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Relations of Research and Teaching in Legal Education: International Legal Framework and Selected National Solutions⁸

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Abstract

The aim of the article is to provide an overview of the international and EU law framework concerning the relation between the research and teaching. The analysis of internal regulations of selected European states is provided for a broader vision and comparative perspective. Such an overview constitutes the initial ground for further research and evaluation of the applicable law and its implementation. The article constitutes a summary of the initial phase of the research project dedicated to the impact of the legal research on legal education based on the projects funded by the Polish National Science Centre.

Keywords: legal education, scientific research, academic teachers.

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Relacja badań naukowych i dydaktyki w edukacji prawniczej. Ujęcie prawnomiędzynarodowe i wybrane rozwiązania krajowe⁹

Streszczenie

Celem artykułu jest przedstawienie przeglądu międzynarodowych i unijnych ram prawnych dotyczących relacji pomiędzy badaniami naukowymi a nauczaniem. W celu uzyskania szerszej wizji i perspektywy porównawczej dokonano analizy regulacji wewnętrznych wybranych państw europejskich. Taki przegląd stanowi wstępną podstawę do dalszych badań i oceny obowiązującego prawa oraz jego implementacji. Artykuł stanowi podsumowanie początkowej fazy projektu badawczego poświęconego wpływowi badań prawnych opartych na projektach finansowanych przez Narodowe Centrum Nauki na edukację prawniczą.

Słowa kluczowe: edukacja prawnicza, badania naukowe, nauczyciele akademicy.

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Introduction

The reform of higher education implemented in Poland only several years ago introduced a number of changes, about which much has been written, in various fields of science.¹⁰

The authors, examining the impact of legal basic research on legal education using the example of basic research funded by the National Science Centre in Poland, decided to establish (and initially evaluate in this context) the international legal framework of the relationship between research and teaching in the Polish higher education system.

The aim of the article is to provide an overview of the international and EU law framework concerning the relation between the research and teaching. The analysis of internal regulations of selected European states is provided for a broader vision and comparative perspective. Such an overview constitutes the initial ground for further research and evaluation of the applicable law and its implementation.

The content of the article is framed in a triad: (1) international law, documents and works of international organisations, (2) European Union law, (3) foreign models of domestic law of Germany, France, the United Kingdom, establishing in each case the formal basis and the subject content contained therein (relevant to the title issue). The selection of these countries stems from the authors' intentions to compare systems historically subjected to the influence of European Union policies, and at the same time to analyse the diverse organisation and management solutions in the field of teaching and research activities in universities.

The applicable international law, international documents and the work of international organisations as well as the relevant EU law sources and non-binding acts together related strategic assumptions, do not clearly define the academic interdependence of research and teaching, though the significance of both fields is underlined. The analysed national solutions also present different approaches and no firm imperative for the compatibility of research and teaching. The analysed

¹⁰ Publications in English include: P. Urbanek, *Reform of the Higher Education System in Poland from the Perspective of Agency Theory*, "European Journal of Higher Education" 2020, 10(2), pp. 130–146; M. Jakubowski, *Poland: Polish Education Reforms and Evidence from International Assessments*, [in:] N. Crato (ed.), *Improving a Country's Education*, Springer 2020, pp. 137–158; R. Seliga, R. Woźniak, *Higher Education Sector in Poland – Analysis of Consolidation Processes*, "International Journal of Contemporary Management" 2018, 17(4), pp. 339–353.

national solutions also present different approaches and no firm imperative for the compatibility of research and teaching.

Models of how universities operate around the world vary.¹¹ In Europe, the Humboldt model, which lies at the heart of the university tradition on the continent, has taken shape above all. The idea is to combine education and research, and the needs of academics. Anglo-Saxon countries and the United States, on the other hand, have until recently been linked mainly by a model focused on student education. Both the Humboldt model and the Anglo-Saxon model are now being superseded by the entrepreneurial model (an umbrella term), which focuses on the commercialisation of education and research results.¹² The ideal of a holistic approach to higher education is coming under increased scrutiny around the world. Research into the symbiotic nature of the relationship provides no clear answers, and it even questions the validity of the nexus between teaching and research in such a marketised sector.¹³ The foundations for these peculiar transformations of university models are primarily formed by political visions (intended to offset problems, mainly financial ones) transformed into legislation at the national, and less often international (including the EU) level.

¹¹ This also applies to legal education, see: G. Bryant, G. Shaffer, *The Globalization of Legal Education: A Critical Perspective*, [in:] iidem (eds.), *The Globalization of Legal Education: A Critical Perspective*, New York 2022; online edition, Oxford Academic, 23 June 2022, <https://doi.org/10.1093/oso/9780197632314.003.0001> (access: 2.01.2023).

¹² See e.g.: R.D. Anderson, *The German (Humboldtian) University Tradition*, [in:] P.N. Teixeira, J.C. Shin (eds.), *The International Encyclopedia of Higher Education Systems and Institutions*, Springer 2020, pp. 546–551, https://doi.org/10.1007/978-94-017-8905-9_4 (access: 2.01.2023); T. Nybom, *The Humboldt legacy: Reflections on the Past, Present, and Future of the European University*, "Higher Education Policy" 2003, 16, pp. 141–159; S. Michelsen, *Humboldt Meets Bologna*, "Higher Education Policy" 2010, 23, pp. 151–172, <https://doi.org/10.1057/hep.2010.8> (access: 2.01.2023); P.U. Hohendahl, *Humboldt Revisited: Liberal Education, University Reform, and the Opposition to the Neoliberal University*, "New German Critique" 2011, 38, 2(113), pp. 159–196, <https://doi.org/10.1215/0094033X-1221812> (access: 2.01.2023); J.H. Newman, *The Idea of a University* [1852], London 2015; W.G. Tierney, *Portrait of Higher Education in the Twenty-First Century: John Henry Newman's 'The Idea of a University'*, "International Journal of Leadership in Education" 2016, 19(1), pp. 5–16. See also: J. Jabłońska-Bonca, *O szkolnictwie wyższym i kształceniu prawników* [On Higher Education and Training of Lawyers], Warszawa 2020, pp. 153–196; G. Rhoades, B. Sporn, *Quality Assurance in Europe and the U.S.: Professional and Plitical Economic Framing of Higher Education Policy*, "Higher Education" 2002, 43, pp. 355–390, <https://doi.org/10.1023/A:1014659908601> (access: 2.01.2023); M.G. Ash, *Bachelor of What, Master of Whom? The Humboldt Myth and Historical Transformations of Higher Education in German-Speaking Europe and the US*, "European Journal of Education" 2006, 41(2), pp. 245–267, <http://www.jstor.org/stable/3700114> (access: 2.01.2023).

