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TÍTULO: Construcciones contractuales en la ley educativa rusa.

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RESUMEN. El artículo revela las características distintivas de las construcciones contractuales y el lugar que ocupan estos acuerdos en el sistema del derecho educativo. Se concluye que el acuerdo sobre la educación meta genera obligaciones no solo en el campo del derecho educativo, sino también en las áreas del derecho administrativo y laboral. El análisis de la composición temática de los contratos en estudio indica que no son, en el sentido estricto de la palabra, los acuerdos sobre educación, ya que se caracterizan por un círculo diferente de sujetos participantes. Estos contratos actúan como elementos de la composición legal que sirve de base para el surgimiento de relaciones legales educativas. Por separado, cada uno de ellos no puede implicar el surgimiento de una relación educativa.

PALABRAS CLAVES: convenio, objetivo de la educación, relación educativa.

TITLE: Contractual constructions in the Russian educational law

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ABSTRACT. The article reveals the distinctive characteristics of contractual constructions and the place these agreements occupy in the educational law system. It is concluded that the agreement on the target education generates obligations not only in the field of educational law, but also in the areas of administrative and labor law. The analysis of the thematic composition of the contracts under study indicates that they are not, in the strict sense of the word, the agreements on education, since they are characterized by a different circle of participating subjects. These contracts act as elements of the legal composition that serves as the basis for the emergence of educational legal relationships. Separately, each of them can not imply the emergence of an educational relationship.

KEY WORDS: agreement, target education, educational relationship.

INTRODUCTION.

The transition of the economy of the Russian Federation to the market path of development leads to significant changes in the theory of legal regulation [Demieva Ainur, 2014; p. 481]. The Federal Law No. 273-FZ dated December 29, 2012 “On Education” [Federal Law No. 273-FZ dated December 29, 2012] (hereinafter referred to as the Law on Education, the new Law on Education) “became the basis for the formation of a renewed branch of educational legislation corresponding to the socio-economic realities of the 21st century, taking into account the obligations taken by Russia in the process of integration into the European educational space, in particular when entering the Bologna process” [Kozyrin A.N., Troshkina T.A., 2017; p. 81].

As known, the Russian Federation joined such a document as the Declaration on the Creation of a Pan-European Higher Education Area (the Bologna Declaration) in the year 2003 [The Bologna Declaration of 19 June 1999, http://www.magna-charta.org/resources/files/BOLOGNA_DECLARATION.pdf]. Russia's accession to the Bologna Declaration led to the modernization of the education system of our state. The new Law on Education is undoubtedly aimed at fulfilling a number of tasks of the Bologna process, among which it is worth mentioning “adopting a system of generally understandable, comparable qualifications (degrees)”, “introducing a two-step system of higher education (bachelor’s degree), teachers and administrative staff”, “mutual recognition of qualifications and relevant documents in the field of higher education, ensuring the autonomy of the universities” [Shkatulla V.I., 2015; p. 675].

According to Art. 101 of the Law on Education, "the organizations that carry out educational activities are entitled to carry out these activities at the expense of individuals and (or) legal entities under the agreements for paid educational services". The new Law on Education pays a lot of attention to the legal formalization of contractual relations in the field of education, which speaks about the improvement of legal techniques and the enforcement of the rights of subjects of the educational relations. The Law on Education brought legal norms on contractual provision of education into the system. A novelty in the legal regulation of contractual educational relations is the legislative consolidation of the concept of an “agreement on education”, as well as the detailed regulation of relations connected with the target enrollment and target education.

Prior to the entry into force of the new law on education, legal regulation in the field of target enrollment was not clear enough in the legislation. According to clause 11 of Art. 21 of the Law of the Russian Federation “On Education” [Law of the Russian Federation No. 3266-1 dated July 10, 1992] that has lost its force, the educational organizations of the secondary vocational and higher

education had the opportunity to carry out target enrollment of students on the basis of contracts with public authorities in order to prepare relevant specialists for them. Based on clause 2 of Art. 11 of the current Federal Law “On Higher and Postgraduate Professional Education” [Federal Law No. 125-FZ dated August 22, 1996], the quotas for target enrollment to the federal universities have been determined by them annually in coordination with the relevant authority [Kobchikova E.V., Cheparina O.A., 2015]. At the moment, the Order of the Government of the Russian Federation “On Target Contract Training of the Specialists with Higher and Secondary Professional Education” No. 942 dated September 19, 1995 [Resolution of the Government of the Russian Federation No. 942 dated September 19, 1995] has already lost its legal force.

DEVELOPMENT.

Methods.

The leading methods for the study of contractual structures in the Russian educational law are the dialectical method and the intersectoral method of legal research. The dialectical method substantiates the interconnection and interdependence of the processes associated with the legal regulation of educational relations. The interdisciplinary method allows, in the study of contractual structures in the Russian educational law, to combine civil law and administrative law means, to relate private law and public law principles.

Results and Discussion.

A contract is an agreement between the parties that is protected by law. In case of breach of a contract, the remedies are used [Ehsan Zarrokh, 2008; p. 2]. “The use of contracts... is explained, among other things, by the fact that this is a flexible legal form in which social relations of different nature can be clothed” [Braginsky M.I., Vitryansky V.V., 2001; p. 13], including educational. “The main purpose of the contract is to regulate the behavior of people within the framework of the law

by indicating the limits of their possible and proper behavior, as well as the consequences of violating the relevant requirements” [Braginsky M.I., Vitryansky V.V., 2001; p. 13].

