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Problems of the consumer rights protection in education: Topical issues

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Abstract. Several issues are absorbed in practice and research of law applying, concerning the protection of consumers in “traditional” business and services. But issues concerning customer protection in specific fields of individual and legal persons-education, health, science are not investigated and therefore create difficulties in practice. The aim of the paper is to study theoretical and practical issues concerning customer protection in education in Latvia with an emphasis on gaps of consumer protection regulatory. Overall, it should be noted, protection of consumer rights in education in Latvia is difficult under the present circumstances. This is followed by uncontrollable quality. Leaving aside the guarantees of service also stimulates violence of consumer rights. The partition between administrative regulation and civil regulation, concerning protection of consumer rights in education, is required. It will be the base for partition of both law enforcement and the courts, encouraging the customer, society and its member’s confidence in the education system. It also will guarantee the quality of education and justice. It also describes the nature of consumer protection in Republic of Latvia. In addition, modernization of Consumer Rights Protection Law with specific regulations concerning protection of consumer rights in education is needed.

Introduction

The contemporary education has doubtlessly changed and become an essential component of each person’s life and a basis for the development of one’s further personal work/career. With an increasing number of the education service consumers, the number of the suppliers has also increased, which is a general trend at the market economy conditions when an increase in demand increases also the supply. The main tasks of the education service consumer, on his/her turn, are requesting qualitative education services complying with standards, on the one hand, and, on the other hand, i.e., on the part of the education service provider – to satisfy this need, ensuring its compliance with predefined targets and tasks.

Education quality plays a very essential role in all stages of education because the majority of socially and economically active population, clearly representing a very large share of the society, is currently involved in the learning process.

An increasing number of the education service consumers (students, persons covering the study expenses) are paying more attention to the quality and guarantee of the educational service because a contemporary education consumer must know how to apply his/her skills in the labour market and

be ready for changes in his/her field of activity or even change the occupation in order to adapt more successfully to various contemporary crisis situations. Consequently, the issue of the quality and guarantee in education plays an essential role for the education consumer.

One of the priorities for the development of the European joint area is the formation of a knowledge-based society, creating an even tighter link between the science, education and production. The process of formation of a knowledge-based society urges the necessity for each person to develop a lifelong personal and professional capacity, as the knowledge acquired previously changes rapidly, becomes outdated, and should be constantly supplemented and improved.

At the current life situation, a consumer is regarded as a special subject of legal relations enjoying special protection. Consumer rights represent a new legal sub-discipline, both in the Baltic States and worldwide. This is also indicated by the fact that the first consumer protection law, the mail fraud law was adopted in the USA in 1872, by which the committing of a mail order fraud was made a punishable offence (false advertising).¹ When the desirable result was not achieved, the first Antitrust Act (The Sherman Antitrust Act) in the USA was adopted in 1890, aimed at limiting the formation of cartels and monopolies thus protecting the competition in the market.²

On 15 March 1962, *John Fitzgerald Kennedy* defined four basic consumer rights (the right to choose, the right to safety, the right to be informed, and the right to be heard), outlining that “*Consumers by definition, include us all. They are the largest economic group, affecting and affected by almost every public and private economic decision. Yet they are the only important group... whose views are often not heard.*”³

From the above, it follows that any person learning in an educational establishment is deemed to be considered as a consumer, because according to the definition a consumer is any natural person using a service for a purpose not directly related to its business⁴ or a person using or consuming purchased goods or using services (without reselling). In tourism, a tourist is the consumer.⁵ It should be noted that, in most cases, entering into a special agreement on the education service – a study contract – is obligatory only in the higher education. This contract regulates relations between the higher education establishment and the student, stipulates the study fee, study programme, degree or qualification to be obtained, as well as the rights and obligations of the student. The second case is when a party does not fulfil what is stipulated in the contract. Under the civil law relationships, violation of rights (offence) is denoted by “illicit activity”. Pursuant to the civil law, an illicit activity may be demonstrated both as a non-compliance with a contract or other transaction terms, and as a non-compliance with one’s obligations, and as an infringement of other person outside the contractual boundaries. Non-fulfilment of a contract is unlawful in general, as well as delays in the contract fulfilment and non-fulfilment of other contractual provisions, e.g., on quality or payment (Torgāns, 2006)⁶.

Thus it should be established that there are several basis for the provision of the educational service and only one of them is contractual.