¹³ See e.g. M. Elken, S. Wollscleid, *The Relationship between Research and Education: Typologies and Indicators. A Literature Review*, Oslo 2016; J. Hattie, H.E. March, *The Relationship between Research and Teaching: A Meta-Analysis*, "Review of Educational Research" 1996, 66(4), pp. 507–542; M. Malcom, *A Critical Evaluation of Recent Progress in Understanding the Role of the Research-Teaching Link in Higher Education*, "Higher Education" 2014, 67(8), pp. 289–301; M. Tight, *Examining the Research/Teaching Nexus*, "European Journal of Higher Education" 2016, 6(4), pp. 293–311; all cited in: J. McKinley, S. McIntosh, L. Milligan, A. Mikołajewska, *Eyes on the Enterprise: Problematising the Concept of a Teaching-Research Nexus in UK Higher Education*, "Higher Education" 2021, 91, pp. 1023–1041 at pp. 1023–1024.

The reform of higher education in Poland, crowned by the Law on Higher Education and Science, has been and continues to be controversial. As the Ministry of Education and Science (MEaS) notes: "To co-create the reform of science and higher education, the entire academic and scientific community was invited. The results of the analyses and findings of the program conferences of the NKN [National Science Congress – author's note] series were discussed in the explanatory memorandum to the bill and the Regulatory Impact Assessment (RIA)."¹⁴ The relationship between science and education with regard to academics shaped by the reform seems to separate the spheres of science and education, however, preferring scientific rather than didactic outcomes. In this context, it is worth analysing what the statutory conditions of the relationship between didactics and scientific research in Polish universities are. Such an opportunity is provided by dedicated basic research.

The authors of this article are carrying out a research project entitled *Impact of Legal Basic Research on Legal Education on the Example of Basic Research Funded by the National Science Centre in Poland*. The scientific objective of the project is to analyse and evaluate the impact of basic research funded by the National Science Centre in the field of legal sciences, carried out by academic teachers, on legal studies education in the reality of Polish public universities by determining the links between the conducted research and didactics and analysing, evaluating and determining the prospects for the development of these links from the position of legal sciences. One of the research tasks is the analysis of legal regulations that may affect the relationship between research and didactics, the aftermath of which is, among other things, this article.¹⁵ It compiles the most important, in the opinion of the authors, aspects of international and EU law binding on Poland and it comparatively presents national solutions that may constitute relevant systems of reference for Polish system approaches in the context indicated above. Thus, the present study serves to establish the legal framework at the supranational level (albeit from the Polish perspective) and comparative standards in the context of the title issue.

¹⁴ Response from the Ministry of Education and Science to a request for public information, Warsaw, 15 July 2022, ref. No. BM-WI.0191.76.2022.AS. See also: the draft of the Law on Higher Education and Science, <https://legislacja.rcl.gov.pl/projekt/12303102/katalog/12458887#12458887> (access: 2.01.2023).

¹⁵ The legal framework contained in Polish national law is contained in the following article: M. Perkowski, I. Kraśnicka, A. Drabarz, W. Zoń, M. Oksztulski, M. Skórzewska-Amberg, E.M. Kwiatkowska, *Transformacja szkolnictwa wyższego, a ramy prawne relacji badań i dydaktyki w polskim systemie szkolnictwa wyższego* [Transformation of Higher Education, and the Legal Framework of the Relationship between Research and Teaching in the Polish Higher Education System], "Transformacje" 2022, 3.

International Law, International Documents and the Work of International Organisations

The research issue under consideration contains two elements: the problem of basic research (which is essentially scientific research) and the problem of teaching, in this case limited to university education. In turn, the subject of the key analysis is the impact of conducting research on the education of future lawyers. At the outset, it should be pointed out that a thematic review of the law and literature leads to the conclusion that the issue of the impact of legal basic research on the education of lawyers is not a separate area of intergovernmental cooperation. After all, there is no separate act of international law directly aimed at the issue in question. When looking for the title relationship, it is therefore necessary to first recognise the legal regulations concerning both issues separately.

Scientific research (understood also as basic research) is the subject of narrow international regulations of universal scope in a specific context, i.e. the freedom of such research – understood as one of the freedoms functioning in the system of protection of human rights, already derived from the Universal Declaration of Human Rights¹⁶ or – more broadly – from the International Covenant on Economic, Social and Cultural Rights.¹⁷ In the Polish literature, the freedom of scientific research in the light of international law has lived to see a monographic study, and interestingly enough, this is a publication resulting from a research project funded by the National Science Centre.¹⁸

The border concept of research freedom understood as ‘academic freedom’ is also the subject of international regulations, although here the regulations are usually framed as non-binding declarations (the following may be given as examples: the 1988 Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education,¹⁹ the 1988 Magna Carta Universitatum,²⁰ the 1990 Dar es Salaam Declaration on Academic Freedom and Social Responsibility of Academics²¹

¹⁶ Article 27, UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

¹⁷ Article 15, International Covenant on Economic, Social and Cultural Rights United Nations, Treaty Series, Vol. 993, p. 3.

