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**GLOBALIZATION AND EDUCATION.
THE INTERNATIONALIZATION OF ACCESS
TO HIGHER EDUCATION IN POLAND –
SELECTED LEGAL ASPECTS**

Abstract. Affecting many spheres of social life, globalization also inevitably affects the functioning of higher education and the legal status of individuals who intend to apply for admission in a country other than the one where they completed a previous stage of their education. The paper considers selected legal aspects of the access to higher education in Poland, primarily in the context of the internationalization of education, and, thus, the internationalization of the recruitment procedure where individual candidates apply for admission to study on the basis of documents authorizing them to pursue higher education in different legal systems. The background for the reflections is the normative content of the right to education and one of its guarantees, namely the principle of equal access to education – in Poland having the status of a constitutional norm.

Keywords: globalization, internationalization, higher education, student recruitment.

**Globalization in the field of education
and its impact on the law**

The increase in mobility, especially among young people, related to pursuing education is one of the effects of globalization processes. Students perceive studying abroad as an opportunity to increase their attractiveness in the labour market, to enhance the universality of their education, or to connect more closely to a country where they perhaps intend to reside in the future. The contemporary educational migrations force the creation of legal instruments allowing for free education beyond the borders of a home country. This is not so much a case of transnational regulations, such as bilateral agreements or European Union acts on the movement of persons regarding their education, but mainly of national regulations which affect,

albeit indirectly, the possibility of using educational attainments (completed educational stages) in another country. Due to them, an individual completing a given educational stage (typically the middle/secondary school stage) has wider opportunities for further education, not limited to using the current course of education to continue learning solely in their own country. This is of particular importance in higher education, and that, in turn, induces the existence of the abovementioned instruments, either in the law on higher education itself or simultaneously in educational law (regulating the learning process at lower education stages), especially regarding secondary education which results are the basis for accepting candidates for studies. Within this research scope, two aspects of the issue can be distinguished: the use of foreign documents valid for application for student admission in countries of origin for recruitment conducted at Polish universities and the use of attainments obtained in Poland to apply for admission in other countries.

Obviously, in the entire legal system (including EU law) many instruments can be found whose function is to create a legal back-up for the internationalization of higher education, starting with the recruitment phase. Their full presentation, however, exceeds the potential of a single paper. It is worth pointing out that the catalogue of these issues should include, for instance, the regulations of EU Migration Law on learning, the consequences of the European Court of Human Rights case law for the obligations of states party to the ECHR and the consequences of the Court of Justice of the European Union case law for the Member States of the European Union (Kumela-Romańska, 2017, pp. 351–361), as well as regulations on the right to education provided in international law acts, such as the Convention against Discrimination in Education. Among national regulations, the regulations on nostrification (recognition) of diplomas for purposes of applying for admission to study in respective countries should certainly be mentioned (the scope of permitted nostrification in fact determines the possibility of exercising the right to study by foreigners from individual countries). Due to the extent of the above subject matter, in this paper I shall confine my remarks to selected aspects of the student recruitment mode and maintaining equal access to education in the context of the internationalization of the recruitment.

The issues related to the internationalization of higher education, without considering the impact of these processes on lawmaking, have been repeatedly addressed in the literature. For example, it has been stated that the internationalization of studies and research in Poland seems to be an obvious consequence of the integration and globalization processes, but it has

been pointed out that it is less clear whether or not the internationalization of the education and science sector has already become a fact or maybe is still a process (a state), more being desirable than realized. The fact that internationalization, now one of the priorities of education and research and development policy, has been ever since included in the European concept of higher education is pointed out as a paradox. In other words, today the internationalization of higher education is particularly stressed while, when the international character of early European universities was simply obvious it did not require any special emphasis (Waltoś, Rozmus, 2016, p. 596; Bergan, 2011, p. 11). This paper is to be published when Poland is on the verge of a major reform in science and higher education. In the almost two-year discussions on the future shape of higher education, major emphasis has been placed on the still insufficient internationalization of the didactic and scientific sphere. In addition, at the time of the work on this text, the works of the act the National Agency for Academic Exchange, whose task is among others to initiate and implement activities supporting international academic exchange and the process of internationalization of Polish universities and scientific units, are being proceeded in the Parliament.

