

“Student as a consumer” in Latvian higher education

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Abstract. The authors felt it necessary to update the discussion, which is associated with higher education, as one of the forms, which operates under free market conditions, and the relationship that is established between the higher education institutions and the students. Higher Education Institutions is a “service provider”, but the student recipient of the service – “consumer”. Both the Latvian and international higher education area is very different and there are conflicting views on the issue. Consequently, the authors wanted to analyze the current situation in Latvia, look at the legal framework relating to the above problem and to provide their views.

Key words: higher education, higher education management, consumer law protection, student as a consumer.

1 Introduction

Nowadays globalisation processes, other countries’ higher education availability, the instability of Latvian economic situation and poor demographic situation create a series of prerequisites that make Latvian higher education institutions face high competition. Higher education institutions are forced to continuously focus on their efficiency promotion and the rise of students’ contentment. As the former rector of Latvia University, professor Mārcis Auziņš claimed: “In recent years the administration of Latvia and other countries” higher education institutions, regardless of their own willingness, more and more are forced to act according to the rules of the market economy and to solve the economy issues in addition to the academic issues. Furthermore, competing in the common European education space is not the same as dealing with market conditions.

This causes numerous university lecturers’ objections – the higher education institutions are not business, they do not produce “goods” and supply “services”. The higher education institutions teach and educate young people and establish new knowledge with the help of research works. This is certainly the truth that cannot be objected. It is impossible to imagine a university without high education standards and the liberty of the professors and other academic staff, which is a constant value at all times, both in the past and in the future. Sadly, this is the harsh reality of today. The higher education institutions that are able to combine the high education standards and the academic liberty with the realities of the business world will continue existing” [1]. Consequently, this ambiguously perceived statement is still topical – providing the education, higher education institutions deal with business that involves students as “consumers”. Rīga Stradiņš University vice rector Tatjana Koķe also states, that “the offer of qualitative studies, where the student is taken into account and assessed as

the full study process participant and performer instead of consumer or client” is the most important [6].

But is this so simple? It is necessary to comprehend the legal interest and meaning of the statement “student–consumer” and to analyse Latvian higher education laws and regulations to find the answer to the question.

Market relations have taken persistent place in higher education. We can see that the higher education institutions compete with each other to draw students. It is highly noticeable before the matriculation period, when the higher education institutions try to overcome each other with the help of different type of advertisements, information in the social networks, handouts, special offers etc., to attract further students’ attention and make them choose particular institution. In addition, this is not the only fact that proves existence of market relations in Latvian higher education system. Higher education institutions implement various business rules: define the sale product guided by the education and labour market demand; set the price for the studies, taking into account operating costs as well as market offer and demand, competing prices, social solvency and other higher education market factors; spend money on product advertising; set the human resource salary; provide other services, to receive extra income. According to the Commercial law, business unlike any other type of economic activity is an open-type economic activity that is managed by the merchant aiming to gain profit. Business is one of the types of the business activity [13]. Higher education is considered the business activity, furthermore, the successful business activity that is developed due to the introduction of education fees and private sector entry in higher education in the middle of 90s. However public officials, administration of higher education institutions and academic staff is unwilling to talk about business and market relationships in this field, sometimes being strictly negative. Admittedly, the excessive higher education commercialism only sharpens the contradictions between parties involved in higher education, as well as the contradiction between implementation of higher education and its current legal framework. To eliminate this, it should be admitted, that higher education is a service of commercial character that acts in the free market. Of course the culturally and historically evolved societies’ and academic area’s comprehension of higher education, higher education institutions autonomy and academic staff liberty and other specific factors have to be taken into consideration. At the same time, it may be concluded, that the higher education field fundamentally differs from other business. It is also pointed by Registrar at University of Nottingham Dr. Paul Greatrix – “However, higher education is a slightly unusual kind of business and differs from other businesses in a number of ways.