¹⁸ J. Rezmer, *Wolność badań naukowych w świetle prawa międzynarodowego [Freedom of Scientific Research under International Law]*, Toruń 2016.

¹⁹ Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education adopted in 1988 by the World University Service on the 40th anniversary of the Universal Declaration of Human Rights, <https://www.wusgermany.de/sites/wusgermany.de/files/userfiles/WUS-Internationales/wus-lima-englisch.pdf> (access: 2.01.2023).

²⁰ Originally signed by 388 rectors and heads of universities from all over Europe and beyond on 18 September 1988, the 900th anniversary of the University of Bologna, <http://www.magna-charta.org/magna-charta-universitatum> (access: 2.01.2023).

²¹ Adopted by African academicians, <http://hrlibrary.umn.edu/africa/DARDOK.htm> (access: 2.01.2023).

or the 1990 Kampala Declaration on Intellectual Freedom and Social Responsibility²²), that can be analysed as the 'soft law' instruments. The Polish voice on the necessity to adopt a regular international law document dedicated to academic freedom is also recognised.²³

The problem of legal education (which is the authors' main area of interest in the research carried out in the project indicated above) also does not have its individual basis in international law. Instead, it fits firmly into the problem of education in general, including the key right to education which is also one of the basic human rights, identified and recognised in a number of global legal acts (from the Universal Declaration of Human Rights, through the Covenants on Human Rights, to specialised conventions adopted at the UN such as the Convention on the Rights of the Child²⁴ or the Convention on the Rights of Persons with Disabilities²⁵) and regional legal acts (especially the *acquis* of the Council of Europe which is essential from the Polish perspective).

Legal education is not a subject of regulation in international law, but it is a subject of discussion in international forums (which also include representatives of Polish higher education), such as the Global Law Deans' Forum and the International Association of Law Schools (IALS),²⁶ the Commonwealth Legal Education Association²⁷ or the European Law Faculties Association (ELFA).²⁸ It is also an area of publication in international periodicals (e.g. "Asian Journal of Legal Education", "European Journal of Legal Education", "Journal of Legal Studies Education", "Legal Education Review", "Journal of Legal Education" or "Law Teacher").

Poland is a member of a number of international governmental organisations, in the forum (or in the work) of which legal acts and 'soft law' acts are created, starting with the UN and ending with regional organisations. Freedom of scientific research or academic freedom's framework of guarantees is set by Article 15 of the 1966 International Covenant on Economic, Social and Cultural Rights of 1966.²⁹ Guarantees of the fundamental right to education are implemented in the UN

²² As another African declaration, <http://hrlibrary.umn.edu/africa/KAMDOK.htm> (access: 2.01.2023).

²³ J. Symonides, *Wolność akademicka jako kategoria praw człowieka. O potrzebie przyjęcia instrumentu międzynarodowego* [Academic Freedom as a Category of Human Rights: On the Need for an International Instrument], [in:] J. Białocerkiewicz, M. Balcerzak, A. Czeczko-Durlak (eds.), *Księga jubileuszowa Profesora Tadeusza Jasudowicza* [Professor Tadeusz Jasudowicz's Jubilee Book], Toruń 2004, pp. 408–409.

²⁴ Convention on the Rights of the Child, United Nations, Treaty Series, Vol. 1577, p. 3.

²⁵ Convention on the Rights of Persons with Disabilities, A/RES/61/106.

²⁶ <https://www.ialsnet.org/> (access: 2.01.2023).

²⁷ <https://thecommonwealth.org/organisations/commonwealth-legal-education-association-clea> (access: 2.01.2023).

²⁸ <https://elfa-edu.org/> (access: 2.01.2023).

²⁹ Article 15 states 'Everyone has the right to take part in cultural life; enjoy the benefits of scientific progress.'

mainly through the activities of specialised organisations within the United Nations system.

UNESCO is the specialised agency within the United Nations system whose main field of activity is education and science, including realisation of the right to education and it is UNESCO that must be the focus of the further analysis.³⁰ The Convention against Discrimination in Education,³¹ which was adopted in 1960 is central to UNESCO's subject matter and contains guarantees of the right to education in its broadest sense, but there is no reference to freedom of research or academic freedom. Already at the UNESCO conference in Nice in 1950, the basic principles of universities' functioning were established: the right to advance knowledge, the search for truth, tolerance of dissent, freedom from political influence, the duty to promote the principles of freedom and justice and human dignity and solidarity, freedom and justice and human dignity and solidarity through teaching and research.³² On the other hand, during the millennium period, in 1997 the UNESCO General Conference adopted the *Recommendation Concerning the Status of Higher Education Teaching Personnel*.³³ This was the first international statement sanctioned within the framework of the United Nations on the rights and responsibilities of teaching staff at universities and colleges.³⁴ It defined academic freedom as the right to freedom of teaching and discussion, freedom to conduct scientific research and disseminate and publish its results, freedom to freely express opinions about the institution or system in which they work, freedom from institutional censorship, and freedom to participate in professional or representative academic bodies. This definition, in the absence of any other formula adopted as valid, is recognised in scientific studies as crucial and a starting point for further research.³⁵ It is worth mentioning that close cooperation in the implementation of the Recommendation is carried out with the International Labour Organization³⁶ and the assessment of

³⁰ It is worth mentioning, however, that in the acts adopted by the organisations that underpin the system, such as the International Labour Organization (ILO), there are pointed references to the right to education. Conventions adopted within the ILO explicitly refer to the right to education in the context of ensuring a minimum age of employment or eliminating the worst forms of child labour, and with regard to guarantees for indigenous and tribal peoples.

³¹ Convention Against Discrimination in Education, 14 December 1960, <https://www.refworld.org/docid/3ae6b3880.html> (access: 2.01.2023).