Education (or the provision of educational services) is a public task and takes the form of organized and systematic activity by public authorities, which in a democratic state ruled by law for all their external actions, i.e. affecting the legal position of an individual, ought to have a direct legal basis in regulations of universally applicable law. For this reason, education – primary, secondary, as well as higher – is obviously entrenched in a whole range of legal regulations. Whereas education and its international dimension can be observed and examined from the perspective of various scientific disciplines – such as pedagogy, sociology, economics – the legal consequences of the internationalization of higher education are presented extremely rarely. On the other hand, the multifaceted nature of education results in the fact that the areas of national law covering regulations regarding education adopt a very complex and complicated form, and they are often a combination of different types of legislation typical to different branches of law. Thus, this considerably heterogeneous and elaborate matter is further complicated by the fact that the internationalization of higher education significantly determines the shape of legal regulations related to this sphere, also in terms of the access to studies, influencing in this regard the legal situation of an individual. With all this, as it has been already mentioned in the introduction, the paper is limited only to national regulations and, therefore, should the problem be presented comprehensively

in a more extensive study, the full range of issues related to the application of international instruments in the field of science and migration to learn would have to be considered.

The impact of globalization *per se*, i.e. unrelated to any particular sphere of social relations, on law and the ability to stimulate globalization through law has been recognized in the science of law many times. For example, A. Zieliński has pointed out that not only globalization affects law, but also law affects globalization. Globalization causes the emergence of phenomena that require legal regulation. In turn, law aims at influencing the structured shape of these phenomena. Since the phenomena that are supposed to be regulated by law are becoming more and more similar in different countries, the laws of these countries are becoming convergent to each other. According to A. Zieliński, the active influence of law on social relations should consist in supporting positive phenomena and eliminating, or at least limiting, negative ones. Globalization is linked to both types of phenomena. Therefore, law has to work in both directions. On the one hand, it should facilitate the development of globalization processes by creating an appropriate framework for them, but, on the other hand, it should prevent the risks posed by globalization and remove its negative effects (Zieliński, 2008, p. 904).

Internationalization of education versus the recruitment mode for studies

It is, therefore, evident that similar processes have to concern legal regulations from the area of broadly defined education, and above all – higher education. Legislation in this area cannot remain blind to the processes of the internationalization of higher education and the phenomenon of educational migration. Not only the rules of substantive law, but also the recruitment procedures are of key importance here. They should equate the status of “native” candidates and candidates from other countries, which is particularly important in terms of the comparability of documents and learning results (attainments) included in them. In this regard, the legislature has to balance two values – on the one hand, facilitating (or even allowing) application for student admission to persons having documents obtained after completion of a specific level of education (usually the secondary level) in their own country and, on the other hand, the real comparability of these results with the Polish attainments. By comparability, I understand not only its formal aspect meaning the possibility to take part in the recruit-

ment procedure and to requalify in the recruitment all results to percentage points, which – compared to results of the Polish secondary school-leaving examination – allow for creating one common ranking list. The comparability in the material aspect is much more substantial, which is manifested in the actual (real) comparability of results being the basis for the eligibility of candidates for studies. This material aspect determines actual equality in the access to higher education (Kierznowski, 2016, pp. 240–241). The internationalization of the recruitment process and the consequent multiplicity of documents and types of results achieved in previous educational stages by individual candidates, are clearly an obstacle to the actual material comparability of candidates' learning results.

However, it should be noted that the principle of equal access to education does not refer to the equalization of the legal status of student applicants who are citizens of other countries and want to undertake higher education in Poland. Although the principle of equal access to education is distinguished in the Polish legal system as a derivative of the principle of equality before the law, and equal access to education even has its direct constitutional provision, it is, however, a principle concerning only Polish citizens – according to Article 70 (4) of the Constitution of the Republic of Poland. In the case of foreigners applying to study in Poland far more variations in access to education are possible than in the case of Polish citizens, regarding which possible variations always have to be based on a legally relevant criterion (Safjan, Bosek, 2016, p. 1583).

However, it must be firmly stated that the Constitution in this regard provides only for a minimum standard and, in the context of globalization, there is no justification for adopting only this minimum. First and foremost, the process of application of law in the field of education cannot lead to a situation in which one of the guarantees of the right to education (and that is the principle of equal access to education) is the basis for limiting the right to education is granted to “everyone” – in this case to a foreign student candidate. Such an interpretation remains in line with international regulations.

