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Concept and essence of the educational service as a legal category

The sphere of educational services has always been of particular importance. Educational services is the leading activity of higher education institutions. The provision of educational services is regulated by the Civil code of the Republic of Kazakhstan. This scientific article briefly discusses the provision of educational services, defines the legal concept and features of the provision of educational services. The essence of the educational service is revealed as the activity of training and education, which consists skills aimed at developing the spiritual state of the learner's personality. The authors highlighted the features of the provision of educational services as a subject of civil legal relations (unsuitability for exploitation; variability of quality; lack of guarantees; complexity; inseparability from the source). The conclusion is made on the basis of existing norms, about the need to develop additional legal mechanisms for protecting the rights of consumers of services in the field of education.

Keywords: services, educational services, contract, provision of educational services, consumer protection, civil relations, object, legal regulation, quality of education, civil law category.

Introduction

In the system of human and civil rights and freedoms, the right of everyone to education is paramount. This right was first established in article 26, part 1, of the «Universal Declaration of Human Rights» of 1948, and was further developed in article 13, part 1, of the «International Covenant on economic, social and cultural rights» of 1966.

The right to education is a person's right to acquire a certain amount of knowledge, cultural skills, and professional orientation necessary for normal life in a modern society.

The law of the Republic of Kazakhstan «On education» of July 27, 2007 is the main act regulating relations in the field of education in our country.

This law has made significant changes in the regulation of education. The most important area of the social sphere of society has received a new round of development, associated primarily with the introduction of new, previously unknown to Soviet education institutional elements, such as granting students the right to receive general and professional education not only on a budget, but also on a fee basis, the possibility of organizing and functioning non-governmental educational organizations. This has led to the introduction of new tools for educational activities, but also the resulting emergence of new categories and concepts. One of these was an educational service.

The analysis of Russian literature and periodicals has shown that there is no consensus among researchers studying this problem as to what should be considered an educational service.

Introduced by this Law as a type of paid educational activity, which was considered rather as an exception in the activities of an educational institution due to insufficient budget funding, educational services gradually acquired a broader meaning. Today, researchers increasingly do not proceed from the literal content of this concept, which is enshrined in legislation, but give it a more comprehensive sound, considering educational services not just as a type of educational activity of a paid nature, but as its main content. However, this legislative feature, as well as the lack of a clear legal definition of educational services in the Law «on education» of the Republic of Kazakhstan, determines the appearance in the literature of a broad discussion about its content.

Educational services are an element of educational activity that has specific goals and subjective content. The goals of educational services are the transfer of knowledge, skills, the formation of professional skills and their development by students. Subjects of educational services are educational organizations represented by teaching staff and students who want to get an education of a certain level.

Scientists identify a number of essential characteristics (properties) of educational services based on their social essence:

1) Variability in the quality of educational services. It is related to the fact that the process of providing and receiving services is influenced by many different factors, and first of all, the professionalism of the service provider. In addition, the quality of the service can be determined by the level of educational programs, the organization of the educational process, the availability of necessary material resources, etc.;

2) Non-preservation of educational services, which is due to both its non-material form and constantly changing living conditions. Knowledge quickly loses its relevance and requires constant development and improvement;

3) The provision of educational services is a continuous, continuous process that stretches over time from a few hours to several years;

4) The targeting of educational services is due to the fact that different types of educational services are addressed to different groups of people who differ in age, professional and other characteristics.

Educational services also have the property of continuity of production and consumption, since the provision of services and its consumption are simultaneous processes. Educational services do not have a material result, even when obtaining a certain level of education is confirmed by issuing a document (certificate, certificate, diploma of the appropriate sample). What the person who has completed the training (graduate) receives in the end can be classified as «intangible values», which are inseparable from the person who carries them.

The provision of educational services is the leading activity of the higher educational institution. Despite the large number of works on this issue, there are no generally accepted views on the essence of this category. The current situation is largely due to the theoretical lack of work of the general economic category «service». It is also noted that there is no theoretically justified concept of service as a legal category and its varieties — educational service.