³² M. Gołda-Sobczak, *International Aspects of the Status of Academic Freedom in European Culture*, "Środkowo-europejskie Studia Polityczne" 2014, 3, p. 152.

³³ *Recommendation Concerning the Status of Higher Education Teaching Personnel*, published: ED.2008/WS/24.

³⁴ More: D.C. Savage, P.A. Finn, *The Road to the 1997 UNESCO Statement on Academic Freedom*, https://www.caut.ca/sites/default/files/unesco_en_insidepages_final2017-09-11.pdf (access: 2.01.2023).

³⁵ T. Karran, *Academic Freedom in Europe: A Preliminary Comparative Analysis*, "Higher Education Policy" 2007, pp. 3–4.

³⁶ *Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART)*, Geneva 2012.

the recognition of the Recommendation in Europe has been carried out within the framework of scientific research.³⁷ In 1998, under the auspices of UNESCO (as part of the World Conference on Higher Education), the World Declaration on Higher Education for the Twenty-first Century: Vision and Action and Framework for Priority Action for Change and Development in Higher Education was adopted.³⁸

In times strongly determined by economic globalisation, a rather important forum for the title issue seems to be the Organisation for Economic Cooperation and Development (OECD), which specialises in monitoring universal access to education in member countries, influences educational policies in these countries (with a particular focus on equal opportunities in education) and thus controls the exercise of the right to education guaranteed by international instruments. The organisation also establishes a classification of fields of science and technology. It reacts to the current needs in education triggered by various factors, such as migration.³⁹ The organisation also looks at higher education employees, recognising higher education as an intensive labour sector.⁴⁰

Although issues of scientific research and/or academic teaching are the subject of the work and achievements of many regional international organisations,⁴¹ European regional organisations are important from the Polish perspective.

The distinctiveness of the legal order of the European Union requires a separate reference, as the European Union has taken steps towards expanding its scope of activities in the sphere of education, especially through the Bologna process, the creation of the European Higher Education Area and the establishment of the European Research Area. Therefore, it seems necessary at this point to signal only the activities and achievements of the Council of Europe.

³⁷ See: T. Karran, *Academic Freedom in Europe: Reviewing UNESCO's Recommendation*, "British Journal of Educational Studies" 2009, 57(1), pp. 191–215.

³⁸ World Declaration on Higher Education for the Twenty-First Century: Vision and Action and Framework for Priority Action for Change and Development in Higher Education, adopted by the World Conference on Higher Education: Higher Education in the Twenty-First Century, Vision and Action, 9 October 1998, published: ED/2005/ME/H/1

³⁹ Ch. Hajisoteriou, L. Neophytou, *The Role of the OECD in the Development of Global Policies for Migrant Education*, "Education Inquiry" 2022, 13(2), pp. 127–150. More on the topic of education in the work of the organisation, see: OECD and Education, <https://www.oecd.org/education/> (access: 2.01.2023). The organisation provides an extensive publication database: <https://www.oecd.org/education/publicationsdocuments/> (access: 2.01.2023).

⁴⁰ *Higher Education, Benchmarking Higher Education System Performance*, OECD 2019, <https://www.oecd.org/education/benchmarking-higher-education-system-performance-be5514d7-en.htm> (access: 2.01.2023).

⁴¹ Such as the African Union, the League of Arab States, and the Organization of American States (e.g. within the latter, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, adopted in San Salvador in 1998, in Article 14 recognises the right of all individuals to benefit from advances in science and technology).

It may be somewhat disappointing that there is no separate provision for freedom of education in the European Convention on Human Rights or any of its additional protocols (the right to education itself is, obviously, protected under Article 2 of the 1952 Additional Protocol).⁴²

In addition, the European Court of Human Rights evaluates possible violations of this freedom in the light of Article 10 of the ECHR, which guarantees freedom of expression.⁴³

The Council of Europe touches upon the most urgent problems of the academia in different parts of Europe, usually by pointing out the issues relevant to academic integrity, freedom and fairness.⁴⁴ It also cares about the constant education on human rights protection, including education of the addressees of the rights (such as prisoners) and those who oversee the guarantees of those rights, that is, practicing lawyers and judges.⁴⁵

The Law of the European Union

According to the Treaty on the Functioning of the European Union (TfEU): 'In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.'⁴⁶

Under the provisions of the treaty, scientific research is in the area of shared competence of the European Union (Article 4 TfEU), while education is in the area

⁴² Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Paris, 20.03.1952. The catalogue of the cases deriving from art 2 of the Protocol can be found at: Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights, 31 August 2022, https://www.echr.coe.int/documents/guide_art_2_protocol_1_eng.pdf (access: 2.01.2023). See also: J. Lonbay, *Rights in Education under the European Convention on Human Rights*, "The Modern Law Review" 1983, 43(3), pp. 345–350.

⁴³ For instance: *Lunde v. Norway, Azevedo v Portugal*, No. 38318/97, 13 February 2001, *Chauvy and others v. France*, No. 64915/01, 29 June 2004.

⁴⁴ For instance: T. Folynek, D. Dlabolova, *Academic Integrity in Eastern Europe: Beyond Corruption and Plagiarism*, [in:] T. Bretag (ed.), *A Research Agenda for Academic Integrity*, Elgar 2020, pp. 40–54; I. Glendinning, T. Folynek, D. Dlabolova, D. Linkeschova, T. Lancaster, *Exploring Issues Challenging Academic Integrity in South East Europe*, [in:] *Plagiarism across Europe and Beyond 2017 – Conference Proceedings*, Brno 2017, pp. 132–146.

