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**HIGHER LEGAL EDUCATION IN BELARUS AND POLAND
THROUGH THE PRISM
OF THE HUMAN RIGHT TO EDUCATION**

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INTRODUCTION

Over the centuries, the attitude of society toward learning and education has continually changed from considering it an activity exclusively for the elite to perceiving it as a fundamental human right. Undoubtedly, education ensures the development of intellectual skills, prepares people for work and as members of society and citizens; it also broadens their view of the world. It is worth considering that education is not synonymous with literacy (a basic ability to read and write), but it is a much broader phenomenon, including, but not limited to, adult and vocational education, formal learning and informal educational activity, the development of skills and the formation of social competences. It is provided at different ages for learners and under various conditions of formality. Education is an indispensable requirement for the free development of human beings and a tool to shape the future professional path of individuals. By means of education, society and the whole country develop. Education performs many functions. One of them is to explain how the world, in which human beings live, functions and to prepare them for independent existence in society. During formal education, people achieve specific professional outcomes which allow them to function independently in an appropriate role.

The legal profession is one of the professions which can be achieved through the process of formal education. The enrolment numbers and the annual rankings of higher education institutions indicate that legal studies remain one of the most popular and attractive fields of studies in Poland and overseas. Neither the high admission requirements defined by higher education institutions, nor the volume of materials to be learned discourage a wide range of entrants from selecting a career in law. Legal practice belongs to the three oldest and most elite professions in the world (along with doctors and priests), which aim to help people solve problems related to health, life and death. Since legal work is considered a profession of public trust, to demonstrate its significance in society the law defines certain criteria for candidates who aspire to the position of lawyer. Some of them are of a substantive nature, such as a higher education degree and the completion of a legal apprenticeship, others characterise the moral nature of the candidates, such as *bona fide* and the full enjoyment of civil rights.

Undoubtedly, the content and teaching methods of legal studies, the academic environment and student rights directly and significantly affect the image of future lawyers. Students are expected to acquire professional knowledge (i.e. specific fields of national and international law, understanding and correct application of legal terminology,

awareness of the sources of law and its classification, the legislation process) and the essential skills necessary to apply law in practice (interpretation, analysis and execution of legal provisions, legal writing and public speaking skills, argumentation and negotiation). Another important outcome of legal studies is formation of the moral values of future specialists. The ethical rules of lawyers recommend that law graduates are able to work in a team and to respect their colleagues, encourage high moral standards in professional life and continuous development of professional and interpersonal skills, empathy, and sensitivity to unfairness and social vulnerability.

It is also important to underline that legal education largely affects justice and democracy in society; it manifests the weaknesses and disadvantages of different sides of social life. Access to justice depends, among other things, on a sufficient number of educated and competent lawyers who play an important role in the proper functioning of the rule of law. These lawyers not only defend infringed rights and freedoms acting as advocates, but in the position of judges they ensure a fair trial, demonstrating the judiciary in action. Law graduates act as public prosecutors and ensure that the preparatory detention of a suspect lasts no longer than necessary. Lawyers participate in the legislative process in parliament, mediate business and interpersonal conflicts, and apply legal knowledge in the relations between consumers and suppliers. It is hard to identify a sphere of life in which law does not regulate and where lawyers do not perform their duties. Therefore, social processes, the lives of citizens and matters of state are intertwined with the quality of legal services and legal education.

Renowned economist John Kenneth Galbraith, in “The Good Society” published more than 20 years ago, emphasised how important the process of education is for the life and development of a modern, decent society: “In the advanced industrial nations, however, education has a central economic role. The modern economy requires a well-prepared, adaptable labour force (...) Education both prepares and inspires the innovators who respond to the interests and diversions of an educated population”¹. While graduates of economics or technology start acquiring professional experience in their first workplace, law graduates are not entitled to start their career immediately in a court, prosecutor’s office or as an advocate. A legal apprenticeship is often a mandatory next level of learning in order to gain access to the legal industry. As a result, the long educational pathway, the vocational and academic aspirations of legal education and a long-term professional

¹ J.K.Galbraith, *The Good Society. The humane agenda*. Houghton Mifflin Company, New York, 1996, p. 69.

apprenticeship are subjects of various polemics among law graduates, and the academic and professional communities.

As one can see, legal education can be recognised as a means of personal and professional development of individuals, a safeguard against disorder and injustice in society and a tool of economic sustainability of citizens. At the same time, education is a fundamental human right guaranteed by the state. The right to education, including higher education, is regulated by around one hundred international human-rights documents. The international community describes the core content of the right, defines its principles and prepares numerous recommendations and judicial conclusions, if relevant, for its proper implementation at the national level. The state is obliged to put every effort into ensuring that national education, including higher legal education, meets the requirements of the international documents. In maintaining a high standard of legal education, governmental bodies ensure that legal professionals serve the rule of law and bolster democracy and justice in society. Justice in society through effective and qualitative legal education strengthens public trust in both lawyers and the governing power. It also creates a positive image of the state in international relations. Then, the selected research is important not only for the academic and professional communities, but also for the whole society and the image of the state internationally.

Higher legal education, as one of the levels of formal education, shall be considered within the framework of the human right to education. **The main objective** of this research is to verify whether higher legal education in Belarus and Poland meets the international standards and principles defined by human rights law towards the right to education. **The main hypothesis** states that the national regulations concerning the system of higher education, in particular legal education, are mainly in line with the international standards describing the human right to education. **The second hypothesis** points out that *de facto* the full harmonisation of the international standards concerning higher education in the national systems requires systematic changes in the chosen countries, without which legal education cannot be recognised as fully available, accessible, acceptable and adaptable to the needs of society, the labour market and contemporary global challenges.

The research focuses on the system of higher legal education in two countries – Poland and Belarus. The selection of the countries is grounded in the relative similarities of the national systems of higher education and legal occupations, and the transferability of best practices from one country to another. For example, belonging to the group of civil law countries, Belarus and Poland produce academic papers dedicated mostly to the

controversial issues of implementation, interpretation and exercise of the legal provisions in practice, while the methodology of legal education and legal didactics are left without the due attention of researchers.

Belarus only joined the Higher Education Area in 2015 and the system of higher education is being developed in accordance with contemporary European trends. In such situation, good practices and the experience of higher education institutions in Poland over many years can be adapted and implemented in Belarusian conditions. Moreover, the researcher's knowledge of Polish and Russian languages and her personal experience of studying law in both countries enables an effective and comprehensive analysis of the questions formulated below and achievement of the research objective.

Taking into consideration the main objective of the dissertation, the research has the following specific objectives:

The first objective is to define the term “education”, its content and functions from different academic perspectives and to describe a rationale of the interdisciplinary approach to education through the prism of human rights law.

The second objective is to determine the core content and the main principles of the human right to education and to identify its place among all human rights.

The third objective is to compose a list of indicators to enable an assessment of higher legal education from the human rights-based perspective.

The researcher focuses her attention on the content, principles and characteristics of the human right to education at the international level and their implementation in the national legislation of Poland and Belarus. International treaties, reports and recommendations concerning higher legal education and the legal profession create the background of the research. *The subject of the research* includes the provisions regulating higher education in Poland and Belarus and their factual implementation in the system of legal education. The concept “legal provisions” is not limited to the legislation adopted by the governmental bodies, but also covers the legal norms, internal regulations and rules issued within the jurisdiction of higher education institutions.

Based on a review of the literature and the findings of other scholars concerning the current subject, the following subsidiary theses are formulated:

1. The notion “education” is a subject of research in various sciences.
2. The human rights-based approach to education ensures a comprehensive and interdisciplinary analysis of the concept of learning from the perspective of historical, legal and social transformation.

3. Since human rights law is a living mechanism of the international order there is no uniform meaning of the right to education under human rights treaties. Similarly, the content of the right to education is regulated by hundreds of human rights documents.
4. The core content of the right to education is described by its fundamental principles and essential features that are interpreted in line with the full spirit of the human rights instrument, the development of social relationships and changes in the international arena.

For the realisation of the defined above objectives and confirmation of the hypotheses, the research consists of 5 chapters.

The first chapter describes the applied methodology of the research and presents the overview of the doctrine dedicated to the research topic. It is justified that the human rights-based approach enables the multidisciplinary analysis of the system of higher legal education. The first chapter describes the empirical investigation which has been conducted in Poland and Belarus and aims to enrich the analysis of the doctrine and to fill the gap in the researched issues.

The second chapter is devoted to analysis of the term “education” and displays the perception of education in the linguistic, legal, philosophical and pedagogical aspects. Recognising education as an essential element of the human life, it performs a range of purposes. The functions of education are analysed and presented in the light of the historical development of the concept of education in the world. The comprehensive analysis of the notion throughout the sciences exhibits that the essence of education has different facets.

The third chapter presents the analysis of the international regulations concerning the human right to education. It attempts to learn the meaning of education as the right enshrined in the human rights treaties, legal doctrine and case law. The essence of the right to education is sought firstly through its definition and then by learning the main characteristics and the core content of the right. Education occupies a particular place in the life of human beings and links different spheres of human activity, embedding awareness of the significant role of education in each of them. For proper realisation of the right to education, accuracy in understanding the core content and its place among other rights is required. In the chapter, the classifications of human rights and the place of the right to education among other human rights are examined within the matrix of scientific and legal discussions. The educational objectives of the right are presented as they are

defined in the international human rights treaties, since they constitute a fundamental part of the right to education.

The fourth chapter of the research is devoted to the principles and features of the right to education, focussing on a thorough analysis of the 4-A scheme formulated by the UN Special Rapporteur on the right to education. It illustrates one of the scientific approaches to examine the compliance of the right to education with international requirements. Reference to the abundant legal practice of the European Court of Human Rights and other documents of an international nature makes the subject matter more practically oriented and clearer. Higher education is examined as a human right and the indicators corresponding to the specific features of the right to education – availability, accessibility, acceptability and adaptability – are defined.

The fifth and final chapter presents the results of the assessment of higher legal education in Poland and Belarus by means of the human right indicators in the light of the 4-A scheme. It is examined the extent to which national legislation regulates the system of higher education in general and, particularly, how legal education complies with the international provisions on the human right to education. Statistical, economic, empirical and analytical data reflecting different facets of higher legal education constitute the background of the research, along with legal regulation of the system of higher education. For analysis of the pedagogical aspect of legal education, reference is made to the findings of empirical research and the internal documents adopted by higher education institutions.

The research is based on an analysis of national and international sources related to pedagogy, law, ethics, psychology and sociology. The major part of the materials consists of legal provisions of national and international law regulating the human right to education, higher education, legal occupations, ethical rules and the standards of education. Bearing in mind the numerous amendments to the national regulations concerning higher education, the research is based on legal norms valid as of 10 January 2019. Taking into account the comparative nature of the research, for the creation of the full picture of the analysed matter it is important to study foreign scientific articles. They demonstrate the variety of approaches in the science and ensure a broad vision in the field of research. Internet resources are also an essential part of current research and enable access to reports and data of international organisations, syllabi and curricula of legal studies, provided mainly on official university webpages.

There are a few main methods applied at different stages of the research: intuition, critical analysis, comparative and historical methods and also a multiple case study

method. The method of intuition is used for the selection of the field of the research, formulation of the theses and application of other methods. Critical analysis method enables collection of materials in the literature and legislation regarding the meaning of education and the content of the human right to education, which results in the creation of the theoretical background of the research. The historical method is essential to describe the functions of education over the ages and changes in the perception of the right to education. The case study method is applied to collect the experience-based opinions of law professors on law teaching. The empirical research is based on in-depth interviews and the tool is a questionnaire. The interviews are conducted with law teachers with at least five years of pedagogic experience from public law schools. This method provides qualitative data on the less discussed matters of legal doctrine, such as legal didactics, teaching methods in law schools, motivation and ways of developing the professional qualifications of teaching staff.

CHAPTER 1. METHODOLOGY OF THE RESEARCH

1.1. The interdisciplinary character of the research

The preliminary findings of the research show that education is a multiple phenomenon of the social existence. It lies down in the subject of research of different sciences – philosophy, economy, sociology, pedagogy. Within the legal disciplines the matter of education also takes its place, but to a lesser extent. The attempts to gather the legislation regulating the social relations in the realm of education into a separate branch called education law have been occasionally made. However, in the XX century the influence of fast development of the society and a plenty of the scientific achievements in different spheres stipulated the integration of sciences. The formation of new integrated disciplines such as philosophy of education, sociology of education, philosophy of law, economic law or others raises the demand for multifaceted study. In the framework of these studies an object is viewed from the various perspectives regardless of whether the research has theoretical or empirical character. The study may result in the discovery of new concepts (e.g. human capital in economics of education) and enriches the science as a whole. Natural sciences integrated with the social fields of science produce a new methodology and stipulate an application of the interdisciplinary approach to research. Nowadays the scientific picture of the world implies a unity of the diversity. The science consists of the diverse human achievements in many fields, but every single fragment of the picture different from others is not neglected, but becomes a part of the complex image.

Each research varies by its subject and the applied methodology. Methodology of a research is a complex of elements required to solve a scientific problem and to achieve the defined scientific target. It includes a well defined goal of the research and theses/hypotheses to verify, the research methods and instructions (algorithm) how to apply the methods, approaches and principles². The current research applies an interdisciplinary approach of scientific investigation to verify the formulated theses.

Firstly, it is worth to understand what an interdisciplinary approach of research looks like. By K. Kuciński, an interdisciplinary approach is perceived as an application of the terminology and theoretical background, scientific methods and techniques relevant to different scientific disciplines in order to achieve the results based on the experience of all

² В.Ф. Берков, *Философия и методология науки*: учебное пособие, Москва, 2004, с. 24.

scientific fields³. Undoubtedly, the scientist points to the major characteristics of interdisciplinarity, however it is not an comprehensive perception. The list of general methods of research is very vast, they are widely applied in different scientific fields. Research within the social sciences, in general, is accompanied with the same methodology regardless of the branch of the science. In the applied sciences researchers seem to organize their studies based on the similar methods. There are also specific methods relevant to only pedagogy or law. However, the narrowly specialized methods and techniques applicable in a certain discipline can unlikely be transferred without any modifications to other field of science for application. As a result, many sciences apply the same methods of research, but no one states that the research is carried out within a single disciplinary, i.e. the research is interdisciplinary⁴.

Apparently, in addition to the diverse methods a subject of the research relevant to the different sciences shall be identified in order to carry out interdisciplinary studies. Then, the characteristics of the subject along with the selected methods will be the main indicators of the interdisciplinarity of the research.

The interdisciplinary character of the research shall not be considered a trend in the science, but “a useful consciously applied approach aimed at the deep study of the object of the research, in particular those its sides that are undefined or hidden from the traditional methodology of one of the sciences”⁵. Such research shall validate and enrich the experience of classical disciplines and expand their theoretical and practical aspects to the areas classified on the boundaries of different sciences. In the doctrine there is found another concept called “multidisciplinary approach” which takes place when two disciplines create an equally foundation of the research. Meanwhile, an interdisciplinary research aims at an integration of the disciplines⁶. Let us look at an example. The complex study may be grounded on the method of theoretical analysis from the list of general methods which are relevant to all sciences and, on the other hand, includes an empirical method applicable in a specific discipline. Different sciences may be interested in the results of the research, but the subject of the study lies in the focus of one science only. As

³ K. Kuciński, *Metodologia nauk ekonomicznych. Dylematy i wyzwania*, Difin, Warszawa, 2010, s. 79.

⁴ The Kuciński's definition may be supported by the theory of positivism. According to H. Kelsen, a proponent of positivism and limitation of the interdisciplinary research of law, an object and method of inquiry are correlated, different methods of inquiry necessarily generate different objects. B. van Klink, S. Taekema, *Limits and Possibilities of Interdisciplinary Research into Law. A Comparison of Pragmatist and Positivist Views*, Series Politika, nr 4, Tübingen: Mohr Siebeck, 2011, p. 13.

⁵ I. Kowalska, Rozwój badań z zakresu ekonomiki edukacji w paradygmacie interdyscyplinarości nauki, *Prace naukowe Uniwersytetu ekonomicznego we Wrocławiu*, 2013, № 305, s. 349.

⁶ B. van Klink, S. Taekema, *op.cit.*, p. 17.

a result, it is difficult to evaluate the contribution of each discipline into the methodology of the complex research. The boundaries of two approaches (interdisciplinary and multidisciplinary) seem nominal bearing in the mind the challenges encountered during the comparison of methods, results and impact of theoretical and empirical studies. That is why further in the current work the term “interdisciplinary” is being applied.

No every scientific topic and problem is suitable for the research within different disciplines. These are following prerequisites for the interdisciplinary research:

- a subject of the research lies in the focus of difference sciences;

J. Dewey stated that education is a process of living, living is education⁷. He didn't separate theory from practice, knowledge from capacity to implement the gained information into the reality. The understanding of the nature of an agreement and the definition of the characteristics of personal communication in the framework of psychology is important to the same extent as the ability to draft and negotiate the conditions of a commercial contract within the legal science. The social relationship regulating the process of negotiation and conclusion of a civil contract is considered a subject relevant to different sciences, i.e. psychology, legal science, economics.

- some aspects, conditions or consequences of the researched subject take roots in the realm different from the science where the main subject is learned;

The consequences of the legal reform of the system of education are reflected in the learning outcomes, the rate of unemployment of graduates, the level of health of the learners and the growth of wealth of the society. All of these elements are subjects of scientific interest of different disciplines. The advantage of the interdisciplinary approach of the research consists in the elaboration of a complex view on education in the light of political and legal transformations.

- The nature of the subject of the research is similar with the characteristics of subjects of other sciences. Hence, the methodology of different sciences is applicable by the analogy.

Interdisciplinarity is not a new idea in the science. The debates on the interdisciplinary approach in the framework of the legal disciplines are presented by various scholarships, mostly international⁸. In the Polish scholarship it is worth to mention K. Opalek and his

⁷ J. Sigler, *Education: Ends and Means*. Classical selections on great issues. Lynchburg College, 1997, Vol.IX, p. 332-333.

