

THE ROLE OF THE UNIVERSITY IN TERMS OF REALISATION OF FREEDOM OF TEACHING AND FREEDOM OF SCIENTIFIC RESEARCH – POLISH CASE

O PAPEL DA UNIVERSIDADE EM TERMOS DE REALIZAÇÃO DA LIBERDADE DE ENSINO E LIBERDADE DE PESQUISA CIENTÍFICA – CASO POLACO

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Abstract: The terms “university”, “teaching” and “research” are closely related. The reason for the establishment of a community of learners and students were, on the one hand, the formation of man, and on the other the search for the truth about man, life, society and the world. In the face of technological development and access to information, including the development of legislation that allows the individual, without going through formal institutions, data acquisition, the question arises whether the university is needed, and if so, what is its role in realizing the right to education and freedom of scientific research. Implementation of freedom of scientific research and freedom of teaching in times of universal information access and modern technology can do without the university. However, this is university that can benefit from innovative research methods and teaching remains the most important forum for the exchange of ideas and the search for truth and knowledge transfer, vocational skills and social attitudes.

Keywords: Right to education. Freedom of scientific research. Constitution. Cultural rights. Freedom of teaching.

Resumo: Os termos “universidade”, “ensino” e “pesquisa” estão intimamente relacionados. A razão para o estabelecimento de uma comunidade de alunos e estudantes foram, por um lado, a formação do homem, e por outro a busca da verdade sobre o homem, a vida, a sociedade e o mundo. Em face de desenvolvimento tecnológico e do acesso à informação, incluindo o desenvolvimento de uma legislação que permite que o indivíduo, sem passar por instituições formais, tenha acesso a dados e a informações, gera a questão de saber se a universidade é necessária, e em caso afirmativo, qual é o seu papel na realização dos direitos à educação e à liberdade de pesquisa científica. A implementação da liberdade de investigação científica e liberdade de ensino em tempos de acesso à informação universal e tecnologia avançada pode se realizar sem a universidade. No entanto, a universidade pode se beneficiar de métodos inovadores de pesquisa e de ensino e continuar a ser o mais importante fórum para a troca de ideias ea busca da verdade e da transferência de conhecimentos, competências profissionais e as atitudes sociais.

Palavras-chave: Direito à Educação. Liberdade de Pesquisa Científica. Constituição. Direitos Culturais. Liberdade de Ensino.

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Introduction

University was an institution in which for centuries sought beauty, goodness and truth. The results of the study allowed for the development of man and society.

The terms “university”, “teaching” and “research” are closely related. The reason for the establishment of a community of learners and students were, on the one hand, the formation of man, and on the other the search for the truth about man, life, society and the world. Categories “university”, “education”, “research” induce a reflection on the relationship between these concepts. In particular, the following questions arise: 1) whether today you can teach and conduct research without a university; 2) whether the university is today a prerequisite for the search for truth, goodness and beauty; 3) or institutionalized forms of science and education do not limit the freedom of man to seek answers to basic problems.

In the face of technological development and access to information, including the development of legislation that allows the individual, without going through formal institutions, data acquisition, the question arises whether the university is needed, and if so, what is its role in realizing the right to education and freedom of scientific research.

The answer to such a problem requires the first indication of the position of the university in today’s world, and secondly determine the substance of the rights which are the right to freedom of teaching and research. This will indicate whether there is a close relationship between the university and the indicated rights and freedoms, and thus determine the role of the university in this area. Due to the experience of the author, the analysis is based on the example of Polish system.

1 The concept of the university and its task in Polish law

The term “university” was first used in 1221. It comes from the Latin word “universitas” (universality) meaning the community of preachers and people taught. Although the beginning of the university dates back to the Middle Ages in Europe, the first community of intellectuals arose in ancient times. In this framework, they conducted elitist form of education and learning about the world (Dzwonkowska, 2016, p. 20).

The contemporary debate on the position of universities associated with the idea of universitas. As pointed out by D. Dzwonkowska, the classic model of the university refers to a scientific institution centered around exploring the world, the search for truth, the pursuit of answers to questions posed by man. It is an independent and autonomous entity. This approach differs from the modern vision of science, which is focused on the development of innovations and improvements, the expectations of businesses and the labor market (Dzwonkowska, 2016, p. 33). Identity problem also affects universities in Poland. Their determined normatively position is not always adequate to new ideas.

