

25

LA FORMACIÓN DE LA INDEPENDENCIA PROFESIONAL EN EL PROCESO DE OBTENER UNA EDUCACIÓN LEGAL

FORMATION OF PROFESSIONAL INDEPENDENCE IN THE PROCESS OF OBTAINING A LEGAL EDUCATION

Ph. D. Yuri N. Zelenov¹

E-mail: zelenov.757@mail.ru

Ph. D. Anna V. Gubareva²

E-mail: ashipova@mail.ru

Ph. D. Kseniya E. Kovalenko³

E-mail: kovalenko1288@mail.ru

¹ Ministry of General and Vocational education of the Sverdlovsk Region. Yekaterinburg. Russian Federation.

² Ural State Law University. Yekaterinburg. Russian Federation.

³ Altai State University. Barnaul. Russian Federation.

Suggested citation (APA, sixth edition)

Zelenov, Y. N., Gubareva, A. V., & Kovalenko, K. E. (2017). Formation of professional independence in the process of obtaining a legal education. *Revista Conrado*, 13(60), 156-159. Retrieved from <http://conrado.ucf.edu.cu/index.php/conrado>

RESUMEN

Los requisitos modernos para mejorar la calidad de vida en Rusia están relacionados con la mejora continua de la actividad humana, mejorando su efectividad mediante la optimización y el aumento de la intensidad de la ciencia, buscando e implementando las tecnologías más efectivas. La solución de estos problemas es prácticamente imposible sin la independencia profesional. La independencia profesional, en nuestra opinión, es una cualidad compleja, cuya estructura incluye las características morales, intelectuales y de actividad de individuos o colectivos que actúan en ciertas esferas. La naturaleza creativa de la actividad legal está determinada por el dinamismo e individualidad de las situaciones en que se lleva a cabo, la exclusividad del comportamiento de sus participantes, la ausencia en la mayoría de los casos de instrucciones inequívocas sobre los métodos y medios para regular las relaciones legales, la imposibilidad de aplicar instrucciones obligatorias, la irrepitibilidad de las condiciones reales que surgen en la regulación legal.

Palabras clave:

Independencia profesional, educación legal, competencia, proceso educativo.

ABSTRACT

The modern requirements for improving the quality of life in Russia are linked with the continuous improvement of human activity, improving its effectiveness through optimization and increasing the science intensity, searching and implementing the most effective technologies. The solution of these problems is practically impossible without the professional independence. Professional independence, in our opinion, is a complex quality, the structure of which includes the moral, intellectual and activity characteristics of the individual or collective acting in certain spheres. The creative nature of legal activity is determined by the dynamism and individuality of the situations in which it is carried out, the exclusivity of the behavior of its participants, the absence in most cases of unambiguous instructions on the methods and means of regulating the legal relationships, the impossibility of applying mandatory instructions, the unrepeatability of the real conditions that arise in legal regulation.

Keywords:

Professional independence, legal education, competence, educational process.

INTRODUCTION

Moral qualities includes in the list of the general cultural and professional competencies of graduates of law schools. There are the recognition of the social importance of the profession, adherence to the norms of professional ethics, intolerance to manifestations of corruption in the list of the general competencies. Objections to the formulation of these competences cause an unreasonable restriction only by corruption of offenses to which the lawyer should have an intolerant attitude. Proceeding from the well-known principle of “*dura lex, sed lex*”, a lawyer should be intolerant of any offense. Unfortunately, in modern conditions, the acquisition of this competence by students in law schools is not given enough attention. A significant part of them receive a higher legal education, not having the full competence, are characterized by legal nihilism. In addition to numerous student interviews, this fact is confirmed by publications and official statistics. In particular, judges, lawyers, and scientists note a large number of mistakes made by employees of operational search agencies, inquiries, investigations in the implementation of criminal proceedings. Among the reasons for the return of criminal cases for further investigation, the main violations of criminal procedural legislation.

DEVELOPMENT

It should be noted that both judges and lawyers are allowed to violate the law. Such a manifestation can be regarded as a negative manifestation of the independence of a lawyer who regards illegal behavior as permissible. It seems that the universities are making obviously insufficient efforts to form the analyzed quality, limiting themselves in this direction by teaching such academic disciplines as “theory of state and law”, “professional ethics of a lawyer” and some others. Formation of the moral qualities of a lawyer requires a set of measures to influence the student by demonstrating to him the negative consequences of violations of not only legal but also ethical norms. For these purposes, during the training and extra-curricular activities, the student should demonstrate the significance and possible negative consequences of non-compliance with the norms of professional ethics, legal regulations, as well as the advantages of law-abiding and ethical behavior.