⁴⁵ The following programmes may serve as examples: The European Programme for Human Rights Education for Legal Professionals (HELP), <https://www.coe.int/en/web/help-country/about-help>; Education in Prison, <https://www.epea.org/education-in-prison-council-of-europe-recommendation/> (access: 2.01.2023)

⁴⁶ Article 9, Treaty on the Functioning of the European Union, OJ C 202 26.10.2012.

of supportive competence (Article 6 TFEU). This means that research-related activities can become the subject of direct regulation by the EU and the national laws of the Member States, with priority of action given to the European Union, in accordance with the principle of subsidiarity and in accordance with the principle of proportionality if EU law exhaustively regulates a specific area, no national regulation is allowed in this area.⁴⁷ Education (including university education), on the other hand, remains, as a rule, in the decision-making sphere of Member States. The EU's activity in this area is limited to supporting, coordinating or supplementing the activities of Member States that adopt legal solutions in a given area.⁴⁸

Article 179, introduced by the Lisbon Treaty, officially placed the European Research Area⁴⁹ within the primary law framework:

1. The Union shall have the objective of strengthening its scientific and technological bases by achieving a European research area in which researchers, scientific knowledge and technology circulate freely, and encouraging it to become more competitive, including in its industry, while promoting all the research activities deemed necessary by virtue of other Chapters of the Treaties.
2. For this purpose the Union shall, throughout the Union, encourage undertakings, including small and medium-sized undertakings, research centres and universities in their research and technological development activities of high quality; it shall support their efforts to cooperate with one another, aiming, notably, at permitting researchers to cooperate freely across borders and at enabling undertakings to exploit the internal market potential to the full, in particular through the opening-up of national public contracts, the definition of common standards and the removal of legal and fiscal obstacles to that cooperation.
3. All Union activities under the Treaties in the area of research and technological development, including demonstration projects, shall be decided on and implemented in accordance with the provisions of this Title.

⁴⁷ T.C. Hartley, *The Foundations of European Union Law*, Oxford 2010, pp. 122–123.

⁴⁸ A. Kaczorowska, *European Union Law*, Routledge 2011, p. 60.

⁴⁹ The European Research Area (ERA) is the primary field for scientific and research policy in the European Union. Its overarching goal is to create a single research area that is open to the entire world and allows the full free movement of scientists, scientific knowledge and technology. More: https://research-and-innovation.ec.europa.eu/strategy/strategy-2020-2024/our-digital-future/european-research-area_en (access: 2.01.2023).

Moving at the level of primary law, it should also be pointed out that freedom of scientific research is explicitly addressed in the Charter of Fundamental Rights, in Article 13 ensuring freedom from restrictions on the arts and scientific research and respect for academic freedom.⁵⁰

On the secondary sources level, the EU law does not provide for any general, complex laws. The regulations establishing the Horizon framework program (previously – *Horizon 2020*⁵¹ and currently – *Horizon Europe*⁵²) can serve as a point of departure for further analysis. The Horizon programme is the flagship EU funding programme for research and innovation, but the focus on education is visible mostly in the part of the most recent regulation where it discusses the European Institute of Innovation and Technology. The combination of ‘education’ and ‘innovation’ seems to be the leading motif of that part.⁵³

Throughout the specifics of the European Union, the role of non-binding documents, which also touch upon the title issue of this study in a ‘soft way’, cannot be underestimated.

In 2010, the Europe 2020 Strategy was initiated by the European Commission as a strategy for smart, sustainable and inclusive growth which interconnected with education in many ways.⁵⁴

In 2017 the Commission published a communication on a renewed EU agenda for higher education.⁵⁵ It focuses on four priority areas: (1) aligning the development of skills in higher education with the needs of the labour market; (2) ensuring universal accessibility of higher education and making it more inclusive, as well

⁵⁰ M. Stachowiak-Kudła, *The Scope of Academic Freedom Right and the Situation of Scientists in Poland*, “Interchange” 2022, 53, pp. 99–111; T.D. Ziegler, *Academic Freedom in the European Union – Why the Single European Market is a Bad Reference Point* (17 January 2019). Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2019-03, <https://ssrn.com/abstract=3317406> (access: 2.01.2023).

⁵¹ Regulation (EU) No. 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 – the Framework Programme for Research and Innovation (2014–2020) and repealing Decision No. 1982/2006/EC.

⁵² Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No. 1290/2013 and (EU) No. 1291/2013.

⁵³ *Ibidem*, Annex II.

⁵⁴ Communication from the Commission Europe 2020, COM(2010) 2020. See also: F. Pasimeni, P. Pasimeni, *An Institutional Analysis of the Europe 2020 Strategy*, “Social Indicators Research” 2016, 127, pp. 1021–1038.

⁵⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a renewed EU agenda for higher education, 31.05.2017, COM(2017) 247, [https://www.europarl.europa.eu/RegistreWeb/search/simple.htm?languages=EN&relations=DOSSIER%23%23COM\(2017\)0247&sortAndOrder=DATE_DOCU_DESC](https://www.europarl.europa.eu/RegistreWeb/search/simple.htm?languages=EN&relations=DOSSIER%23%23COM(2017)0247&sortAndOrder=DATE_DOCU_DESC) (access: 2.01.2023).

as enhancing interaction with society; (3) boosting the innovative potential of higher education; (4) improving the effectiveness and efficiency of higher education.

Most recent action is the 2021 European Universities initiative carried out by the European Commission that offers 'opportunities to support diverse cooperation models for European Universities through the Erasmus+ calls for proposals.'⁵⁶ The Erasmus Mundus Action expects from the submitted proposals the impact that will increase 'the synergies between higher education, innovation and research.'⁵⁷

Throughout the binding and non-binding sources of the EU law and actions, it is clear that the organisation realises the significance of science and education. These two seem to be present in a variety of ways in the Union's work, but the present stage of the research within the project does not allow for pointing at a set of regulations or guidelines strengthening the correlation between academic research and teaching.