Art. 70.5 of the Polish Constitution of 2. Apr.1997. (Dz. U. No. 78, pos. 483, as amended.; hereinafter: the Constitution) establishes the autonomy of universities. This autonomy is to be concretized in the act. In none of his pieces Constitution does not use the concept of the university, which is significant and shows that the position of the university seems to be weakened.

Independence of higher education is not a new legal category. Already in the interwar period, based on the provisions of the Polish Act of 13 Jul.1920. Academic Schools (Dz. U. No. 72, pos. 494), they were given the wide range of self-government. They perceived corporate element “local government institutions”, which is an academic school. Chief of the Administrative Court in its judgment of 9 Nov.1926. confirmed that – beyond arising from having legal personality sphere of organization and management of the assets – the so-called universities are entitled to academic freedom, which includes freedom of science, education and freedom of student life (cf. ed. password “academic education” [in] Cybichowski, 1930, p. 1010).

The concept of “autonomy of universities” was first used in the Polish legislation in the Act – Law on Higher Education of 2005. This expression must be interpreted through the prism of constitutional principles and values.

The word “autonomy” comes from the Greek (gr. „autos” – alone my own, and „nomos” – the law, the norm, the rule). Autonomy is therefore the property of deciding about himself or directing their own laws (Gromski, 2000, p. 15; Herbut, 1997, p. 66).

The autonomy of universities is considered to be a derivative of academic freedom, which must be understood as both the freedom of science (research and delivering views) and learning (choice of content and teaching methods). The autonomy of universities is a substantiation of that freedom. This is the institutional dimension of this freedom (Antonowicz, 2003, pp. 286-305; Hubner, 1999).

Buławajewski and Dąbrowski (2008, p. 219) indicate that elements of the autonomy of institutions of higher education are 1) the right to determine the content and form of teaching; 2) the right to establish subject matter, methods and scope of research; 3) The right to own and establish their independent authorities; 4) the right regulation of its internal law in the determination of their own system.

Presented above definitions are reflected in the jurisprudence of Polish Constitutional Tribunal (CT). This Tribunal concluded that the foundation of the autonomy of universities is right to create statutes. The attributes of autonomy are the right setting by the school content and forms of teaching, subject matter and methods of scientific research and university regulations that determine their progress, as well as the right to elect authorities constitutive and executive school (judgment of CT of 5 Oct. 2005., ref. No. SK 39/05, OTK ZU No. 9/A/2005, pos. 99).

By the autonomy of universities Constitutional Court understands the constitutionally protected sphere of freedom of scientific research and education, under the existing law (judgment of CT of 8 Nov.2000., ref. no. SK 18/99, OTK ZU No. 7/2000, pos. 258). In the normative sense autonomy of universities means, therefore, that they are governed by their own law, both general

and internally in force (judgment of CT of 5 Oct. 2005., ref. no. SK 39/05). The purpose of this autonomy is to create conditions for the optimal fulfillment of tasks by universities to conduct research and teaching (judgment of CT of 7 Feb. 2006., ref. no SK 45/04, OTK-A 2006, No 2, pos. 15).

The constitutional principle of the autonomy of universities but can not be understood as freedom of procedure of the university in the areas of its operations. The university must therefore abide by the law (judgment of the Supreme Administrative Court of 12 Jul. 2011., Ref. Act I OSK 597/11, ONSAiWSA 2012 No. 6, pos. 115).

The University is an institution established to implement the freedom of science. Autonomy allows the university to a greater extent realize the tasks assigned to research and education. This is possible thanks to freedom in regulating the internal structure and procedures, which, however, must comply with the law.

2 Freedom of scientific research

University enables realization of scientific research. Freedom of scientific research, freedom of publication and freedom of scientific belongs to a common category, which is the freedom of science (Garlicki, 2003, p. 5; Jarosz-Żukowska & Żukowski, 2014 p. 715; Królikowski & Szczucki, 2016). Of great importance in the context of freedom of science plays a freedom of scientific research. It consists in the fact that man is free to choose the method of research, research, place and manner of presentation of the results, scope and methods of transmitting his knowledge (Jarosz-Żukowska & Żukowski, 2014, p. 723).

By scientific research should be understood as a process starting from the identification of the research problem, then relies on the analysis of the available literature on the subject, observation of practice, the choice of research methods and techniques, and finally carried out the research process in the strict sense consists of measurements, data collection, data analysis and generalize. It activities are aimed at the creation theory (Apanowicz, 2000; Frankfort-Nachmias & Nachmias, 2001). Not every ongoing research will be of a scientific nature. For scientific characteristics are: universality, originality, objectivity, validity, accuracy, communication, ordering, utility (Klepacki, 2009, p. 39).