Considering the above referred, as well as the specific nature of the education relations, the following options for the consumer rights protection and dispute settlement can be established in education, by addressing the competent institutions:

¹ “History of consumer Protection”. <http://www.consumerdaddy.com/a-12-history-of-consumer-protection.htm> (2012.15.10.).

² “Sherman Anti-Trust Act”. <http://www.ourdocuments.gov/doc.php?flash=true&doc=51> (2012.15.10.).

³ “Consumer rights”. <http://www.consumersinternational.org/who-we-are/consumer-rights> (2012.09.01.).

⁴ Patērētāju tiesību aizsardzības likums. Normatīvo aktu krājums. (Consumer Protection Act. Collection of laws and regulations) (2012) Rīga: TNA, 8.lpp.

⁵ (Academic term data base) <http://termini.lza.lv/term.php?term=pat%C4%93r%C4%93t%C4%81js&list=&lang=LV> (21.01.2012).

⁶ Torgāns, K. (2006) Saistību tiesības I daļa. Mācību grāmata. (Contract law in Part I. Textbook) Rīga: TNA. 172.lpp.

1. Using the internal regulations of the educational establishments.
2. Addressing the founder of the educational establishment.
3. Addressing the education monitoring institutions.
4. Addressing the consumer protection establishments.
5. Claim statement in a court.

The most important tool for the education consumer is consecutive application of all the applicable laws and regulations (initially using the internal regulations of the educational establishment), thus ensuring full-fledged provision of one's rights.

A topical issue in the consumer rights protection in education is also the education service quality and education recognition by the state. As demonstrated by Harvey and Green, quality apprehension options may be grouped in several categories, the most essential of which being the following:

- Quality as excellence. This quality definition is traditionally used by the higher education representatives and policymakers when debating about the higher education quality.
- Quality as "zero errors" (...).
- Quality as "fitness for purpose" (...).
- Quality as transformation (...).
- Quality as threshold (...).
- Quality as enhancement or improvement (...).⁷

One of the most essential preconditions for ensuring a realistic development of a higher educational establishment is achieving the comprehension of the defined goals and tasks at all levels: by administration, academic staff, students and employees. Preconditions for the university quality development will be made only if these targets and tasks are discussed and accepted at all levels (Dobelis 2002)⁸.

At present, such situations, when a student has been promised other education than the one obtained upon completing one's studies, are experienced more often. Thus, a set of norms regulating the consumer rights which would also facilitate/protect the education service quality must be in place in order to render a qualitative service and ensure the respective previously expected result, service guarantee and assurance for receiving the service.

One should also agree with a view that the basis of quality (as compliance with the set target) is a customer – a person buying or consuming products (goods)/services offered by an organization. Identifying a customer in education is complicated, though. According to the approach of the European Foundation for Quality Management stating that "*Good results mean: satisfied clients, satisfied employees and satisfied society,*" (Āriņa, 2009)⁹ one should note that the consumers of the education service are not only the learners but also their parents and persons covering their study expenses, and in a wider scale – the whole society.

A service should have generally accepted features set, comply with certain standards, certification requirements, approved and known examples, intended designation and contractual provisions.

⁷ Kvalitātes rokasgrāmata procedūras un prakse. (Quality manual procedures and practices) (1998) Eiropas izglītības fonds, 9.–10.lpp.

⁸ Dobelis, K. (2002) "Augstskolu kvalitatīvas izaugsmes nosacījumi un rezultāti" Augstskolu kvalitatīva izaugsme un tās ietekme uz tautsaimniecības un zinātnes attīstību starptautiskā zinātniskā konference. (University quality growth conditions and results "Higher – quality growth and its impact on economic and scientific developments in the international scientific conference") Rīga: Banku augstskola, 55. – 56.lpp.

⁹ Āriņa, A. (2009) Pakalpojuma kvalitātes nodrošināšana sociālajā sistēmā. Psiholoģijas, biznesa un sabiedrības sociālās sfēras aktuālās problēmas: teorija un prakse. (Ensuring the quality of social service system. Psychology, business and public sphere of social problem areas: theory and practice) Rīga: "JUMF", 22.lpp.