Among the many relations in the field of education, civil legal relations occupy a significant place. In civil law, services, along with things, works, objectified results of creative intellectual activity, are considered as an object of civil rights under article 115 of the Civil code of the Republic of Kazakhstan [1, 47]. Service category, and special legal regulation of paid services, there was in civil law only in 1994, with the adoption of General part of civil code of Kazakhstan. In the codified legislative acts of the Soviet period, services were not specified as objects of civil rights. Thus, in article 4 of the «Fundamentals of civil legislation of the USSR and the republics» of 1991, «services» are not included in the list of objects of civil rights. According to the legislator, they are included in the category of « other tangible and intangible goods».

In legal science, there is a traditional approach to defining services in terms of their difference from other objects of civil rights, usually from things and works. Things as objects of the material world are considered in civil law, first of all, as objects of absolute legal relations, in which one party is precisely defined — the owner of certain property rights, and on the other side — an indefinite number of persons who are obliged to refrain from violating other people's property rights. Services, however, as well as works, can only act as an object of relative legal obligations, since services do not exist as a static object of the material world. Services are not material objects, but actions. This is the main feature of differentiation of services and other objects of civil rights, given in legal science and in positive law.

All services have one common feature—the result is preceded by actions that do not have a material embodiment and make up a single whole together with it. Therefore, as O.N. Sadikov correctly notes, when providing a service, it is not the result itself that is «sold», but the actions that led to it.

Thus, services have been recognized relatively recently as a subject of civil rights through incorporation into the Civil Code of the Republic of Kazakhstan. However, it can be seen from the titles and content of the articles, the rules incorporated therein are predominantly general and yet mandatory. Their purpose is to regulate a wide but not clearly limited range of services [2, 42].

It is impossible to create educational organizations, formalize the organization's property rights, and ensure the implementation of educational activities without applying to civil law norms.

Education system—a set of educational programs with continuity and a system of state educational standards of various levels and directions, points of their implementation in educational institutions of various organizational and legal forms, types and types, as well as the system of educational management bodies.

As L.V. Sannikova rightly believes, «the formation of a unified concept of services covering all or most types of this phenomenon is seen as a priority task of civilists. Such a concept should be based on the eco-

conomic nature of services. In property turnover, services participate as an economic good that is revealed by most academic economists as carrying out activities. But the nature of these activities is usually not specified» [3, 70].

The question of the inclusion of educational services in the sphere of civil law is extremely debatable. In the literature there are different opinions on this issue: some authors (M.N. Malenina, A.A. Mokhov) justify the civil — legal nature of these relations, others social-legal, third (A.V. Belozеров, V.V. Qualina, V.N. Solovyev) — determine the legal nature of the investigated relations depending on their re. It should be noted that legislation in the field of education is comprehensive, which corresponds to the complex nature of the subject matter of the law.

It is important to determine the legal nature of the relations between the educational institution and the learner in the provision of educational services [4, 65].

A prerequisite for the introduction of the category «service» into the sphere of regulation of educational relations was the following circumstances: the complex nature of educational relations, which requires not only administrative and legal methods of influence, but also the use of methods of regulation of other branches of law; Recognition of the complex nature of educational relations and identification of the peculiarities of its regulation in legal doctrine; The strengthening of private law in the regulation of educational relations; Perception of the legal practice and legal doctrine of the category «public services».

In the Dictionary of the Russian language, the service means actions that benefit another, provide him with assistance [5, 82]. It should be noted that initially the meaning of this concept was not invested in the reimbursable nature of such actions.

Methodology

In the course of the study, General research methods were used: methods for analyzing the theoretical justification: horizontal, vertical, coefficient, comparison, and others.

General scientific and special research methods were used to study the legal system of Kazakhstan:

- overview of the legal framework;
- analytical method.

