ANNOTATION
TO THE DISSERTATION OF BURASHOV SHOKAN UALIKHANULY, PREPARED FOR THE DEGREE OF DOCTOR OF PHILOSOPHY (PhD) UNDER THE EDUCATIONAL PROGRAM 8D04208 – «LAW» ON THE TOPIC: «LEGAL PROBLEMS OF THE APPLICATION OF LEGISLATION ON CONSUMER RIGHTS PROTECTION IN THE EDUCATION SYSTEM OF THE REPUBLIC OF KAZAKHSTAN»

Relevance of the research topic. Both the types of services and the ways in which they are provided have changed. Alongside public and private educational institutions, short-term courses, additional programmes, corporate training, online platforms and blended learning have become widespread. In paid educational relations, in addition to the learner, parents, employers, third parties paying tuition fees, and sometimes the state may also participate.

However, legislation does not in all cases clearly define the role of each of these persons in the contract. This gives rise to practical questions as to who is a consumer, who is entitled to demand a refund, and who may challenge an academic decision.

The legal aspect of the issue is particularly evident at the intersection of two laws. The Law of the Republic of Kazakhstan «On Protection of Consumer Rights» protects an individual who receives a service for purposes unrelated to entrepreneurial activity. The Law of the Republic of Kazakhstan «On Education» establishes the rights of learners and the obligations of educational organisations. However, the issues of the quality of paid services, pre-contractual information, tuition fee refunds, unfair contractual terms, appeals against digital assessment, and the allocation of the burden of proof have not been comprehensively resolved in either of these legal acts. This also explains why similar disputes may be considered under different legal provisions when brought before a court or an authorised body.

It would be erroneous to measure the quality of an educational service solely by its final result. This service is not provided in the form of a tangible object, while a learner's grade and learning outcomes are affected by their motivation, attendance, completion of assignments and academic integrity.

Therefore, the fact of receiving a low grade, failing to obtain a diploma, or failing to secure employment does not in itself prove that the service was of inadequate quality. Legal assessment should focus on the actions controlled by the educational organisation: whether the programme was implemented, whether the academic workload was maintained, whether appropriate teaching staff were engaged, and whether assessment procedures and infrastructure were provided. The issue of quality was considered within these limits.

The digital environment has further complicated this distinction. The Digital Code of the Republic of Kazakhstan and the Law on Artificial Intelligence establish the general foundations for protecting human rights and legitimate interests in the digital environment and the basic requirements for the use of AI systems.

However, despite the adoption of new laws, many issues and specific mechanisms arising in educational relations, particularly those related to their

digitalisation, have not yet been fully and specifically regulated by legislation. This situation leads to a number of difficulties and contradictions in law enforcement practice.

A paid educational services contract is usually concluded for a long period, while its text is prepared in advance by the educational organisation. After choosing an educational institution and programme, an applicant incurs time and financial costs if they subsequently decide to transfer to another organisation. Assessment records, attendance data, platform records and internal commission minutes are also usually retained by the organisation itself. In such circumstances, the learner cannot influence the content of the contract and faces difficulties in collecting evidence when a dispute arises. Their vulnerable position is manifested precisely in this informational, contractual, academic and evidentiary dependence.

This protection does not negate the learner's own obligations. The learner is obliged to attend classes, complete assignments, comply with academic integrity requirements and observe the lawful requirements of internal regulations. Therefore, the proper provision of services by the organisation and the learner's individual educational outcome cannot be regarded as one and the same concept. If the organisation performs the actions stipulated by the contract and the law, a low grade or failure to obtain a diploma does not automatically mean that the service was of inadequate quality.

The issue of information provided before conclusion of the contract should also not be overlooked. The consumer should know in advance the content of the programme, the duration and language of instruction, the licensing and accreditation status, the teaching staff, the full price, additional payments, the grounds for changing the price, and the procedure for refunds and appeals. Such information should not merely be posted on a website but should be presented in a clear and readily comparable form. Otherwise, a person cannot adequately assess the economic and legal risks of the contract.

Disputed provisions may also be found in the contract itself. Unjustified limitation of the educational organisation's liability, unilateral changes to tuition fees, unjustified substitution of a significant part of the programme, or refusal to refund payment for services not provided cannot be justified by freedom of contract. Restrictions on access to court, mandatory arbitration imposed before a dispute arises, and placing the entire burden of proof on the consumer also raise doubts. Kazakhstan's legislation has not yet fully developed criteria for assessing such terms with due regard to the specific characteristics of the education sector.