- HE is usually a one-off transaction and there are few opportunities for repeated sales of the same product (except with under-graduate to post-graduate progression).
- Others, for example parents or sponsors, can be heavily involved in the purchasing decision.
- The purchaser has little knowledge of the product and generally is unable to test it before deciding to buy.
- Who the customer is, makes a difference – students contribute to the quality of the product by helping to shape it (which is one of the reasons universities are selective in their recruitment)” [3].

On the basis of the above mentioned, it is fully correct to say, that the higher education institutions are active specific business performers, and one of the main interested party in this business are students. Therefore the question arises as to what kind of legal status a student is and in what way the student’s rights are seen through the prism of consumer protection.

Considering experience of other countries, as for example United Kingdom, competent authorities Competition and Markets Authority (CMA) opinion define as consumers. “The CMA considers that if universities or colleges are acting for purposes relating to their trade, business, or profession when providing educational services, they will be a “trader” or “seller or supplier” under consumer protection legislation. Prospective and undergraduate students will mostly be acting for purposes outside their trade, business, or profession, and therefore will be “consumers” under the legislation. It follows that consumer law will generally apply to the relationship between universities and colleges and prospective and current undergraduate students.

The CMA’s advice focuses on three key areas where universities and colleges need to be compliant:

- Information provision – providing clear, comprehensive, and timely information.
- Terms and conditions – ensuring terms and conditions that are fair, clear, and transparent.
- Complaint handling processes and practices – making complaints processes and practices fair and visible” [2].

It is remarkable, that CMA sets up series of initiatives that help students and higher education institutions understand the consumer protection rights as good as possible and implement them in everyday activities. CMA makes special publications that help educate students on their rights, as for example, pointing at what to take into consideration choosing the university or also what the actions are in case of students’ consumer rights violation [7].

A student could theoretically be identified as a consumer in Latvian legal system with the moment the student matches the term “consumer” according to the law. Historically, after the Latvian Republic independence renewal, the consumer is mentioned for the first time in the law “On Consumer Rights Protection”, which came into force in 15.04.1999 [15]. According to the law Section 1, the consumer was defined as “any natural person who expresses a wish to purchase, purchases goods for personal and family needs or for household consumption or orders and uses services for the same purposes”, along with the “service” defined “legal or neutral person’s performed paid service for consumer and accomplished work”. Evaluating both above mentioned terms it may be inferred that one of the consumer’s conditions was to gain the rewarded service.

By the time when the Latvian Republic Consumer Rights Protection Law came into force (15.04.1999.) [17], the service term was complemented by free of charge, within the scope of the economic activity. Along with the above specified, the fact must be taken into consideration, that both legal persons established (business) and state (forfeit public person) higher education institutions are legal persons, so they are ascribed to providing services. At the same time Consumer Rights Protection Law Section 1, Paragraph 3 determines that “consumer—a natural person who expresses wish to purchase, purchases or might purchase, or use goods or a service for a purpose, which is not related to his or her economic or professional activity” [17]. According to the Section 1, Paragraph 2, of the above mentioned law service is “performance of a consumer’s order or such fulfilment of a contract entered into with a consumer, for remuneration or free of charge, within the scope of the economic activity of a person as a result of which an article is leased, an existing article or its characteristics are improved or altered, or work is performed, or intangible result of work is achieved” [17].

Part 12 of Section 1 of Education Law determines that “educatee – a pupil, trainee, student or listener who is pursuing an educational programme at an educational institution or with a teacher working in private practice” [12]. Whereas part 4 of the above mentioned Section

determines “education – a process of systematic acquisition of knowledge and skills and development of attitudes, and result thereof. The educational process includes teaching and upbringing activities. The result of education is comprised of the totality of the knowledge, skills and attitudes of a person” [12].

Consequently, it may be concluded that the student is considered the educatee that acquires above mentioned skills in education process. According to the special rules, i.e. Law on Institutions of Higher Education Section 44 [8], the students of higher education institutions are students of the bachelor degree study programmes, professional study programmes, master’s degree study programmes (master’s programme students), residents in medicine; and doctoral students.