⁸ See examples B. van Klink, S. Taekema, *op.cit.*, p. 7-32. W. M. Schrama, *How to Carry out Interdisciplinary Legal Research: Some Experiences with an Interdisciplinary Research Method*, Utrecht Law Review, 2011, № 1, p.147-162. D. W. Vick, *Interdisciplinarity and the Discipline of Law*, Journal of

works⁹. He presents the well-described and logically adjusted idea of internal and external integration of sciences, where under “internal integration” is understood an interdisciplinary approach within legal sciences themselves, while “external integration” refers to cooperation of legal disciplines with other fields of science, such as geography, political science and others¹⁰. Legal scholars seem to get inspiration in various disciplines, such as sociology, psychology, philosophy, economics and even literature¹¹. This is simply explained by the broad dimension of legal science in the people’s life starting from the history of political thoughts, philosophy of law and ending with criminology and legal psychiatry. In the framework of the pedagogical science the application of interdisciplinary approach is also rational and grounded by the programmes of study and expected learning outcomes that imply the obtained knowledge and skills of other fields of science. The programme of pedagogic speciality includes the following interdisciplinary subjects: cultural anthropology, social policy, clinical psychology for the master’s degree students¹² and social therapy, intercultural communication¹³ in the advanced studies.

Interdisciplinary as well as monodisciplinary approach in the legal sciences has its opponents and proponents. A major advantage of a monodisciplinary approach implies in limitation of understanding of the legal system as it is. This approach results in a high level of harmonization in concepts and methods; legal norms and interpretative tools that have been developed and refined over centuries are considered a significant legacy of the legal science. At the same time, when a legal vocabulary and methods are stabilized, limited space for innovation remains. Moreover, a traditional conception of legal science doesn’t strive for innovation in the description and application of legal norms at all¹⁴. An interdisciplinary approach gives an opportunity to develop and improve the existing legal system if a scholar doesn’t treat other discipline as a source of inspiration, but rather a

Law and Society, 2004, vol. 31, № 2, p.163-193. М.А. Поночевный, *Основания и границы применения междисциплинарных исследований в юриспруденции*, Исторические, философские, политические и юридические науки, культурология и искусствоведение. Вопросы теории и практики, 2014, № 12 (50), с.151-155.

⁹ The articles and monographs are cited in the article by J. Łakomy, *Prawa Człowieka w perspektywie interdyscyplinarnej*, Wrocławskie Studia Erazmiańskie, 2010, t. IV, s.131-152.

¹⁰ J. Łakomy, *op.cit.*, s.133.

¹¹ Some researchers analyse the relationship between international law and literature from the point of view of its form of expression. See E. Krivenko, *International law, literature and interdisciplinarity*, Law and Humanities, Vol. 9, Iss. 1, 2015, p. 103-122.

¹² The subjects are included in the programme of studies at the Faculty of pedagogy and psychology of the university in Białystok, academic year 2016/2017, master’s degree. Available at http://pedagogika.uwb.edu.pl/files/file/PDF/programy_studiow/stacjonarne/II_stopien/Pedagogika_II_st_program_st%2015_16.pdf [accessed on 22 January 2017].

¹³ The list of advanced courses for the academic year 2015/2016 is available at <http://pedagogika.uwb.edu.pl/studenci.php?p=126> [accessed on 23 January 2017].

¹⁴ B. van Klink, S. Taekema, *op.cit.*, p. 17.

necessary contribution to the science of law. On the other hand, literal transfer of achievements of one discipline to legal science may disturb an order and system in law. If an economist inserts the concept of effectiveness into criminal executive law the effectiveness of a criminal punishment will be understood in a weird meaning. Indeed, an interdisciplinary approach is an implicit union of concepts, ideas and tools generated in the framework of different sciences aimed to discover a new idea or improve the existing research within a traditional approach of a certain discipline.

The subject of the research is the content and principles of the human right to education at the international level and the implementation of human right to education in the national legislation of Poland and Belarus. Although the human right to education is recognized and affirmed by the majority of states in the world, the execution of this fundamental right still remains unsatisfactory in many countries. The content of the right to education and its principles are extracted through the examination of the international documents, legal doctrine, judicial and quasi-judicial decisions on the facts of the human right violation. From the theoretical concept of the science the human right to education is turned to the practical aspect of human life – the system of education and a right to education of each person.

The subject of the research lies mainly in the focus of two main sciences – legal science and pedagogy, though the experience of other disciplines like sociology and economics of education are also touched by the scholar to achieve the expected scientific results. Within the legal science it is beneficial to gain insights of the notion of education from the perspective of constitutional, administrative and international branches of law. In the research the legal regulations of higher education and their implementation in the system of legal education in Poland and Belarus are analysed. The concept “legal regulations” is not limited to the legislation adopted by the government bodies, it also includes the legal norms, provisions and rules issued within the jurisdiction of education institutions. International treaties and recommendations concerning the higher legal education and legal profession in general are also in focus of the research.

The effectiveness of the civil or criminal law clauses is displayed in application them in practice. In a case of disputes and conflicts the legal provisions are examined and evaluated by judges. The legitimacy of the judicial decisions affirms that procedural law functions properly. The effectiveness of the norms concerning the higher legal education shall be examined through their application in practice too. However, the application of these norms differs from a mere application of articles and codes in the legal practice of

lawyers. The effectiveness of laws on education in action is displayed in stability and fruitfulness of the system of education, through outcomes of teaching process and the development of the legal science. The effective execution of the right to education by the state is indirectly proved by the work of lawyers after the graduation from the law faculty.

Summarizing the above, the scientific interest of the current research lies in the content of higher legal education, the characteristics of the law didactics and the administration of educational process by means of legal provisions. In other words, the research focuses on the system of higher legal education. These all are elements that compose the essence of the human right to education. The strict higher education with its content and didactics is a subject of pedagogy, or precisely to say, higher education pedagogy. On the other hand, the research of higher legal education, its legal regulations and learning outcomes in the form of capacities of practising lawyers obviously belongs to the legal science. Thus, the subject of the study possesses the mentioned above characteristics in order to call the research interdisciplinary.

While scholars are motivated in carrying out interdisciplinary theoretical research and the scholarships confirm it, empirical interdisciplinary studies in the social sciences are not often found. It is easy to agree with the Kowalska's explanations¹⁵ of reasons why interdisciplinary scientific research is not popular in Poland, in particular in economics of education and economic sciences. E. Kulczycki¹⁶ also points to the challenges of studies in different disciplines. He raises the issues of Interdisciplinarity in the field of humanities in Poland. It is worth considering that the presented below reasons to a greater extent can justify the low rate of interdisciplinary studies in the legal sciences. The main reasons of a lack of motivation of scholars to conduct a research in groups or with different methodologies applicable in various sciences are following.

Firstly, there is a strict identification of boundaries of the scientific fields and disciplines by the legal regulation¹⁷. The boundaries of the discipline are established widely, however interdisciplinarity is not assumed. The controversial systematization of fields of science in Poland would not be so unsatisfactory if only the career growth of a scholar was not linked to the achievements in a certain scientific discipline. According to

¹⁵ See more I. Kowalska, *op.cit.*, s.348-357.

¹⁶ E. Kulczycki, Ocena humanistyki w świetle wyzwań Narodowego Programu Rozwoju Humanistyki, *Zagadnienia Naukoznawstwa*, 2016, 52-1 (207), s.152.

¹⁷ Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego z dnia 25 września 2018 r. w sprawie dziedzin nauki i dyscyplin naukowych oraz dyscyplin artystycznych, *Dz. U. poz. 1818*.

Article 219 of the Law on higher education and science¹⁸ a person who holds a doctoral degree and demonstrates scientific [...] achievements forming a significant contribution to the advancement of a given scientific [...] discipline [...] may be admitted to a habilitation assessment process. So, a lecturer with the degree of doctor must develop a particular discipline. At the same time, the Law permits to conduct interdisciplinary studies¹⁹. It looks irrational to give an opportunity to a junior researcher to profit from insights from other disciplines, while a senior scholar doesn't have it, but possesses more experience in the scientific research.

Secondly, academic staff and scholars are encouraged for innovative interdisciplinary research neither by higher education institutions nor donors of the scientific development²⁰. Higher education institutions regularly evaluate the personal and professional development of academic staff. The scientific activity in the form of active participation in the conferences, publications in the national and international reviews, the work in the editorial board, management and participation in the scientific project are taken into consideration during the teacher's evaluation of the scientific contribution to the development of science²¹. Unfortunately, the participation in the project with the interdisciplinary approach is not marked out among others activities of a teacher.

Moreover, I. Kowalska and E. Kulczycki correctly admit that the regulations of the grant competition organized by the National Science Centre or the Ministry of Science and Higher Education neglect the interdisciplinary scientific projects²². The applications with such approach fail to receive additional points in the evaluation procedure. On the contrary, the monodisciplinary projects assigned to a specified discipline are more often financially supported²³.

Last but not least, scholars seem not to be interested in changing the traditional approach to research. The scientific tradition stipulating the monodisciplinary interest to the science is illustrated in Poland and Belarus in various forms – a narrow topic of a conference or forum, a rigid thematic area of the scientific journal. However it is worth to admit that this tradition in education is changing towards opening the space for broader target groups either in the scientific scholarships or during the organisation of conferences

¹⁸ Ustawa Prawo o szkolnictwie wyższym i nauce z dnia 20 lipca 2018, Dz. U. z 2018 poz.1668.

¹⁹ Ibidem, art.59.

²⁰ I. Kowalska, *op.cit.*, s.355-356.

²¹ Para. 3, unit 1 and para.1 Regulamin okresowego oceniania nauczycieli akademickich, załącznik 2 do Statutu Uniwersytetu w Białymstoku, uchwalony w dn. 4 kwietnia 2012 *available at* <http://www.uwb.edu.pl/pliki/statut%20UwB.pdf> [accessed on 25 January 2017].

²² E. Kulczycki, *op.cit.*, s.152.

²³ I. Kowalska, *op.cit.*, s.356.

and meetings. The changes are explained by the influence of the international educational policy, free movement of people and natural integration of the sciences.

The monodisciplinarity of the science in the scholarship may be explained by the existing universal classification of sciences which requires finding a place of any publication in the scope of all sources. Everyone who goes to the library and searches for a book shall see symbols like 34.017.34. This is a number indicating the field of science and discipline of the publication according to the universal decimal classification (UDC).

The narrow specialization and interest to deepen the knowledge in a given science were rational in the previous centuries when the legal disciplines were developing. The emergence of much new knowledge and as a result new fields of science required its classification and orderliness. Thus, the universal decimal classification was created in 1895 by Paul Otlet and his fellow Henry LaFontaine²⁴. They were both lawyers and intended to create a system of the bibliographic sources that lawyers apply to. Over the years the UDC embraced all sciences, not only legal, the system was many times revised and developed. Currently the UDC serves for the bibliographic and librarian purposes to arrange the literature in the multilinguistic environment. After many changes the classification remains one of the most widely-used schemes in the world.

“The UDC is especially popular in the French-speaking countries of North Africa, in Spain and Latin America, and throughout Eastern Europe”²⁵. The influence of the UDC is significantly big in Belarus. If a scholar participates in a scientific conference with a possibility of publication of the thesis one of the requirements to the thesis is an identification of the UDC symbol. An author shall by herself or himself define the main idea of the thesis and the scientific discipline what the idea fits better. If the submitted to the editorial board thesis doesn't satisfy the requirements, including the UDC symbol is missing, it will not be accepted for consideration and then publication in the materials of the conference.

In Poland other obstacle is the classification of the scientific journals according to the discipline. Polish scientific reviews issued by higher education institutions and scientific entities are regularly evaluated and receive a certain number of points since 2013²⁶. Submitting the application form for evaluation of the review the applicant identifies the

²⁴ I. McIlwaine, *The Universal Decimal Classification: Some Factors Concerning Its Origins, Development, and Influence*, Journal of the American society for information science, 1997, 48 (4), p.331.

²⁵ I. McIlwaine, *op.cit.*, p.331.

²⁶ Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego z dnia 13 lipca 2012 r. w sprawie kryteriów i trybu przyznawania kategorii naukowej jednostkom naukowym, Dz. U. 2014, poz. 1126 z późn. zm.

field of science and the scientific discipline dominating in the articles which corresponds to the relevant UDC symbol. For example, the symbol 34 belongs to law, the symbol 37 is relevant to pedagogy. The applicant has the right to define a few fields of science or disciplines pointing to the leading one²⁷. If the evaluation commission has doubts on the selected area of science by the applicant, it is allowed to change it depending on the dominating field or discipline of the materials published in the journal²⁸.

In fact, the applicant, i.e. an editor or a representative on behalf of the editor, does not use this possibility in its full potential. Indeed, the most discussed issue of the evaluation procedure or better to say the result of this evaluation is the number of points received and fair objective criteria of giving them²⁹. Within the project titled “The influence scientometrics on the humanities in Poland” the scholars carried out an analysis of the legal scientific journals³⁰. From the list B of the national journals that don’t have Impact Factor (IF)³¹ they selected the journals dedicated to law as a scientific discipline. In total it amounts to 192 journals from 2212 scientific units, in some cases a journal is classified in a few disciplines. There are 172 units from the social sciences (law is assigned to the social sciences), 16 journals are assigned to the humanities (law is included as an additional discipline) and 4 units are from a group of technical, applied, natural sciences and medicine³². Among 172 legal journals from the social sciences there are 100 units strictly dedicated to law and the rest 72 journals accept the publications concerning a few disciplines, including law³³.

²⁷ Komunikat Ministra Nauki i Szkolnictwa Wyższego z dnia 2 czerwca 2015 r. w sprawie kryteriów i trybu oceny czasopism naukowych. Attachment 1 is an application form for evaluation. In the p.11 and 12 of the application form the discipline and field of the science must be defined accordingly.

²⁸ Ibidem, Art. 4 pkt. 7.

²⁹ See for example the following publications on the topic of evaluation of scientific journals in Poland. E. Kulczycki, *Assessing Publications through a Bibliometric Indicator: The Case of Comprehensive Evaluation of Scientific Units in Poland*, Research Evaluation, 2017, p. 1-12; E. Kulczycki, E. Rozkosz, A. Drabek, *Ocena ekspercka jako trzeci wymiar ewaluacji krajowych czasopism naukowych*, Nauka, 1/2016, 35–58.

³⁰ The methodology of the research is described on the web-site of the project called “Współczesna polska humanistyka wobec wyzwań naukometrii” which lasts from 2014 till 2018. The title of the publication is *Czasopisma prawnicze – wykaz czasopism punktowanych*. Available at <http://scientometrics.amu.edu.pl/czasopisma-prawnicze-wykaz-czasopism-punktowanych/> [accessed on 14 December 2016].

³¹ The list B was approved by the Communication of the Minister of Science and Higher Education of 18 December 2015 on the list of scientific journals with the points awarded for publication in these journals.

³² E. Kulczycki, *Czasopisma prawnicze – wykaz czasopism punktowanych available at* <http://scientometrics.amu.edu.pl/czasopisma-prawnicze-wykaz-czasopism-punktowanych/> [accessed on 25 January 2017].

³³ The discipline to what the journal is dedicated is displayed in the application form for evaluation of the journal. The statistic data is collected whereby the database Polska Bibliografia Naukowa created by the Ministry of Science and Higher Education <https://pbn.nauka.gov.pl/sedno-webapp/>. The database contains the description of each evaluated journal and number of points given by the commission.

Why is the field of science and a discipline important? And to whom? First of all, it is important for the academic staff during the periodic evaluation for a career development, as it is mentioned above. They have to prove their contribution to the development of a particular scientific discipline. If a Polish teacher submits a material based on the interdisciplinary approach to the journal that doesn't have the UDC symbol of his/her discipline the achievement will not be taken into account by the evaluation commission.

Science is announced an area of scientific freedom. It means that scholars are free to apply the research method they wish or to identify a goal of the research and its subject according to their interests. Analysis of the previous research and the literature on the subject is an important step of the study. One way to find the materials on the given topic is to select articles by the key words. Thanks to the electronic databases it is not a difficult task nowadays. Other way of material gathering is to look through the specialized journals. At this point the UDC symbol and the given to the journal scientific discipline may be helpful, because the journal title does not always reflect the main idea of the materials published in the review. The UDC symbol would help to select the journals dedicated to different disciplines, e.g. law and education, law and philosophy.

Here are a few examples of the Polish journals which title, the selected discipline or the UDC symbol may confuse a scholar in terms of the content of the articles published in it. The journal "Klinika" issued by the Polish Legal Clinics Foundation³⁴ belongs to the legal discipline only. However, the articles published in it are focused on the didactics of higher legal education and legal clinics as a method of teaching law. The journal "Edukacja prawnicza" is dedicated to law in a broad meaning and contains the materials on different aspects of application and interpretation of legal provisions, legal education and training of lawyers. The review is marked by the 34 UDC symbol and devoted to law discipline³⁵. Another example when the title and the content of the journal don't match the UDC classification is the review titled "Administracja. Teoria-Dydaktyka-Praktyka"³⁶. According to the selected disciplines the materials are to be devoted to the administration and law, however a researcher can also find the materials on law interpretation, management of the higher education and the pedagogical aspects of administration studies. There are examples of units publishing the articles of the similar thematic interests,

³⁴ The journals are searched in the database PBN, a system of scientific and professional Polish journals available at <https://pbn.nauka.gov.pl/sedno-webapp/journals/42533> [accessed on 26 January 2017].

³⁵ Available at <https://pbn.nauka.gov.pl/sedno-webapp/journals/42867> [accessed on 26 January 2017].

³⁶ Available at <https://pbn.nauka.gov.pl/sedno-webapp/journals/42545> [accessed on 26 January 2017].

however the journals are classified to different disciplines, e.g. “Nauka”³⁷ dedicated to the science on culture, “Nauka i Szkolnictwo Wyższe”³⁸ belongs to the management and administration.