There are several formal avenues for protecting rights. The internal commission of an educational organisation, the relevant authorised sectoral body, the consumer protection authority, a public association, a mediator and a court may each consider different aspects of the same dispute. In practice, however, their competences and procedures are not always interconnected. A document submitted to one body may not be transferred to another, while the applicant may be asked to resubmit the same materials. As a result, a complaint may be transferred from one institution to another, delaying the restoration of the violated right.

When court practice was classified, its inconsistency became apparent. Disputes concerning tuition fee refunds, retention of actual expenses, proof of conclusion of a contract, moral damages, expulsion, academic integrity and fulfilment of obligations through employment under a state grant do not rely on the same legal grounds. Therefore, including them in one general statistical group may lead to erroneous conclusions. In this study, cases were systematised according to year, subject matter of the dispute, type of claim, applicable legal provision, decision and the author's legal assessment.

Although digital disputes have a different nature, this area also contains a number of deficiencies. One of them concerns the protection of consumers' rights in the operation of platforms. In particular, the procedure for restoring the consequences caused by technical errors has not been established in advance at the legislative level.

It is difficult to resolve all these issues solely through administrative control or the general provisions of the Civil Code. The public importance of education and academic autonomy must be preserved, but the private-law nature of a paid contract must also be taken into account. Here, the consumer's actual vulnerability and the specific features of the digital environment are simultaneously evident. The approach proposed in the dissertation is aimed at reconciling these interests according to the specific nature of the dispute rather than placing them in opposition to one another.

Object of the research is the social relations arising in the Republic of Kazakhstan in the provision, receipt and payment of paid educational services. These relations also include assessment of service quality, performance of contractual obligations, use of digital technologies and protection of violated rights.

Subject of the research. The study examines the norms of the civil, consumer, educational, digital and procedural legislation of the Republic of Kazakhstan. International instruments, foreign legislation and law enforcement practice, legal positions of Kazakhstan's courts, contracts for the provision of paid educational services, internal acts of educational organisations and scholarly works relating to the topic were also examined.

Aim of the research. To analyse consumer relations in the education system of the Republic of Kazakhstan and the application of legislation on the protection of consumer rights. Based on this analysis, the study aims to develop a legal concept defining the role of private-law and public-law instruments and to provide specific proposals for improving legislation.

In accordance with the stated aim, the objectives of the research are:

To achieve this aim, the following research objectives were established: to identify the patterns of historical and legal development of the institution of consumer rights protection in the education sector and the boundaries of private-law and public-law regulation;

to assess the possibility and limits of adapting foreign legal mechanisms to the legal system of the Republic of Kazakhstan;

to formulate the concepts relating to educational services and the legal criteria for service quality and informational transparency;

to substantiate a model of the legal status of participants in educational relations based on the functions they perform;

to determine the legal nature and content of the contract for the provision of educational services and to propose mechanisms for protecting consumers from unfair practices and unfair contractual terms;

to substantiate the legal position of participants in the digital educational environment and the digital rights of consumers;

to develop an institutional-combined model for protecting the rights of consumers of educational services;

to systematise court practice, determine criteria for improving law enforcement and develop article-level proposals for improving the current legislation.

Research hypothesis.The study is based on the assumption that neither unlimited application of consumer legislation to the education sector nor its complete exclusion from this sector produces an appropriate result. Its application depends on the existence of a paid service, the acquisition of the service for non-entrepreneurial purposes, and the specific role performed by the relevant person under the contract. The quality of a service should be assessed through the manner in which the organisation performs obligations within its control. Special criteria are required for unfair contractual terms, while where digital assessment and proctoring are used, the learner should have an opportunity to receive an explanation and lodge a complaint. If protection mechanisms are interconnected from internal review through to judicial protection, consumer rights can be effectively protected without undermining academic autonomy.

Another component of the hypothesis concerns rejecting the direct copying of foreign models. It is necessary to compare not the names of individual mechanisms but the problems they can solve in Kazakhstan. For example, pre-contractual information and control over unfair terms may be directly incorporated into existing legislation. A public ombudsman and specialised pre-trial review may be adapted to the competences of national authorities. At the same time, granting an individual court decision the force of a generally binding source of law or imposing mandatory arbitration on a consumer before a dispute arises would not correspond to Kazakhstan’s continental legal system.

Scientific novelty of the research. The study proposes a civil-law concept for the protection of consumers of paid educational services. Its novelty lies not in increasing the number of individual terms, but in considering the status of subjects, service quality, contractual terms, digital guarantees, complaint procedures and legislative proposals within a single logical framework. The specific results obtained from the research are presented below.

