E.Khomidov, Teacher of the Military- Technical Institute of the National Guard of the Republic of Uzbekistan

THE CONTENT OF CONTRACTS FOR THE IMPLEMENTATION OF ENTREPRENEURIAL ACTIVITIES OF PUBLIC HIGHER EDUCATION INSTITUTIONS AND THE PROBLEMS OF THEIR IMPLEMENTATION

E.Khomidov

Abstract: The article analyzes the content of contracts for the implementation of entrepreneurial activities of public higher education institutions and the problems of their implementation.

Keywords: public institution, law, higher education, entrepreneurship, finance.

In nowadays market conditions, it is difficult for a public institution to survive only on budget funding. The issue is especially important in the context of these institutions, especially in public universities, where there is an opportunity to provide various services in a competitive market, attract additional funding, implement various research and innovation projects.

In this case, the university could have concluded contracts for business activities in the past! Why is it so relevant now? a reasonable question arises. Entrepreneurial activity of the university should be enterprising, independent and profitable. At the same time, the main focus should not be on profit, but on the implementation of its charter goals, the development of education. The adopted legislation puts new tasks before the university. Therefore, at this stage, the university needs to widely introduce legal mechanisms for doing business.

Today, the need to develop entrepreneurship in higher education is explained by:

Introduction of public-private partnership in higher education;

emergence of a competitive environment in the market of higher education services;

providing higher education institutions with opportunities for admission to higher education on a fee-for-service basis;

the variability of demand for higher education;

Widespread introduction of new forms and methods of higher education;

State funding of higher education is closely linked;

Weak communication with the business structures of the university;

establishment of education in accordance with international standards, etc.

It is necessary to classify the contracts concluded by the university for business activities. First of all, it is necessary to distinguish between

contracts related to the performance of normal functional tasks and contracts aimed at raising additional funds.

Provision of education by professors and teachers of the university on a fee-for-service basis, the organization of scientific circles for students, participation in various conferences by the university in connection with the functional responsibilities of the university in the manner prescribed by this law.

According to the legal literature, the content of the contract consists of its clauses (conditions, details) [1]. According to E.A. Sukhanov, the content of the contract as an agreement (contract) is the sum of the terms agreed between its parties, which constitute the content of the contract obligations [2].

Some experts say it is important to focus on what is the main subject of the contract. It is noted that in the contractual approach to the performance of the usual functional tasks of the university, its object is the provision of educational services aimed at achieving a specific result [3].

In our opinion, although the phrase "the content of the contract" in the contracts concluded in the Uzbek language mainly means the subject of the contract, it is clear that the content of the contract is the rights and obligations of the parties. Because it is the rights and obligations that allow you to determine what the contract is about, what obligations the parties will fulfill. The terms of the contract are a way of defining mutual rights and obligations. Therefore, when talking about the content of the contract as a legal relationship, the rights and obligations of the parties are considered.

In our opinion, the university should pay attention to the analysis of contracts for business activities. According to V.V. Kvanina, the professor who gives the lecture is not in a contractual relationship with the student, but in an employment relationship with the university, and therefore serves the students [4]. According to V. Shkatulla, the relationship between the educational institution and the student is regulated by the method of administrative law, that is, the relationship of subordination is established between them. Objections to the civil-legal structure of the provision of educational services for a fee are as follows: 1) a collective agreement is concluded only by a business entity, and the educational institution is not considered a business entity; 2) the content of the contract for paid services is expressed in the actions performed by the executor on behalf of the customer, and the customer pays for services, ie the customer's obligation ends only with payment. The contract of education requires the student to work and master the educational program at the same time as the services of the executive of the educational institution or individual teacher [5].

The opinion of V.I.Shkatulla cannot be agreed upon as follows. First, a collective agreement is not concluded only by a business entity. Although Article 358 of the Civil Code provides that retail trade, public transport,

communications, energy, medical care, hotel services, etc. [6] are mainly carried out by business entities, this article does not clearly define the subject of a public contract. Second, the payment of services by the customer in the provision of educational services does not in itself constitute a complete fulfillment of the contractual obligation. Accordingly, the condition that the learner fulfills certain obligations is also expressed in the content of the contract.

V.M .Syrykh, studying the issue of providing educational services for a fee, argues that the provision of educational services is not of a civil nature. In his opinion, first of all, in the provision of educational services for a fee, the customer is required to take a number of active actions (lectures, participation in seminars, implementation of the curriculum, etc.). FC, on the other hand, means only payment by the customer. Second, the equality of the participants in a civil-law relationship does not apply because disciplinary action may be taken against the learner. Third, the contract for the provision of paid educational services comes into force from the time of payment, not from the date of conclusion. Fourth, the legal relationship to the provision of education cannot be revoked on the basis of the performance of an obligation. Fifth, the learner does not have the right to dispute and recover damages for the quality of educational services inherent in a civil legal relationship.