Foreign Models of Domestic Law

Although they do not have a binding character for the Polish system, but they are related to it at most (as a result of simultaneous binding of EU law or identical international law), selected national solutions regulating the link between (legal) basic research and education indicate comparative patterns and, at the same time, possible ways of their implementation. The states selected for analysis in this publication (Germany, France and Great Britain) heavily rely on the principle of academic freedom.⁵⁸

Naturally, in German-speaking higher education the tradition of the unity of research and teaching (*Einheit von Forschung und Lehre*) is still present. It defines the professional role of academic teachers, according to which their teaching is to be closely linked to and directly based on their research. Under this concept, university teachers should always be involved in research, and the specific insights and results of their research activities should directly become the content of their

⁵⁶ European Universities Initiative, <https://education.ec.europa.eu/education-levels/higher-education/european-universities-initiative> (access: 2.01.2023).

⁵⁷ Erasmus Mundus Action, <https://erasmus-plus.ec.europa.eu/programme-guide/part-b/key-action-2/erasmus-mundus> (access: 2.01.2023).

⁵⁸ More on the applicable law of the European states: K.D. Beiter, T. Karran, K. Appiagyei-Atua, *Academic Freedom and Its Protection in the Law of European States: Measuring an International Human Right*, "European Journal of Comparative Law and Governance" 2016, 3, pp. 254–345.

teaching. Moreover, academic teachers were obliged to conduct research, the results of which could be immediately used for teaching purposes.⁵⁹

In the context of linking teaching and research activities, it is fundamental that higher education institutions under the Basic Law⁶⁰ and the Law on Academic Freedom⁶¹ have the autonomy to manage these areas independently.⁶² In administrative matters such as academic and local government affairs, these institutions must act in consultation with the Land Ministry.⁶³

At the same time, in the sphere of research activities, Germany is a country with a relatively weak level of evaluation of the publication activities of university professionals.⁶⁴ In the absence of federal jurisdiction, laws implementing higher education and science regulation in the 16 states clearly demonstrate the autonomy of higher education institutions. Higher education authorities and academic self-governing bodies (e.g. university senates) have the authority to apply or to not apply performance evaluation.⁶⁵ In 2016, the federal government and the states agreed to launch a funding programme to provide ongoing support for ground-breaking research at German universities. The main goal is to strengthen the international competitiveness and visibility of German science in the long term.⁶⁶ These activities are supported within the framework of the February 2017 adoption of the Federal Government's strategy for the internationalisation of education, science and research.⁶⁷ It is worth noting that the German university system does not distinguish between academic and vocational training. All studies, whether for professional

⁵⁹ More on German higher education and the development of the Humboldt idea in Germany: C. Gellert, *ONE: The German Model of Research and Advanced Education*, [in:] B.R. Clark (ed.) *The Research Foundations of Graduate Education: Germany, Britain, France, United States, Japan*, Berkeley 1993, pp. 5–44; U. Teichler, *Teaching and Research in Germany: The Notions of University Professors*, [in:] J.Ch. Shin, A. Arimoto, W.K. Cummings, U. Teichler (eds.), *Teaching and Research in Contemporary Higher Education: Systems, Activities and Rewards*, Springer 2013.

⁶⁰ Grundgesetz für die Bundesrepublik Deutschland vom 23. Mai 1949 (BGBl, p. 1).

⁶¹ Wissenschaftsfreiheitsgesetz vom 5. Dezember 2012 (BGBl. I, p. 2457).

⁶² Article 5(3) Grundgesetz für die Bundesrepublik Deutschland.

⁶³ Article 91b(1) Grundgesetz für die Bundesrepublik Deutschland.

⁶⁴ J. Gläser, G. Laudel, *Die Unterkomplexität hochschulpolitischer Innovationen*, [in:] C. Schubert, I. Schulz-Schaeffer (eds.), *Berliner Schlüssel zur Techniksoziologie*, Springer 2019, pp. 179–204.

⁶⁵ M. Huber, M. Hillebrandt, "Pay for Promise" in *Higher Education: The Influence of NPM on Resource Allocation in German Universities*, "Historical Social Research" 2019, 44(2), pp. 247–269.

⁶⁶ *Exzellenzstrategie* is a funding programme of the Federal Government and the states to strengthen ground-breaking research at universities in two forms of funding: Clusters of Excellence (*Exzellenzclustern*) and Universities of Excellence (*Exzellenzuniversitäten*). See: <https://www.bmbf.de/bmbf/de/forschung/das-wissenschaftssystem/die-exzellenzstrategie/die-exzellenzstrategie.html> (access: 2.01.2023).

⁶⁷ *Internationalisierung von Bildung, Wissenschaft und Forschung. Strategie der Bundesregierung*, https://www.bmbf.de/SharedDocs/Publikationen/de/bmbf/2/31254_Internationalisierungsstrategie.pdf?__blob=publicationFile&v=3 (access: 2.01.2023).

qualifications in fields such as law or for primarily academic purposes, are pursued at the same level and culminate in a diploma. Thus, there are no separate schools that train lawyers. A university degree in legal sciences certifies both an academic qualification, which theoretically allows a graduate to engage in scientific research, and a professional qualification, which is required for practical and applied professional activities. Currently, the transfer of basic and applied research from universities to other entities, such as institutes like the Max Planck Institute, seems to threaten the idea of unity of research and teaching.⁶⁸

It is widely believed that university professors in Germany are strongly research-oriented. Protected by a high degree of academic freedom, they pursue knowledge for knowledge's sake or to freely choose other emphases in research and teaching. Ongoing comparative studies show that academics, especially those in professorial positions, have traditionally had a relatively high degree of power in internal decision-making processes at universities. They appear to be less exposed than their counterparts in other countries to standardised expectations about teaching processes and outcomes. Moreover, they have little involvement in various teaching activities beyond simply lecturing.⁶⁹

At the same time, the research indicates that the relatively strong emphasis on research on the part of university professors in Germany does not mean that they are only interested in theory and the pursuit of knowledge for its own sake. Rather, they exhibit a practice-oriented approach to research and teaching more strongly than academics in most of the other countries studied, and the gap between practice-oriented other higher education institutions and universities is smaller in Germany than in other countries in this regard.