Measures should be envisaged for the formation of these qualities in the process of planning the educational programme for each discipline. During the training sessions, it is advisable to examine the cases of violations committed by lawyers that have occurred as a result of the consequences. Positive impact on students is provided by

attendance at court hearings to review similar facts, studying video recordings of such processes, materials of criminal and disciplinary cases. Of great importance is the participation of students in internal and external public organizations engaged in the identification and examination of various kinds of violations. During the Soviet period, juridical institutions of higher education were involved in the activities of the Starostats (praepostor’s meetings), student councils, Komsomol and party organizations, which dealt with various kinds of misconduct. Of course, not everywhere and not always they made objective and fair decisions. However, their role in managing and organizing the life of courses, faculties, academic groups, hostels and in the formation of the moral qualities of students is indisputable.

A great influence on this process is provided by the environment surrounding the students in the university, at the faculty, the level of adherence by the administration, teachers, and student’s ethical and legal norms. It seems that the situation that has developed in a number of universities, characterized by systematic violations, deviations from established and generally accepted rules of conduct, does not contribute to the development of these properties. It is also relevant to note that students come to the university, already possessing a certain level of legal awareness. Some of these students are characterized by legal nihilism of varying degrees of stability. In most cases, this is due to the influence of the environment in which the student was before entering university, and sometimes even after that. In such conditions, the impact of legal education should exceed the influence of the student’s environment. The opinions expressed in this connection about the need to update the role of educational institutions seem to be quite justified. At the same time, certain doubts raise the allocation of increased requirements for discipline as the only, perhaps, priority means of solving this problem. It seems that this is just one of the areas (albeit important enough) in shaping the lawyer’s belief in the necessity of observing the norms of law. It is pertinent to recall that the condition for the formation of moral qualities is voluntary acceptance of moral norms on the basis of awareness of their necessity. That is why the best option is to form a graduate need for compliance with the law. There is no doubt that the main component of a lawyer’s independence is the independence of his professional thinking. Unfortunately, the acquisition of this professional quality in most of the Russian law schools is clearly not paid enough attention. Despite the requirements of the already mentioned state standards of the quality of education to the results of mastering the basic educational programs, the educational process in law schools is aimed at the acquisition by student’s knowledge from the

disciplines of the general educational, general scientific, information-legal, professional cycles. At the same time, as some authors rightly note, "the priority in training specialists in Russian universities remains the acquisition of universal knowledge by the student". It should be noted that a large part of the course is devoted to the study of traditional and newly created branches of substantive law. Time for the development of the student's qualities on the application of the norms of these industries remains much less. Young specialists use the experience of their colleagues, standard recommendations, not adapting them to the conditions of real situations because they have not the qualities that necessary for the correct application of the norms of law. At the beginning of their professional careers, some of these lawyers have difficulty with the legal assessment of the events and actions of specific individuals, with the establishment and proving in the course of administrative, arbitration, civil and criminal proceedings of the circumstances, the nature of the event being investigated, and the guilt of specific individuals in the offenses.

The skills of applying the norms of law are formed mainly in the process of collective seminars and practical exercises, where typical situations, examples from practice are discussed, problems on the topic are solved. It should be noted that such training tools do not provide the formation of independent thinking. First of all, the number of academic groups, participants in these and other types of studies practically does not allow students to be involved in the discussion. In addition, participants in these classes have a different speed of thinking, communicative qualities, which also complicates the development of independent professional thinking. Sometimes students do not always have higher abilities and thinking skills than their colleagues. Students who are preparing for classes, in the course of their conduct use recommendations from lectures, educational and methodological literature. But at the same time, most of the students retell the material perceived by them from the sources indicated. Strangely enough, such a statement is satisfied by a significant part of the teachers, especially if the student refers to the lectures, publications and statements of the teacher himself. Such an order to a greater extent contributes to increasing the amount of knowledge of a conscientious student, rather than the development of his mental qualities. It seems that at the first stage the student must learn the rules of legal evaluation of events, highlighting his signs relevant to an adequate and objective conclusion about the delinquency or the legitimacy of the actions of specific people. Important in this period are the assimilation of the signs and structure of various types of offenses and law-abiding behavior enshrined in the norms of law, the conditions for their recognition. The degree of mastery

is checked during interviews in class, testing and self-assessment. Self-assessment is the later important elements in the formation of a lawyer's skills in the professional assessment of his activities.

