MUSTAQIL TA‘LIM: AMALDAGI MAVJUDLIK VA HUQUQIY TAN OLINMAGANLIK

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Annotatsiya. *Tezisda XX asr oxirigacha oliy ta'limda talabaning mustaqil mehnati qonunchilik e'tiboridan chetda qolgan, biroq o'quv jarayonida real ishlagan faoliyat sifatida tahlil qilinadi. Pedagogik ta'rif, o'quv yuklamasini hisoblash asosi va huquqiy tartibga solish o'rtasidagi tafovut ochiladi hamda "huquqiy fantom" tushunchasi huquqiy bo'shliq va huquqiy vakuumdan farqlanadigan tahliliy vosita sifatida asoslanadi.*

Kalit so'zlar: *mustaqil mehnat, huquqiy fantom, de-fakto mavjudlik, de-yure shakllanmaganlik, o'quv yuklamasi, huquqiy bo'shliq, ma'muriy-buyruqbozlik tizimi, ta'lim huquqi.*

Аннотация. *В тезисах самостоятельный труд студента в высшем образовании до конца XX века анализируется как деятельность, оставшаяся вне внимания законодателя, но реально функционировавшая в учебном процессе. Раскрывается расхождение между педагогическим определением, основанием расчёта учебной нагрузки и правовым регулированием, а понятие «правовой фантом» обосновывается как аналитический инструмент, отличный от правового пробела и правового вакуума.*

Ключевые слова: *самостоятельный труд, правовой фантом, фактическое существование, юридическая неоформленность, учебная нагрузка, правовой пробел, административно-командная система, образовательное право.*

Abstract. *The thesis examines student independent work in higher education up to the close of the twentieth century as an activity that escaped the legislator's attention yet operated in real teaching practice. It exposes the divergence between the pedagogical definition, the basis on which study load was calculated and legal regulation, and substantiates "legal phantom" as an analytical device distinct from a legal gap and a legal vacuum.*

Keywords: *independent work, legal phantom, de facto existence, de jure non-formation, study load, legal gap, administrative-command system, education law.*

Introduction. A legal institution can be understood today only if its earlier standing is fixed with precision. In the present credit-module system, self-directed learning is an officially recorded part of the study load. Until the close of the twentieth century, by contrast, the work a student did outside the lecture room was not a distinct subject of education law. Pedagogical writing treated it as an important activity, while legal texts left its place invisible. This discrepancy predetermined the later legal fate of self-directed learning.

Three markers were applied to assess the period: how firmly the activity was secured by norms; how clearly the powers and duties of the participants were drawn; and what consequence followed when a duty was not met. The thesis seeks to show what these markers meant for the first period and to explain the essence of the condition "present in practice, absent from law". Its tasks are to pinpoint the real object of regulation, to set the scholarly definition against legislative practice, and to demonstrate the effects of organising the work on a discretionary basis.

Main part. The real object of regulation. The administrative-command model ran education through a strictly centralised procedure. Under such a system, normative attention is directed first of all to the control of scarce resources, namely teacher time and the stock of lecture rooms [1, p. 85]. As a result, the only object of legal regulation became the hours spent together with the teacher. The teacher's workload, staffing units and the volume of funding were all calculated from those hours. Because a student's work outside the lecture room never entered this calculation, neither its volume, nor its content, nor the conditions for its performance appeared in any document.

The gap between scholarship and legislation. Soviet pedagogy stressed the importance of independent work. P.I. Pidkasistiy, for example, defined it as learning activity carried out without the teacher's direct participation but on the teacher's assignment and under the teacher's guidance [2, p. 245]. That definition, however, did not find its way into legislation. Scholarship acknowledged the activity, while the law neither measured nor counted it. Consequently only lecture-room hours were regulated, and a student's work outside class time was not recognised as official study load. Describing this condition as a mere "absence

of a norm" is insufficient: the activity existed, and so did a system that organised it and demanded results from it; the law simply stayed outside that system.

The category of the "legal phantom". Such a condition may conventionally be called a "legal phantom": the activity exists in fact (de facto) but is not formed in law (de jure). Three features distinguish it. First, the status, volume and assessment criteria of the activity were not fixed in any document. Second, its organisation rested not on uniform rules but on the personal discretion of the teacher. Third, its effect on the final result was unclear. As an instrument of analysis, the category separates two situations: a total absence of a norm and a norm that fails to cover real activity.