Results

There are different approaches to the definition of an educational service, we list the main ones:

- result of educational production (U.G. Zinnurov, E.N. Zhiltsov, A.P. Pankrukhin);
- a special type of the consumer cost existing in the form of the useful activity satisfying public requirements (L.Ya. Baranova, A.I. Levin);
- the system of knowledge, information, skills which are used for satisfaction of various educational needs of the personality, society, the state (V.P. Shchetinin);
- demonstration during certain time of abilities of the teacher (A. Zapesotsky);
- the useful type of work which is directly satisfying need of the person for education and as the material and material product allowing to satisfy educational need of the person independently (the textbooks training programs, grants) (E.V. Burdenko);
- the set of results of educational process and the auxiliary processes accompanying it presented by the highest educational institution at education market and which is directly directed to satisfaction of the established and estimated educational needs of the specific consumer (T.V. Danilov);
- the volume of educational and scientific information as the sums of knowledge of general education and special character and practical skills transferred to the personality according to a certain program (U.G. Zinnurov);
- The work of the certain teacher or pedagogical collective directed to the expedient (previously programmed) change social and psychological (in private manifestations — professional, qualification) structures of the identity of the trainee (V.M. Kozhukhar);
- economic category in which it is concentrated the difficult economic relations in the field of education are expressed (V.P. Kolesov);
- process of formation of various abilities of the person to work, i.e. investment into the human capital taking the form of the complex benefit (A.V. Morozov);
- a complex of such services which are directly connected with realization of main goals of education, implementation of its mission (A.P. Pankrukhin);

– the system of knowledge, information, skills which are used for satisfaction of many — sided needs of the person, society and the state (V.P. Shchetinin).

At the same time, the conceptual apparatus of the phenomenon of educational services is not yet sufficiently specific and consistent, which implies considering such services in the format of the public good.

The following features of educational services are identified:

– unserviceability (the process of production and consumption of these services takes place simultaneously);

– Quality variability (quality of educational services depends on objective and subjective factors);

– Lack of guarantees (with the purchase of an educational service, the consumer does not receive guarantees: it is possible to return the goods, but not knowledge);

– Intangible (it is impossible to see, verify the quality and feasibility of the purchase before consumption); Integrity (for the consumer, the educational service will have a consuming value only when it receives it in full);

– Duration of consumption and subsequent use (the process of consumption of the effect of the educational service is extended over time for several years, and the period of use of the received service can be the whole further life of the consumer);

– Complexity (the educational service is technically and methodically so complex that it requires the manufacturer to meet the level of qualification of the degree of complexity of the services provided);

– Reuse (the educational service can be replicated by the manufacturer as many times as possible);

– coherence with the consumer (from the consumer active personal participation and a certain set of skills, abilities, efforts for consumption of this service is required);

– inseparability from a source;

– impossibility of full standardization;

– The inability to estimate the expected personal effect of the educational service by the consumer due to the difficulty of predicting the state of the labour market at the time of completion of the training;

– The delay effect and cumulative effect on the individual and social utility of the educational service;

– The inability to understand the public utility of the educational service by individual producers and consumers;

– The impossibility of guaranteeing the achievement of a high result of the educational service, as it (the result) depends not only on the performer, but also on the student himself, on abilities, attention, effort and hard work.

In addition to these characteristics, the following features are characteristic of the educational service:

The purpose of rendering educational service is not just transfer of knowledge, abilities, skills, but also assimilation of this knowledge and abilities from students, otherwise the contract will not be able to be executed by the educational organization. It is not typical for any other contract that the duties of the executor (in the person of the faculty) should be subject to systematic control (set — off, examination, certification) over the performance of the counter — duty by the other party — the student.

The educational service has a public focus.

For subjective and objective reasons, it is almost impossible to prove the provision of poor quality educational services (in the form of lectures, seminars, consultations) even after a short period of time.

Educational activities can only be carried out by a subject who has the appropriate professional knowledge, skills, and skills that meet state educational standards and are confirmed by a document of the established form confirming the achievement of the state-established levels of education (educational qualifications) and (or) qualifications.

Educational activities are expressed in the form of providing educational services. Unlike performers of other services, the performer of educational services cannot guarantee the achievement of a high result of their activities, since it depends not only on them, but also on the student, his abilities, care, effort and diligence

It seems necessary to formulate a certain classification of educational services that has developed and is currently in existence.

