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# The Needs of the Polish Public Administration Sector versus Legal Education.

## Some Remarks on the Changes Relating to the Drafts of ‘Act 2.0’ and the ‘University Apprenticeship’

### Abstract

The article attempts to present the legislative changes relating to the so called Act 2.0, i.e. the law on higher education together with its implementary regulation on studies as well as the proposed university apprenticeship, which has not as of yet been made into law of any kind. These changes may have a considerable impact on legal education in Poland, and, hence, on the public administration sector in the context of its needs. For it seems justified to assume that the two research areas, i.e. the public administration sector and legal education are both interrelated and that they exert reciprocal influence upon each other. For public administration, in order to function properly, requires a supply of lawyers whereas the latter, in turn, considerably affects its practices – for instance, by way of academic activities and jurisprudential construction or judicial review. The text focuses, above all, on outlining the postulate of the so called good administration. Subsequently, selected issues are presented in the areas of legal education that are related to such administration and can serve to either implement the postulate or to weaken it. Presented are also the assumptions of the draft of the, so called, academic apprenticeship as well as the draft law together with its implementary regulation. Moreover, attention is paid to the phenomenon of mythologisation of practical education presenting a desired direction of legislative action in that respect.

**Keywords:** legal education, law on higher education, public administration, university apprenticeship

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## Introduction

On account of the legislative procedure underway in relation to the so called “Act 2.0”, i.e. law on higher education,<sup>2</sup> the associated lower-level instruments<sup>3</sup> and the proposals not yet incorporated in any draft of a legal instrument,<sup>4</sup> which procedure may exert considerable impact on legal education in Poland, I found it reasonable to attempt an academic reflection upon the issue, as expressed by the title hereof, of the needs of Polish public administration sector against the background of anticipated changes in lawyers’ education. I adopt two assumptions herein: that the two research areas, i.e. the public administration sector and legal education are both interrelated and that they exert reciprocal influence upon each other. For public administration, in order to function properly, requires a supply of lawyers whereas the latter, in turn, considerably affects its practices – for instance, through academic activities and jurisprudential construction or judicial review. Avoiding addressing more general research questions, such as “What should ‘good’ legal education be like?” or about the optimal functional model of public administration in Poland – as these are questions to be addressed in a dissertation – I focus, instead, on outlining the postulate of the good administration. Subsequently, I discuss selected issues of legal education that are related to such administration and can serve either to implement the postulate or to weaken it. I present and assess the assumptions of the proposal of the so called academic apprenticeship as well as the LHES draft together with its complementary regulation. I also pay attention to a phenomenon I have termed ‘mythologisation of practical education’ presenting a desired direction of legislative action in that regard.

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<sup>2</sup> Bill of 3 July 2018 Law on Higher Education and Science, available at: [http://orka.sejm.gov.pl/opinie8.nsf/nazwa/2446\\_u/\\$file/2446\\_u.pdf](http://orka.sejm.gov.pl/opinie8.nsf/nazwa/2446_u/$file/2446_u.pdf) (access: 19.07.2018), hereinafter: the Bill or LHES.

<sup>3</sup> Draft regulation of the Minister of Science and Higher Education of 11 July 2018 on studies, available at: <https://legislacja.rcl.gov.pl/docs/506/12313816/12521892/12521893/dokument349821.pdf> (access: 19.07.2018), hereinafter: regulation.

<sup>4</sup> An informal proposal of the so called university (academic) apprenticeship, available only in journalist and popular science publications; a number of sources regarding the proposal will be given in later parts hereof.

## Good administration postulate

Legal education, or rather good legal education, which may be understood as a desirable model of education, if only from the praxeological point of view, is inseparably linked with public administration. For the latter, in order to function properly, requires staff recruited from among, *inter*, those with such education. Both jurists and legal practitioners frequently speak of 'good administration', by which, with a certain degree of oversimplification, one can understand a certain model solution characterised by efficiency and efficacy of operation. To this end, various decision-making centres undertake various activities aiming at achieving or, at least, approximating that goal. Such initiatives are exemplified, in particular, by the "European Code of Good Administrative Behaviour"<sup>5</sup> containing a number of guidelines constituting a specification of the right to good administration as set out in Article 41 of the Charter of Fundamental Rights of the European Union<sup>6</sup>. The Code mentions, *inter alia*, the importance of the administration functioning in a manner that is lawful, impartial, commensurate and fair, and the need for advice with regard to the proceedings pending. On the other hand, "in the Polish legal order, the right to good administration has not been stated *expressis verbis* (nor in lower-level legal instruments – author's remark) in the fundamental law in the state, which is the Constitution of the Republic of Poland of 1997. Regardless of the above, as a result of the construction, the above mentioned concept can be derived from the constitutional provisions (...), [in particular from] Article 153 of the Constitution – concerning governmental administration, in particular the civil service corpus providing for the implementation of the tasks of the state by its a fourfold nature, *viz.*: professional, reliable, impartial and politically neutral"<sup>7</sup>. In the literature it has also been held that, from the good administration point of view, "of significant importance is the principle of proportionality of the actions of public administration bodies. It is worth mentioning on this occasion that a public administration body, having, among its attributes, an element of administrative authority, should act with reasonable minimum of interference with the sphere of individual rights"<sup>8</sup>. Therefore, in order