The French specificity is the separation of structures tasked with teaching (*grandes écoles*) and research (*universités*) in specific fields, respectively. A *grande école* is defined by the Ministry of Education as 'an institution of higher education that recruits students by competitive examination and provides higher education',⁷⁰ and outside the university system, *école supérieure*, as a specialised and 'highly selective' one that trains 'high-level engineers and managers, but also specialists in the arts, humanities and social sciences.'⁷¹

⁶⁸ U. Teichler, op. cit., p. 63.

⁶⁹ Ibidem, p. 85.

⁷⁰ Arrêté du 27 août 1992 relatif à la terminologie de l'éducation, 11.09.1992, NOR : MENA9203372A

⁷¹ Décret n° 2009-652 du 9 juin 2009 portant publication de l'accord entre le Gouvernement de la République française et le Gouvernement de la République de Pologne sur la reconnaissance mutuelle des documents donnant accès aux études supérieures, des périodes d'études, des diplômes, titres et grades (ensemble une annexe), signé à Varsovie le 28 mai 2008 (1) NOR : MAEJ0911491D, JORF n°0133 du 11 juin 2009, Texte n° 24.

French higher education in general, and the organisation of advanced education and research systems in particular, is based on different structures and follow specific models.⁷² The main features of the higher education system are its relatively close relationship with what can be described as pre-graduate education and its high degree of specialisation. The two levels, pre-advanced and advanced, share a vertical distinction or pathway between professional degrees and research-oriented programmes. The research system, on the other hand, has many unique features, starting with the degree's physical and financial concentration and its strong disciplinary bias towards the sciences. Equally unprecedented is the degree of formal stratification in the conditions under which different types of research units operate. So different are the various types of research units in terms of their sources of funding and formally assigned status that they can be seen as separate elements in a subsystem that variously links the university to the research function itself.⁷³ It is therefore difficult to identify a single coherent system for linking teaching and research activities.

This reflects the historical perception of teaching as a technical and professional activity that had to be carried out separately.⁷⁴ The change in this approach within legal education was influenced by the work of Raymond Saleilles and François Géný advocating the need for an evolutionary perspective in legal science.⁷⁵ The assumption that the meaning and scope of legal norms change with the changes to which customs and ideas are subject implied the need for continuous research and the application of its results to the interpretation, creation and application of laws.

Today in France, all legal education is conducted within the university system, so much so that even preparation for professional examinations can take place at the university. University education is primarily large-scale lectures to provide mass instruction.⁷⁶ There is no uniform set of teaching activities applicable to law students. Universities under the Law of 10 August 2007 on the Freedom and Responsibility of Universities have gained considerable freedom in creating their

⁷² L. Highman, *Remapping French Higher Education: Towards a Multi-tiered Higher Education System?*, "Tertiary Education and Management" 2020, 26, pp. 199–214, <https://doi.org/10.1007/s11233-019-09052-x> (access: 2.01.2023).

⁷³ C. Musselin, *La longue marche des universités françaises*, "Presses de Sciences Po" 2022, p. 12.

⁷⁴ B. Wittrock, *Dinosaurs and Dolphins, Rise and Resurgence of the Research-Oriented University*, [in:] B. Wittrock, A. Elzinga, *The University Research System: The Public Policies of the Home of Scientists*, Stockholm 1985, pp. 13–37.

⁷⁵ R. Saleilles, *Droit civil et droit comparé*, "Revue Internationale de l'Enseignement" 1911, 61, p. 12.

⁷⁶ For a broader discussion of legal education in France in historical and contemporary terms: M. Augustyniak, *Model edukacji prawniczej we Francji – historia i współczesność* [The Model of Legal Education in France: History and the Present Day], "Prawo i Więź" 2022, 2(40), <https://doi.org/10.36128/priv.vi40.458> (access: 2.01.2023).

curricula.⁷⁷ The peculiarities of the legal system in France also affect the teaching methodology to some extent. It is characterized by the predominance of a conceptual and abstract approach to legal problems.

However, it is also worth noting the increased importance of jurisprudence currently being noted in France,⁷⁸ which needs to be reflected in the content and methods of teaching. In discussions of these issues, determining the proportion between the scope of theoretical knowledge and the formation of practical skills proves to be an ever-present issue.

In the UK, especially in England, current policy issues, including the evolution and revision of the Research Excellence Framework (REF),⁷⁹ the Teaching Excellence and Student Outcomes Framework (TEF)⁸⁰ and introduction of the Knowledge Exchange Framework (KEF),⁸¹ as well as the new architecture put into effect by the Higher Education and Research Act (HERA),⁸² have made the link between teaching and research the subject of a debate on the role of universities for several years now. Universities regularly make choices about their priorities in pursuit of excellence and in the face of limited resources. The specifications for both the TEF and the REF seek to integrate teaching and research, but the current trajectory seems to be leading to further polarisation.⁸³

In practice, the Higher Education Statistics Agency (HESA) data show that while there has been an overall increase in the number of contracts, including those combining teaching and research, there has been a continuing trend towards

⁷⁷ Loi du 10 août 2007 relative aux libertés et responsabilités des universités.

⁷⁸ M. Augustyniak, *op. cit.*, p. 253.

⁷⁹ The REF is an assessment of the impact of research on UK higher education institutions. The Research Excellence Framework website: <https://www.ref.ac.uk> (access: 2.01.2023).

⁸⁰ This is the government's assessment of the quality of undergraduate teaching at universities and other higher education institutions in England, which from 2020 can be used to determine whether state-funded institutions can raise tuition fees. Higher education providers in other parts of the UK can use the tool, but the assessment does not affect their funding. Read more about the TEF: <https://www.officeforstudents.org.uk/advice-and-guidance/teaching/about-the-tef/> (access: 2.01.2023).