In the light of the foregoing considerations, it is also necessary to raise the following question: is there, from the point of view of the state, a legal (not so much social or civil) obligation to provide their citizens with legal instruments enabling them to apply to study in other countries without prejudice to the legal situation of these citizens? This type of educational migration brings many positive and negative effects, and causes, therefore, a lot of controversy in the public debate. On the other hand, it is worth noting that in this context the perception of the right to education as a right

primarily serving the public interest and, subsequently, the interest of an individual is manifested, for example, in the idea of sanctioning the obligation to “working off” studies for some time after finishing them, especially expensive and publicly funded studies. In the meantime, the view that the right to education is a fundamental good, both individually and socially, equivalent on the grounds of these two interests, has been so far predominant (Safjan, Bosek, 2016, p. 1580).

It seems, however, that the question must be answered in the affirmative. The obligation of the state to provide such legal instruments which, on the one hand, make it possible to apply for studies in other countries – if such instruments are already developed in world educational practice – and, on the other hand, enable foreigners to study, can be derived from the right to education granted, after all, to “everyone”, not just to citizens. In turn, in Polish constitutionalism it was common to perceive the right to education (“*prawo do nauki*” – literally “the right to learn”) in a manner similar to the so-called “right to obtain education” (“*prawo do wykształcenia*”) (Bała, 2009). It is defined as the right to go through educational stages and to obtain documents certifying the completion of these educational stages and enabling further education (Garlicki, 2003, p. 3). In the context of globalization and increasingly free movement of people, such an internationalized standard of the right to education seems obvious. In EU law and in the Court of Justice of the European Union case law, this standard has taken the normative form (Kumela-Romanski, 2017, pp. 355–361).

Internationalization of the recruitment mode for studies – selected aspects

However, the compatibility of the national regulations intended for recruitment at foreign universities with regulations envisaged exclusively for recruitment at national universities is a separate issue. For example, such a problem occurs in the case of the International Baccalaureate Diploma Programme, known in Poland as the international secondary school-leaving examination and recognized as “equivalent” to the Polish secondary school-leaving examination (Dańczak, 2015, p. 232).

Under the Polish Act on Education System, the secondary school-leaving examination (national, Polish) is conducted for graduates of secondary education and allows for obtaining a special document to apply for entry to higher education – the secondary school-leaving examination certifi-

cate (*swiadectwo dojrzalosci, matura*). The provisions of the Act on Higher Education stipulate that the basis for admission to first-cycle studies or unified master's studies is the result of the secondary school-leaving examination (the legislation provides only a few exceptions). Universities have only the right to determine what exam results are the basis for admission to study (and the possibility of holding an entrance examination, however, in very exceptional cases), and thus in this regard, the principle of autonomy of higher education in the Polish Constitution is significantly limited (Waltoś, Rozmus, 2016, pp. 211–213). This limitation, compared to, for example, the recruitment mode for studies in England, can even be considered very far-reaching, since in the English legal system no universally applicable law regulates the mode of the recruitment for studies, universities have full autonomy to set specific requirements for people who want to get student status, and refusal decisions do not even require a justification (Budnik, 2016, p. 291).

According to the legislator's will, the primary legal function of the Polish secondary school-leaving examination is, first of all, the use of its result while recruiting for chosen studies run by a Polish university. Thus, the secondary school-leaving examination and the result obtained by a student becomes the only legal instrument with which an individual can exercise their constitutional right to higher education. Such a position of the secondary school-leaving examination in the Polish education system makes it necessary to be allowed to retake the secondary school-leaving examination if the result proves to be insufficient for admission to particular studies at the university chosen by the candidate or when the high school graduate long after finishing secondary school and passing the examination wants to change their educational plans and, for example, apply to a degree course requiring different *matura* subjects than they sat immediately after completing secondary education. In the Polish education system the unrestricted possibility of re-entering the secondary school-leaving examination in order to obtain results from additional subjects or to increase the results of subjects already passed is default. Only in this way can anyone at any time of their life exercise their constitutional right to education.

However, the right to re-enter the examination and to obtain new results (including results in new subjects) is granted only to those who have passed the Polish secondary school-leaving examination and have obtained a document certifying their results and qualifying to apply for admission to study – the secondary school-leaving examination certificate. This is where the abovementioned incompatibility of the regulation is revealed, as this doc-

ument is not owned by persons who completed the so-called International Baccalaureate Programme and finished it by passing the final examination. They may, of course, apply for admission to study at Polish universities, but they cannot increase their results or obtain the results from other subjects within the Polish secondary school-leaving examination. In this way, due to the faulty regulations, there are groups of young people who are permanently deprived of access to their chosen degree course in the event when the result of the “International Baccalaureate” is not sufficient for admission. This applies in particular to the degree courses where the highest numbers of applicants are present, and therefore the threshold for admission is considerably elevated, such as at the medical degree.