The provisions set in the consumer rights protection are general, thus a service quality in education cannot be identified adequately using these provisions. Also the identification of the education service guarantee is challenging, because according to the definition a guarantee is a promise given to the buyer of goods that the goods are of good quality, and in case any damages or faults are found they will be eliminated or replaced by new ones during the guarantee period.¹⁰ Moreover, there are often such cases found in the practice of education when the education being acquired becomes out-dated, non-compliant with the laws and regulations and the current life situation even before it is acquired.

These issues make the consumer rights protection in education difficult by creating unregulated, immense quality and disassociating from providing the service guarantee. This creates the environment of unfair competition in education, consequently increasing the consumer rights violations.

In addition, the competence of both the law enforcement bodies and courts should be distinguished, as well as the rights and obligations of the educational establishment itself by ensuring respect for the education consumer rights. Modernisation of the consumer rights protection regulations would also be required by stipulating a specific regulation regarding the consumer rights protection in education (this requirement is justified by at least 456 888 people currently being involved in education in Latvia).¹¹

Simultaneously, the consumer rights protection in education is directly linked with such issues (affecting the quality and safety of the service) as implementation of educational programme (curriculum, form), awarding documents certifying the respective education, recognition of the obtained education, mutual settlements of the parties, etc. For this reason the consumer rights protection in education is a topical theme which requires research by developing solutions for modernisation of the consumer rights protection in education, duly facilitating the development of both the theory and practice of the consumer rights. *“In other words, the coming decade should be the years of demanding and obtaining high class education and actual enforcement of the rule of law”* (Ziemele 2005).¹²

Certainly, for the purpose of achieving the respect of the education consumer rights, the necessity of monitoring must be highlighted in order to ensure a continuous quality improvement throughout all the levels of education, whereas the education monitoring involves the rule of law of education and quality assurance.

It is highly important that education quality assessment is actually carried out by members of the public – which is mainly ensured by trained experts – heads of educational establishments and specialists of education management institutions, representatives of education professional unions, trade unions and employers.

Thus, public monitoring (in its wider sense) exceeds the state institutional boundaries, fostering the involvement of the society in providing qualitative education services, guaranteeing the quality and rule of law in education. This also determines the special features of the education monitoring in the Republic of Latvia.

Conclusions

In general, the aim of the education monitoring is to facilitate the development of the education quality, thus also achieving the main priorities of the education. At same time, the issue of understanding the education quality becomes topical within the context. The education quality can be defined in various ways. Pursuant the understanding of quality according to Harvey and Green, several categories can be

¹⁰ Akadēmisko terminu dat bāze (Academic term data base) <http://termini.lza.lv/term.php?term=garantija&list=&lang=LV> (22.01.2012).

¹¹ Izglītība – galvenie rādītāji. (Education – key indicators) <http://www.csb.gov.lv/statistikas-temas/izglitiba-galvenie-raditaji-30273.html> (2011.19.10.).

¹² Ziemele, I. (2005) Starptautiskās tiesības un cilvēktiesības Latvijā: abstrakcija vai realitāte. (International law and human rights in Latvian: Abstraction or Reality) Rīga: TNA, 182.lpp.

distinguished, the most important of which are quality as excellence, quality as “zero errors”, quality as fitness for purpose, quality as transformation, quality as threshold, and quality as enhancement or improvement (Dobelis, 2002)¹³. The Explanatory Dictionary of Pedagogical Terms, on its turn, assigns the word ‘quality’ the meaning of a feature, property or entirety characterising the compliance of an object, phenomenon or process with certain predefined (preset) requirements. The quality of successively linked processes and outcomes (learning process – knowledge – education – work) plays an essential role in the pedagogical process (Skujiņa, 2000)¹⁴.

Now, we might be on our way towards the education quality excellence, and the current commitment for the education quality will be measurable in several years when the persons currently learning enter the labour market and form the part of the society providing for qualitative education service.

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¹³ Dobelis D. (2002). “Augstskolu kvalitatīvas izaugsmes nosacījumi un rezultāti” [Prerequisite of Qualitative Growth of Higher Educational Establishment and Results]. Augstskolu kvalitatīva izaugsme un tās ietekme uz tautsaimniecības un zinātnes attīstību [Qualitative growth of institutions of higher education and its impact on the development of science and economy]. Rīga: Rasa ABC, 56. lpp (in Latvian).

¹⁴ Skujiņa V. (2000). Pedagoģijas terminu skaidrojošā vārdnīca [Teacher training glossary]. Rīga: Zvaigzne ABC, (in Latvian).