For the comparison, in Belarus there are 26 journals and 10 collections of scientific papers dedicated to law of all 296 units³⁹. These are scientific sources approved by the Higher Attestation Commission⁴⁰ and serve for the dissemination of the scientific results, in particular the results of the doctoral research. Beside them, there are other journals, reviews and collections where scholars publish their materials, but such kind publicity doesn't mean dissemination for the purposes of the doctoral defence. The majority of the journals from the list above are assigned to a few scientific disciplines.

Returning back to the reasons of low rate of interdisciplinary research in the legal science it is important to add the natural integration of various legal disciplines as a reason to avoid more diversification in studies. Indeed, in the curriculum of law students there are a variety of disciplines that are not always strict legal, e.g. history of law, legal ethics, judicial psychology, criminalistics, sociology of law, legal linguistics and others. Scholars are eager to develop the existing disciplines than to ground the appropriateness of an interdisciplinary approach.

The reasons mentioned above are considered subjective and can be eliminated by the efforts of scientific community as well as the state. First of all, it is worth to clarify that the universal decimal classification as any other classification aims to arrange the units and make their management simple. The UDC is a classification that is used in hundreds of libraries in the world with various modifications. “It can in no way be described as a standard. It is proved by the tradition of English-speaking states where the UDC has always been and remains used principally in specialist libraries, and most frequently in those with a strong emphasis on technological interests”⁴¹. Thus, a Polish editorial board filling the application form for the evaluation of a journal by the Ministry of Science and Higher Education is recommended to mention a few scientific disciplines if the materials concern different fields of science. In this context the experience of the Spanish journal classification looks attractive and logical. For instance the journal “Revista de Educación y

³⁷ Available at <https://pbn.nauka.gov.pl/sedno-webapp/journals/34989> [accessed on 26 January 2017].

³⁸ Available at <https://pbn.nauka.gov.pl/sedno-webapp/journals/42737> [accessed on 26 January 2017].

³⁹ Attachment to the Order of the Higher Attestation Commission of Republic of Belarus of 1 April 2014 № 94 as amended (приложение к приказу Высшей аттестационной комиссии Республики Беларусь от 1 апреля 2014 года) available at <http://www.vak.org.by/node/3312> [accessed on 26 January 2017].

⁴⁰ A national government agency in post-Soviet states that oversees awarding of advanced academic degrees. The literal translation differs and sounds as the State Supreme Certification Commission.

⁴¹ I. McIlwaine, *op.cit.*, p.336.

Derecho⁴² is assigned to the jurisprudence as the main area and pedagogy as the additional one. The authors of the articles published in the journal raise the actual issues of law teaching and discuss the effectiveness of legal education.

Nowadays in the XXI century of IT technology the electronic databases are considered as a necessary tool for the collection, analysis and dissemination of the scientific achievements. Bearing in the mind the number of journals qualified for the list B of the Ministry of Science and Higher Education in Poland the proper identification of the area of a review directs a scholar to choose a relevant source of publication of the results of the research. Hence, the entire description of the journals, reviews and other sources will encourage scholars to pay attention not only to Impact Factor or points of the source, but also the scientific discipline in order to share the ideas in the community with the same interests.

The variety of legal disciplines looks like a tree where the fundamental disciplines are being developed and gives a foundation for interdisciplinary fields of law, such as gender issues, human rights, the rights of minorities and others. The development of the science results in the natural autonomy of the legal discipline and emergence of sub-disciplines. The creation of the independent methodology of the science, development of the conceptual instrument, the identification of a new subject and goals of the science which cannot be achieved within already existing disciplines are prerequisites of scientific innovation. An interdisciplinary approach that is successful in integrating knowledge from different sources may at some point become a discipline with its own right. The acceptance of the interdisciplinary approach by the academic circles, how it occurred with sociology of education and economics of education in the last century, supports the emergence of a new field of science. Thus, it's important to create conditions for the development of all fields of science and give possibilities to scholars to solve a research problem according to their scientific interests than to think over the standardization of scientific activities.

In the practical area of life the interdisciplinary approach will appear more often in the empirical projects if scholars are encouraged to change the traditional scientific path and undertake an innovative research. Scientists should be motivated to carry out the interdisciplinary research and moreover present their results for the habilitation procedure. Secondly, in the grant competitions the applicants should be awarded with additional

⁴²See ISSN 2013-584X in the classification RESH (revistas españolas de Humanidades y Ciencias Sociales) available at <http://epuc.cchs.csic.es/resh/> [accessed on 26 January 2017].

points for the interdisciplinary approach applied⁴³ or the applications with such approach should be evaluated in a separate group. The academic institutions shall support academics in implementing the innovative ideas both in didactics and scientific studies. There are different administrative instruments for that – either financial or moral. Thirdly, a social request from enterprises, companies and other entities interested in the results of the interdisciplinary research will raise the motivation of academics and scholars for such activity. “Supply creates its own demand” says the law of markets⁴⁴. The creation of the list of experts enabling to carry out the interdisciplinary research will produce a social request from the industry.

In the purely democratic society freedom of research is sufficient for the development of the science, support of economic growth and enhancement of intellectual level of the nation. Carrying out a research, composing the regulation of the grant competition or evaluating academic’s achievements it is important to remember that the main target of a scholar is to solve a research problem, not to identify a correct discipline where to allocate the results of the research.

It is worth to admit that Anglo-Saxon tradition of legal science is more innovative and open-minded in this sense. It doesn’t fix the strict boundaries between disciplines and avoid the mere theoretical knowledge of legal disciplines⁴⁵. Interdisciplinarity is also understood as an application theoretical knowledge to the practical area. It is not surprisingly that law schools in the UK and USA issue the law review with the materials devoting to application of law, law teaching, psychological and sociological aspects of legal profession and other interdisciplinary topics. Moreover, J. Dewey, H. Putnam and others⁴⁶ with their conception of experiential learning and empirical methods of research didn’t see any obstacles for the conduction of the interdisciplinary research in the theoretical science.

Considering the advantages and disadvantages of the methods of research a scholar has freedom to select an appropriate one to his/her convictions and research goals. However, it is important to avoid two extremes. On the one hand, many innovators see the rigidity and closeness of a pure monodisciplinary approach. On the other hand, traditionalists argue an interdisciplinary approach for its too much flexibility and openness

⁴³ I. Kowalska, *op.cit.*, s.356.

⁴⁴ The French economist Say introduced this idea in his principal work “A Treatise on Political Economy”, now this statement is known as Say’s law. R.A. Arnold, *Economics*, Cengage Learning, 2008, p.184.

⁴⁵ М.А. Поночевный, *op.cit.*, с.153.

⁴⁶ H. Putnam is an American philosopher and mathematician, J. Dewey is a philosopher and psychologist. See more B. van Klink, S. Taekema, *op.cit.*, p. 7-32.

that may result in an undifferentiated and undifferentiating integration and confusion of perspectives.

1.2. Overview of international law and legal doctrine on human rights and education

Human rights are recognized a world-known language in the realm of the international policy, law and order. Human rights serve as an instrument of communication between lawyers, politicians, policy-makers and others. No surprisingly the human rights dictionaries⁴⁷ have been published in order to provide the meaning and explain the rules of application of different terms concerning human rights. The role of the language of human rights is similar with the knowledge of a foreign language for a tourist. It is impossible to avoid it in the modern society and the knowledge of this language expands the human outlook. Nevertheless, it is sad to admit that human rights language is still far from being universally applicable and understandable. Various international organisations and institutions are struggling with the low level of awareness of human rights and freedoms as well as with the human rights violations over the world. Nowadays the study of human rights is organised for lawyers and non-lawyers, children and adults, the ideas of human rights are taught within the school education and in non-formal educational activities. Students and non-academic people may learn the essence of their rights, freedoms and obligations. The content of human rights and freedoms is delivered to everybody through games, social activities and academic learning enlightening children and adults over the world. Human rights are integral supplements of the human dignity and personality.

The first statements concerning human rights came up in the science for a few centuries until the human right terminology, as it is, appeared in the legal document. “No society, civilization, or culture prior to the seventeenth century [...] had a widely endorsed practice, or even vision, of equal and inalienable individual human rights”⁴⁸. In the late XVIII century the concept of human rights emerged in the national documents of the nations. In particular, human rights were legally affirmed in France under the Declaration of the Rights of Man and of the Citizen in 1789. The United States of America protected

⁴⁷ See for example, H.V. Conde, *A handbook of international human rights terminology*, University of Nebraska Press, Lincoln and London, 2004; D. Robertson, *A dictionary of human rights*, Taylor & Francis, 2005; M. Nowicki, *Słownik angielsko-francusko-polski Europejskiej Konwencji Praw Człowieka*, Oficyna, 2009; *Glossary of the European Convention on Human Rights*, Council of Europe, 2015.

⁴⁸ J. Donnelly, *The Relative Universality of Human Rights*, *Human Rights Quarterly*, 2007, Nr. 29, p. 284-285.

the rights of individuals by the Virginia Declaration of Rights and the Declaration of Independence of the United States in 1776⁴⁹. During the next 250 years the idea of human rights passed many transformations for empowerment. Predispositions to the human right theory and legal instruments for protection of particular rights can be found in the other legal documents⁵⁰. However, they rather established the state's obligations than proclaimed the rights of individuals.

The term "human rights" was absent from the international discourse until the end of the World War II. The birth of the international doctrine of human rights as such is usually linked with the adoption of the United Nations Charter⁵¹ and then the proclamation of the Universal Declaration of Human Rights⁵². These documents put the beginning to human rights law which was mainly developed until then within the particular countries. Starting from the middle of the XX century various treaties have been composed and adopted to reaffirm and guarantee legally the human rights and freedoms by many states.

The right to education as the fundamental human right is embodied in the numerous legal instruments. By the nature of their power the documents varies from so called soft law instruments, such as declarations, standards and recommendations, to the binding covenants and treaties with the mechanism enabling the enforcement and monitoring of the state's obligations. A leading role in defining and advancing human rights, including the right to education, at the international level has been played by the United Nations. At the regional level, the instruments have been elaborated by the European, African and American institutions. There are also specialised agencies of the UN, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Labour Organisation (ILO), which legal instruments regulate *inter alia* the right to education. For the purposes of the research the regional dimension of the legal provisions is limited by the European context, as the both researched countries belong to the European region.

Analysing the provisions and doctrine concerning the right to education it is worth to distinguish the right to education and human rights education. These terms are coherent but not similar. The awareness of human rights and freedoms is crucial in maintaining the

⁴⁹ *Human rights: Handbook for Parliamentarians №26*, Inter-Parliamentary Union, 2016, p.19 and 41.

⁵⁰ For example, the Geneva Convention concerning the forced labour (Nr.29), 1930 and the treaties and declarations signed in 1919-1924 after the World War I concerning the rights of ethnic and linguistic minorities.

⁵¹ The Charter was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945.

⁵² Adopted by the General Assembly of the United Nations on 10 December 1948.

respect for them. Therefore, the world community considers important to create the system of education aimed at raising the consciousness of all human rights and freedoms, in other words human rights education. The idea was enshrined in the Resolution of the United Nations⁵³ and then successfully realised into practice. The post of the High Commissioner for Human Rights who is responsible for the promotion and protection of human rights at the international and national levels was created in 1994. So far the High Commissioner for Human Rights on behalf of the United Nations did a lot and continues doing very important work on spreading knowledge of human values, enhancing dignity and encouraging all people to care of their rights and promote the society where human rights are respected and valued. Human rights education has various forms and is addressed to a lot of target groups. In general, human rights education is a complex of events, tools and activities serving to educate and expand the knowledge of all human rights and freedoms among population of the globe. The High Commissioner for Human Rights provides the support (including financial assistance) of national and local capacities for human rights education and etc⁵⁴.

1.2.1. The right to education in the international legal instruments

The principal documents of the UN nature proclaiming the right to education are the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights⁵⁵. Article 26 of the Universal Declaration for the first time recognised the right to education in the legal instruments in explicit terms. Although the term “declaration” refers to the non-binding legal nature of the document it is recognised the principal source of the worldwide binding customary law⁵⁶. It provides a basis for the specific human rights treaties concluded within the United Nations framework. Article 13 of the International Covenant on Economic, Social and Cultural Rights reaffirms the right to education with the detailed definition of the state’s obligations in realisation of the right, Article 14 is mainly dedicated to primary education. Article 18(4) of the International Covenant on Civil and Political Rights⁵⁷ is a scanty provision fixing the parent’s right to

⁵³ Resolution 48/141 adopted by the General Assembly on 7 January 1994.

⁵⁴ See more on the web-page of the Office of the High Commissioner for Human Rights *available at* <http://www.ohchr.org/EN/Issues/Education/Training/Pages/HREducationTrainingIndex.aspx> [accessed on 21 January 2017].

⁵⁵ Adopted by the UN General Assembly in 1966.

⁵⁶ J. Bucińska, *Spoleczne prawa człowieka w Powszechnej Deklaracji Praw Człowieka*, Rocznik nauk prawnych, t.XIII, zeszyt 1, 2003, s. 127-128.

⁵⁷ Adopted in 1966.

ensure the moral and religious education of their children in accordance with their convictions. These provisions compose the backbone of the right to education at the international level.

At the same time there are numerous other instruments protecting the right to education in a particular context or of the certain target groups. The protection against discrimination on the ground of religion, race and gender is reflected in Article 5 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief⁵⁸, Article 3(1) of the Declaration on the Elimination of All Forms of Racial Discrimination⁵⁹, Article 5(e)(v) of the International Convention on the Elimination of All Forms of Racial Discrimination⁶⁰, Article 9 of the Declaration on the Elimination of Discrimination against Women⁶¹ and Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women⁶².

Although the right to education is universal and everyone must have an access to education, some legal instruments regulating *inter alia* the right to education are addressed to particular target groups such as children, immigrants and refugees. These vulnerable groups require the additional attention and care in providing their rights. The international human rights instruments regulating the right to education are following: Principle 7 of the Declaration of the Right of the Child⁶³, Article 28-29 of the Convention of the Rights of the Child, Article 22 of the Convention relating to the Status of Refugees, Principle 6 of the Declaration on the Rights of Disabled Persons⁶⁴, Article 30 of the International Convention on the Protection of the Rights of all Migrant Workers and Their Families and Article 4(3) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities⁶⁵. The educational rights of persons during the armed conflict are stipulated by the Geneva conventions on international humanitarian law⁶⁶.

The provisions of these international instruments were subsequently supplemented by the specific sources classified by international law as soft law. They are recommendations and General Comments, including but not limited to: General Comments 11 and 13 to the

⁵⁸ Proclaimed in 1981.

⁵⁹ Proclaimed in 1963.

⁶⁰ Adopted in 1965.

⁶¹ Proclaimed in 1967.

⁶² Adopted in 1979.

⁶³ Adopted in 1959.

⁶⁴ Proclaimed in 1975.

⁶⁵ Adopted in 1992.

⁶⁶ For example, Article 38(1) of the Geneva Convention Relative to the Treatment of Prisoners of War, 1949, Article 94(1) of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949.

Covenant on Economic, Social and Cultural Rights⁶⁷, General Comment 1 to the Convention of the Rights of the Child⁶⁸ and others. The right to education of internally displaced persons is regulated by Principle 23 of the Guiding Principles on Internal Displacement⁶⁹. Rule 77 of the Standard Minimum Rules for the Treatment of Prisoners⁷⁰ describes the educational entitlement of people in detention. Though these documents are considered to be non-binding due to their belonging to the soft law sources, their legal significance is beyond doubt because of the normative values they epitomise. They illustrate a live mechanism of the international human rights law that adapts to the evolution of the times in general and to current living conditions in particular.

1.2.2. The right to education in the regional legal instruments

In Europe the regional documents which contain provisions on the right to education have been prepared by the Council of Europe, the European Union (EU) and the Organisation on Security and Co-operation in Europe (OSCE).

The well-known legal document of the Council of Europe regulating the right to education is the European Convention for the Protection of Human Rights and Fundamental Freedoms⁷¹. The right to education takes place in Article 2 of the Protocol 1⁷². The decisions of the European Court enrich significantly the understanding of the human rights at the regional level, including the right to education, and will be examined thoroughly further in the dissertation. Unlike the instructive character of the UN treaty-based body decisions, for example a decision of the Human Rights Committee or the Committee on Economic, Social and Cultural Rights, the decisions of the European Court of Human Rights are obligatory for the state parties in accordance with Article 46, paragraph 1 of the European Convention on Human Rights. The Committee of Ministers supervises its execution at the national level⁷³.

⁶⁷ UN Committee on Economic, Social and Cultural Rights, General Comment 11: Plans of action for primary education (Art. 14 of the Covenant), UN Doc. E/C.12/1999/4 (1999) and UN Committee on Economic, Social and Cultural Rights, General Comment 13: The Right to Education (Art. 13 of the Covenant), UN Doc E/C.12/1999/10 (1999).

⁶⁸ UN Committee on the Rights of the Child, General Comment 1: The aims of education (Art. 29 of the Convention), UN Doc. CRC/GC/2001/1 (2001).

⁶⁹ Adopted in 1998.

⁷⁰ Adopted in 1955.

⁷¹ The Convention was signed in 1950, entered into force in 1953.

⁷² The Protocol 1 was signed in 1952.

⁷³ Article 46, paragraph 2 of the European Convention on Human Rights.

Social, economic and cultural rights are enshrined in the European Social Charter⁷⁴ considered the social Constitution of Europe. There is also an amended version of the document called the Revised European Social Charter⁷⁵ which is gradually replacing the origin Charter. Both Charters are a complement to the European Convention on Human Rights guaranteeing that everyday essential needs related to housing, employment and working conditions, education and health, medical and social assistance are human rights on an equal footing with civil and political rights. The educational rights are reflected in a row of articles of the Revised European Social Charter, i.e. Article 9-10 (vocational training), 15 (right of disabled people), 17 (right of children).