Cannot agree with the author's opinion. The relationship between the university and the student is not only within the scope of administrative-legal norms, but also a wide range of legal relations. According to Article 357 of the Civil Code, the contract comes into force from the moment of its conclusion and remains binding on the parties. In order for a contract to be considered concluded, the parties are required to agree on all important terms.

According to Article 703 of the Civil Code, it is necessary to perform a non-material service on behalf of the executing customer, rather than to perform legal actions as in the contract of assignment [9]. Enforcement is an important condition in the legal relationship with respect to education. The obligation becomes void as a result of the performance of this obligation as in the other terms of the contract. In addition, the challenges facing higher education today require improving the quality of educational services. Compensation for damages is carried out in accordance with the general rule (Article 11 FC) as a method of protection of civil rights.

In our opinion, the method of administrative law in legal relations related to educational services is mainly manifested only in the observance of discipline, internal rules. The content and essence of civil law are of paramount importance in the provision of educational services for a fee. This is because in any contract, based on the principle of freedom of

contract, the interest is first and foremost. The parties agree on the content of the mutual benefit agreement. In this case, the rights and obligations of the university and the student are subject not only to the terms of the contract, but also to the norms of a public nature. However, this does not in itself mean that this agreement is governed by the method of administrative law.

According to A.V. Belozerov, the "third" method of legal regulation is applied to the provision of educational services at the expense of the budget as a social security relationship. The obligatory subject for this method is the state, its bodies (social protection bodies). On the other side of the legal relationship - the citizen participates and does not perform any alternative obligations [7].

In our opinion, it is natural for the state to participate in the implementation of entrepreneurial activities in higher education on the basis of educational services or other contracts. This is because the FC implies that the state participates on an equal footing with other entities. In the provision of educational services, the customer is required to perform certain actions, acquire relevant knowledge and skills, pass exams and perform other duties assigned to him. Therefore, the opinion of A.V .Belozerov that the participation of a citizen does not fulfill any alternative obligation is incorrect.

In our opinion, the contracts concluded for the implementation of entrepreneurial activities are a legal instrument for the implementation of entrepreneurial activities aimed at obtaining income (profit) at the risk and under the property responsibility of the university. For example, an agreement signed by a university to implement startup projects.

It is desirable to divide the business activity of the university into activities directly related to the performance of functional duties (a certain part on a contract basis, on the basis of a contract for paid services) and activities not directly related to the performance of functional duties of the university (only on a contract basis) appropriate

It would be appropriate to indicate a lease agreement as a common business activity of a state university. Leasing of property of a higher education institution is subject to a special procedure. On April 8, 2009, the Cabinet of Ministers of the Republic of Uzbekistan adopted Resolution No. 102 "On meAndijan State University named after Z.M.Boburres to improve the procedure for leasing state property." According to him, 50% of the rent to the transit accounts of the centers will be directed to the Fund for Support of Privatized Enterprises, 40% - to the custodian of state property and 10% - to the relevant center [8]. This means that only 40 percent of the leased property will remain at the disposal of the higher education institution. The

remaining funds are given to the persons designated by the owner as state property.

In accordance with paragraph 16 of the Decree of the President of the Republic of Uzbekistan dated April 29, 2020 No PF-5987 "On additional meAndijan State University named after Z.M.Boburres to radically improve legal education and science in the Republic of Uzbekistan", from May 1, 2020 - Proceeds from the lease of property are transferred in full to the development funds of these institutions, minus the payment of the operator of the electronic trading platform [9].

In our opinion, the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 102 of April 8, 2009 "On meAndijan State University named after Z.M.Boburres to improve the procedure for leasing state property" was adopted in a timely manner to protect state property from various abuses and ensure the interests of the state. However, today's reality precludes the conclusion of low-cost leases by higher education institutions through various abuses, and the tax legislation has also improved. Therefore, it is advisable to apply this rule to all universities, where the proceeds from the lease of property are transferred in full to the development funds of these institutions, minus the payment of the operator of the electronic trading platform.

According to paragraph 15 of the Regulation on the procedure for leasing state property, in the case of proposals from two or more bidders, the lease agreement is concluded with the bidder who offered the maximum amount of rent for the leased state property in accordance with the terms of the lease [10]. This means that the person offering the more expensive price wins the right to rent. This is also meant as a specific property right.

