

Beata Zięba

The impact of the Polish and Community jurisprudence on the application of higher education law by universities

In the doctoral dissertation entitled: "The impact of the Polish and Community jurisprudence on the application of higher education law by universities", an analysis of both the provisions of the current "*Prawo o szkolnictwie wyższym*" of 2005 and the currently applicable provisions of the "*Prawo o szkolnictwie wyższym i nauce*" of 2018 and the selection of decisions of the Court of Justice of the European Union are presented, European Court of Human Rights and Polish courts (the Constitutional Tribunal of Poland, Supreme Court of the Republic of Poland, Supreme Administrative Court, voivodships in administrative courts and others). Legal regulations of the statutes of the largest universities in Poland, which are acts of internal law, were also presented as elements having a significant impact on the understanding and effectiveness of legal provisions regarding the specificity and nature of the law on higher education. The correlation of the issue of analyzing legal provisions of acts regulating the matter and functioning of higher education was shown with the issue of interpretation of these provisions, by analyzing Polish case law and Community, followed by the issue of provisions set out in the acts of internal law of individual universities. This acquis is extremely important and worth emphasizing, as it serves to facilitate the understanding of regulations and procedures specific to the area of functioning of universities in Poland.

The main topics discussed in the dissertation affect its structure. The doctoral dissertation will consist of four chapters and an introduction, ending, as well as lists: Community legal acts, Polish legal acts, Community jurisprudence, Polish jurisprudence, a list of literature in English and a list of literature in Polish as well as a list of other letters and documents.

The starting point for the development of the subject of the dissertation was the reference to legal regulations of the "*Prawo o szkolnictwie wyższym*" of 27 July 2005, which constituted the basis for issuing decisions of Community and Polish courts and their characteristics. On the basis of these provisions, judgments of Polish courts were and are issued and Community, which are the main subject of the analysis of this dissertation. Key

institutions and mechanisms that are regulated by the “*Prawo o szkolnictwie wyższym*” are discussed from 2005, including principles of university functioning (including those covering the matter of the organization of a university, the subject of university autonomy, issues of the status of university employees, students, doctoral students, the nature of scientific research, international cooperation), university financing and institutions of the higher education system. The first chapter is a canvas and a necessary introduction to the proper analysis of the effectiveness of the law on higher education, as well as to indicate problems in the application of the law on higher education in the following chapters of the doctoral dissertation.

The second chapter presents an analysis of Community case law and Polish in terms of topics and levels, in particular taking into account the issues that are the subject of court rulings, related e.g. to the principle of free education at universities, the right to study at university level, legal status and legal personality of universities, the principle of autonomy of universities, financing universities, commercialization of scientific research, rights of individual groups of people functioning at universities, especially academic staff and students, property of universities, etc. - in this way the main problems in applying the law on higher education were signaled. A look at legal provisions was presented on higher education through the prism of problems in their application / interpretation, which are extracted from the case law of Polish and Community courts, and then translated into the internal law of universities.

The third chapter presents the application of law at the level of internal law acts of universities and the impact of rulings on the shape and their application in the context of the wording of university statutes. An analysis of the legal nature of the flagship internal act of each university, which is the statute of a university, gives it a specific scope of autonomy in the operation of its bodies. A list of legal solutions used in the statutes of the largest universities in Poland was also presented, they were analyzed in terms of reflecting (or lack of) judicial lines in individual provisions of internal legal acts and comparing internal legal regulations in individual universities, thus showing convergence or discrepancies in legal solutions adopted in specific areas specifying important issues related to the functioning of the indicated universities.

The fourth chapter presents the current regulations of the law on higher education, discusses the provisions introducing the “*Prawo o szkolnictwie wyższym i nauce*”, the differences in the regulations of the outgoing act and the new act were indicated in the context

of the main issues of the organization and functioning of universities, the most important and characteristic or innovative changes in the higher education system were discussed, and then *de lege lata*, *de lege ferenda* conclusions were formulated and an attempt was made to assess the new legislation in terms of indicating the desirability of introducing new regulations of legal norms in higher education and their effectiveness.

This doctoral dissertation is a study in which complementary reflection and analysis have been made regarding the main lines of jurisprudence of courts to date, national and international tribunals in the field of law on higher education and legal norms resulting from regulating the functioning of universities on various levels. In the doctoral dissertation, several hundred judgments of various courts and tribunals were analyzed to show their color and diversity of approaches to the same topics, while at the same time capturing and passing on the idea and sense of reaching for interpretation solutions and interpretations of legal provisions developed in jurisprudence, which should all become a habit because of the impact of Polish case law and the Community's application of the law on higher education is undeniable.