Research is characterized by a specific area of research and precise research topic, their purpose, and the research hypothesis. They also contain strictly defined terms used in the study. They use state of the knowledge in research. They are taking into account the achievements of both domestic and foreign. The study comes to the precise definition presented statements and evidence and the final opinions and conclusions. The studies can be used modern methods and models useful in solving problems. Research rely on presenting original scientific solution to the problem. Their content should be presented in a linguistically correct, clear, clear, concise (Klepacki, 2009, p. 41).

Standards for the protection of the freedom of scientific research can be found in international acts, although not always the freedom of scientific research is regulated separately. This

freedom is indicated in article 27 of the Universal Declaration of Human Rights in the context of the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. According to article 27:

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. (United Nations, 2016).

Freedom of scientific research also confirmed the International Covenant on Civil and Political Rights by recognizing that it is housed in the freedom of expression. Article 19.2 of the Covenant stipulates that:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. (United Nations, 1976).

It should also be noted that article. 7 sentence 2 of the Covenant prohibits the conduct of scientific research without the consent of the people involved in them.

Standard protection of the freedom of scientific research we also find in the article 15 of the International Covenant on Economic, Social and Cultural Rights. The international community has indicated that everyone has the right to benefit from scientific progress and its applications and to benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which he is the author. At the state has imposed the obligation to apply the necessary measures for the protection, development and dissemination of science and culture, as well as to respect the freedom indispensable for scientific research and creative activity.

In the European Convention on Human Rights does not explicitly indicated the freedom of scientific research, but through art. 10 of the Convention (freedom of expression) declared that freedom. 10 of the Convention provides that everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers state. This provision applies not only to provide information but also ideas. Protection art. 10 of the Convention are therefore also covered by the scientific statements, if they are open to public. The Court in Strasbourg interprets this freedom laid down in Article. 10 of the Convention widely. He stresses that it applies

not only to information or ideas received favorably or perceived as harmless or neutral, but also to those that offend, shock or disturb the State or any group of society. Such are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society. (Judgment of the ECHR of 07. Dec. 1976. On Handyside against the United Kingdom, application No. 5493/72).

Standards of freedom of scientific research sets out a Charter of Fundamental Rights. Article 13 of the Charter states that the arts and scientific research shall be free of constraint. Academic freedom is respected (Sobczak, 2009, p. 507). European standard protection of freedom of research

is supplemented by a recommendation of the European Commission, notably through the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers (Commission Recommendation of 11. Mar. 2005 r. on the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers, OJ. Office. L EU No. 75, p. 67; Jarosz-Żukowska & Żukowski, 2014, p. 711).

The aim of the document is to create a European Research Area, whose task will be to consolidate and determine the structure of the European research policy. The Recommendation of the European Commission on 11. Mar. 2005. assumed that the ultimate political goal of this recommendation is to contribute to the creation of an attractive, open and sustainable European labor market for researchers, where the framework conditions allow for recruiting and retaining high quality researchers in environments conducive effective performance and productivity (Królikowski & Szczucki, 2016, Nb 14).

International law also noted some risks associated with the very dynamic development of the scientific research that affect previously inaccessible space. On the one hand, scientific research related to the benefits and facilitate human life. On the other hand, however, they can be a threat. Some of the studies may lead to the commodification of human and violate his or her dignity. To counter these threats, the international community attempts to regulatory addressed to research, particularly in the areas of biology and medicine (Królikowski & Szczucki, 2016, Nb 15).

Freedom of scientific research in the Polish legal system is guaranteed in art. 73 of the Constitution. This act does not specify the scope of the freedom. It does not indicate the definition of research. The Constitution does not directly indicate how to understand the freedom of scientific research. Certainly the art. 73 stem the negative obligations of the State, whose task is to refrain from actions, including normative, that might impede or limit the freedom of scientific research. In the opinion of the Constitutional Court, the rights of freedom guaranteed by Article. 73 protect the unit and other legal entities against arbitrary interference by the state in the subject matter and methods of scientific research and in the content and teaching methods (judgment of 7 Feb. 2006., ref. no. SK 45/04).

With art. 73 of the Constitution that freedom of scientific research refers to individuals, not to legal persons or other types of units. This is natural, because only an individual can assign the attribute of freedom. This does not mean, however, that research can not be carried out by entities other than individuals. In such a situation, however, we are dealing with the formal conduct research. Their material aspect, so running queries, experiences, experiments and all the other elements of the research is carried out by individuals working for a company.