The legislation does not provide for an exception. The Civil Code contains the construction of a free use contract. Can it be used for free at this location? A reasonable question arises. In our opinion, there is no prohibition in the legislation in this regard. The above legislation regulating the lease of state property does not provide for free use. The general rule is to lease state property, not to use it for free. Although the rule of transfer of state property under the terms of the lease agreement applies, it should not exclude the transfer of free use. It is only necessary not to go beyond the intended use. It must not lead to a state of cheap, or rather, harmful use, which does not justify the cost of state property as it did before the decision was made.

The university uses its intellectual capital and material and technical base to attract additional funding. While intellectual capital allows for the development of education and research, the material and technical base allows the university not only to carry out its normal activities, but also to earn income by providing additional paid services.

It should be noted that the fact that the university conducts business activities that are not unique to it does not justify itself. This is because market laws create a unique competitive environment and do not allow entities that cannot provide appropriate professional services to enter the market. Therefore, the main way to raise additional funds for higher education is to expand the provision of educational services, to provide services in the direction of its nature.

General Regulations on the conclusion of contracts for entrepreneurial activities of higher education institutions FC, the Law "On the legal framework of business entities", the Regulation on Higher Education (February 22, 2003, registration number 1222), Higher and secondary special, professional Regulations on the form of payment-contract training in educational institutions and the order of distribution of funds received from it (February 26, 2013, registration number 2431) and other legislation. The content of the agreement on the implementation of entrepreneurial activities of the university is determined by the agreement between the parties.

In today's world of opportunities, the university can provide a wide range of services. At the same time, the services provided by higher education institutions are wide and complex. For example, conducting a scientific seminar on the implementation of judicial reform requires a number of related actions. This includes conducting research by the scientific community to identify a legal problem, proposing a solution, bringing it to the attention of the general public, studying public opinion, and so on. actions complement each other.

Execution of the contract shall be carried out at the location of the higher education institution, unless otherwise provided by the contract.

In our opinion, the contractual relations of higher education institutions for the implementation of entrepreneurial activity are regulated by civil law, as well as there are elements of public regulation in the conduct of entrepreneurial activity.

References:

1. 1.Муаллифлар жамоаси. Фуқаролик ҳуқуқи. Дарслик. Т.: ТДЮУ, 2017. 312 б.

2. Гражданское право: В 4 т. Том 3: Обязательственное право: Учебник. 3-е издание, переработанное и дополненное. Под ред. Е.А.Суханова. М. Волтерс Клувер, 2008. – С.95.

3. Цуровцева М.Н. Государственный вуз как юридическое лицо. Дисс…канд.юрид.наук. -М.: 2005. – С. 192.

4. Кванина В.В. Проблемы отраслевой принадлежности договора на оказание возмездных образовательных услуг. //Вестник ЮУрГУ. 2005. №8. – С. 162.

5. Шкатулла В.И. Образовательное право. Учебник для вузов. М.: НОРМА–ИНФРА-М. 2001. – С. 39-40.

6. Ўзбекистон Республикасининг Фуқаролик кодекси.-Т.: Адолат 2017.560 б.

7. Сырых В.М. Образовательное право как отрасль российского права. 2-изд. –М.: 2000. Исследовательский центр качества подготовки специалистов. – С. 30-32.

8. Кванина В.В. Проблемы отраслевой принадлежности договора на оказание возмездных образовательных услуг. //Вестник ЮУрГУ. 2005. №8. – С.166.

9. Белозеров А.В. Понятие и содержание обязательств по возмездному оказанию образовательных услуг. Автореф. Дисс…канд.юрид.наук. М.: 2000. – С. 10.

10. Ўзбекистон Республикаси қонун ҳужжатлари тўплами, 2009 й, 15-сон,186-модда.

11. Ўзбекистон Республикаси Президентининг 2020 йил 29 апрелдаги “Ўзбекистон Республикасида юридик таълим ва фанни тубдан такомиллаштириш бўйича қўшимча чора-тадбирлар тўғрисида”ги ПФ–5987-сон Фармони // Қонун ҳужжатлари маълумотлари миллий базаси, 30.04.2020 й., 06/20/5987/0521-сон.

12. Приказ Минстра Высшего и среднего специального образования Республики Узбекистан Об утверждении положения о высшем образовании. Зарегистрираван Минстерством юстиции Республики Узбекистан от 22 февраля 2003г № 1222. http: // lex.uz/ docs