Educational services in literature are classified by various grounds:

– By type of service: lecture class; seminar occupation; practical occupation; work practice; consultation; examination; offset;

– By training technology: traditional educational service; Remote technology service;

- By duration: short-term educational services (from one day to a month); Medium-term educational services (month to year); Long-term educational services with different levels (higher vocational education, doctoral studies, etc.);
- According to the results of achievement of educational levels established by the state by the students: with receipt of a document confirming achievement of educational level; Without receiving a document confirming achievement of the educational level;
- Training reimbursement method: educational services provided free of charge (at the expense of the budget); paid educational services; Partial cost recovery education services
- In the areas of educational services: additional children's educational services (sports, arts, scientific and technical); Additional school (pre-school) educational services (language, cultural, information and computer); Certification services for students in home training with teachers and individuals engaged in individual teaching activities; Additional educational services of adults — mastering of additional profession; preparatory educational services; Skills development services;
- By the time of provision of educational services: from several days (courses) to several years (faculties of face-to-face, distance education);
- By specialization: children's creativity and development; profound subject preparation, vocational training and retraining of personnel;
- By age: preschool education, school education, vocational education of adults;
- Information education services: use of telecommunication systems; paid educational websites; system of testing.

The non-material benefit in the form of set of knowledge, abilities, skills corresponding to the certain educational qualification certified by the relevant document on education and granting the right of education of the following level or conducting professional activity is result of educational service.

Discussion

Their main purpose is to meet any need, and the short-term achievement of the desired result is not placed at the centre; Emphasis is placed on the value and content of the actions themselves. During the Soviet period, two main positions on the nature of services were formed in science: some scientists considered services as an activity itself, a specific form of work, and others understood them as the result of work, the useful effect of activity.

This ambiguity in the terminology interpretation of services has remained. Thus, K. Grenroos defines services as a process involving intangible actions, which when necessary occur in interaction between buyers and service personnel, physical resources, schemes of the service provider enterprise.

V.V. Quanina by services means any activity that has no direct result [6, 31]. A number of scientists consider the service as a result of activity. Another approach to defining a service is based on the perception of a service as a set of activities and outcomes. According to this approach, the result is not material and together with the actions preceding it is a whole. Therefore, when providing the service, not the result itself is sold, but the actions leading to it.

The category «service» in the meaning of the object of civil regulation also applies to individual activities. The latter from the point of view of economic content are separate sectors of the service market: medical services, educational services, etc. Their legal regulation is carried out mainly by complex legal acts, which allows to regulate various aspects of these social relations. At the same time, the contractual obligations that mediate them are generally referred to as obligations to provide services on the basis of the economic essence of regulated relations [7, 76].

Services as an object of civil regulation are a certain type of social relations, the economic essence of which is the provision of services. Services as an object of civil rights act in a civil obligation as an object, which defines its legal nature as obligations to provide services.

In the process of providing educational services, the individual is directly affected. The list of services refers to training services. However, the term «educational services» is predominantly used in education legislation and in the legal literature.

The essence of educational services in civilistic literature is revealed in different ways.

According to S.V. Kurov, the educational service is understood «as the organized, purposeful, steady activity (actions) which is carried out by one or several subjects (the teacher, the teacher or group of teachers) by means of communicative means (personal, direct interaction with other subject — the student) on

transfer of knowledge, formation of abilities, skills, rendering influences, the forming identity of the person, the citizen by the organization and management of its educational activity (actions)» [7, 78].

A.V. Belozarov defines educational services as «education and training services, i.e. actions to transfer information to the student aimed at learning its students in the form of knowledge, skills» [8, 50].

The main trends in higher education are improving the quality of training of specialists, development of innovative education, integrated with intensive research activities, close link of research universities with the needs of the social sphere and economy, improvement of educational and information technology. In modern conditions, the higher education system needs to be given a new quality and social status, flexibility and adaptability, the priority of which is the advanced training of highly qualified specialists, providing for its understanding as an exclusive industry. The purpose of higher education is to satisfy the interests of society, the state and the individual in obtaining high-quality higher education, providing everyone with a wide range of options for the content, form and duration of training.