Main part

At the next stage, it is possible to solve problems that involve a legal assessment of various events. Students and some teachers prefer a method of analogy, involving the resolution of situations by template. As a result of the constant use of such methods, the student becomes accustomed to stereotyped thinking. Faced with an unusual situation, they are confused. Sometimes, not being able to make independent decisions, such a lawyer tries to create a model of a typical situation that is not adequate to actually existing conditions. For example, when checking the material on the death of a resident of the regional center, whose corpse was found about 200 km from him in a sparsely populated area, the investigator used standard techniques in investigative practice in similar situations. First of all, the site of the incident was inspected, during which no damage was found on the corpse. In the manufacture of forensic medical research it was established that the death of the victim came as a result of intoxication with alcohol surrogates. At the same time, the investigator did not reflect on the absence of coats, headdress, despite the frosty weather, and in the pockets of his trousers, jacket, shirt, money, a purse, keys, tickets for public transport, how and for what reason the deceased was in the given locality. The decision to refuse to open a criminal case indicated that the death of the victim is non-violent, and consequently, there is no event of a crime. A few months later it was established that the victim was the victim of a crime committed with the aim of acquiring the right to his living space. Such options for the behavior of lawyers are possible not only in the sphere of criminal proceedings, but also in other branches of law enforcement activity.

The formation of the independence thinking presupposes the formation of students' desire to search for their own solutions. This search can be carried out by looking through known solutions. Creative self-sufficiency of lawyer presupposes his own explanations intermediate facts, a search and an objective interpretation of the missing information and the construction of objective conclusions. The skills of independent creative thinking are the only skills that can be formed in the process of studying at a university. It is impossible to instill the skill to product an investigative actions. The skill is an automated action produced during the collapsed control, developed as a result of repeated repetition. A student can personally hold only a separate investigative action

at most once. Naturally, this will not give an opportunity to acquire the analyzed skills. Creative independent thinking requires the individualization of cognitive tasks, the process of solving heuristic (search) cases. This means that the decision process should be related to finding the necessary information: a) to evaluate the data from the condition of the problem; b) for constructing the model of the event under study; c) for making a final decision, etc. It need to perform the search operations for the student, starting with the selection of scientific and methodological literature containing the necessary data, the selection and systematization of the information, explaining the information in the condition of the problem. One the one hand the learning process should be structured so that the student has as few opportunities as possible to take the help of fellow practitioners, other persons. On the other hand, the trainee should develop the desire to find his own solution without the participation of others. This desire should be stimulated. Suppose students with a more developed level of independent thinking than other students can be transferred to an individual training schedule. For the preparation of abstracts, reports, coursework of a creative nature, a student can be released from the delivery of intermediate, and sometimes final certification tests. Creative independence includes the organizational and managerial skills.

CONCLUSIONS

In universities, the development of this professional quality is associated exclusively with the teaching of the relevant academic disciplines, the study of which is conducted for a clearly limited time. Without denying the importance of studying these subjects, we will express the opinion that this is clearly not enough. To educate the skills of self-organization, or organization of their own work, it is necessary to change the structure of the organization of the educational process. In particular, it is advisable to substantially reduce the opportunities for students to evade participation in the educational process. To do this, it is necessary to provide for the student to carry out independent work, the results of which should influence not only his intermediate but also the final attestation. Information on attendance, the performance of training assignments, and the results of training should be available.

Parents of students who are studying for a fee, especially minors who are not doing well, do not show diligence in their studies, it is recommended to report such behavior of the named persons. Similarly, it is advisable to notify organizations that send negligent students to study. In the educational process, it is recommended to use modern means and methods of planning, preparation of study

assignments and scientific works more widely. In self-organization, it is important to assess the quality of the subject, the effectiveness of their own activities, the causes of failures and mistakes made. Long-term pedagogical experience allows us to state that many students and lawyers-practitioners lack the critical attitude to themselves and their activities.

The student must learn how to properly assess their ability to perform certain operations, actions. It is recommended for the students to introduce time tasks into the educational process, assessments of the fulfillment of tasks taking into account the time spent. Students can also be given recommendations on improving the quality and speed of individual operations, choosing the most appropriate methods for implementing individual actions, directions and types of professional activity.

Thus, for the formation and development of students' independent thinking, it is possible to use a variety of prohibitions and incentives that require a significant change in the educational process. First of all, they should concern the transition in teaching from the simple transfer to the trainee of information about the content of individual industries and the norms of law to the creation of the process of searching for, selecting and systematizing the most acceptable methods for resolving situations requiring legal regulation by the student. Undoubtedly, this requires a certain theoretical basis, a set of legal and other knowledge.

BIBLIOGRAPHIC REFERENCES

- Arstanov M. Z., Pidkasisty P. I., & Khaydarov, Z.S. (1980). Problem-model training: questions of theory and technology. Alma-Ata.
- Verbitsky, A. A. (1990). Active methods of teaching in higher education: Contextual approach. Moscow.