The scientific novelty of the dissertation research is determined by the following principal conclusions submitted for defence:

1. It has been substantiated that private-law and public-law regulation are applied simultaneously in protecting consumers of paid educational services. Conclusion of a contract, provision of pre-contractual information, payment, performance of obligations, refund for services not provided, and compensation for

damages and moral harm belong to the private-law sphere. Licensing, state standards, accreditation, authoritative academic acts and state control are regulated by the public-law regime. The regime applicable in a particular dispute is determined depending on the subject matter of the claim, the obligation violated and the powers of the defendant. Violation of a public-law requirement may prove improper performance of the contract, but an instruction issued by a state body does not by itself resolve the consumer's monetary claim. It is proposed to establish this relationship in the new Article 42-9 of the Law "On Protection of Consumer Rights", and the criteria for distinguishing civil and administrative disputes in the new paragraph 20-1 of Regulatory Resolution No. 7 of the Supreme Court (Appendix A, positions 5 and 15 of Table A.1).

2. A three-level functional matrix for adapting foreign legal mechanisms to Kazakhstan has been developed. Mandatory pre-contractual information, control over unfair contractual terms, free pre-trial review for consumers and preservation of the right to apply directly to court are classified as mechanisms suitable for direct adaptation. A public ombudsman, independent specialised pre-trial review and two-stage representative claims concerning homogeneous violations should be introduced with modifications adapted to national conditions. The public ombudsman should not duplicate the powers of a state body or a court. Its assessment in a particular case should be independent, while its conclusion should be recommendatory in nature. Mandatory arbitration imposed before a dispute arises, granting an individual court decision the status of a generally binding source of law, and establishing a new quasi-judicial system duplicating existing bodies were assessed as inappropriate for Kazakhstan. These proposals concern Articles 42-1 and 42-8 of the Law, the Civil Procedure Code and the Government resolution on the public ombudsman (Appendix A, positions 3, 4, 9 and 13 of Table A.1).

3. The principal concepts relating to the education sector and the criteria for assessing the quality of paid educational services have been clarified. "Educational activity" refers to the general activity of an educational organisation. "Educational services" encompass specific actions in relation to a learner. "Paid educational services" constitute the object of a civil-law obligation, while the contract for their provision serves as the legal basis specifying the rights and obligations of the parties. Service quality is determined by compliance with pre-contractual information, the contract, state standards, the programme, licensing requirements, the published accreditation status, requirements imposed on teaching staff, educational and digital infrastructure, and assessment procedures. If an organisation fails to perform an obligation within its control, the service is considered to be of inadequate quality. A low grade, failure to obtain a diploma or failure to secure employment does not in itself lead to such a conclusion. It is proposed to establish these criteria in Articles 1 and the new 42-9 of the Law, Article 63 of the Law "On Education", state standards and the model contract (Appendix A, positions 1, 5, 8, 11, 12 and 15 of Table A.1).

4. A model has been developed for determining the legal status of a consumer of paid educational services according to their specific role. The learner directly receives the service, the customer concludes the contract, the paying person finances the service, and the legal representative acts on behalf of the represented person. One

person may perform several of these functions simultaneously. However, each right, obligation and authority to bring a claim arises from the specific function performed. Consumer status is granted to an individual who orders, purchases or directly uses a paid service for non-entrepreneurial purposes. A legal entity, employer or state may act as a customer or financier but is not recognised as a consumer. The status of a weaker party is also not automatic. It is assessed on the basis of informational, contractual, academic and evidentiary inequality, as well as the costs associated with transferring to another organisation. It is proposed to establish the model in Articles 1 and the new 42-9 of the Law, Articles 47 and 63 of the Law "On Education", the model contract and judicial interpretations (Appendix A, positions 1, 5, 7, 8, 12 and 15 of Table A.1).

5. Violations in the education sector have been divided into six groups related to contractual, informational, standards-based, assessment-procedural, digital and unfair practices. An unfair practice describes the conduct of an educational organisation before conclusion of a contract or during its performance. An unfair contractual term concerns a significant imbalance in the text of the contract. It is incorrect to refer to conduct lacking elements of a criminal offence as a "fraudulent practice". A term that has not been individually negotiated, is unclear, contrary to good faith and creates a significant imbalance between the consumer's rights and obligations should be recognised as unfair. Such a term should not apply to the consumer or should be declared partially invalid. If the remaining part of the contract can be performed, it remains in force. It is proposed to include refusal to refund payment for services not provided, retention of a fixed percentage without proving actual expenses, unjustified price changes, exclusion of liability and restrictions on access to court in a special list (Appendix A, positions 2, 5, 8, 12 and 15 of Table A.1).