The legal relationships between student and higher education institution are established at the moment when the student signs the study agreement about the higher education acquisition and its content in the particular higher education institution.

According to the Constitution of the Republic of Latvia Section 81 (eliminated by 03.05.2007. Law that came into force 31.05.2007.) On January 6, 2004 the Cabinet announced amends of Law On Institutions of Higher Education (06.01.2004. The Cabinet Regulation No. 1) that included the norm on study agreement for the first time – the first part Section 46 “The institution of higher education creates each student’s personal file, which includes at least these documents: (...) 4) all between student and institution of higher education signed agreements about studies and the chosen study programme” [10]. 03.06.2004. amends of Law On Institutions of Higher Education second part of Section 46 indicates the obligation of an agreement between students and the institution of higher education and the compulsory included regulation that are defined by the Cabinet – “A student shall enter into a study agreement with an institution of higher education or college in writing. The mandatory provisions to be included in the study agreement shall be determined by the Cabinet” [11]. According to second part of Section 46 of the Law On Institutions of Higher Education included delegation on 26.10.2004. The Cabinet regulation No. 886 “The mandatory provisions to be included in the study agreement” was accepted [18] and on 23.01.2007. The Cabinet regulation No. 70 “The mandatory provisions to be included in the study agreement” was accepted [19].

In addition to above mentioned, according to the Civil Law interpretation student is considered a consumer, as the civil contracts including study agreements are related to Civil Law regulations that determine the general type agreement conclusion, performance and responsibility for their violation. Contract is a document that records mutual agreement between two or more persons on entering into, altering, or ending lawful relations. The nature of the relationship is almost boundless. Contract conclusion helps regulate business processes, the fulfilment, legal security and legal consequences. Student signs the study agreement that is similar to purchase agreement, which specifies relationships of price and duration of the service, legal consequences in case of contract violation, penalty interest, etc. Consequently the Consumer Rights Protection Centre is the leading institution that allows students to implement their rights and if necessary to request the evaluation of study agreement conditions, if they correspond to fair commercial practices.

Analysing the above mentioned legal regulations, it may be concluded that the students theoretically corresponds with the consumer definition. Student is definitely a neutral person, who expresses his/her will to use higher education institution’s provided services by signing a contract. Therefore it is important to clarify if the higher education institution’s provided services correspond to Consumer Rights Protection Law given service definition.

As we have already clarified, higher education institutions do business and offer students to obtain higher education, so they provide service – fulfil with the student assigned study

agreement that prescribes the nonmaterial work result acquisition. The Consumer Rights Protection Centre practise also points higher education institutions provided service and identifies student as consumer.

It is noticeable, that The Consumer Rights Protection Centre ensures its assignments given by regulatory enactments, including 01.08.2006. Cabinet regulation No. 632 on The Consumer Rights Protection Centre Provision. Paragraph 14.13. of the above mentioned regulation indicates that the centre is empowered to “assess the offer, the agreement project and conclusion of a contract and the liabilities performance according to the law and make the appropriate decisions” [16]. The above mentioned allows to conclude, that the student has a right to appeal the Consumer Rights Protection Centre, that strengthens the statement, that the student is a consumer.

Analysing the national court practise, Riga regional court sentence of 17.02.2014. may be taken as the example, which left into force Ltd “Latvijas biznesa koledža” appealed the Administrative District Court Riga Court House sentence, which left unchanged The Consumer Rights Protection Centre’s 16.06.2011. Resolution No. E03-KREUD-12 [8]. First of all it is essential, that in the resolution the Consumer Rights Protection Centre identify the student as the consumer – “advertisement audience may be consumer group like students and secondary school students, namely the consumer part that is not paid employment”; “as also no extra commission is paid by student – consumer (...)” [5]. Secondly, in the above mentioned resolution the Consumer Rights Protection Centre recognized the unfair merchant’s commercial practise and set “legal obligation to stop the unfair commercial practise immediately, i.e. important information suppression to influence the consumers decision and baseless use of “for free” “gratis”, etc. until it matches the law requirements” [5]. The above mentioned shows, that the higher education institutions have to follow the fair commercial principles, as the consumer is less secured and his/her only chance to secure his/her legal interest is the legal agreement, which includes all essential elements of the contract. These are regulations that declare the essence and purpose of the agreement, which are essential parts of the intelligible deal.