The educational service as a type of activity is characterized by such signs as: inexhaustibility of knowledge, abilities, skills which assumes unlimited number of transfers to students; Targeting, i.e. targeting trainees, taking into account their educational value, which may be collective or individual; The need for active intellectual activity of the trainee himself; Possibility of using material and technical equipment — computers, machines and other equipment in the educational process.

An educational service is an economically and socially significant category, representing an action or activity in the process of which one person (Contractor, supplier, service seller) transfers to another person (customer, buyer, service consumer) A set of information and knowledge aimed at personal development, spiritual and intellectual growth, mastering of professional skills and skills, familiarization with the experience of mankind embodied in certain scientific, cultural and spiritual ideas, concepts and discoveries [8, 167].

The characteristics, or characteristics, of educational services that are inherent in all services in general make it difficult to position these services in the market and to assess the quality of services offered to the market by the consumer. At the same time, using certain management and marketing tools, service providers can overcome the disadvantages associated with such inherent properties of services as intangible, unserviceability, quality heterogeneity.

From a supplier perspective, quality assurance of the services provided is reflected in the following:

- In the correct assessment of the needs of potential pupils, students and other consumers;
- In the selection of the target segment of the educational services market;
- In the development of service components capable of providing appropriate quality;
- Communicating the quality of services to potential consumers;
- Constant monitoring of both the rapidly changing needs in the educational services market and the quality of the services offered by this provider [7, 81].

As L.V. Sannikova notes, the complexity of developing the concept of «service» lies in the lack of a unified understanding of the economic essence of this phenomenon. In economic science, services are understood as both an activity and an economic good. On this basis, it can be assumed that each of these values is mediated by an adequate legal form.

Therefore, it is hardly possible to develop a single concept covering both of these service meanings. This can explain the failures of civilists in the formation of the concept of service as a civil — legal category. It is therefore useful to distinguish between legal concepts of services on the basis of their economic content. Services as an activity are a group of social relations that form in the process of meeting the needs of participants in property turnover. Social relations of a certain kind in the theory of law, including civil relations, are considered as the object of legal regulation. Accordingly, services as an activity are subject to legal regulation.

Conclusions

In conclusion, we stress that the impact of educational services should be recognized not only as knowledge, skills and skills, but also as the spiritual state of the individual. The essence of the educational service can be revealed as an activity of training and education, consisting in the transfer of knowledge, skills and skills, aimed at the development of the spiritual state of the student's personality.

Summarizing the analysis of educational services, in particular as a variety of objects of civil rights, it is possible to offer the following definition: «Educational service is a legitimate activity of an educational organization performed on a gratuitous and/or compensated basis, or individual pedagogical activity for train-

ing and/or education, consisting in the transfer of knowledge, skills, aimed at the formation and development of the individual, and requiring his active participation as a student or pupil.» Therefore, we conclude that such a term as «educational service» serves as the basis for further scientific developments. After all, disclosure of the definition of «educational service» will allow participants in the educational process not only to correctly determine the subject of the agreement on the provision of educational services, but also to establish such rights and obligations, the grounds for changing and terminating the agreement, and the responsibility of the parties, which will serve as an effective mechanism for the implementation and protection of the constitutional right to education.

To sum up, it should be noted that when formulating the concept of educational services, the legislator had to «invent» a definition, since there is currently no properly developed and officially established definition of the General (basic) concept of services. In particular, article 683 of the civil code of the Republic of Kazakhstan, designed to regulate the contract for the provision of paid services, does not contain a definition, but only specifies that the service is provided by performing certain actions or performing certain activities. The reason for this state of the legal framework is the absence of a theoretically justified concept of «services» as a legal category and its variety of «educational services». Although it should be recognized that in recent years, attempts have been made to improve existing legislation in the field of paid services.

Within the framework of the new paradigm of management and the results-oriented model of education, educational needs are created aimed at developing the professional culture of teachers for the development of certain concepts and norms and effective pedagogical technologies. In the system of refresher training needs of teachers are formed depending on the understanding of the specific knowledge, resulting in entering into self-employment and the goal of improving experience in personal life. The modern teacher is suitable for teaching with a lot of potential.