6. A model has been substantiated for protecting consumers of digital educational services and allocating responsibility between the educational organisation and the platform provider. Such services provide access to materials through a digital learning system, interaction, assessment, monitoring, recording of learning outcomes or processing of personal data. During the study, digital content, platform services, automated assessment, remote monitoring and the digital profile were distinguished according to their functions rather than combined into a single concept. The consumer has the right to know in advance that the system is being used, to receive an explanation of the principal criteria affecting the result, and to request human review of a machine-generated decision. An automated grade should not be the sole basis for an academic or disciplinary sanction. If access, an assignment or learning time is lost due to a technical failure, the consequences should be remedied. In the event of significant unavailability, payment should be recalculated. The educational organisation retains primary responsibility to the consumer for the platform it has selected (Appendix A, positions 2, 5, 6, 7, 8, 10, 11, 12, 14 and 15 of Table A.1).

7. An eight-level institutional-combined model for protecting consumers of paid educational services has been proposed. It includes pre-contractual protection, contractual guarantees, an internal complaint procedure within the educational

organisation, independent pre-trial review, state control, public protection, judicial protection and rapid digital remediation. These levels are not mandatory stages. The consumer chooses the protection channel depending on the subject matter of the dispute and the remedy sought. The right to apply directly to court is preserved. For each level, the grounds for its application, responsible subject, competence, time limits, outcome and evidence generated have been defined. If an application falls within the competence of several bodies, the initial body must fully register it and transfer the materials electronically. Documents previously submitted should not be requested from the consumer again. The model provides for amendments to Articles 42-1, 42-8 and the new 42-9 of the Law, Order No. 595, the Government resolution on the public ombudsman and the rules of interdepartmental electronic document management (Appendix A, positions 3, 4, 5, 10, 13 and 14 of Table A.1).

8. Based on the systematisation of court practice by categories of disputes, differentiated criteria for resolving cases concerning paid educational services have been proposed. The court should first determine the private-law or public-law nature of the dispute, the holder of the violated right, the specific role of the claimant and the appropriate defendant. When tuition fees are refunded, the educational organisation must document the volume of services provided and the actual expenses incurred specifically in relation to the consumer. A predetermined percentage, lost profit and general administrative expenses should not in themselves be recognised as actual expenses. Service quality should be assessed not by the learner's subjective dissatisfaction but by the performance of obligations controlled by the service provider. Academic autonomy does not give a court the right to substitute its own pedagogical opinion. However, the court may examine whether the procedure was announced in advance, whether the person was heard, whether the evidence was sufficient, whether the commission was impartial and whether the decision was reasoned. The amount of moral damages should be substantiated according to the severity and duration of the violation and its impact on the learner (Appendix A, positions 5, 7, 10 and 15 of Table A.1).

Theoretical basis of the research. The study is based on doctrines concerning obligations, contracts, paid services, contracts of adhesion, good faith, invalidity, liability and protection of rights in civil law. Issues of consumer and educational law addressed in Kazakhstani and foreign literature were also taken into account. Contemporary approaches to digital rights, personal data and automated decision-making were considered separately.

In selecting foreign materials, the criterion was not the prestige of a particular model but its ability to solve a specific problem in Kazakhstan. The proposed approach was compared with the principles of Kazakhstan's civil law, such as freedom of contract, good faith, proper performance of obligations, compensation for damages and judicial protection.

The normative basis of the dissertation research consists of the Constitution of the Republic of Kazakhstan, the Civil Code, the Civil Procedure Code, the Administrative Procedural and Process-related Code and the Digital Code of the Republic of Kazakhstan. The laws "On Protection of Consumer Rights", "On Education", "On Artificial Intelligence", "On Personal Data and Their Protection",

"On Mediation" and "On Arbitration", ministerial orders in the field of education and normative resolutions of the Supreme Court were also used.

The international framework includes the United Nations Guidelines for Consumer Protection, international human rights instruments, UNESCO documents and official acts of the states selected for comparison.

When applying normative materials, two time periods were distinguished. A court case was assessed according to the version of the law in force at the time the disputed relationship arose. Legislative proposals, however, were developed on the basis of the provisions in force at the time the study was completed. This makes it possible to avoid applying subsequently adopted legislation retroactively to previous relations and to distinguish applicable law from legislative proposals.