<sup>5</sup> Published in OJEU C. 2011.285.3. See also a publication of the European Ombudsman in this respect: <https://www.ombudsman.europa.eu/pl/resources/code.faces#/page/1> (access: 20.07.2018).

<sup>6</sup> Published in OJEU C. 2012.326.2.

<sup>7</sup> P. Żuradzki, *Prawo do dobrej administracji w polskim porządku prawnym na tle Europejskiego kodeksu dobrej administracji*, [in:] M. Kępa, M. Marszał (eds.), *Duch praw w krajach Europy Środkowo-Wschodniej*, Wrocław 2016, p. 54.

<sup>8</sup> K. Wojtyczek, *Granice ingerencji ustawodawczej w sferę praw człowieka w Konstytucji RP*, Kraków 1999, p. 136 et seq.; D. Kijowski, *Pozwolenia w administracji publicznej*, Białystok 2000, p. 249 et seq., quoted after P. Żuradzki, *op. cit.*

to be able to give effect to the above mentioned guidelines and principles in the operations of the public administration, which is, in its functional essence, a staff-based entity, it must be provided with properly educated personnel, and in particular – lawyers. In summary, there is a connection between the needs of public administration and legal education consisting in, *inter alia*, the requirement that adequate personnel be provided to administration bodies and administration-related institutions, such as courts. A conjecture can also be made that the better educated (prepared) legal personnel is, the more the postulate of ‘good administration’ will be fulfilled by the public administration practice.

### Several remarks on public administration

It is assumed in the literature on the subject that public administration is exercised by the state in the broadest sense of the term, i.e. by state authorities as well as public-law associations (local-government associations) and other administrative entities.<sup>9</sup> In other words, “public administration is understood as a set of actions, activities and organisational and executive enterprises, undertaken in order to pursue the public interest by various entities, bodies and institutions, on the grounds of a statute and in legally prescribed forms”.<sup>10</sup> In introducing the title consideration on the needs of the Polish sector of public administration in the context of legal education, I adopt the above, broad, definition of public administration.<sup>11</sup> Despite such a broad definition of public administration, it should not be forgotten that the model of legal education, which we may deem desirable or expected, also concerns a sphere that is not public administration *per se*, but is tightly related thereto. What is meant here is, *inter alia*, administrative or common courts, which exercise controlling functions over public administration. Undoubtedly, as already mentioned above, proper realisation of those functions requires adequately trained legal personnel.<sup>12</sup> It seems justified here to state that the role of the lawyer acting within the framework of public administration, or outside it but in connection with it, will be, in a major part, to apply administrative law, whereas the law itself, being part of public law, can be treated, following F. Werner – a former president of the Federal Administrative Court of the FRG, “as constitutive law in a concrete form”.<sup>13</sup>

<sup>9</sup> E. Ochendowski, *Prawo administracyjne. Część ogólna*, Toruń 2013, p. 22.

<sup>10</sup> H. Izdebski, M. Kulesza, *Administracja publiczna. Zagadnienia ogólne*, Warszawa 1999, p. 79.

<sup>11</sup> Cf. S. Wrzosek, M. Kruszewska-Gagoś (ed.), *Prawo administracyjne*, Lublin 2016, p. 17.

<sup>12</sup> See E. Gdulewicz (ed.), *Konstytucyjny system organów państwowych*, Lublin 2015, p. 231 et seq.

<sup>13</sup> J. Jabłońska-Bonca, *Podstawy prawa dla ekonomistów*, Warszawa 2000, p. 367.