Therefore, to combine their functional literacy with professional skill, an androgical process of purposeful education, formation, and development in the model of result-oriented education is necessary. In other words, to develop the needs of General and professional education for adults, to stimulate cognitive activity aimed at the development of General culture and social activity of people through the achievements of science, education and culture. The modern educational paradigm provides for the transition from knowledge focused on the «person of culture» to knowledge focused on the «qualified person».

This education requires a deep revision of its philosophical, psychological, pedagogical foundations, theory and practice. Therefore, today the country's education system is faced with the task of providing a new content of the educational process based on new ideas.

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Құқықтық санат ретінде білім беру қызметінің түсінігі мен мәні

Білім беру қызметінің саласы әрқашан да ерекше маңызға ие. Білім беру қызметтері жоғары оқу орнының негізгі қызметі болып табылады. Білім беру қызметтерін көрсету ҚР Азаматтық кодексімен

және басқа да ҚР нормативтік—құқықтық актілерімен реттеледі. Қызмет көрсету — бұл азаматтық құқықтық қатынастарды реттеу объектісі. Мақалада жоғары оқу орындарында білім беру қызметін көрсету мәселелері қысқаша қарастырылып, құқықтық санат ретіндегі білім беру қызметін көрсетудің түсінігі мен мәні анықталған. Білім алушылардың рухани жағдайын дамытуға бағытталған білімді, шеберлікті және дағдыларды беруге негізделген оқыту және тәрбиелеу бойынша қызмет ретінде білім беру қызметінің мәні ашылған. Авторлар азаматтық құқықтық қатынастардың пәні ретіндегі білім беру қызметін көрсетудің ерекшеліктерін (сапалы білім; кепілдіктің болмауы; күрделілігі; қайнар көзден бөлінбеуі; білім беру қызметінің жоғары нәтижеге қол жеткізуге кепілдік бере алмау) атап көрсеткен. Демек, қызмет көрсету азаматтық құқықтық қатынастың объектісі және қызметтің бір түрі ретінде құқықтық реттеуге жатады. Қолданыстағы нормалар негізінде, жоғары білім беру саласындағы білім көрсету қызметтерін пайдаланатын тұтынушылардың құқықтарын қорғау жөнінде қосымша заң қабылдау қажеттілігі туралы қорытынды жасалған.

Кілт сөздер: қызмет, білім беру қызметтері, шарт, білім беру қызметтерін көрсету, тұтынушылардың құқықтарын қорғау, азаматтық құқықтық қатынастар, объект, құқықтық реттеу, білім беру сапасы, азаматтық-құқықтық санат.

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Понятие и сущность образовательной услуги как правовой категории

Сфера образовательных услуг всегда имела особую значимость. Образовательные услуги являются ведущей деятельностью высшего учебного заведения. Оказание образовательных услуг регулируется Гражданским кодексом и другими нормативно-правовыми актами Республики Казахстан. Оказание услуг — это объект регулирования гражданских правоотношений. В статье кратко рассмотрены вопросы оказания образовательной услуги в сфере высшего образования, определены понятие и сущность образовательной услуги как правовой категории. Раскрыта сущность образовательной услуги как деятельности по обучению и воспитанию, заключающейся в передаче знаний, умений и навыков, направленных на развитие духовного состояния личности обучающегося. Авторами выделены особенности оказания образовательной услуги как предмета гражданских правоотношений (качество образования, отсутствие гарантий, сложность, неотделимость от источника, невозможность гарантировать достижение высокого результата образовательной услуги). Следовательно, услуги как объект правового регулирования и как вид деятельности подлежат правовому регулированию. На основании действующих норм сделан вывод о необходимости разработки дополнительных правовых механизмов по защите прав потребителей образовательных услуг в сфере высшего образования.

Ключевые слова: услуги, образовательные услуги, договор, оказание образовательных услуг, защита прав потребителей, гражданские правоотношения, объект, правовое регулирование, качество образования, гражданско-правовая категория.

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