The Constitution does not limit the scope of the subjectively freedom of scientific research. This freedom belongs to all, whose activities meet the criteria for scientific research. Freedom is covered so the research is not only academics, to whom responsibilities include research, but also

the activities of other people that also without any formal relationships with the scientific sector leads the components of the criteria for scientific research.

Freedom of scientific research is therefore not only academic freedom. It can be detached from being a member of a scientific institute or a member of the academic community. It is narrower than the right to freedom of scientific research.

This does not mean, however, that the status of the researcher and other individuals engaged in research must be equal in terms of access to instruments to facilitate research. You can not prohibit individual research, citing its status other than the researcher. There is also no obligation to guarantee its financial support or institutional (judgment of CT of 28 Apr.2009. K 27/07, OTK-A 2009, No 4, pos. 54).

The Constitutional Court held that the rights of freedom guaranteed by article 73 of the Constitution protect the unit and other legal entities against arbitrary interference by the state in the subject matter and methods of scientific research and in the content and teaching methods. They can not however constitute grounds for removal by the staff of universities and scientific institutions of any claims regarding their material status (judgment of CT of 28 Apr.2009., ref. no. K 27/07 and judgment of CT of 7 Feb. 2006. ref. no. SK 45/04).

It follows that, although being an academic is not necessary to conduct scientific research, it may facilitate their implementation. Thus, the university continues to play a role in the implementation of the freedom of science. It is entirely supported by state aid.

In Polish law, freedom of scientific research may only be limited on the basis of art. 31 paragraph. 3 of the Constitution (principle of proportionality). You can have different priorities in terms of scientific activity. It is possible to introduce additional criteria for support. The state is also entitled to refrain from supporting research unethical or violating considered relevant, so those that are incompatible with axiology of the Constitution (Banaszak, 2012, p. 433).

Guarantee freedom to publish research results includes any form of presentation. It follows that the prohibition of censorship in any form (Królikowski & Szczucki, 2016, Nb 38).

Freedom of scientific research is directed to the public authorities injunction refraining from all devoid of a clear legal basis, interference in the domain of scientific research both before the start, during, and after their completion, interference in the dissemination of their results, obliging them to protect against such interference by other entities. Public authorities can, however, support research in some areas, especially if it corresponds to the axiology of the Constitution or the implementation of its principles. Even if the research is legal, but social reasons or ethical do not enjoy social approval, public authorities may refuse to support them, even if their scope is covered by the support of the public authorities. With the principle of freedom of scientific research can not be derived researcher claims to support his individual projects by the public authorities. Freedom of scientific research also includes the right to error and falsity of a scientific theory (Garlicki, 2003, pp. 6-7).

Freedom of scientific research is a human right that guarantees him to assert the truth. The realization of this freedom is not dependent on binding researcher with the research unit. It is not inconceivable that the legislature due to the implementation of specific values of committed support for research carried out in the context of specific research centers, including the University. Thus, despite the fact that the university is not a prerequisite for the implementation of scientific research, it is the entity that this research is to facilitate and support. It provides the organizational framework and legal bases for seeking answers to the research questions.

3 Freedom of teaching

Freedom of teaching, as well as freedom of scientific research is a manifestation of the general principle of freedom. It is located in the concept of academic freedom. Freedom of teaching it can be implemented as long as does not violate the freedom of another man. Freedom of teaching is based on freedom of the scope and methods of knowledge transfer (Jarosz-Żukowska & Żukowski, 2014, p. 723).

Freedom of teaching is a consequence of the freedom to conduct research and publish their results. It involves the transfer of knowledge and training of appropriate qualifications in the field of knowledge, skills and social competence. Information subject teaching can come both from own research and other sources. In this regard, you can use the scientific achievements of others. Freedom of teaching are subject to the processes of teaching, the content of which is of a scientific nature.

In the context of education can distinguish aspect - material and formal. The first is related to the content that is taught. The area formally relates to a method of teaching and it could be supervised by the state.

Freedom of teaching includes the freedom to determine the object of teaching, development of methods, forms and teaching content, search for and establish cooperation with partners in the learning process and selection aids (Jarosz-Żukowska & Żukowski, 2014, pp. 736-737; Garlicki, 2003, p. 7).

You may make regulations concerning the structure of entities, in which will take place training and qualifications of educators. You can also have an influence on the curriculum. This is to protect the people using the knowledge transfer before forwarding them false or lacking overall merit of the research (Garlicki, 2003, p. 8).

