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Autonomy of an Educational Organization and its Limits Regarding School Management Matters

Under art. 3 of the Federal Law "On Education in the Russian Federation" (the Law), the autonomy of the educational organization is one of the basic principles of the State Policy of the Russian Federation in the field of education.

Under art. 28 of the Law, 'an educational organization has autonomy, which means autonomy in the exercise of educational, scientific, administrative, financial and economic activities, in drafting and adopting by-laws and local regulations in compliance with the Law, other normative legal acts of the Russian Federation and the Charter of the educational organization. Educational organizations shall be free to determine the content of education, to choose educational and pedagogical support and educational technologies in their educational programs.'

Implementation of this principle is associated with decentralization of management in education and means substantial increase in autonomous rights, powers, competences and responsibilities of educational institutions.

Autonomy of educational organizations covers acquisition of the rights of a legal person, elaboration of the Charter of the educational organization, elaboration of general and educational strategies and main directions for development.

Misunderstanding and improper implementation of the principle of educational organization autonomy may result in such extremes as full autonomy and independence of schools from the state and social control, from the 'social order' for education, from territorial educational systems, which amounts to distortion of the principle of autonomy of the educational organization.

Analysis of the practice shows that possibilities for the development of public-social administration of schools are directly related to the degree of autonomy. The higher the level of the school autonomy, the more freedom it has in defining development strategies and tactics, the more powers the bodies of collegial governance have and the greater the likelihood that they will be able to exercise actual managerial powers is.

As a general rule, educational organizations are free to determine the structure of school governance. Art. 26 and 27 of the Law defines the powers of the educational organization in the most general terms. Under art. 25 of the Law, an educational organization consolidates its established structure in the Charter. Thus, the limits of the educational organization autonomy are determined by the powers enshrined in the Charter of the educational organization. In fact, the limits of autonomy are determined by the will of the founder of the educational organization. The limits of autonomy could be challenged in court.

Under p. 4 and 5 of art. 26 of the Law, the educational organization forms a collegiate body of governance. Collegiate bodies of governance may include the General Assembly (Conference) consisting of the educational organization employees (in a professional educational organization and educational organization of higher education the General Meeting (Conference) of employees and students may be founded), Pedagogical Council (in the educational organization of higher education it is called the Academic Council), the Board of Trustees, Governing Board, Supervisory Board and other collegiate bodies of governance. The structure, formation, terms of office and competences of governing authorities of the educational organization, the manner in which they take decisions and speak on behalf of the educational organization are determined by the Charter of the educational organization in accordance with the legislation of the Russian Federation.

1. The Judicial Collegium for Civil Cases of the Moscow City Court dealt with an appeal filed against the decision of the Babushkinsky District Court of the City of Moscow dated 14 October 2014 and refused to satisfy the claims against the State Budgetary Educational Organization "Sviblovo" Gymnasium No. 1565. The claimant asked the Court to find the Governing Council illegitimate, and all decisions and Order № 38B "On Forming the List of Elected Members of the Board and Appointing the Date of the First Meeting of the Board" passed after 17 December 2013 illegal. The court of first instance concluded that the provisions of the Gymnasium Charter, when the director of the Gymnasium issued an order establishing a list of elected members of the Board, were not violated since the said paragraph established the director's right to take decisions on matters falling within the competence of the Bard in the event that the Board fails to take a decision within the stipulated time limits, and the absence of that decision impedes the normal functioning of the organization. The Judicial Collegium, in turn, held that after several general educational organizations merged, the Department of Education of Moscow approved the new Gymnasium Charter that provided for the formation of a single Governing Board. In order to form a new Governing Board, the election of delegates to the Conference devoted to the formation of a Governing Board was to be held in primary organizations. In the Gymnasium such elections had been never held and delegates to the Conference had not been elected thereby depriving the claimant of the right to represent the interests of the class and his son in the Governing Board of the joint educational organization in violation of art. 44 of the Law. The court found that the formation of the Governing Board was assigned to the discretion of the Gymnasium. Thus, the court was not entitled to decide on the validity of the decision due to the lack of the grounds for satisfying the claims. In addition, the Gymnasium Charter provides for the right of the Director to decide on matters within the competence of the Board in the event when the Board fails to take a decision within the specified time limits and the absence of that decision impedes the normal functioning of the organization.

Cases Involving the Powers of the Head of the Educational Organization.

Under p. 3 art. 26 of the Law, a head of the educational organization (rector, director, head, chief or other supervisor), who carries out current management of activities of the educational organization, is the sole executive body of the educational organization. To this end, the head, within the scope of his or her competence, shall be entrusted with the function of implementing the principle of autonomy in making organizational and personnel decisions.

Powers of the Head of the Educational Organization to Decide on Redundancy.

2. In the Appellate Determination of the Moscow City Court of 18 May 2015 N. 33-16065/2015, the Court dealt with the claim against unlawful dismissal order because, in the claimant's view, the head of the educational organization had no right to issue such an order. The Court rejected the claim because the established redundancy procedure was met: The plaintiff was promptly notified of redundancy; the defendant had offered the claimant all the vacancies that the claimant refused. *The Court noted that the general education institution was free to form a staff schedule in accordance with the teaching hours and to decide on whether there is a necessity for a certain staff position or it can be reduced and eliminated from the staff schedule. Moreover, making personnel and staff decisions, including changes in structure, staff schedule and number of employees forms an exclusive competence of the employer who is entitled to terminate employment contracts with employees provided the established procedure for dismissal and guarantees are complied with.*

3. The decision taken by the Provincial Court of the Primorskiy Kray in case No. 33-7728 was opposite. The Court held that the head of the State Educational Institution did not have any right to make a unilateral decision on staff redundancy. The Court opined that, according to the Charter of the Provincial State Budgetary Special (correctional) Educational Institution for students with disabilities the Council of the Boarding School is a permanent, elected collegiate body of the institution that acts as the highest self-governing body of the institution during the period between the staff meetings. The Council's competence includes deciding on changes in the structure and staffing within the framework of the wage and salaries fund. Thus, it is the responsibility of the School Council, rather than the director, to decide on restructuring and staffing of the institution. The School Council did not make any decision concerning redundancy and changing the structure of the institution. Under such circumstances, the Court had rightly concluded that the Director of the school violated the Law, and the Order "On changing the staff schedule and reducing the number of the staff of the Institution" was unlawful, since the Director unilaterally decided to change the structure and staffing of the Institution and approved the new staff schedule without the decision

passed by the School Council. In addition, it was held that, in violation of art. 82 the RF Labour Code and the provisions of the collective bargaining, the trade union had not been informed about the redundancy, which constitutes a gross violation of the labour legislation and invalidates the redundancy order issued by the director.