Empirical basis of the research. The principal empirical material consisted of the Kazakhstan court decisions presented in the dissertation. These include cases concerning tuition fee refunds, proof of conclusion of a contract, retention of actual expenses, moral damages, expulsion, academic integrity, transfer and obligations relating to state grants. These cases were systematised according to the legal nature of the dispute and type of claim and presented in the appendix.

In addition to court decisions, contracts and internal procedures of educational organisations, advertising and pre-contractual information, assessment and appeal templates, the operation of digital platforms and official explanatory materials were examined. The limitations of the empirical material were taken into account in advance. General consumer statistics were not used as specialised statistics on educational disputes. No quantitative conclusions were drawn from individual cases. They were used to reveal problems frequently encountered in law enforcement practice.

Validity and reliability of the research results. The conclusions were not based on a single source. Normative acts, scholarly literature, foreign materials and court practice were compared with one another. Court cases were classified according to their legal nature, while legislative proposals were tested against the principles of current civil law. Information whose official text or data had not been verified was not used to substantiate the principal conclusions.

The reliability of the research results was also ensured by identifying the limitations of the empirical material. The court decisions examined are not presented as a statistical representation of all educational disputes. They were used to identify recurring law enforcement issues. The author's proposals are not formulated as general appeals but are linked to specific legal gaps, addressees and potential consequences.

Practical significance of the research. The proposals may be used in developing legislation, model contracts and internal documents of educational organisations. They are aimed at clarifying provisions relating to the admission and expulsion of learners, final attestation, issuance of educational documents, licensing and accreditation procedures. The models presented in the dissertation may also be used to develop internal complaint procedures and rules for the use of digital systems. The systematisation of court practice may assist in comparing issues of classification and proof in educational disputes.

Approbation of the research results. The dissertation was developed at the Department of Constitutional Law and Civil Law of the Faculty of Law of Khoja Akhmet Yassawi International Kazakh-Turkish University and was discussed and reviewed at the department. The principal results of the research were presented in seven publications by the author; one was published in an international journal indexed in the Scopus database, three in scientific publications recommended by the authorised body, and three in proceedings of international conferences.

Scientific publications recommended by the Committee for Control in the Sphere of Education and Science of the Ministry of Education and Science of the Republic of Kazakhstan:

1. Legal Regulation of Consumer Rights: Historical Retrospective and Global Best Practices // Bulletin of Karaganda University. – 2022. – No. 1 (105). – P. 46–54.

2. Consumer Rights in Educational Services in the Republic of Kazakhstan: Problems of Conceptualisation and Modernisation of Legislation // Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan. – 2022. – No. 2 (69). – P. 104–115.

3. Civil-Law Regulation of Consumer Rights in Educational Services in the Sphere of Higher Professional Education // Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan. – No. 3 (70). – P. 80–89.

Publication in an international scientific journal indexed in the Scopus database:

4. Consumer Rights in the Republic of Kazakhstan and Their Legal Regulation: Transformation in the Context of Global Experience // Public Integrity. – 2023. – Vol. 25, No. 6. – P. 614–632. DOI: 10.1080/10999922.2022.2101268.

Publications in the proceedings of international scientific conferences:

5. Formation of the Institution of Consumer Protection in the World and in Kazakhstan // Global Science and Innovations 2021: Central Asia. – 2021. – No. 1 (12).

6. Legal Issues of Regulation of Legislation on Consumer Protection in the Field of Educational Services of the Republic of Kazakhstan // Proceedings of the International Scientific-Theoretical Conference “Academician Zimanov – an Outstanding Scholar and Founder of the Formation and Evolution of National Statehood”. – February 26, 2021.

7. Protection of Consumer Interests as a System of International Standards // Proceedings of the International Scientific-Practical Conference “Development of Legal Science in Independent Kazakhstan”. – Almaty, 2022.

Volume and structure of the dissertation. The dissertation consists of normative references, designations and abbreviations, an introduction, three chapters comprising eight paragraphs, a conclusion, a list of references and an appendix. The first chapter examines the historical, theoretical and comparative-legal foundations of consumer rights protection. The second chapter studies the subjects of consumer relations in the education sector, their legal status and their position in the digital environment. The third chapter analyses the institutional-combined model of protection, court practice and directions for improving legislation. The appendix

systematises legislative proposals. The volume of the dissertation complies with the requirements established for works of this category.