Like the international human rights instruments the regional documents concerning the right to education or containing the norms about it can be merged in the groups by certain target groups. The European instruments addressing specific aspects include among others Article 8 of the European Charter for Regional or Minority Languages⁷⁶ defining the use of the minority languages in education and Article 14 of the Framework Convention for the Protection of National Minorities⁷⁷ devoted to the educational rights of minorities.

Among the norms of the European Union dimension it is important to mention Articles 149 and 150 of the Treaty Establishing the European Community⁷⁸ describing the competencies on the European Community in the fields of education and vocational training accordingly. The right to education of migrant workers and their children is enshrined in Articles 7(2) and (3) and 12 of Regulation 1612/68⁷⁹ and Directive 77/486⁸⁰. Moreover, the right to education is mentioned in the Resolution on Freedom of Education in the European Community⁸¹, Article 16 of the Declaration of Fundamental Rights and Freedoms⁸².

During over 60 years of the existence the European Union bodies has generated many treaties, directives, recommendations and other international instruments. The individual rights are set up in various documents, at different time and in a lot of forms. In order to highlight the significance of the human rights and freedoms protected in the European Union it was decided to bring them together in a single document called the Charter of

⁷⁴ Adopted in 1961, ETS Nr.35.

⁷⁵ Adopted in 1996, ETS Nr.163. The Revised Charter is gradually replacing the initial 1961 treaty.

⁷⁶ Adopted in 1992.

⁷⁷ Adopted in 1994.

⁷⁸ Signed in 1957.

⁷⁹ It concerns the freedom of movement for workers within the Community, adopted in 1968.

⁸⁰ It is about the education of the children of migrant workers, adopted in 1977.

⁸¹ Adopted in 1984.

⁸² Proclaimed in 1989.

Fundamental Rights of the European Union. Proclaimed in 2000, the Charter became legally mandatory with the entry into force of the Treaty of Lisbon, in December 2009⁸³. The Charter is consistent with the concept of the European Convention on Human Rights and repeats the primary rights and freedoms embodied in the European Convention. The document contains the fundamental rights of the third generation, i.e. data protection⁸⁴, bioethics regulations⁸⁵ what are not reflected in other human rights documents. Regarding the right to education it is considered fundamental and also included in the text under Article 14.

The Final Act of Helsinki adopted by the OSCE in 1975 contains a section on cooperation and exchanges in the field of education as well as the Concluding Document of the Vienna Follow-up Meeting⁸⁶. Another important document is the Hague Recommendations Regarding the Education Rights of National Minorities⁸⁷.

As opposed to the European Union and the Council of Europe, after the crash of the Soviet Union the leaders of Belarus, Russia and Ukraine initiated in 1991 the creation of the regional organisation titled the Commonwealth of Independent States, or Russian Commonwealth⁸⁸. Nine of the 15 former Soviet States are members of the regional union⁸⁹. Belarus is considered a founder member state. According to the Charter of the Commonwealth of Independent States the goals of the union is *inter alia* to ensure the human rights and fundamental freedoms in accordance with the generally recognized principles and norms of international law. The only legal instrument on human rights and freedoms within the scope of the union is the Convention on Human Rights and Fundamental Freedoms⁹⁰, Articles 27-28 are dedicated to the right to education. The treaty is composed in similarity with the European Convention on Human Rights, but without the effective mechanism of the norm implementation.

⁸³ Ł.Bojarski, D. Schindlauer i inn., *Karta Praw Podstawowych Unii Europejskiej jako żywy instrument*. Podręcznik dla prawników, Warszawa 2014, s. 14.

⁸⁴ Article 8 of the Charter of Fundamental Rights of the European Union.

⁸⁵ Article 3 of the Charter of Fundamental Rights of the European Union.

⁸⁶ Adopted in 1989.

⁸⁷ Adopted in 1996.

⁸⁸ The Agreement Establishing the Commonwealth of Independent States was signed on 8 December 1991 in the Belovezhskaya Pushcha Natural Reserve.

⁸⁹ The list of member states and associate members is displayed on the official web-page of the union www.e-cis.info.

⁹⁰ Adopted in 1995.

1.2.3. The right to education in the dimension of the specialised agencies and Special Rapporteur

Education in its broad meaning is in focus of the specialised UN organisation - the United Nations Educational, Scientific and Cultural Organization (UNESCO). After the end of the World War II it was required the institution that would support and embody the peaceful system of life activity⁹¹. Education is considered something more than a mere way to prevent illiteracy. Education transforms human being life, builds peace in the mind of people and is an instrument to struggle with poverty. With the development of the society and the fast growth of the sciences the primary peace-oriented goal of the UN agency was modified. The current UNESCO global task lays in coordination of international cooperation in education, science, culture and communications.

Education is one of the major interests of UNESCO. About one third of the organisation's budget is spent on educational aims⁹². In the realm of education UNESCO focuses vary from the illiteracy elimination to dissemination of education for all and eradication of discrimination from national education systems. Education relating to human rights and fundamental freedoms is also UNESCO's priority as well as the development of formal education at all levels⁹³. This organisation is the only United Nations institution with a mandate to cover all areas of education⁹⁴, therefore the UNESCO reports and publications being referred to implicate a significant part of the research.

The elaboration of international educational standards by UNESCO results from Article 23 of the International Covenant on Economic, Social and Cultural Rights stating that the achievement of the rights of the Covenant includes but not limited to the conclusion of conventions, the adoption of recommendations by the specialised agencies⁹⁵. Hence, the provisions on the right to education can be found in the following legal instruments including documents of both hard and soft law. One may tell that the primary UNESCO's document in terms of education is the Convention against Discrimination in Education⁹⁶. It is said to be "a codification of the right to education in international law"⁹⁷.

⁹¹ P. Duedahl, *The History of UNESCO: Global Actions and Impacts*, Palgrave MacMillian, 2016, p.3.

⁹² K. Beiter, *The Protection of the right to education by international law: including a systematic analysis of article 13 of the International Covenant on Economic, Social, and Cultural Rights*, Leiden: Brill, 2006, p. 228.

⁹³ See more at the www.unesco.org.

⁹⁴ *Education for the 21st century*. See more the official web-page of UNESCO, available at <http://en.unesco.org/themes/education-21st-century> [accessed on 16 April 2017].

⁹⁵ K. Beiter, *op. cit*, p. 232.

⁹⁶ Adopted in 1960.

⁹⁷ K. Beiter, *op. cit*, p. 226.

Convention on Technical and Vocational Education⁹⁸ is the second binding legal instrument. The extensive non-binding instruments in the field of education is said to make the right to education the most precisely defined and protected among other economic, social and cultural rights⁹⁹. It is important to refer to the Recommendation against Discrimination in Education¹⁰⁰, the Recommendation Concerning the Status of Teachers¹⁰¹, the Recommendation Concerning Education for International Understanding, Co-operating and Peace and Education Relating to Human Rights and Fundamental Freedoms¹⁰², the Recommendation on the Development of Adult Education¹⁰³, the Recommendation concerning the Status of Higher-Education Teaching Personnel¹⁰⁴, the Recommendation Concerning Technical and Vocational Education and Training (TVET)¹⁰⁵. The mentioned above list should be added by the UNESCO World Declaration on Education for All¹⁰⁶, Salamanca Statements and Framework for Action on Special Needs Education¹⁰⁷, Dakar Framework for Action: Education for All¹⁰⁸.

The International Labour Organisation (ILO) was created with the primary goal to improve the labour conditions in the states, there are some legal instruments concerning the right to education. These are the Convention concerning Minimum Age for Admission to Employment¹⁰⁹ and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour¹¹⁰.

The mandate, Special Rapporteur on the right to education, was created by the Commission on Human Rights in its resolution 1998/33 of 17 April 1998. The decision to assign a Special Rapporteur on the right to education was justified by the strong belief that economic, social and cultural rights had been neglected, if not marginalized. The Special Rapporteur was to draw the attention of the international community to the wick points in the protection of the fundamental human right globally. Katarina Tomasevski was

⁹⁸ Adopted in 1989.

⁹⁹ A. Nartowski, *The UNESCO system of protection of the right to education*, Polish Yearbook of International Law, Vol. 6, 1974, p. 290.

¹⁰⁰ Adopted in 1960.

¹⁰¹ Adopted in 1966.

¹⁰² Adopted in 1974.

¹⁰³ Adopted in 1976.

¹⁰⁴ Adopted in 1997.

¹⁰⁵ Adopted in 2015. It replaced the Revised Recommendation Concerning Technical and Vocational Education adopted in 1974.

¹⁰⁶ Proclaimed at the World Conference on Education for All on 5-9 March 1990 in Jomtien.

¹⁰⁷ Adopted in 1994.

¹⁰⁸ This is a document composed in 2000 at the World Education Forum and enshrines a global commitment to provide quality basic education for all children, youth and adults.

¹⁰⁹ Adopted in 1973.

¹¹⁰ Adopted in 1999.

appointed the first Special Rapporteur in August 1998 and during 6 years of her work contributed widely to the conceptualisation, meaning and promotion of the right to education¹¹¹. Not detracting from other Special Rapporteurs' achievements Katarina Tomasevski was known as an outstanding international human rights lawyer and uncompromising activist of her generation. She wrote over 200 articles, sat in the editorial board of human rights reviews and was the author or editor of many books dedicated to the right to education¹¹². In the current research one may find the references to her various works starting from the reports and statements composed in the position of the Special Rapporteur on the right to education to her monographs and books concerning education in general and the human right to education in particular.

1.2.4. The right to higher education in the legal instruments

The following legal instruments are the results of the efforts of the Council of Europe and/or UNESCO in order to deliver the statement of the international organisations towards the challenges arisen within the higher education: the UNESCO Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region¹¹³, the Convention on the Recognition of Qualifications concerning Higher Education in the European Region¹¹⁴, the Recommendation on the Recognition of Studies and Qualifications in Higher Education¹¹⁵, the World Declaration on Higher Education for the Twenty-First Century: Vision and Action¹¹⁶.

Summarizing up the mentioned above it is worth to highlight that the exercise of the legal provisions, including those inculcated into the international treaties, requires the precise wording and unequivocal content of the legal document. Therefore, the international organisations strive to clarify and enrich the content of the treaties regulating human rights by means of various manuals, General Comments, observations, recommendations, expert's opinions. All together these human rights sources generate a

¹¹¹ The data of the official UN web-page about the Special Rapporteur on the right to education, *available at* <http://www.ohchr.org/EN/Issues/Education/SREducation/Pages/SREducationIndex.aspx> [accessed on 12 April 2017].

¹¹² *Obituary*. Human Rights Law Review, Oxford University Press, 2007, Volume 7, issue 1, p. 1.

¹¹³ Adopted in 1979. The Convention is open for signature by the countries invited to the diplomatic conference organized on the occasion of the adoption of the Convention. According to Article 16 other member states of the United Nations may be authorized to accede to the Convention.

¹¹⁴ Adopted in 1977 and known as Lisbon Convention. Regardless of the territorial zone mentioned in the title of the Convention the legal instrument is open for signature by the member states of the UNESCO Europe Region, the Council of Europe and other states complied with Article XI.1 of the Convention. For example, Canada and United States of America signed the legal instrument in 1997.

¹¹⁵ Adopted in 1993.

¹¹⁶ Adopted by the World Conference on Higher Education, Paris, France, 9 October 1998.

comprehensive vision what the right to education shall be considered at the international, regional and national levels.

1.2.5. The legal doctrine on the right to education

The legal instruments of human rights are crucial in the realisation of the right to education in practice. The international norms determine the framework and create the commitments of sovereign states towards the implementation of the rules at the national level. They also ensure the protection mechanism in case when the human rights and fundamental freedoms are violated. At the same time, the human rights-based approach to education will be incomplete without the study of the legal doctrine. At this point, it is important to underline that in the doctrine there are hundreds of the research devoted to various aspects of human rights and freedoms. They lie in the realm of history, international and constitutional law, philosophy. Education is also in the focus of the numerous scientific research from the perspective of the legal science, pedagogy and psychology. Nevertheless, the human right to education as a separate object of the study has been less examined and a few scientific works are put down in the foundation of the human rights-based approach to education. J. Spring¹¹⁷ and D. Hodgson¹¹⁸ have analysed the international and regional instruments related to the human right to education. M. Verheyde¹¹⁹ has examined the right to education from the perspective of the Convention on the Rights of the Child. The historical angle of the child's right to education can be traced in the UNESCO publication by edition of G. Mialaret¹²⁰. The comprehensive analysis of the protection of the right to education by international law is presented in K. Beiter's work¹²¹. The important contribution to development of knowledge on the human right to education has been done by K. Tomasevski, UN Special Rapporteur on the right to education in her numerous publications.

¹¹⁷ J. Spring, *The universal right to education: Justification, definition, and guidelines*, Lawrence Erlbaum Associates, 2000.

¹¹⁸ D. Hodgson, *The human right to education*, Aldershot: Ashgate Publishing, 1998.

¹¹⁹ M. Verheyde, *A commentary on the United Nations Convention on the Rights of the Child. Article 28, the right to education*, Martinus Nijhoff Publishers, 2006.

¹²⁰ *The child's right to education*. G. Mialaret (ed.), UNESCO, 1979.

¹²¹ K. Beiter, *op.cit.*

It is worth to refer to the collective works¹²² on the system of human rights in general and economic, social and cultural rights in particular where the content and the place of the right to education is examined along with other human rights and fundamental freedoms.

In the Polish doctrine there are no monographs dedicated entirely to the human right to education in the light of the international law, however the topic is often raised either in the interdisciplinary research¹²³ or as a part of the collective works¹²⁴ concerning various human rights and freedoms. As opposed to the little scientific interest to the international dimension of the right to education the Polish researchers are interested greatly in the research on education within the national legislation. The implementation of the human right to education at the national level is a topic of various legal research, articles and books within the constitutional or administrative field of law. The works analysing the school reforms in Poland take the particular place in the line of all scientific results dedicated to the human right to education.

The similar situation occurs in the Russian-language science. In the Russian Federation there are many papers dedicated to the system of human rights and fundamental freedoms, however few works concern the human right to education. The topic is mostly examined from the perspective of implementation of the right to education in the national legal system¹²⁵ or is researched in the historical perspective¹²⁶. The innovative perception of education in the light of law has resulted in the justification of the education law as an independent field of legal science in the works of V. Shkatulla¹²⁷ and V. Syrych¹²⁸. The

¹²² J. Delbruck, *The Right to Education as an International Human right*, German Yearbook of International Law 35, 1992. M. Nowak, *The Right to Education*, w: A. Eide, C. Krause, A. Rosas (eds.), *Economic, Social and Cultural Rights*, Martinus Nijhoff Publishers, 2001. F. Coomans, *In Search of the Core Content of the Right to Education*, in: A. Chapman and S. Russel (eds.), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, Intersentia, 2002.

¹²³ M. Kozak, *Prawo dziecka do edukacji. Założenia pedagogiczno-prawne i bariery realizacyjne*, Warszawa 2013. See also M. Czuba-Wąsowska, K. Mańko, *Egzekucja obowiązków szkolnego i nauki. Zagadnienia prawne. Teoria i praktyka*, Warszawa, 2011.

¹²⁴ See J. Mikosz, *Prawo do nauki*, w: *Prawa człowieka. Model prawny*, Warszawa 2001. O. Rudak, *Prawo do nauki*, w: B. Banaszak, A. Preisner (red.), *Prawa i wolności obywatelskie w Konstytucji RP*, Warszawa 2002. D. Tyrawa, *Prawo do nauki w świetle obowiązującego ustawodawstwa polskiego*, w: K. Warchałowski, *Prawo do wolności myśli, sumienia i religii w Europejskiej Konwencji Praw Człowieka i Podstawowych Wolności*, Lublin, 2004. D. Kurzyńska-Chmiel, *Prawa w dziedzinie oświaty (edukacji) w wybranych umowach międzynarodowych i prawie UE*, w: J. Boć, L. Dziewięcka-Bokun (red.), *Umowy w administracji*, Wrocław 2008.

¹²⁵ Т.В. Гусева, *Право человека и гражданина на образование: международные стандарты и российское законодательство*, Волгоград, 2003; И.В. Тяпкина, *Правовой механизм реализации конституционного права на образование в средних и высших профессиональных учебных заведениях в России*. Диссертация на соискание ученой степени кандидата юридических наук, Москва, 2009.

¹²⁶ Р.Ш. Мещеров, *Право на образование в дореволюционной России в конце XIX - начале XX вв.* Диссертация на соискание ученой степени кандидата юридических наук, Санкт-Петербург, 2010.

¹²⁷ В.И. Шкагулла, *Образовательное право: учебник для ВУЗов*, М.: Норма, 2001.

¹²⁸ В.М. Сырых. *Введение в теорию образовательного права*, Москва, Готика, 2002.

right to education in the international human rights law is an object of A. Kozyrin¹²⁹ and A. Bondarevskiy's¹³⁰ scientific interests. In the Belarusian science the topic of human rights and freedoms in general and the human right to education in particular is poorly studied and is occasionally illustrated in forms of scientific articles only¹³¹.

Indeed, legal regulations of formal education and education as a fundamental right are two main approaches in different scientific works. At the same time it is worth to focus attention on the lack of research on legal education and law teaching in both selected countries. Traditionally, teaching itself, even if it concerns legal disciplines, is out of the framework of the legal doctrine in the civil law countries. However, some countries, like Spain and Germany, have started to encourage the scientific research focused on the development of legal didactics¹³². Legal education in Poland as well as in Belarus implies a subject of interdisciplinary research that faces various challenges, as it has been mentioned above. Neither the legal industry nor the scientific community demonstrates the interest to research scientifically the matter of higher legal education, at the same time broad discussions on the different aspects of legal education and professional training are raised in the non-scientific sources¹³³. Among the scientific publication in Poland it is worth to mention the monograph of F. Zoll¹³⁴ and the collective works of Polish scholars¹³⁵. There are also reviews "Klinika" and "Edukacja prawnicza" where different aspects of legal education are raised. The Belarusian science is very poor developed in terms of scientific research on higher legal education. There are mainly abstract collections summarizing discussions held during the scientific conferences and meetings and few scientific

¹²⁹ А.Н. Козырин, *Образование: гражданин и право*, Библиотечка Российской газеты, Вып. 17, 2015.