⁸¹ The KEF aims to enable universities to better understand and improve their own knowledge-sharing performance, as well as provide information and assistance to businesses and other users to access world-class knowledge and expertise at higher education institutions. The KEF website: <https://kef.ac.uk> (access: 2.01.2023).

⁸² Higher Education and Research Act 2017.

⁸³ As part of the criteria for assessing the quality of the learning environment, the current TEF guidelines state that for Scholarship, Research and Professional Practice (LE2): 'The learning environment is enriched by student exposure to and involvement in provision at the forefront of scholarship, research and/or professional practice', Department for Education (10.2017), Teaching Excellence and Student Outcomes Framework Specification, p. 25; The panel's criteria and working methods for 2019/20 for the REF took into account the impact on or through teaching, both inside and outside the submitting institution, Research Excellence Framework (2020), REF 2021: Index of revisions to the 'Panel criteria and working methods' (2019/20), p. 54, No. 301.

hiring academics, especially women or those from ethnic minorities, on teaching-only contracts.⁸⁴ Research conducted by the British Academy in 2018, the results of which were published in the report *The Teaching-Research Nexus*,⁸⁵ painted a picture of both congruence and divergence when it comes to the link between teaching and research. The value of this link and the positive impact that teaching and research can have on each other is widely appreciated. However, the different pressures and expectations of the two activities, at the institutional and sector levels, as well as increasing competition and internationalisation throughout the higher education sector, are straining this relationship and polarising the two spheres.

The UK higher education sector operates in a global environment characterised by increasing marketization and increased internationalisation, with university rankings focusing more on measurable research indicators. A by-product of this is the increased volume and intensity of academics and the sector's tendency to privilege the conduct of research over teaching. The findings indicate a disconnect between the broad recognition of the value of a supportive and bi-directional relationship between teaching and research by those involved in the higher education sector and current expectations and funding priorities driven by policy directives that place the two in conflict or that overwhelmingly prioritise research. Decisions on the distribution of research funds have led to an increase in competition among academics conducted within the discourse of cooperation and interdisciplinarity. Reduction of research funds and open competition for them direct the attention of academics to teaching.⁸⁶ In the UK, criticism of value quantification, or otherwise assessing academic excellence through simple instruments, such as student surveys, has been blamed for marginalising qualitative indicators and escalating cultural differences in values.⁸⁷ Recent research leaves no doubt that academics of all types of universities recognise this gap between rhetoric and practice.⁸⁸

⁸⁴ The British Academy, *The Teaching-Research Nexus*, Project summary, June 2022.

⁸⁵ S. McIntosh, J. McKinley, A. Mikołajewska, *Critical Examination of the Teaching-Research Nexus: Academic Contracts in UK Universities*, A Report for the British Academy 2021, pp. 12–18.

⁸⁶ C. Mitten, D. Ross, *Sustaining a Commitment to Teaching in a Research-Intensive University: What We Learn from Award-Winning Faculty*, "Studies in Higher Education" 2016, pp. 1–14.

⁸⁷ D.B. Saunders, G. Blanco Ramirez, *Against 'Teaching Excellence': Ideology, Commodification, and Enabling the Neoliberalization of Postsecondary Education*, "Teaching in Higher Education" 2017, 22(4), pp. 396–407.

⁸⁸ For instance: J. McKinley, A. Harris, M. Jones, S. McIntosh, L. Okpevba Milligan, *An Exploration of the Teaching-Research Nexus in Humanities and Social Sciences in Higher Education*, 2018, <https://www.thebritishacademy.ac.uk/documents/4094/McKinley-et-al-An-Exploration-of-the-Teaching-Research-Nexus.pdf> (access: 2.01.2023).

Conclusions

The initial research carried out for the purpose of this article allows to state that the international law and international documents establish the right to education and freedom of scientific research but there is no explicit imperative providing for any kind of interrelation between research and teaching. The law of the European Union strictly connected with research funding and teaching opportunities (including mobility programmes) seem to expect academics to combine their scientific activity with educational efforts but also here the clear interrelation is not indicated.

The analysed examples from the UK, Germany and France reveal differences in models of legal education, the main axis of which is the dilemma between balancing theoretical teaching (and therefore based on the results of scientific research) and practical legal teaching, which is influenced by the way science and teaching are funded and by national rules for evaluating the performance of academics and universities. It can be assumed that the change in the funding and evaluation model directly translates into an approach to combining or dividing scientific research and teaching at the higher education level.

It is widely believed that the Humboldtian concept of the 'unity of research and teaching', formulated more than two centuries ago, has led to the fact in almost all countries of the world that a close link between research and teaching remains the hallmark of high-quality higher education institutions. However, the concept of this linkage varies from country to country. It should be noted that the close link between teaching and research does not apply equally to the entire higher education and research system, i.e. it does not apply equally to all higher education institutions or to all categories of academics. In May 2018, a lawyer and three academics from Australia published an article, *The Myth of the Teaching-Research Nexus*, in which they argued that, at least in researcher-led law schools, due to the development of research excellence frameworks, the nexus no longer exists, and that 'individualistic, competitive, disunited' jobs are being created in universities.⁸⁹ The model of legal education in a given country seems to be more a product of its legal culture and the national solutions adopted with regard to financing and evaluating the activities of higher education institutions and less the impact of the internationalisation process on legal education. Hence, there may be a lack of a consistent model of legal education on a European scale, but this issue requires further research.⁹⁰

⁸⁹ A. McKenzie, L. Griggs, R. Snell, G.D. Meyers, *The Myth of the Teaching-Research Nexus*, "Legal Education Review" 2018, 28(1), p. 2.

⁹⁰ In order to determine why this is not reflected systemically, it seems necessary to also study Polish academic practice in terms of the impact of basic research on legal education. Such research (survey

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