Consequences of discretion. Assignments that depend on a teacher's personal choice lose systematic character in content and volume. One subject may demand a great deal and another almost nothing, so that the load on students is distributed unevenly. Without an assessment mechanism, the work turns into an informal process that does not influence the final result [1, p. 85]. The effectiveness of independent work therefore depended not on a systemic guarantee but on the initiative of an individual teacher. In legal terms this meant that no reference norm existed either for demanding quality or for asking anyone to answer for its absence.

Historical significance. Analysis of the first period shows that the absence of legal regulation produced several gaps at once: the object itself was not counted, the duties of the participants were not set, and what would follow from a violation was left unclear. These very gaps later made it necessary to turn the field into a coherent institution. The phased shift to credit-module teaching that began in the 2020/2021 academic year [3] may be assessed as a step against the first of these gaps, since by recording independent work in hours and credits it recognises the object itself.

Methodological conclusion. To assess a historical stage correctly, one must study not only the list of documents but also the relationship between documents and real practice, because in the case of independent work the lack of a norm did not mean the lack of a practice. For that reason it is correct to describe the first stage as "unregulated activity" and incorrect to describe it as "non-existent activity".

A test of legal formation. Four questions can be put to check whether an activity is legally formed: is it recognised as a separate concept; is its volume measured; are the parties obliged to perform or secure it; and is there a remedy or form of liability when it is violated. Soviet-era independent work gives no clear

positive answer to any of them. The concept was recognised in pedagogy but not as a legal concept; its volume was not counted; the obligation lay mainly on the student, often as an informal demand; and no remedy was visible at all. A "no" or "informal" answer on all four questions supports the diagnosis of a "legal phantom".

The teaching model and legal attention. One reason regulation was confined to lecture-room hours lay in the educational model itself. Where knowledge is delivered ready-made and then reproduced, the teacher's work in the auditorium is treated as primary and the student's independent work as auxiliary. For an auxiliary activity there seems to be no need for separate legal rules. When the development of independent thinking and of the capacity to manage one's own learning becomes the central aim, the activity stops being auxiliary and a need for its legal regulation arises. Legal non-formation was therefore no accident but a logical outcome of the educational approach.

Groups of consequences. The effects of legal non-formation fall into four groups. Organisational: time, resources and consultation were not planned for independent work. Evaluative: the work done had no definite share in the final grade. Protective: neither student nor teacher had a norm to rely on in a dispute. Developmental: since the quality of independent work was not measured, there was no basis for decisions to improve it. These groups work as a checklist of the directions in which later regulation had to be built.

Limits and prospects of the study. The thesis does not analyse the specific normative acts of the first period; its conclusions rest on descriptions in the existing pedagogical and legal literature. A subsequent study could compare curricula and internal instructions of that time on the basis of archival sources. This would supplement the "legal phantom" diagnosis with documentary evidence and make its grounding firmer.

Distinguishing the concepts. The notion of a "legal phantom" must be distinguished from a legal gap and a legal vacuum. A legal gap means that a given relation ought to be regulated by legislation but is not. A legal vacuum means that norms are absent in an entire field. In a phantom situation, by contrast, the activity works in practice, is recognised by scholarship and is even regarded as an inseparable part of the learning process, yet lacks legal expression. The concept therefore gives a more exact diagnosis than "gap": the problem lies not in the absence of a norm but in the separation of real activity from the legal system.

The nature of the term. The concept is proposed as an analytical tool and not as a normative category. It makes it possible to set the first period apart from

later stages and to measure how far the distance between activity and law narrowed at each stage. In this sense the first period is the point where the distance is greatest, and the later periods are assessed as steps toward shortening it.

Conclusion. First, in the decades preceding the twentieth century's close, independent work existed in higher education in practice but was not formed in law. Second, the main reason was that regulation was directed at controlling resource expenditure and counted only the hours spent together with the teacher. Third, the gap between scholarly definition and legislation gave rise to a discretionary, unsystematic practice. Fourth, this experience shows that in analysing the present legal institution one must separate the notions "the activity exists" and "the activity is secured in law".

References

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