¹³⁰ А.Е. Бондаревский, *Право человека на образование: сущность и принципы*. Диссертация на соискание ученой степени кандидата юридических наук, Москва, 2013.

¹³¹ В. А. Юбко, *Место конституционного права на образование в системе основных прав и свобод личности*, *Право и образование* № 10, 2015, с.25-34; Д.В. Шабайлов, *Право на образование: оптимизация организационно-правовых форм его реализации (сравнительный анализ)*. Журнал международного права и международных отношений, № 2, 2008, с. 19-25. See also the monograph Л. В. Павлова, А. Е. Вашкевич, *ЮНЕСКО и права человека*, Минск: Тесей, 2002.

¹³² *Revista de Educacion y Derecho (Education and Law Review)* is a scientific journal with the interdisciplinary articles on legal education issued by the university of Barcelona, available at <http://revistes.ub.edu/index.php/RED/index> [accessed on 13 April 2018]; German Journal of Legal Education, available at <http://b-s-r-b.de/german-journal-of-legal-education/archiv/> [accessed on 13 April 2018].

¹³³ B. Sitek, P. Polaczuk, *Reforma szkolnictwa wyższego. Kształcenie prawników w Polsce na tle dosвідczeń innych państw europejskich*, *Forum prawnicze*, październik 2012, s. 10.

¹³⁴ F. Zoll, *Jaka szkoła prawa? Czy amerykańskie metody nauczania prawa mogą być przydatne w Polsce*, Warszawa, 2004.

¹³⁵ S. L. Stadniczenko, P. Zamelski, *Pedagogika prawa*, 2016; E. Kozerska, P. Sadowski, A. Szymański (red.), *Ze studiów nad tradycją prawa*, Warszawa, 2012; E. Kozerska, P. Sadowski, A. Szymański (red.), *Wybrane problemy nauki i nauczania prawa*, Opole, 2010.

articles¹³⁶. Taking into account that the system of higher education and science of Belarus follows the ideas and trends of the scientific stream in Russia the number of publications concerning higher legal education in Russia significantly exceeds the output of Belarusian scholars.

Summarizing up the main points, it is worth to reaffirm that human rights are not a mere theory, it is the rules of peaceful coexistence in the global community. From the legal standpoint, human rights imply the number of rights and freedoms recognized by sovereign states and enshrined in human rights norms. Like other fields of law the international human rights law consists of its sources, principles and language. It also generates its tools of promotion and protection of human rights and freedoms. The international human rights law is illustrated at the national, regional or international levels. Although the human rights and freedoms are universal and everyone is equal in the scope of rights by virtue of birth, the enforcement of human rights law vary depending on the will of a state to implement the international norms in the national legislation. As a result, separate research is required to demonstrate the perception of the right to education at the national and international levels.

In spite of the probable jurisdictional differences of the human rights law in the world it is based on the common respect for human values, dignity and humanity in their full extent. The significance and recognition of human rights is proven by the number of member states ratified the international human rights norms as well as the expansion of the human rights-based approach in the political and scientific activity. For example, the human rights-based approach is widely applied in the programmes aimed at human development. “A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights”¹³⁷. In other words, struggling with social or economic problems in certain countries the policy-makers look at the roots of inequality of chances and fight with the reasons of discrimination. Planting the ideas and principles of human rights they seek to solve both the primary problem and its consequences reflected in the social, economic or political fields.

¹³⁶ Among the scientific articles it can be mentioned the following ones: А. Браусов, С. Вашкевич, *Подготовка юридических кадров высшей школы по вопросам информатизации правовой сферы*, Высшая школа, №1, 2016, с.41-43; М. Латышева, *Проблемы юридического образования в Республике Беларусь*, Юридический мир, №3, 2012, с. 5-8; М.А. Акинфина, С.П. Бондаренко, *Использование информационных технологий и киберпространства*, Философские проблемы информационных технологий и киберпространства, 2011, с. 13-24.

¹³⁷ *Frequently asked questions on a human-rights based approach to development cooperation*, United Nations, New York and Geneva, 2006, p.15.

1.3. The description of the empirical research carried out in Belarus and Poland

The doctoral thesis is based on the results of a few empirical research, one of each was conducted for the purposes on the current work. It was applied the qualitative method of research to examine the methodology of teaching law and the professional development of law professors in Belarus and Poland. Other scientific investigations cited in the thesis are based on the quantitative and qualitative research methodology and conducted either in Poland or Belarus among law students¹³⁸.

The research concerning the teaching methodology spread in the law schools in Belarus and Poland is the first investigation of this type. The researcher conducted the analysis by means of multiple case studies. Unfortunately, the legal didactics and the issues of higher legal education are the least examined questions in the legal sciences of the researched countries. Legal didactics, didactics of higher education, methodology of professional education are sub-disciplines of the faculty of pedagogy and andragogy. Obviously, due to their narrow specialisation these subjects don't imply the main scientific interest for researchers of the pedagogic science. At the same time, law scholars are interested mainly in the theoretical and practical issues of law interpretation and application than the methodology of law teaching and the didactics in higher education institutions¹³⁹. Therefore, the empirical research dedicated to the practical aspects of law teaching in the chosen countries is presented in the legal doctrine in the least extent.

It is interesting that the questions of teaching and learning in law programmes have been investigated in depth in the common-law countries, particularly in the USA and the UK. There are found the empirical research on teaching law as well as a range of the scientific articles, textbooks and teacher's manuals on the various facets of legal didactics in higher education¹⁴⁰.

¹³⁸ See the sub-chapter 1.3.4.

¹³⁹ The researcher describes the challenges of interdisciplinary legal scholarship in Poland and Belarus in the sub-chapter „Interdisciplinary character of the research”.

¹⁴⁰ J. Ogloff, D. Lyon, K. Douglas, V. Gordon Rose, *More than Learning to think Like a Lawyer: The Empirical Research on Legal Education*, Creighton Law Review, 2000, p. 73-243. J. Eagar, *The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education*, Gonzaga Law Review, 1997, p. 389-415, H. Katz, K. O'Neill, *Strategies and techniques of law school teaching*, 2009, Leah Wortham, A. Scherr, N. Maurer, S. Brooks (ed.), *Learning from practice: a text for experiential legal education*. Teacher's manual, 2016.

1.3.1. Method, instrumentation and research questions

The multiple case studies conducted by the researcher serve a tool to fill in a gap on the methodology of teaching law that is little presented in the legal scholarship in both countries. The research aims to empirically explore the teaching methods spread in the legal pedagogy in Poland and Belarus. The method of the research is the multiple case studies; a research tool is an individual in-depth interview. It implies a qualitative look at law teaching based on the personal experience of the respondents. The information was collected by the means of the questionnaire (Annex 1).

The main research question of the case studies is the following: what ways of knowledge transfer, training of practical skills and the development of social attitudes of law students that are used by law professors?

The specific research questions are following:

1. What are the educational objectives of law professors? How do they see their role in higher education?
2. What teaching methods do law professors know? Which of these are predominantly used? What factors determine their pedagogic choice?
3. How do law teachers develop their pedagogic experience?
4. What is the impact of clinical legal education on the academia and legal education?

The questionnaire includes 28 questions divided into three thematic blocks and a few questions of the social and demographic content. The first block of questions concerns the learning outcomes obtained by law students during their studies and the educational objectives of law professors. The educational objectives of the respondents are a personal guideline of teachers of what they want to achieve by teaching others. It often differs from the objectives defined in the curricula of a particular legal subject. The second block is dedicated to the teaching methods which are known and can be applied in law schools by law teachers. The third block examines the legal clinical experience of law professors if they are engaged in such activity. The interview has a form of a dialogue with the open-ended questions that encourage a narrative story of the respondents.

At the preparation stage the questionnaire was translated into the Russian and Polish languages to enable the organization of communication with respondents in Belarus and Poland in the official languages of the country. Two testing interviews were conducted in Poland and Belarus (an interview in each country) in order to precise the clarity and the

comprehensive character of the research questions. Then, the questionnaire was added with the vocabulary and some clarifying questions.

1.3.2. Sampling strategy

The questionnaire is addressed to law professors working at budget-funded higher education institutions in Poland and Belarus. The public universities and institutions have been selected due to their high scores in any types of international and national rankings. Indeed, the massive emergence of private higher education institutions a few decades ago offering the most popular specialization – law, marketing, economy – formed the image of higher education as a commodity. Competing for students the private institutions sometimes offered the low quality education at low price. As results, the diploma and higher education degrees obtained in a private institution was considered an insignificant paper than a proof of professional competences. Nowadays, the national educational policy and the system of the control of quality of education ensure the provision of higher education compliant to the adopted standards in all types of educational institutions. Nevertheless, legal education provided in the best private law schools in Poland and Belarus is perceived less competitive than the education in the high-scored public institutions. Assuming that the budget-funded law schools imply model providers of educational service, the respondents for the research have been selected from the academic staff of these entities.

Taking into account the geographical diversity of the higher education institutions and the size of the organization it was selected 8 of 15 law faculties in Belarus and 10 of 27 law faculties in Poland in order to have the representatives from the relatively various institutions (table 1, table 2). The aim was to conduct 2-3 interviews in each institution resulting in a sample of 40-45 respondents representing different groups of the academia based on gender, academic rank, age group, teaching experience.

Table 1. Sample of law faculties in Belarus

| Law faculty № | Country | Higher education institution | The number of interviews done |
|----------------------|----------------|-------------------------------------|--------------------------------------|
| 1 | Belarus | Belarusian State University | 2 |
| 2 | Belarus | Belarus State Economic University | 3 |

| | | | |
|-------|---------|---|----|
| 3 | Belarus | Brest State University named after A.S. Pushkin | 3 |
| 4 | Belarus | Francisk Skorina Gomel State University | 3 |
| 5 | Belarus | Mogilev State A. Kuleshov University | 3 |
| 6 | Belarus | Polotsk State University | 1 |
| 7 | Belarus | Vitebsk State University named after P.M.Masherov | 3 |
| 8 | Belarus | Yanka Kupala State University of Grodno | 2 |
| Total | | | 20 |

Table 2. Sample of law faculties in Poland

| Law faculty № | Country | Higher education institution | The number of interviews done |
|--------------------------|----------------|---|--|
| 1 | Poland | Adam Mickiewicz University in Poznan | 3 |
| 2 | Poland | Jagiellonian University | 2 |
| 3 | Poland | Maria Curie-Skłodowska University | 2 |
| 4 | Poland | Nicolaus Copernicus University | 1 |
| 5 | Poland | University of Bialystok | 3 |
| 6 | Poland | University of Gdansk | 1 |
| 7 | Poland | University of Lodz | 3 |
| 8 | Poland | University of Rzeszow | 1 |
| 9 | Poland | University of Wroclaw | 2 |
| 10 | Poland | Warsaw University | 2 |
| Total | | | 20 |

For the selection of the participants of the research three main methods were applied: voluntary participation, purposeful sampling and snowballing. The voluntary participation means that the candidates reached by the researcher shall express their consent to take part in the individual interview. Until the planned sample size was achieved about 20 law professors in total neither gave their consent at a personal meeting nor responded to the email inviting to participate in the research. The legislation of the selected countries allows law teachers to combine the pedagogical activity with the individual practice of law. The majority of the academic staff at the law faculties is practicing lawyers with the tight

working schedule. Their refusals to participate in the research, if it was provided, were mainly explained by a lack of free time.

In this point it is important to refer to the prominent scientists having expertise in case study area. These are M. Patton¹⁴¹, R. Yin¹⁴², U. Flick¹⁴³ and others¹⁴⁴. They state that there are no rules for sample size in a qualitative research. The sample size depends on what a scholar wants to obtain, the purpose of the inquiry, the available resource. One of the recommendations for the verification of the proper sample size is based on the principle of redundancy. If every additional case study doesn't enrich the findings of the research the sample size is seemed sufficient¹⁴⁵. In the thematic literature one may find the following recommendations. The sample size in the a multiple case study research shall range from 2 to 4 cases as the minimum and 10-15 as the maximum depending on how comprehensive analysis is conducted with each case and how much data is required to answer to the research question¹⁴⁶.

Purposeful sampling in a broad sense means “selecting groups or categories to study on the basis of their relevance to your research questions, your theoretical position and analytical framework, your analytical practice, and most importantly the argument or explanation that you are developing”¹⁴⁷. Purposeful sampling is based on the selection of participants with certain characteristics or criteria which help to verify hypothesis, sometimes the sample is called a study group. For the purpose of the current research the law professors who match the characteristics as followed were invited:

- working in the public higher education institution;
- possessing at least 5-year teaching experience;
- participating in the legal clinic (half of respondents).

The third block of the questionnaire is concerned the clinical legal education as an important part of the legal didactics. To analyse the influence of the clinical methodology on the teaching style about half of the respondents were selected on the basis of their legal

¹⁴¹ M. Patton, *Qualitative Research and Evaluation Methods*, Sage Publications, 2002.

¹⁴² R. Yin, *Case Study Research: Design and Methods*, Thousand Oaks, California, 2003.

¹⁴³ U. Flick, *Projektowanie badania jakościowego*. Tłum. P. Tomanek, Warszawa, 2012.

¹⁴⁴ The polish scholarship on this theme is enriched by insights of the following authors. S. Juszczyk, *Badania jakościowe w naukach społecznych*, Katowice, 2013; E. Babbie, *Badania społeczne w praktyce*, Warszawa, 2004; A. Boczkowski, *Badania ilościowe i jakościowe w socjologii*, *Rocznik nauk społecznych*, t.4, 2018, s. 63-80.

¹⁴⁵ P. Zaborek, *Application of multiple case study metod in doctor al dissertation*, in: M. Strzyżewska (ed.), *Selected Methodological Issues for Doctoral Students*, Warsaw School of Economics Publishing, 2009, p. 86.

¹⁴⁶ *Idem*.

¹⁴⁷ J. Mason, *Qualitative researching*, Sage Publications, 2002, p. 124.

clinical experience. There are no restrictions on the term of engagement or a role and duties of the respondent in the legal clinic.

The last approach applied in the selection of the respondents is snowballing when one person leads to another¹⁴⁸. In summary, the respondents that have participated in the research fulfil the following criteria: law professors teaching in the selected public higher education institutions with 5-year teaching experience, giving the consent to the interview and, if applicable, engaged in the legal clinic.

The approach to contact the respondents in Poland differed from the approach applied in Belarus. The first step of the sample selection in Poland started from the composing the list of possible candidates. They were selected randomly from the web-sites of the law faculties with the consideration of the minimum required criteria. The researcher tried to compose the list of law teachers whose scientific interests lie in different legal disciplines – historical and theoretical aspects of law, procedural and substantive law. Then, the candidates were sent an individual email-invitation to grant 60-90 minute interview. The candidates (not all) with the clinical background were reached in a person at the annual Polish legal clinics conferences organized in Rzeszow on 25-27 November 2016 and in Warsaw on 8-9 April 2017.

Due to the lack of the contact information of law teachers at the web-site of higher education institutions in Belarus (the law faculty of the Belarusian State University is an exception) the appointments with the Belarusian law teachers were made in a person during the fieldtrip of the researcher to Belarus. The law teachers were asked for an interview during their duty hours at the university or were contacted in a person or via email by the reference of their colleagues.

The interviews in Belarus and Poland were conducted with 40 lecturers in the period from January 2016 until May 2017. The majority of interviews were conducted in a person in the campus of the higher education institution, a few one were organized via Skype. Prior to the interview, each respondent was informed in detail about the topic and aim of the research. Those who granted the consent to participate in the research were informed that their answers are recorded and will be used for the scientific purposes with the protection of the personal data. The citation of the answers in the dissertation is written in cursive and followed with the bracket with the first name of a respondent and the country of residence. For example, *the simplest and at the same time classic method of teaching is*

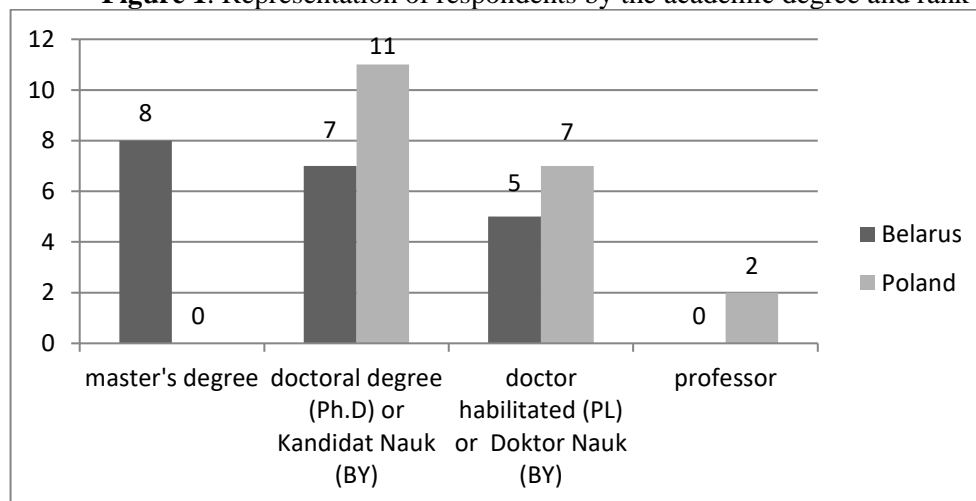
¹⁴⁸ I. Seidman, *Interviewing as qualitative research: a guide for researchers in education and the social sciences*, New York, 1998, p. 47.

lecturing (Barbara, Poland). The shortest interview took 35 minutes, the longest one lasted 1 hour 20 minutes. The interviews were later transcribed; the shortest transcription consists of 6 pages, the longest one has 13 pages.