The legal status of International Baccalaureate graduates in relation to “ordinary” secondary school-leaving examination graduates is better if they want to apply for admission to a foreign university, but much worse if they want to study at a Polish university, especially in the most overcrowded fields, while it is the International Baccalaureate diploma that is considered much more prestigious than the Polish certificate. It is a typical example of the “deterioration” of the legal position of a secondary school graduate planning to study abroad, which may further discourage young people from using this mode of access to higher education. This problem began to be more widely recognized only recently thanks to the Helsinki Foundation for Human Rights. According to the Foundation, in this regard, the provisions preventing International Baccalaureate graduates from taking the Polish secondary school-leaving examination and, consequently, hindering their access to higher education violate the constitutional guarantees for learning rights and the guarantees of equal access to education. On the other hand, the Conference of Rectors of Polish Academic Schools took the view that the provisions of the Act on Education in this area are discriminatory (HFHR, 2017).

However, the use of the results obtained in the Polish secondary school-leaving examination in recruiting for universities in other countries, in principle, requires acceptance of the result (or sanctioning its requalification or nostrification process) by either the foreign legal system (if the basic conditions for applying for admission are set out in the universally applicable law) or by internal regulations of the institution (if in the country it has wide autonomy to determine terms, rules, and mode of admission for its degree courses).

The examples show how even a subtle maladjustment of legal provisions to the educational reality in the globalized world affects the legal status of student candidates. The internationalization of higher education has created

a number of challenges for the legislature, including the absolute obligation to maintain the comparability of the results for admission of student candidates outlined in this paper, which has an impact on the reality of equal access to education.

This comparability is determined by many factors that should be taken into account in lawmaking and application of law in the field of admission to studies, because it is not only an educational good, but undoubtedly also a legal good, as it determines the possibility to exercise the individuals' right to learn and to ensure equal access to further educational stages. In this respect, the legal issues are interwoven with the standards of educational diagnostics and didactic measurement; their significance is particularly evident in the case of the imbalance in the comparability of the recruitment of students due to the internationalization of this process. These principles have to be respected both by the legislature as well as by the university – depending on which entity and to what extent is entitled in the given country to determine the conditions and mode of recruitment to study.

R E F E R E N C E S

- Bała P. (2009). *Konstytucyjne prawo do nauki a polski system oświaty*. Warszawa.
- Bergan S. (2011). *Internationalization of higher education: a perspective of European values* [in:] Martyniuk W. (ed.), *Internacjonalizacja studiów wyższych*.
- Budnik A. (2016). *Państwo a szkolnictwo wyższe w Anglii i w Polsce*. Białystok.
- Garlicki L. (ed.). (2003). *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. III. Warszawa.
- Jarosz-Żukowska S., Żukowski Ł. (2014). *Prawo do nauki i jego gwarancje* [in:] Jabłoński M. (ed.), *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*. Wrocław.
- Kierznowski Ł. (2016). *Egzamin maturalny w Polsce. Analiza prawna*. Białystok.
- Kumela-Romańska M. (2017), *Administracyjnoprawny status cudzoziemca w Polsce*. Warszawa.
- Safjan M., Bosek L. (ed.). (2016). *Konstytucja RP. Komentarz*, vol. I. Warszawa.
- Schmidt E.K., Langberg K. (2007). *Academic Autonomy in a Rapidly Changing Higher Education Framework: Academia on the Procrustean Bed?*, *European Education* vol. 39, nr 4.
- Zieliński A. (2008). *Prawo a globalizacja* [in:] M. Andrzejewski, L. Kociucki, M. Łączkowska, A.N. Schulz, *Księga Jubileuszowa Profesora Tadeusza Smyczyńskiego*. Toruń.

The official website of the Helsinki Foundation for Human Rights, the paper: “Podwójne standardy w rekrutacji na polskie uczelnie dla osób z dyplomem matury międzynarodowej” / “The double standards in recruitment for Polish universities for people with the international baccalaureate diploma”, <http://www.hfhr.pl/podwojne-standardy-w-rekrutacji-na-polskie-uczelnie-dla-osob-z-dyplomem-matury-miedzynarodowej/>.