'nogo dogovora s usloviyem oplaty obuchayushchimsya stoimosti obucheniya] // *Law and Education [Pravo i obrazovaniye]. 2002. No. 4. P. 68–83. (In rus)*
14. *Syubareva, I. F.* The Legal Regime of Property of Educational Organizations in Modern Russia [Pravovoy rezhim imushchestva obrazovatel'nykh organizatsiy v sovremennoy Rossii]. M., 2016. 146 p. (In rus)
15. *Khodyrev, P. M., Khodyreva, E. A.* Compensation for the Damage Caused by Poor Quality of Higher Education: Prospects for the Legislative Control // *Bulletin of Udmurt University. Series Economics and Law. 2011. Issue 4. P. 160–165. (In rus)*
16. *Khodyrev, P. M., Khodyreva, E. A.* The Quality of Education and the Issues of Responsibility of the University to the Student [Kachestvo obrazovaniya i voprosy otvetstvennosti vuza pered studentom] // *Vector of science TSU. Series: Jurisprudence [Vektor nauki TGU. Seriya: Yuridicheskiye nauki]. 2012. No. 3 (10). P. 66–69. (In rus)*
17. *Chelyshev, M. Yu.* The System of Interbranch Ties of Civil Law: Civil Law Research [Sistema mezhotraslevykh svyazey grazhdanskogo prava: tsivilisticheskoye issledovaniye]. Extended abstract of dissertation of Dr. of Sciences. Kazan, 2009. 40 p. (In rus)