1.3.3. Sampling characteristics

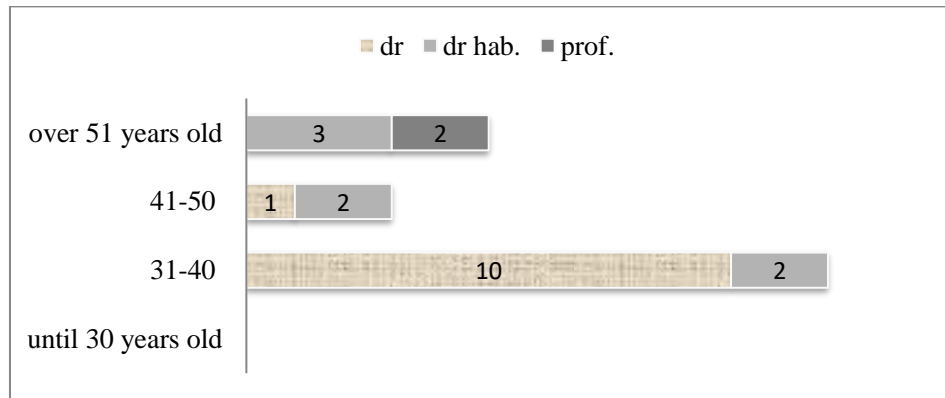
In the research 40 law teachers took part. As for the gender breakdown of the respondents, there is a higher share of female participants than male: 9 men and 11 women in Poland, 7 men and 13 women in Belarus. The figure below gives a breakdown of the staff by the academic degree and rank (Figure 1). For the ease of comparison and to avoid the confusion of the university position of professor with the academic rank of professor the sampling of the respondents is broken down by the highest academic degree or rank obtained. The academic degree and title are granted permanently, while the position in the higher education institution is a time-limited academic appointment.

Figure 1. Representation of respondents by the academic degree and rank



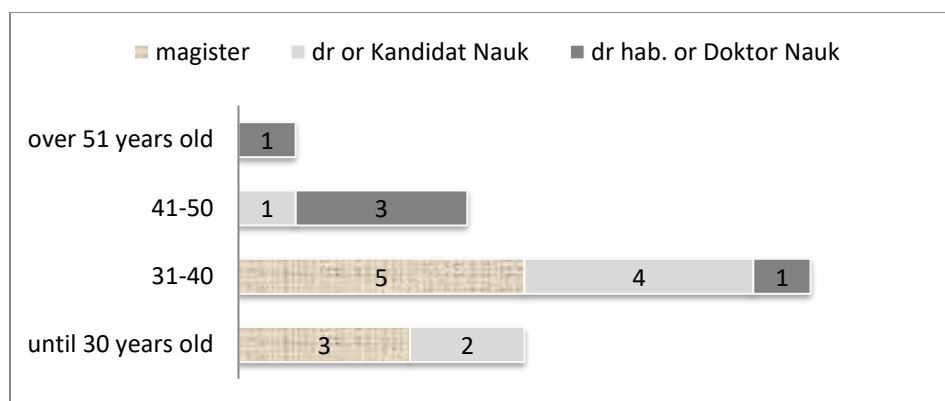
By the age and the academic rank there is a slight difference of the representatives from Belarus and Poland (Figure 2 and Figure 3). The age groups in both countries look roughly similar, the main category of the participants is ranged between 30 and 50 years old, it can be explained by the general active position of people at the labour market at this age frame. Reflecting on the breakdown by the academic rank it is worth to admit that the data of the respondents reflect the current situation of the academic society in Belarus as well in Poland.

Figure 2. Respondents in Poland by rank and age



According to the Polish law on higher education and science the academic career in higher education institutions can be started at the position of an assistant professor available for a candidate with the respective master's degree¹⁴⁹. The big number of graduates with the doctoral degree in law results in the hiring practice of law faculties when the position of an assistant professor is given to candidates with the higher academic rank. It is assumed that there are law teachers in Poland with the master's degree in law, however they probably form little per centage to be represented in the qualitative research. In addition, for the purpose of the research the respondents with teaching experience less than 5 years were excluded from a sample, what minimized the possibility for law teachers under 30 years old to be presented.

Figure 3. Respondents in Belarus by rank and age



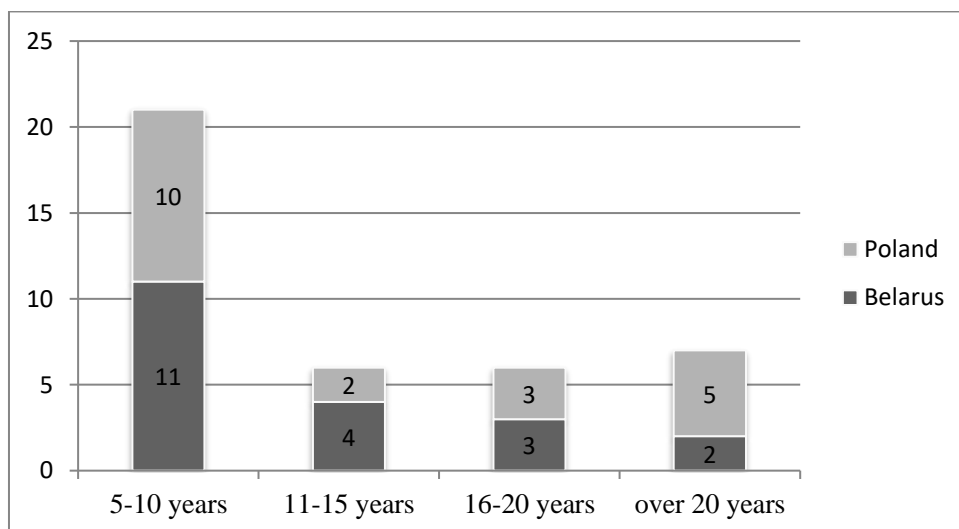
Within the recent years the academic society of Belarus points to the permanent low interest to the academic career among graduates of higher education institutions, including graduates with the law degree. Only half of about 100 doctoral students starting annually

¹⁴⁹ Ustawa Prawo o szkolnictwie wyższym i nauce z dnia 20 lipca 2018, Dz. U. 2018 poz. 1668 ze zm., art. 116 ust. 2 pkt.4.

the post-graduate legal education finish their studies. Among them about 6-9 persons annually defend the doctoral thesis in the legal disciplines and receive the academic degree of Kandidat Nauk¹⁵⁰. Like the law on higher education and science in Poland the Belarusian legislation allows to hire a person with the master's degree in law to the position of a law teacher. The law faculties, in particular of the regional institutions, often try to awake the scientific interest of capable law students during their master's degree course in order to offer them a position at the university under the condition of further doctoral studies.

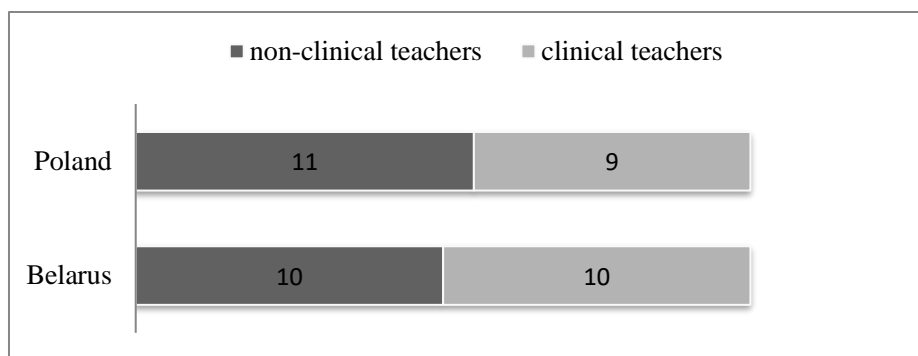
By the years of experience in teaching the respondents represent various groups and contribute to the findings of the research with different kind of expertise (Figure 4). About 20 years ago clinical legal education was introduced in higher education in Belarus and Poland as innovative teaching method of lawyers. Nowadays it is something more than merely a teaching method, it is considered a philosophy of teaching critically-thinking and socially-responsible lawyers with the well-developed methodology. About half of respondents actively participate in the legal clinic in their educational institutions and share their opinions of its influence in their professional life (Figure 5).

Figure 4. Respondents by years of experience



¹⁵⁰ 46 of the accepted 87 doctoral students in law graduated in 2016, among them 9 people successfully defended the thesis and received the doctoral degree (Kandidat Nauk). In other years the data are similar: 44 graduates of 96 and 7 with the defence – in 2015, 51 of 108 and 10 with the defence – in 2014. *Образование в Республике Беларусь, Статистический сборник, Минск, 2017, с. 166-167.*

Figure 5. Respondents by their engagement in clinical legal education



1.3.4. Other empirical research

The empirical research carried out within the work has a narrow thematic content, it is devoted to law teaching methods from the perspective of law professors. The verification of higher legal education according to the 4-A scheme requires the comprehensive analysis of all components of education, not limiting to teaching methods only. Educational policy, student's learning approaches, the curricula content, expected *versus* obtained outcomes of education are a few components that affect the entire system of higher education in general and legal education particularly. Obviously, such comprehensive analysis is beyond the framework of the doctoral research. Nevertheless, the outcomes of other empirical research related to higher legal education and conducted in Poland and Belarus enrich the current work and mentioned in its text.

One of the analyses was carried out in Poland by the analytical team of the CLEST in 2016 and presents the law student's profile, their motivation to enrol the legal studies and the student's overall opinion on the higher legal education based on their personal experience¹⁵¹. The respondents were also asked of the future profession plans, in other words the scholars analysed the occupation in the labour market of law graduates. The results of the research were enriched with the comments of practising lawyers and published in the open access. Although the sample is composed of the students of the Wrocław University only, the research team justifies that taking into consideration the sample size towards the number of law students and the high place of the university in the

¹⁵¹ A. Czarnota, M. Paździora, M. Stambulski, *Nużęca konieczność. Powody podjęcia i ocena studiów prawniczych na WPAE UW*, Wrocław, 2017.

national rankings the obtained results may cautiously be seen as representative for the entire legal education in Poland¹⁵².

The second research cited in the text concerns the outcomes of clinical legal education from the student's perspective¹⁵³. The empirical research was conducted in Poland in 2011 within the master's thesis by A. Pawlak. The sample covered the students participating in 15 of 25 legal clinics located on the territory of the entire county. Over 250 students took part in the survey what constituted about 15% of all students engaged in the clinical legal education in Poland¹⁵⁴. The variety of the sampling population and the confirmation of Pawlak's findings by the legal doctrine ensure the credibility of the results of the research and their transferability to the entire clinical legal education in Poland.

Additionally, the annual survey conducted by European Law Students' Association (ELSA) in Poland is the largest analytical research demonstrating the Polish law student's profiles and their opinions on legal education, apprenticeship, career path and other issues¹⁵⁵.

¹⁵² Ibidem, s. 10.

¹⁵³ The description of the research, the research questions and findings are published in the article A. Pawlak, *Umiejętności prawnicze nabywane w klinikach prawa*, *Klinika*, Nr 15 (19), 2013, s. 3-11.

¹⁵⁴ Ibidem, s. 11.

¹⁵⁵ *Studenci prawa w Polsce 2018, wyniki corocznego badania prowadzonego przez Europejskie Stowarzyszenie Studentów Prawa ELSA Poland*, available at <https://elsa.org.pl/wp-content/uploads/2018/06/Badanie-Studentci-Prawa-w-Polsce-2018-pe%C5%82ne-wyniki-online.pdf>

CHAPTER 2. EDUCATION AS AN OBJECT OF THE SCIENTIFIC RESEARCH

Nowadays the term “education” is applied to different learning approaches, including but not limited to family and school education, lifelong or distance learning, religious, health and human rights education. The education is classified by the level of state interference and official recognition of studies as formal, non-formal and informal education. In the meanwhile the formal education is divided into a few levels - primary, secondary, vocational and higher education, other levels may appear depending of the system of education in the state. The subject, content, duration and teaching tools distinguish all these types of learning activities when people discover new things, gain knowledge on a certain topic and practise their new role in the society. Educational opportunities are so broad and various that the language generates new terminology reflecting the human development in the particular historical moment or in certain life conditions. Nowadays the words “science”, “enlightenment”, “learning”, “instructions”, “training” and “education” are used in various contexts and may replace each other depending on the purpose of its usage.

In the literature education has multiple dimensions enabling its research from different prospective. Psychological, philosophical, pedagogical and sociological dictionaries and encyclopaedias give its definition of the term and explain the synthesis of different approaches. Education is deemed a result, a process or system. Some scientists look at it as a value, right or even civil obligation. Education is also considered as a tool of political influence on the society. Looking thoroughly at the different theories it is worth to confirm that each understanding of education has its roots and reasonable justification. Each approach is focused on the deep research and the understanding of a single dimension of the term “education”, not excluding the other interpretations of its phenomenon. Thus, various scientific outcomes results in the broad understanding of the word education enriching its content, application and significance in the society.

2.1. Linguistic approach to education

The first inevitable approach to discover the meaning of education is etymological. The word “education” has its roots from four Latin words – *educare*, *educere*, *educatum* or

*educio*¹⁵⁶. There is not a single correct answer to what of these words gave the beginning of education. In the literature on the history of pedagogy all four concepts are mentioned in the equal extent.

Education is derived from the word *educare*, meaning “to raise”, “to bring up”, “to nourish”. This meaning implies that a child is to be brought up physically and mentally.

There is also another view that education is originated from the word *educere* meaning “to lead out”, “to draw out”. Education means to bring forth or to grow from within. A child is assumed to possess some inner power and innate capacities. Education is a process aimed at developing these characteristics.

Educatum means the act of “teaching” or “training” and implies the art of transferring knowledge and skills from the experienced educator to a learner.

Educo is translated as “to lead out”, “to draw out”.

Comparing these terminology we can merge *educare* and *educatum* words in one group and the rest is the second. The first group has the meaning of education as something external, which is imposed from outside. A teacher or parents put efforts to shape an educated person. According to the words *educere* and *educio* education implies the internal growth, in other words education is a means whereby the best of man is extracted out.

All ideas have their opponents and proponents. The modern educationalists support the opinion that the second group of words (*educere* and *educio*) is more acceptable as it allows more freedom to a child during the learning activity¹⁵⁷. A teacher doesn't serve as a box of axioms that must be accepted by a learner. A child has to observe, think and then make his own conclusions. Therefore, education means to discover the hidden talents of man. It is very much an art of cultivation of the various capacities of mind and body.

The opponents believe that nothing can be drawn, unless something is put before¹⁵⁸. A child is like a garden, firstly we plant something, and then we harvest. The growth of a learner will not take automatically, it needs a nourishing environment and certain knowledge and experience to be contributed before the latent virtue and perfection become obvious over the time.

It is worth to agree with Semionova who states that a mere linguistic expertise doesn't provide the essence of the term. For the justification she refers to the French language

¹⁵⁶ S. Ravi, *A Comprehensive Study of Education*, PHI Learning, New Delhi, 2011, p.4.

¹⁵⁷ P. Solarski, *Wychowanie moralne w ujęciu Guido Gattiego SDB*. Lublin, 2013, s.14.

¹⁵⁸ S.Ravi, *op.cit*, p.5.

where a few words are used for education, i.e. enseignement, instruction, apprentissage. Their meaning is often explained with the reference to other similar term¹⁵⁹.

The etymological analysis is not the major one to learn the meaning and context of the word, but important for the purposes of the entire scientific research. At the same time, it is unreasonable to make any conclusions based on the linguistic approach only without understanding the theoretical background of the researched issue.

2.2. Philosophical approach to education

The first science where education became a subject of interest was philosophy. As a field of the scientific knowledge philosophy originated many years ago and many investigations were dedicated to the essence of a human being and its goals, knowledge, mind and values, philosophers tried to find answers to the questions such as: Is it fair or unfair? What is good and bad? Education in all its forms as an inseparable part of human being existence develops in the tight connection with the philosophical ideas. Therefore, many scientists see the roots of education in the ancient times. The subject matter of human being nurture and education in the context of the role and place of people in the world stipulated a new academic discipline called philosophy of education. In the world literature father of philosophy of education is called J. Dewey¹⁶⁰, however many discussions in Russia and Europe take place around the justification of separation philosophy of education from philosophy and other fields¹⁶¹.

The different philosophical concepts embody a plenty of scientific approaches to the term “education” giving the answer to the following questions: what to study? How to study? Why to study? The multiple ways to understand the essence of education linked with the various philosophical approaches make philosophy of education a complicated field for the classification. Moreover, philosophy in its essence is a subjective science and the classification of the theories is quite relative gathering in the same group philosophers with similar thoughts, but no equal ones.

¹⁵⁹ Н.С. Семенова, *Право на образование в международном праве*, Международное право, 2010, № 3 (43), с. 36.

¹⁶⁰ D. Stępkowski, *Andrzej Murzyn, Współczesna filozofia edukacji. Kluczowe kwestii*, Oficyna Wydawnicza „Impuls”, Kraków 2015, s.295. *Terazniejszość – Człowiek – Edukacja*, 2015, Tom 18, n. 2(70), s.160.

¹⁶¹ W. Carr, *Philosophy and education*, Journal of Philosophy of education, vol.38, 2004. p. 59. In Russia this question was discussed during a few scientific conferences organized in 1992, 1995 and 1999. See *Образование в конце XX века* (материалы "круглого стола"). *Вопр. Философии*, 1992, № 9, с. 3-21 and *Философия образования: состояние, проблемы и перспективы* (материалы заочного "круглого стола"). *Вопр. Философии*, 1995, № 11, с. 3-34 and *Философия образования* (материалы "круглого стола"). *Педагогика*, 1999, №5, с. 3-28.