It should be noted that “every contract depends on the offer acceptance” [Ernest W. Huffcut, Edwin H. Woodruff, 1913; p. 1]. Braginsky M.I. and Vitryansky V.V., write: “The process of concluding contracts is predetermined by the very nature of the corresponding construction: if the meaning of the contract consists in an agreement, then its conclusion implies the expression of the will of each of the parties and its coincidence” [Braginsky M.I., Vitryansky V.V., 2001; p. 193]. “The stages of the offer and its acceptance follow one after the other and never coincide” [Braginsky M.I., Vitryansky V.V., 2001; p. 194].

There are many different contracts in the education field. They, of course, apply the principles of civil law, the key of which is the principle of contract freedom. The conclusion and execution of the agreements on target enrollment and on target training are carried out on the basis of this principle. Now we will carry out the ratio of the studied contracts with the agreement on education. The concepts “agreement on education” and “agreement for paid educational services”, in our opinion, are identical in domestic legislation. The agreement on education always includes a citizen who is enrolled in a study or his/her legal representative. In our opinion, this agreement may be referred to as a consumer contract, in which the student is a weak side and needs special legal protection in case of violation of his/her subjective rights. The new Law on Education provides for two types of agreements for paid educational services now: the consumer contracts with the participation of the student-consumer educational services and the contracts between organizations or individual entrepreneurs, in which the educational organization participates.

Having studied the features of the subject composition of the agreements on target enrollment and on target training, we came to the conclusion that they could not be classified as the agreements on education. The parties to the agreement on target enrollment are the educational organization and

the relevant state or municipal authority or legal entity that has entered into a special agreement on education with the citizen.

In the agreement on targeted training, the parties are a citizen and the relevant public authority or legal entity. A party to the agreement on target education is not an educational organization, and the agreement on target enrollment has a different subject than the agreement on education.

The key obligation under the agreement on target enrollment is the obligation of the organization carrying out the educational activities to organize, within the framework of the relevant quota, the target enrollment of citizens, who have entered into a special agreement on education with the customer. It should be especially emphasized that the customer has no obligation to pay for the education of such citizens, since their education takes place at the expense of the budget funds. The obligation to educate citizens within the framework of targeted enrollment is of public legal, not contractual (private legal) nature.

Summing up, it should be noted that the agreement on education is an element of a legal composition, which, in turn, serves as the basis for the emergence of educational relationship. The agreements on target enrollment and target training are similar elements only in a relationship. Separately, each of them cannot entail the emergence of educational relationship. In these contracts, the relationship between the educational organization and students is dependent on the relationship of these individuals with the relevant public authority or legal entity .

Today, the legal regulation of the agreements in question is carried out mainly by the Law on Education and the Order of the Government of the Russian Federation No. 1076 dated November 27, 2013 [Resolution of the Government of the Russian Federation No. 1076 dated November 27, 2013].

It should be borne in mind that the agreement on target training can be concluded both before the beginning of the target enrollment, and at any stage of education. A party to the agreement may be

both an adult and a minor citizen. The party is the student himself/herself, and not his/her legal representative. The legal representative consents to the conclusion of such an agreement, if the student is a minor.

The regulation subject of the agreement on target education is the relations between the bodies or organizations and the citizens arising with regard to the latest education. The agreement on target education is governed by the norms of educational law as an integrated branch of law, which includes integrated institutions of educational and other branches of law [Syrykh V.M.]. Due to the complex institutions, the legal norms are clarified in relation to educational relations [Kobchikova E.V., 2013; p. 63].

Studying the legal nature of the agreement on target education, one should know the rights and obligations of its parties. The obligations of the body or organization should include the provision of social support to the citizen during the education period (measures of material incentives, payment of paid educational services, provision of use and (or) payment for residential premises during the educational period, etc.); organization of educational, industrial and pre-diploma practice of the student in accordance with the curriculum; employment of a citizen in the organization specified in the agreement on target education, and compensation payment to the citizen in double amount of costs associated with the provision of social support measures in the event of non-fulfillment of obligations for his/her employment during the period specified in a particular agreement.

The citizen (student), in turn, should master the curriculum; pass the final certification; complete the internship; comply with the acts of the body or organization, in which he/she practices; conclude an employment contract with the relevant body or organization; reimburse the body or organization for the expenses related to social support of a citizen, as well as pay a fine in case of non-fulfillment of the employment obligation.

CONCLUSIONS.

Summing up, it is possible to single out the following obligations of the parties to the agreement on target education: related to the field of educational law (for example, the student's obligation to master the curriculum); administrative and legal obligations (for example, the citizen's obligation to comply with the acts of the body or organization, in which he/she practices), and obligations in the field of labor law (for example, the student's obligation to conclude an employment contract with the relevant body or organization).

The considered legal features of the agreement on target education are also inherent in the agreement on target enrollment, as it is also complex in its nature.

We should note, once again, that the agreements on target education and on target enrollment, being the complex institutions of educational law, are interrelated elements of a legal composition that serves as the basis for the emergence of an educational relationship. Separately, each of the studied agreement cannot entail the emergence of educational legal relationship.

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