At the same time, analysing Latvian Republic law that regulate higher education institutions and students mutual relationships, the attention must be paid to the fact, that the legislator is trying to differentiate in some way student and consumer, launching special law regulations that are directly related to relationships between students and higher education institutions.

Education, science and sports area as well as youth and state language area is headed by Ministry of Education and Science, which supervises the State education Quality Service, which ensures quality and the rule of law in different kind of educational institutions and provides support in educational process. The State education Quality Service is authorized to examine the administrative violation matter on violations in education and sport, which are stated in Latvian Administrative Violation Code Chapter Fourteen “g” Administrative Violations in Education and Sport [14]. The mentioned Law’s Section 201.59 Violation of the Provisions of a Study Agreement [14] is referable directly to the actions that result the violation of between student and higher education institution signed study agreement’s regulations.

To sum up all the above mentioned, the conclusion is made, that the student is a full study process participant and performer, who is identified as consumer, though he/she is not an “ordinary” consumer. A student may be called a “special” consumer, who has enough powerful students’ right protection mechanism, developed by legislator. Undeniably the student is consumer, but at the same time the student is an educatee with its rights and responsibilities. It should be mentioned, that the action of higher education institutions,

which is outside the Ministry of Education and Science area of authority, is evaluated by other ministries supervised institutions, e.g. the Consumer Rights Protection Centre, police, prosecutor's office, court, etc.

If the student is only considered the consumer and the mutual relationships between students and higher education institutions are founded only by the agreement regulations, then the higher education system changes into total business, which is performed according to market provisions, being consumer and seller or service supplier. It must be noticed, that if we evaluate student status through the prism of consumer protection and existing court practise we come to the conclusion, that the interaction between students and higher education institutions meets the following consumer protection aspects:

- legal relationships are based on the signed agreement;
- the mandatory provisions included in the: the subject, the rights and responsibilities of the parties(including the right to receive information), the set price (fee), a contract for a specified period;
- provided service according to the agreement – at the end of the studies the state recognized higher education document is issued.

However, if the student is evaluated as the full study process participant, the relationships between the student and the higher education institution do not only emerge from agreement's relationships, but also from student's intellectual cooperation, the spiritual value acquisition, cooperation in scientific research processes, and it is undeniably superior then the market relationships. The higher education institutions nowadays are orientated to the acquisition of knowledge and skills that are very essential for our society and economy. Students are our country's investment for the future. The main value of our country is its people, who influence the country's development model in the future. It is important for the country, that the inhabitants are educated and competitive in the labour market. This indicator will ensure the effective and balanced long-term development of our country. This directly influences national economy and the prosperity. Consequently, it is important to develop the well-considered, effective educational system that is able to provide and realise high level study programmes and studies for the secondary school gradulators and the inhabitants, who are willing to increase their academic development. From this point of view the student cannot be evaluated only as the "consumer-client", who pays to gain the service, he must be identified as an important member of society, country's development potential. The former Latvian Education and Science minister Vjačeslavs Dombrovskis emphasized that "Education is the basis of person's life, but the person is the basis of country. This is the unbreakable circuit (...). That is why all developed countries have paid a lot of attention and resources to education and therefore put the persistent development basis for the whole country" [4].

Summarizing the above mentioned, it is concluded, that from the consumer protection point of view the student has rights to receive the high quality educational service, as well as has responsibilities towards higher education institution. Nevertheless the education including higher education involves much more than market relationships, it has huge development power and country's future.

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