Philosophy of education generates a few general theories concerning the philosophical thoughts on education. They are idealism, realism, scholasticism, pragmatism and existentialism. Besides them philosophy of education distinguishes also a few conceptions called educational philosophies which are focused either on the nature of knowledge (i.e. what to study?) or nature of learning (how to study?).

Idealism and realism started its beginning from the outstanding Greek philosophers Plato and Aristotle whose ideas were modified and interpreted throughout the centuries by their students and followers. Plato is considered father of idealism, he believed in two worlds – world of mind and world of body. In idealism, the goal of education is to search and develop each individual's ability. Based on the dualism of human being he offered to develop mental and physical body through the study of poetry, dance, oratory as well as philosophy, religion, literature and history¹⁶². Education is a powerful tool to open eyes on the possibilities around people and serves excellence for the whole society.

Some scientists compare Plato's system of education with the current concept of andragogy when at particular age people learn a certain scope of subjects. Moreover, Plato being a Socrates's student brought to our times so called Socratic teaching method – achieving the truth by raising questions. Plato stated that education is much more than feeding students with axioms, a burden of learning falls on the students, a teacher is a facilitator. This teaching method is widely applied over the world¹⁶³. His main works "The Republic"¹⁶⁴ and "Laws"¹⁶⁵ are also written in the form of a dialog between various characters.

In the 4th century Saint Augustine followed Plato's concept with the strong focus on the Christian religion. He considered that all people are responsible for their mistakes, they are free to choose a proper way. The aim of educators is to show the face of good and evil and to support students in the struggle with the evil and turn then to the good¹⁶⁶. Education for the moral responsibility is a key issue of Augustine's theory.

¹⁶² P. Gonzales, *Plato's idea of the teacher*, The University Bookman, 2013, p. 2.

¹⁶³ *The Socratic method: What is it and How to use it in the classroom?* Stanford University Newsletter on Teaching, 2003, Vol.13, N.1, p. 1 and see also D. McQuoid-Mason, R.Palmer, *African Law Clinicians Manual*, 2008, p. 92.

¹⁶⁴ Plato, *The Republic*, Cambridge, 2000.

¹⁶⁵ Plato, *Laws*, Perseus Digital Library available at <http://www.perseus.tufts.edu> [accessed on 27 December 2016].

¹⁶⁶ M. Jakowicka, K. Uzdziński. *Edukacja ogólnotechniczna na przełomie XX i XXI wieku: praca zbiorowa z okazji 70-lecia urodzin i 48-lecia pracy zawodowej prof. zw. dra hab. inż. Kazimierza Uzdzińskiego*. 2003, p. 127-128.

The following outstanding representatives of modern idealism are Immanuel Kant and George Hegel. Kant filled in the image of education with the universal moral rules which are obligatory for people. The system of human's beliefs is so diverse and it's difficult to get to the consensus in the variety. Therefore, Kant's ethical maxims are a yardstick of harmonization and cooperation within the community¹⁶⁷. In case when a man's desire or will is in contrary with the moral law the latter prevails and guides people's behavior. He subscribed to the statement that education is a mandatory condition of mental development of all mankind. As a result, education of children is aimed at not only providing them with particular knowledge, but the creation of conditions to improve the whole society by them in the future¹⁶⁸. The profession of an educator is supposed by Kant as difficult and responsible as the governor of the country.

Being a teacher during 18 years¹⁶⁹ and later a director of the gymnasium¹⁷⁰ Hegel devoted a significant part of his philosophy to the topic of education a tool of the spiritual formation and self-development of the intelligence. The development is based on the cultural and historical experience, but not a transfer of knowledge. The aim of education of a child is to make a human being an independent individual with moral standards and being prepared for the independent existence outside the family¹⁷¹. Discipline is an important element of education, however it shall not be limited to the strict obedience, but forms the moral behaviour, supports reflection and develops the will. Family education is a background but not sufficient for the effective existence within the society. An individual lives among other people, therefore the civil society is responsible for education and formation of civil duties in the mind of the humans¹⁷².

In idealism the character of the world where individuals exist depends on the quality of mind, moral standards or religious faith of each person. The growth of knowledge and the development of education is a matter of whole society, because the moral excellence and discovery of individual's ability results in the welfare of the state. Unlike idealism, realism in education is based on the idea that practical knowledge will prepare an individual to the world of work. A study of science and the creation of the scientific method is a key point of realism. The truth is what can be objected, therefore observation

¹⁶⁷ J. Johnston, *Kant's philosophy: A study for educators*. Bloomsbury, 2013, p.217.

¹⁶⁸ K.Kuźmicz, *Immanuel Kant jako inspirator polskiej teorii i filozofii prawa w latach 1918-1950*. Temida 2, 2009, p.71-72.

¹⁶⁹ Э. Аксенова, *Педагогические идеи в философском наследии Георга Вильгельма Фридриха Гегеля. Проблемы современного образования*, 2015, №2, с. 67.

¹⁷⁰ А. Ерохин, *Гегель об образовании*. Философские исследования, 2007, №3, с.113.

¹⁷¹ Ibidem, p. 128.

¹⁷² Э.Аксенова, *op.cit.*, p.70.

and experimentation are the main learning methods. Believes and thesis without the proof can't be accepted as objective. Education shall proceed from simple to complex, from concrete to abstract; the learning is based on the personal or group experience. Although Aristotle learned from the idealist Plato, he didn't follow the teacher's ideas. Learning by doing something every day is education of habit. Aristotle is a founder of realism believed in the power of human mind, it is that what distinguishes a human being from animals¹⁷³. Learning by thinking is education based on the theory of cause¹⁷⁴. He looked at education from the view of reasoning – why is it? He also was the first who started teaching logic as an academic discipline to ground the object characteristics. Nowadays in the textbooks on logic for lawyers we can find examples almost unchanged from the Aristotle's times¹⁷⁵.

John Locke and J. Rousseau are bright representatives of realism in education in the recent centuries. Locke in his work "Some Thoughts Concerning Education"¹⁷⁶ perceives education as a yardstick of goodness of a person. The goal of education is to make a child into a gentleman. Education fills people with knowledge, values and practical experience. Although children don't have experience and therefore they are not fulfilled yet, parents shall observe their interests and suggest the specialization in education. Children are center of orientation¹⁷⁷. Besides the development of the mind, physical exercises shall take place at the same time or prior to the mind growth. The Locke's phrase "A sound mind in a sound body"¹⁷⁸ is known over the world to draw attention to the healthy lifestyle and physical education.

Rousseau found the roots of education in the principles laid down by nature. As a follower of the theory of naturalism¹⁷⁹ he thoughts that living according to the laws of

¹⁷³ P. Rybicki, *Arystoteles: początki i podstawy nauki o społeczeństwie*. Wrocław: Zakład Narodowy im. Ossolińskich, 1963, s. 78.

¹⁷⁴ A.Falcon, *Aristotle on Causality*, in: E.N. Zalta (ed.), *Stanford Encyclopedia of Philosophy*, Spring 2019, available at <https://plato.stanford.edu/entries/aristotle-causality/#FouCau> [accessed on 1 March 2019].

¹⁷⁵ See example O. Nawrot, *Wprowadzenie do logiki dla prawników*, Warszawa, 2007, s. 187.

¹⁷⁶ One of the most significant papers about education in the UK was written in 1693. During more than 300 years it was translated in a few languages, over the ages his advices are still fresh and can be implemented in the current reality. See more J. McNulty, *Locke's Some Thoughts Concerning Education: a Teacher's perspective*. Speech presented at the NEH Philosophers of Education Summer Seminar, Boston University, 2014, p.1-2 available at http://nehphilosophersofeducationseminar.org/POEMT_2014/McNulty_POE2014.pdf [accessed on 1 January 2017].

¹⁷⁷ This idea was enriched by biological and psychological approaches in education by Rousseau, Froebel and Herbert. B. Baldwin, *John Locke's Contribution to Education*. The Sewanee Review, 1913, Vol. 21, No. 2, p. 181.

¹⁷⁸ J. Locke, *Some Thoughts Concerning Education*. J. and R. Tonson, 1779, p.1.

¹⁷⁹ In the history of philosophy of education naturalism is also as old as idealism. The first philosopher of naturalism is called Democritus. Naturalism is a world applied to those principles of training which don't depend on books but instead on the laws of natural life... These principles are opposed to the traditional way of teaching and embodies a reaction to the oppressive weight of tradition, rules of the school, dry curriculum,

nature will prevent from learning the evils from the society. Education created by and for adults is not adaptable to the child's interests and learning abilities. Natural instincts and primitive emotions are better landmarks for learning than the system of formal education with its unconscious enforcement. Rousseau considered education as a growth of human's natural power and its abilities given from a birth¹⁸⁰. In his work "Emile" he defined 5 stages of education with different scopes, teaching methods and aims of learning activities which are natural for the certain age of a learner¹⁸¹. Education is enjoyable and pleasant process and a child with his abilities is a focus of the learning process.

The brightest philosopher of the philosophical movement aimed at the religious choice as a tool of education was Thomas Aquinas. The theory called scholasticism combines the ideas of idealism and realism¹⁸², however implies the philosophical study of the beliefs of the church and authorises the scientific research within a religious framework. For Aquinas the goal of education is wisdom and truth, namely God¹⁸³. An understanding of what is taught results in the understanding of other things and its consequences in the life. Education is a kind of light in the darkness enabling to see goodness and evils. Although a teacher is a pattern of morals and a motivator to study for pupils, an educative process is a mutual discovery of the truth through interactions of teachers and learners¹⁸⁴. Faith is a crucial element for accepting the religious paradigms as well as for scientific understanding.

The following philosophers believing in education as a way to the career, life and practical experience created a new movement in the philosophy of education called pragmatism or existentialism. The term "pragmatism" appeared in the end of XIX century when the dynamic development of science, industry and technology took place¹⁸⁵. Its roots are coming from the American scientists J. Dewey¹⁸⁶, C. Peirc and W. James¹⁸⁷. They

the formal behavior of teachers. S.S. Chandra, R.K.Sharma, *Principles of education*. Atlantic Publishers and Distributors, 2004, p.71 and 73.

¹⁸⁰ Ibidem, p.73.

¹⁸¹ J. Sigler, *Education: Ends and Means*. Classical selections on great issues. Lynchburg College, 1997, Vol.IX, p.179.

¹⁸² J. Ozolins, *Aquinas and His Understanding of Teaching and Learning*, in: T.B. Mooney and M. Nowacki (eds.), *Aquinas, Education and the East*, 9 Sophia Studies in Cross-cultural Philosophy of Traditions and Cultures 4, Springer Science+Business Media Dordrecht, 2013, p. 11-12.

¹⁸³ H. Majkrzak, *Filozofia wychowania w ujęciu św. Tomasza z Akwinu*. Człowiek w kulturze, 2005, №17, s.203-204.

¹⁸⁴ Ibidem, p.204.

¹⁸⁵ S. Wołoszyn, *Rozwój nowoczesnych systemów szkolnych w XIX wieku*, w: Z.Kwieciński, B.Śliwowski (red.), *Pedagogika. Podręcznik akademicki T.1*, Warszawa: Wydawnictwo Naukowe PWN, 2008, s. 135.

¹⁸⁶ James Dewey is called the father of pedagogical pragmatism, progressive education or experiential education. See more A. Casil, *John Dewey: The Founder of American Liberalism*, The Rosen Publishing

thought that there is no absolute truth, the science shall not be limited to the theoretical dogma, but be practice-oriented. Philosophy with its theoretical paradigms can't be considered the applied and useful science¹⁸⁸. Life is constantly changing, people in the society relying on the ideas and thoughts from the past are not functioning properly in new environment. The best way of learning is to apply the knowledge to real situations solving¹⁸⁹. The adequate learning methods which provide learners with practical skills and prepare to act in the reality are problem-solving, case study, experience learning and observation. The learning context depends on the time, place and circumstances. Dewey offered three rules of good education: learning by doing, individual pedagogical approach and education for democracy¹⁹⁰.

Learning by doing embraces a few principles of education. A teacher doesn't play a role of the smartest person in the school delivering theoretical knowledge to pupils, but a moderator, better to say a facilitator of a learning experience¹⁹¹. Learners discover the truth through the personal and group work, they share their thoughts enriching the whole society. Learning is not a term-defined process, but it lasts throughout the entire life. Dewey's statement "the educational process has no end beyond itself; it is its own end"¹⁹² proves the current idea of lifelong learning approach.

Dewey underlined the variety of individual abilities of learners and environment where a child is brought up. The differences of personalities and upbringing affect the teaching approaches in the class. Great educators recognise that people learn in different ways, today in the pedagogy it is called multiple intelligences¹⁹³. The philosopher advised to take into consideration the individual characteristics of learners, but at the same time to

Group, 2005, p.6; H. Garland, *John Dewey: Father of the New Education*, National Education, 1959; B. Śliwerski, Z. Melosik, *Edukacja alternatywna w XXI wieku*, Impuls, 2013, s.92.

¹⁸⁷ S. Wołoszyn, *op.cit.*, s.136.

¹⁸⁸ B. Śliwerski, *Pedagogika ogólna*, Impuls, 2012, s.145.

¹⁸⁹ J. Dewey. *Education and Experience*, in: A. Sigler, *op.cit.*, p.330.

¹⁹⁰ The main pedagogical ideas were written in his books *Education and Experience*, New York: Macmillan, 1938 and *Democracy and Education. An introduction to the philosophy of education*, New York: Free Press, 1916. J. Dewey contributed to the psychology of education with his work *How We Think. A restatement of the relation of reflective thinking to the educative process*, Boston, 1933.

¹⁹¹ S. Wołoszyn, *op.cit.*, p.142.

¹⁹² J. Dewey, *op. cit.*, p. 59.

¹⁹³ The theory of multiple intelligence was described by H. Gardner in his book *Frames of Mind: The Theory of Multiple Intelligences* published in 1983. Later on the book was edited and republished several times making the theory of multiple intelligence a know-how in pedagogy, psychology and family education. He viewed a human being as a possessor of a few intelligence which tend to complement each other to help people to solve problems. Students think and learn in many ways as different sides of intelligence is active in different learning activities. See more H. Gardner. *Frames of mind: The theory of multiple intelligence*, Basic Books, 2011, p.5.

teach people to adapt them and deal with the variety of interests in the society which can vary from their own¹⁹⁴. Human beings are free and responsible for their decisions.

A human being is a social entity and exists inside and within the society. Living in it people define the common goals and ways to achieve them. The knowledge and experience shared by people will result in the development of the entire community. For Dewey democracy is a way of co-existence and knowledge sharing of individuals¹⁹⁵, representatives of various cultures and ethnic groups learn to work cooperatively and contribute to a democratic society. Depending on the decision-making skill of the social group the democracy can be realized, the consequences of those decisions will be a benchmark of their efficiency and relevance¹⁹⁶.

The last but not least theory of philosophy of education named existentialism is based on the idea of freedom and personal choice. An individual makes its life and feels responsible for its own decision, but not society, religion or somebody else. A Danish philosopher Soren Kierkegaard and Jean Paul Sartre from France contributed a lot to the development of the theory, Friedrich Nietzsche also left the significant personal track in the science¹⁹⁷. The background of the concept is described well by a proverb "Every man is an architect of its own fortune"¹⁹⁸. It means that individual decisions and actions determine what life of the person will be like. Standardisation of the society, creation of corporative culture and massive schooling caused the appearance of the theory of existentialism where an individualism and particularity is maintained and directed forward. Tyranny of averages is what restricts individualism and shall be avoided in education¹⁹⁹. The philosophers viewed that a teacher shall create situations where learners find out what is good and bad by making a personal decision and carrying its consequences. However, adults may require the conformity from children, because they are more experienced and mature.

Five major or world philosophical schools of thoughts on education are described above in a brief. They are learned in details at the faculties of pedagogy and have its followers in many countries. These general theories answer the main questions of philosophy of education – what, how and why to teach? Meanwhile in philosophy of education the scientists mention various educational philosophies which provide the details

¹⁹⁴ B. Śliwerski, Z. Melosik, *op.cit.*, s.94, 97.

¹⁹⁵ J.Dewey, *Democracy and Education...*, *op.cit.*, p.87.

¹⁹⁶ *Ibidem*, p.98.

¹⁹⁷ H. Blackham, *Six Existentialist Thinkers*. Routledge, 2012, p. 149 and 151.

¹⁹⁸ In the Polish version it sounds „Každy jest kowalem swojego losu”, The Russian version is equal to „Каждый человек- кузнец своего счастья”.

¹⁹⁹ C. Kupisiewicz, *Podstawy dydaktyki*. Warszawa, 2005, s.153.

on the curriculum only maintaining without answers the question how and why to teach. These philosophies also take their place in the research, however in the fewer dimensions, in order to point out the diversity of ideas and approaches to education in philosophy. These educational philosophies are perennialism, essentialism, progressivism and critical theory. Learning the background of them these theories can rather be called pedagogical, than philosophical. Nevertheless, the classification adopted by philosophy of education is being presented.

For perennialists, the goal of education is to ensure that students learn the principles first and the facts second. They believe that facts are changing, but the principles and basic ideas are stable²⁰⁰. The world “perennial” means lasting for many years²⁰¹. School guarantees the development of human intellect. Human beings prevail techniques and machine, hence liberal arts such as history, logic, literature shall be taught first and then vocational lessons. A teacher shall focus on the classics which are always actual over generations, the innovations of the last decades are not a subject of learning. In XIX-XX centuries the theory of perennialism was presented by the works of Robert Hutchins and Jacques Maritain²⁰².

Essentialists have the similar with the perennialists approach to the core curriculum to be taught. Essentialists focus on the moral and intellectual development of students, the discipline and rigor are the essential elements of education. Unlike perennialists, they think that the core curriculum may change, school shall prepare learners to work hard, respect for authorities and be valuable members of the society. The role of the teacher in the classroom is as essential as the core curriculum. The teacher organizes an order and discipline and takes the leadership position in the learning environment. The ideas are propounded by William Bagley, H. Rickover and TheodoreSizer²⁰³.