## Proposal of academic apprenticeship

There are numerous ideas for an amendment and improvement of legal education. A current form this tendency takes is the proposed university apprenticeship. The idea of university apprenticeship, also termed 'academic' in the popular-scientific and journalist discourse, is new and only gained wider press coverage in early 2018. It was argued then that "if the assumptions are made into law, some of the universities in the country will obtain the qualification to educate candidates for professional attorneys. Only some, for university apprenticeship is – as is being reserved – to be of elite character. Only those institutions will be entitled to administer it which can guarantee proper preparation of candidates. Authorisation will be granted according to, *inter alia*, the following criteria: the number of independent researchers, number of registered advocates and legal advisors employed at the department, experience in teaching students, and number of graduates".<sup>14</sup> Academic apprenticeship is, according to the assumptions, based on tutoring, with tutors being advocates or legal advisors. Such apprenticeship would last for two years, i.e. one year less than the current advocate or legal advisor training. At the moment, "the issue is subject to preliminary conceptual and analytical evaluation"<sup>15</sup> in the Ministry of Justice which mentors the project.

The proposed apprenticeship has been criticised by certain legal circles. Specifically, the Presiding Committee of the National Council of Legal Advisors has expressed 'outright opposition' arguing, *inter alia*, that "the project is essentially an attempt to take professional training out of the association".<sup>16</sup> It has been emphasised that it is "objectionable that 'academic legal trainees' will be entitled to replace a legal advisor before courts, law enforcement agencies, state and local authorities and other institutions, in lack sufficient safeguards and protection of professional secrecy and being excluded from oversight by the professional association".<sup>17</sup> In expanding on the objections to the draft, Z. Tur argues that "apprenticeship is to prepare a trainee not only for the exam but, above all, for the practical, professional conduct of the profession. Resting with the former will take its toll with every lost litigation, poor advice and human misery resulting not out of malice, but the lack

<sup>14</sup> A. Krzyżanowska, *Aplikacja akademicka – znamy założenia projektu*, "Rzeczpospolita", 5 February 2018.

<sup>15</sup> Eadem, *Aplikacja akademicka: szumne zapowiedzi, działań brak*, "Rzeczpospolita", 21 May 2018.

<sup>16</sup> The position of the Presiding Committee of the National Council of Legal Advisors on the submitted proposals for introduction of the so called university apprenticeship of 6 February 2018, available at: <http://kirp.pl/stanowisko-prezydium-krajowej-rady-radcow-prawnych-sprawie-przedstawionych-propozycji-wprowadzenia-tzw-aplikacji-uniweryyteckiej/> (access: 16.07.2018).

<sup>17</sup> *Ibidem*.

of practice”.<sup>18</sup> In the discussion so far I have not found any positions in favour of the draft.

In independently evaluating the proposed university apprenticeship, I join the group of its critics. However, I would like to express my objection to the excessive emphasis on the practical dimension of studying, which is often given inappropriate, in my opinion, extent.

## Mythologisation of practical education

In the Polish model of legal education, two educational dimensions – with a certain degree of oversimplification – can be distinguished: theoretical (scholarly, academic) and practical.

In pursuing an optimal education model, and hence the realisation of the postulates of good public administration, one should not focus exclusively and stress the practical aspect of studies.<sup>19</sup> A phenomenon can be observed in this regard which I call ‘mythologisation of practical education’ consisting in attributing to this aspect of education an exclusive or dominant role in the process of education *in genere*. Such mythologisation can also be observed in legal education and it is, in my opinion, a worrying process. According to the PWN Dictionary of the Polish Language, mythologisation means “introducing to a text mythological elements; converting something into a myth or legend, creating myths surrounding someone or something”<sup>20</sup>. And it is the case with attributing excessive importance to the practical education in legal university courses; surrounding such practices a myth is sometimes created of which I have written above. Through improper proportions and concentrating exclusively or predominantly on the practical side, lawyers’ education is reduced to craftsmen’s education in the pejorative sense of the term. However, apart from good craftsman’s skill, i.e. practical, a lawyer should have solid theoretical knowledge. For such knowledge is indispensable in understanding properly and describing the phenomena associated with professional activities, including public administration. It is necessary in order to understand values of not tangible, but ontological nature, such as justice or equity. Such values lay at the

<sup>18</sup> Z. Tur, *Aplikacja uniwersytecka: poczuć się radcą, czyli doświadczenie nie dla każdego*, “Rzeczpospolita”, 16 July 2018.

<sup>19</sup> The phrase “study practically” is a frequent leitmotif of advertising campaigns for course of study or institutions themselves. I will even risk saying that it is ubiquitous in the Polish Internet, which is corroborated by an analysis of search engine records for the phrase.