State influence on the system and the process of education can not frustrate the freedom to teach. Freedom of teaching can not be hollow, by their nature by regulations or organizational structures. Therefore you can not eliminate the right to submit their views by the person who teaches, as long as they are presented in a way that the separation of facts and their interpretation. Depending on the study to the criteria of this division will be varied. Within higher education, the right teacher to present their views and interpretations is particularly important. As a result, a

learned person can acquire skills education in a critical look at their content and the ability to independently and responsibly seek answers to emerging problems (Sobczak, 2009, p. 13; Królikowski & Szczucki, 2016, Nb 43).

As in the case of freedom of scientific research, guarantees freedom of teaching can be found in the Universal Declaration of Human Rights. Article 19 of the Act shows the right to hold opinions and freedom of expression includes the freedom to impart information and ideas through any media and regardless of frontiers. This is the starting point for the freedom of teaching (Królikowski & Szczucki, 2016, Nb 9).

In the European Convention on Human Rights includes provisions declaring freedom, which in its scope includes the freedom to teach. The right to freedom of expression is, inter alia, that on its basis can give information and ideas without interference by public authority and regardless of frontiers state (ECHR judgment of 28.Oct.1999 On Wille against Liechtenstein, application No. 28396/9; Jabłoński & Węgrzyn, 2014, p. 696; Sobczak, 2009, pp. 545-546; Królikowski & Szczucki, 2016, Nb 10).

You using art. 10 of the ECHR has an obligation to refrain from unwarranted interference with the subject of freedom, but in addition it is also obliged to carry out actions which allow or facilitate the use of these individual freedom (Królikowski & Szczucki, 2016, Nb 11).

Art. 17 of the ECHR states that:

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of the rights and freedoms set forth herein or at their limitation to a greater extent, than foreseen by the Convention.

So far, the ECHR referred to the art. 17 in conjunction with Art. 10 of the ECHR primarily on matters relating to the promotion of Nazism, questioning the Holocaust, and thus violating the dignity of victims, promote racism (eg. judgment ECHR of 15 Oct.2015. In the spring. Perinçek v Switzerland, application No. 27510/08; judgment ECHR of 24 Jun.2003. in the spring. Garaudy against France, application No. 65831/01; judgment ECHR of 23 Sep. 1998 in the spring. Lehideux and Isorni against France, application No. 24662/94). This means that the freedom to publish the results of research and teaching is limited in relation to specific topics. It is difficult to agree with the assumption that on this basis it is possible to reduce the possibility of announcement of the results of scientific research, which was conducted in accordance with all methodological principles (Królikowski & Szczucki, 2016, nb 12).

Freedom of teaching is also not directly related to the organizational unit in which this teaching is to take place. It is natural, however, that the arrangement of the learning process should take some institutionalized organizational framework. For this reason, the university is a classic and the appropriate forum in which it can be teaching. It gives guarantees the quality of education.

Conclusion

Implementation of freedom of scientific research and freedom of teaching in times of universal information access and modern technology can do without the university. However, this university – that can benefit from innovative research methods and teaching remains the most important forum for the exchange of ideas and the search for truth and knowledge transfer, vocational skills and social attitudes. In this context it is important autonomy university. It has two dimensions: institutional and individual.

Institutional dimension refers to the autonomy of universities in relations with public authorities, and therefore issues such as the position of the university in the state. Individual dimension refers to the liberty conducted in university research and publish their results and is associated with the freedom of teaching (Kijowski, 2012; Lex; Krzywoń, 2014, Lex).

Regulated in art. 73 of the Constitution freedom of science includes the freedom to research and publish their results and the freedom of teaching. A feature of science is to create a work having quality news, with the aim to describe the reality in different ways and give it a systematic and theoretical character. Science combines research and teaching (Jarosz-Żukowska & Żukowski, 2014, pp. 709-740).

The subject of freedom of scientific research is to ensure the freedom of their conduct, including the freedom to choose their subject matter, methods of research and presentation of results. Freedom of teaching is based on freedom of systematic transfer of knowledge to others. This involves a systematic process of learning, not just the transfer of research results. Passed knowledge must be of a scientific nature (Garlicki, 2003, pp. 5-7).

The autonomy of the university, in Poland referred to in Article. 70.5 of the Constitution allows you to create the institutional framework of the implementation of the freedom of science and teaching. These, therefore, these freedoms should determine the basic task of the university. The autonomy of universities is a constitutional value, it can not be an excuse to violate the law. Limitation of autonomy can take place in the law when it is necessary in a democratic state of law for the protection of other constitutional values.

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