<sup>20</sup> *Słownik Języka Polskiego PWN*, available at: <https://sjp.pwn.pl/slowniki/mitologizowanie.html> (access: 16.07.2018).

foundation of law understood as *ars boni et aequi*. Naturally, the practical side must not be neglected either as it also an important element of legal education. Nevertheless, it is essential that it be skilfully harmonised with the theoretical sphere as they are inextricably linked and correlated. In addition, my conviction is that institutions holding the qualifications to administer legal studies should concentrate on the achievement of their primary goal, i.e. harmonious education in accordance with the above principles; of a dichotomic, theoretical-practical nature.

Therefore, returning to the criticism of the projected university apprenticeship, in the context of the considerations of mythologisation of practical education during legal studies, I am of the opinion that legal apprenticeship, mistakenly referred to by some commentators as practical only (which is not the case as apprenticeship has an actual theoretical dimension) should be left in the hands of the Bar. "Universities pursue their mission, which is to comprehensively prepare a young lawyer for the choice of professional (and in some sense – life) path. The place of apprenticeship follows that choice. In such a case, professional associations face no dilemma and can prepare applicants for the specific professional roles: of legal advisor or advocate. Legal departments wrap up the student's knowledge in a professional way, as well as enabling him to choose a career whereas the associations prepare a lawyer for a specific profession"<sup>21</sup>. Although I do not fully share the opinion of exclusive professionalism and comprehensiveness in legal education – as those are not free from flaws, I do believe that the present structure of legal education – in the context of the sequence: university – apprenticeship, is correct. Certainly, a critical debate of changes in both higher education and apprenticeship is desirable and needed; nevertheless, it is a subject of another study.

## New statute and regulation – significance for legal education

Analysing the proposed solutions, one arrives at the conclusion that the legislator aims at fulfilling the postulate of theoretical-practical dichotomy in legal education as described above, although this is not expressly stated in the draft. The proposed division between academic and professional institutions under Articles 14 and 15 LUES merits special attention. The provisions provide that an institution is an academic institution if it pursues scientific studies and holds scientific category A+, A or B+ in a minimum of one scientific or artistic discipline. On the other hand, an institution will be a vocational institution if it provides education considering the needs of the social and economic environment and does not meet the conditions

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<sup>21</sup> Z. Tur, op. cit.

of scientific categorisation. An implication of an institution being academic is authorisation to conduct studies of first and second degrees, uniform master's programmes and educate doctoral students. On the other hand, a vocational institution will provide education in practical disciplines only. The distinction of studies according to the profile: practical and general-academic entails that in a practical profile over a half of ECTS are assigned to practical skill courses, whereas in a general-academic profile over a half of ECTS are assigned to the courses related to academic studies pursued at the institution in question.

The above professional regulation is of considerable importance in correlation with the text of the regulation section 7(1) whereof states that courses of study such as law, canonical law – are conducted as uniform master's programmes. Thus, legal education will only be provided at academic institutions. I hope that in the dominant respect general-academic profiles will be applied in this respect, giving regard to the educational needs of both theoretical and practical nature. Notably, in the event that the practical profile is adopted, in accordance with section 5 of the regulation, the courses developing practical skills will be taught in the conditions relevant to a given professional activity and in a manner enabling students to perform relevant practical exercises. Hence, it seems that in order to ensure proper realisation, specific to the legal education, the institution will be required to provide 'adequate conditions', by which I understand e.g. a mock courtroom or a computer lab with a lawyer's application. I assess positively the proposed changes and am of the opinion that if they are implemented in the institutions' practice, they can bring the desired benefits.

## Summary

In summary, it should be emphasised that the Polish public administration sector together with the ancillary services needs well educated legal staff, which results, *inter alia*, from the need to realise the citizen's right to good administration. The proposed changes, as set out in the Act 2.0 and the regulation on studies, could contribute to the education of such staff. However, on account of broad autonomy of the institution and leeway conferred by the act, practical realisation of such education will be dependent on the commitment of the relevant institutions. An important issue will be here, in my opinion, not mythologisation of practical education and development of a balanced curriculum that will include the strictly academic, theoretical aspect as well. On the other hand, the proposed university apprenticeship is to be assessed unambiguously negatively, as both inexpedient and unnecessary. Therefore, in conclusion, I would like to remind the somewhat pompous



but in line with our subject, Jan Zamoyski's quote from the foundation document of Akademia Zamojska of 1600: "such shall be Republics, as their youth's upbringing". Indeed, the shape of the Polish public administration sector will be dependent on the lawyers' 'upbringing' in this respect.