Taking the main ideas of J. Dewey’s theory on experiential learning progressivists view education as a student-centered process²⁰⁴. Books, teachers and subjects are tools necessary for learning, however a learner is a key element. A human being is social by its nature, therefore learning will pass more effective while a student cooperates with others, in a group work. J. Piaget and J. Bruner are considered progressivists in philosophy of

²⁰⁰ H. Kostyło, P. Kostyło, *Edukacja ogólna według Theodore’a Bramelda. Od przeszłości do przyszłości*. Paedagogia Christiana, 1/33, 2014, s. 135.

²⁰¹ Cambridge Learner’s English-Polish Dictionary, Cambridge University Press, 2011, p. 432.

²⁰² H. Kostyło, P. Kostyło, *op.cit.*, p.135.

²⁰³ O. Lipkowski, *Pedagogika specjalna w zarysie*, Warszawa, 1981, s. 26.

²⁰⁴ W. Segall, A. Wilson, *Introduction to Education: Teaching in a Diverse Society*, Rowman & Littlefield, 2004, p.157

education. Bruner is famous for his discovery learning theory²⁰⁵. He emphasizes interest in the material which students shall gain. The natural interest to discover something new motivates students to learning in more extent than the other motivators like grades or adult's enforcement²⁰⁶. Possessing some knowledge and skills learners are stimulated to discover new facts and establish relations between what they know and what has been discovered.

Critical theories are based on the belief that education can change the situation of inequality in the society, overcome oppression and improve the conditions. A Brazilian educator P. Freire suggests viewing education as a way of teaching consciousness of oppression and dominations, human dignity and rules of social living²⁰⁷. Maria Montessori is known as a proponent of freedom and respect in learning. She emphasizes individuality and independence and education occurs in a harmony with the child's development pace²⁰⁸.

Philosophy seems a rather abstract science that means there is a risk causing that philosophy of education research education in isolation from other social elements and real problematic issues, in disconnection with political and economic relations, far from science and culture development. Focus on the analysis of theoretical principles, concepts, paradigms, hypothesis what implies philosophy as a science in a whole may lead away from identifying the real contradictions and conflicts, so typical for the development of education in the reality. There is another side of the isolation. Philosophy is an ancient and independent science with its methodology, functions, a subject matter. As a result, the philosophical approach is autonomous from other scientific approaches – psychological, economic, and sociological. Economists, sociologists and other researchers interested in the problematic of education rare apply to the philosophic works on education and lost the understanding of education as a multiple key element of our life. The philosophical approach aims at the recognition of education as contradictory phenomenon in its essence.

2.3. Pedagogic approach to education

Apparently, the first branch of the science with the interest in education as a subject matter was pedagogy. Although pedagogy became an independent scientific discipline

²⁰⁵ D. Leonard, *Learning theories, A to Z*. Greenwood Publishing Group, 2002, p.38.

²⁰⁶ J. Bruner, *The process of education*. Harvard University Press, 1999, p.72.

²⁰⁷ A. Kondrasiewicz, P. Sadura, *Edukacja obywatelska w dzialaniu*, Scholar, 2013, s.14.

²⁰⁸ Ibidem, p.30-31.

relatively late in XVII century²⁰⁹, the thoughts about pedagogy could be found in the theories of Plato and Aristotle, as it is mentioned above in the philosophical approach to education. Pedagogy from the Greek language means “to lead a child”, in the Byzantine times “education” was wide spread and meant “an art of breeding”²¹⁰. Currently the both terms are used in the literature in the same context.

Historically pedagogy studied the process of transferring the gained knowledge and experience from the elderly to the young generation. Pedagogy was aimed at preparation children to the adult life and independent activity starting from their birth. Therefore, in the beginning of its scientific formation pedagogy was considered as the study of family, pre-school and school education²¹¹. However, with the world scientific and technical development it was widely accepted that education is not limited to the ability of reading and writing. Education is something more than just literacy, it’s a lifelong process including the vocational, professional and higher education. Nowadays pedagogy is a science and practice of teaching and upbringing of individuals during their all lifelong stages of the personal and professional growth. It is important to emphasize that this science is not strict theoretic, but also embraces the practical process of learning and teaching as a subject matter. The current pedagogical theory includes various ideas and fields of study, a few of them have recently appeared as a scientific discipline: history of pedagogy, self-directing learning, non-formal education, andragogy or adult education, pedagogy of higher education, comparative pedagogy²¹² and social pedagogy²¹³, etc.

As it has recently been shown in the philosophical education is a multiple concept. The pedagogical approach is not an exception and studies the term “education” in its different perspectives. First of all, to avoid misunderstanding and to make the current research precise it is worthy to clarify the terminology accepted in the current research and used in the pedagogic literature. As it is described in the introduction to the dissertation the research has interdisciplinary character cumulating the achievements of comparative pedagogy, legal studies and other fields of science. Hence the pedagogic categories and

²⁰⁹ Jan Komiensky (John Comenius) contributed to the development and formation of pedagogy as a science by his work „Didactica Magna” written in about 1627-1638. *See more* Н. Бордовская, А. Реан, *Педагогика. Учебное пособие*, Издательский дом Питер, 2014, с. 13. Other scientists convince that pedagogy became a separate science later in the XIX century when J. Herbart headed the department of philosophy and distinguished pedagogy based on ethics and psychology from philosophy. *See more* L. Zarzecki, *Teoretyczne podstawy wychowania. Teoria i praktyka w zarysie*, Jelenia Góra, 2012, s.11.

²¹⁰ Н. Бордовская, А. Реан, *Педагогика. Учебное пособие*, Издательский дом Питер, 2014, с. 10.

²¹¹ *Ibidem*, с. 15.

²¹² R. Nowakowska-Siuta, *Pedagogika porównawcza: Problemy, stan badań i perspektywy rozwoju*, Impuls, 2014, s.10.

²¹³ Н. Бордовская, А. Реан, *op.cit.*, с. 14.

terminology applied in the paper shall be briefly distinguished and explained. It's important to conceive that there is no aim to describe the variety of thoughts existing in pedagogy. Educators maintain the scientific debates on the content of each term as well as philosophers view the essence of life in its diversity.

Pedagogy operates with a few categories – upbringing, education (sometimes called training), instructions, teaching and learning. Upbringing is a personality formation, it is a process of shaping of individual's character, values and moral rules²¹⁴. It is not limited to the period of time when children are raised by parents and family, it lasts for all life. Upbringing occurs under the influence of the environment (school, friends, organisations, media, social groups etc.)²¹⁵ what surrounds an individual. Education in the meaning of training is a conscious process of acquisition of a system of knowledge and developing skills and habits which ensure his need and capacity to perform a kind of practical activity. Education as training is always provided by the schools, institutes, non-governmental organisations, employer's departments²¹⁶, it is a formal process of learning. Unlike family or quasi-family environment where upbringing in majority cases happens, the social institutes providing training to individuals direct towards the intellectual transformation of a person as its major goal²¹⁷.

Education in a broad sense includes all forms of education and upbringing together. Education includes the development of the “ability to express moral and aesthetic feelings and to control the negative expressions, to train a motivation to act successfully in the different spheres of personal, social and professional life”²¹⁸. Education is not limited to acquisition of new knowledge or skills, it also implies the changes of the earlier experienced knowledge or trained skills²¹⁹, it is reinforcement, modification and also creation of new learning experience.

²¹⁴ L. Zarzecki, *op.cit.*, s.7.

²¹⁵ *Ibidem*, s.15.

²¹⁶ B. Polak, *Podstawy teorii kształcenia*, Szczecin, 2013, s.15.

²¹⁷ L. Zarzecki, *op.cit.*, s.14. Although this idea is broadly discussed in the pedagogic scholarship, it's not rare to see the statement that school teaches only, while family brings children up. There are proponents of the idea that school, in particular primary school, shall teach the rules of moral and social behaviour in the society. The author of the thesis supports the approach when upbringing may occur in the framework of the organized educational event, e.g. an international training course on breaking stereotypes or intercultural learning organized by a youth organisation.

²¹⁸ *Ibidem*, s.7.

²¹⁹ B. Polak, *op.cit.*, s.12 and also Z. Włodarski, *Psychologiczne prawidłowości uczenia się i nauczania*, Wydawnictwo WSiP, Warszawa 1980, s. 14-17.

Other categories like teaching, learning and instructions are mostly operated by didactics, a sub-discipline meant the art of teaching²²⁰. Under the instruction it is understood a means whereby the scope of knowledge, skills and values is transmitted by an educator and assimilated by a learner²²¹. In other words delivering education occurs via instructions. Learning is a transformative process of an individual behaviour or knowledge as a result of the gained experience²²². Simplifying these rather meaningful terms teaching is an educational process from the perspective of a teacher, learning is a personal development by the eyes of a learner.

Directing towards the content of the term “education” there are two schools of thoughts in pedagogy – education as a process and education as a result.

The development, growth or other types of transformation of an individual’s intellectual, psychological, physical, nervous state happens over the time. Some scientists call it socialisation, i.e. a process of learning the rules of behaviour of the group into which a child is born²²³. It is also defined as the process whereby the social heritage of a community is taken from one generation to another. Education as a process is considered a scope of all educational activities, including upbringing, self-education and teaching whereby the individual is developed in its fullest extent. This process starts from the birth and end by the death. This approach is consistent with Dewey’s²²⁴ thoughts of education: “Education is a process of living through continuous reconstruction of experiences. [...] Experiences are reorganized in the light of changing circumstances and problems of life”²²⁵. A child is born without a consciousness when his life ends, hence every day is a timeframe for new experience. Passing every day that are not repeated people face various challenges and learn to overcome them. As a result, education is truly a lifelong process.

Education as a result of learning process is understood as an achievement, a particular level of knowledge or experience gained during any kind of learning activity²²⁶. The amount of education received by a learner is measured in terms of points, credits, degrees

²²⁰ W. Okoń, *Wielka Encyklopedia Powszechna*, Wydawnictwo PWN, t. 3, Warszawa 1964, s. 212.

²²¹ Ibidem, s. 445.

²²² B. Polak, *op.cit.*, s.11.

²²³ W. Okoń, *Wprowadzenie do dydaktyki ogólnej*, Warszawa, 1987, s.56.

²²⁴ John Dewey is an educationist, sociologist, philosopher of the XX century who contributed significantly to the development of the principles of education. His theory of experiential learning is described further in the part devoted to the Sociologic approaches to education. His numerous books – *Democracy and Education*, *Education Today*, *A School and Society*, *A School of Tomorrow* – won him the world fame. See more A.R. Rather, *Theory and Principles of Education*, Discovery Publishing House, 2004, p.143-144.

²²⁵ Ibidem, p.147.

²²⁶ T. Gajderowicz, G.Grotkowska, L.Wincenciak, *Rola systemu edukacji w dostarczaniu kwalifikacji poszukiwanych przez pracodawców: analiza przypadku województwa pomorskiego*. *Edukacja*, 2013, 2(122), s. 7.

or diplomas awarded to him or her. On the other hand, the proper yardstick of the intellectual growth or moral development shall be in forms of the expected outcomes consisting of knowledge, skills and values. The educator develops the entire strategy called programme and syllabus to inculcate certain habits, skills, attitudes or influences in the learner, which are considered to be essential and useful in the profession, society or his life in general.

Some authors in the pedagogy view education as a system²²⁷. It is a system of the education institutes with their scope of responsibilities, hierarchy and resources. The system also includes laws, rules and policies regulating the learning process, funding and procedures determining its allocations, human resources and other essential elements guaranteeing the existence and effectiveness of the system. It is worth to admit that the system approach is far from the pedagogical idea of education as a personal development of all the potentialities given to a human. Since pedagogy is a science targeted at the enforcement of an individual's transformation, the system approach would be better a subject matter of sociology. Further, an institutional approach to education will be presented among the sociological theories of the term.

Pedagogy is one of the closest to the phenomenon of education scientific discipline, although it isn't as old as philosophy. Nevertheless, education with all its types, phases and elements is a core concept of this science. Pedagogy possesses its methodology, terminology and other scientific tools to make important conclusions about the physical, intellectual, moral and spiritual potentialities of an individual's development. It's important to understand that education can't be emphasized only to the accumulation of specific knowledge or skills, upbringing, as a part of education, aims at the changes of certain beliefs and conscious social position, i.e. socialization. Social adaptation along with self-education, professional education constructs the meaning of education in a broad sense.

Pedagogy is a dynamic discipline responding to the social changes. In times of the unpredictable and cardinal transformations in the society such as globalization, economic crisis, multiculturalism, IT revolution education considers the new environment and develops along with the society. Recently, new specialisations within general pedagogy such as e-learning or cyber pedagogy²²⁸, intercultural pedagogy²²⁹, visual pedagogy²³⁰ have been offered for studies to students of the higher education institutes.

²²⁷ Н. Бордовская, А. Реан, *op.cit.*, с. 26.

²²⁸ В.К. Обыденкова, *Предпосылки становления киберпедагогике как науки XXI века*, Философские проблемы информационных технологий и киберпространства, 2015, №2, с. 87.

Pedagogy as the independent science has various branches and subdisciplines which are split based on the particular subject of the research. There are general, professional, comparative, age specific pedagogy (pre-school and primary education, secondary, andragogy), history of teaching, methodology of particular disciplines (math, history, language, economics, law and others) etc²³¹. Among this variety of fields of studies it is worth to pay attention to higher education pedagogy. Since the current research focuses on the higher legal education what falls within the subject of higher education pedagogy it would be rational to have a look at the aims of higher education pedagogy.

Higher education pedagogy is interested in the practice and theory of teaching and learning in and across all disciplines of higher education. In particular, the science serves to support the design of strategic planning in higher education, to plan, compose and evaluate programmes and actions in higher education institutions, to enhance the quality of teaching and to support the academic staff to reflect on their experience²³². Project management in higher education, innovative teaching methods, personal counselling, trends and challenges of international cooperation in education, academic research are a few topics that are in the focus of higher education pedagogy.

2.4. Economic approach to education

The complexity of education is obvious in the light of other approaches such as economic and sociological which are here also presented. Economics of education (until it became a separate field of study) was developing over the years within the classical theory of economics in XVIII-XIX centuries²³³. Economics in itself is a precise branch of science with a price, materialistic results and goods distribution, economics was applied to the study of private goods. Meanwhile education with its moral and social values occupies its place in the realm of public goods.

Among the most important figures of the classical economic theory is A. Smith with his statement on education “a man educated at the expense of much labour and time [...]

²²⁹ Specialization description and a portrait of the graduates are presented on the Faculty of Pedagogy and Psychology of the University in Bialystok available at <http://pedagogika.uwb.edu.pl/studenci.php?p=226> [accessed on 14 January 2017].

²³⁰ Specialization description and a portrait of the graduates are presented on the Faculty of Pedagogy and Psychology of the University in Bialystok available at <http://pedagogika.uwb.edu.pl/studenci.php?p=215> [accessed on 14 January 2017].

²³¹ В.В. Егоров, Э.Г. Скибицкий, В.Г. Храпченков, Педагогика высшей школы: учебное пособие, 2008, с.17.

²³² Ibidem, с.35.

²³³ И.С. Каленюк, О.В. Кушлин, *Развитие высшего образования и экономика знаний*, Киев: Знания, 2012, с.13.

can be compared to one of those expensive machines. The work which he learns to perform [...] will replace to him the whole expense of his education”²³⁴. A. Smith believes that education shall be available to all, however he didn't offer to abolish school fee (as education was not free), but make them subsidised so that everybody could afford it. At the same time he was a proponent of education partly funded by the state. The dependence of a teacher's salary from the work is a good motivation of doing its best²³⁵.

Classical economists first of all paid attention to the social and political functions of education. Most of them believed that education should help to reduce the level of criminality, increase social mobility. In their view education can also help to establish the rule of law and public order, to improve the state system without a revolutionary transformation, to provide stabilization and development of democratic institutions.

The economists of the classical school of economics did not study the impact of education on the economic growth of the country. A. Smith viewed education as a tool for the moral improvement of individuals, but not the development of production abilities. T. Malthus, famous for the theory of population growth, thought that education is a way of teaching thrift and prudence and a method to limit the birthrate. A prominent economist G. Mill was a proponent of free market. He believed that the quality of education can be evaluated only in a certain period of time, hence a consumer of the educational service, as a rule, can't judge its quality at the moment of its delivery²³⁶. The Russian economist D. Mendeleev in his work “Innermost thoughts” with the patriotic position justified the need for the comprehensive development of education in Russia. The main task of the country is to train the talented people capable of giving impulse to the economic growth of the country²³⁷. It is obvious, various aspects of education are studied by the classical economists in the context of certain economic problems. Education was considered a non-materialistic good and was excluded from the subject of research of economics.

Under the pressure of time and with the flow of social changes the understanding of goods was expanded including materialistic and intellectual outcomes of labour. The rapid educational development and technical progress creates the inquiry to research the relations between economics and education in depth. In the end of XIX century the phenomenon of education was a subject of neoclassical economic approach. Alfred

²³⁴ G. Psacharopoulos, *Human capital and rates of return*, w: International Handbook on the Economics of Education, ed. G. Johnes, J. Johnes, Edward Elgar Publishing, 2007, p.1.

²³⁵ A. Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Book V, Edinburg, 1827, p. 328.

²³⁶ И.С. Каленюк, О.В. Куклин, *op.cit.*, с.14-15.

²³⁷ Д. И. Менделеев, *Заветные мысли*, Мысль, 1995, с. 227.

Marshall, Robert Barro, Edward Denison are representatives of this school of thoughts. Neoclassical economics focuses on the determination of goods, outputs and income distributions in markets through supply and demand. Representatives of the neoclassical economics considered education as free enterprise. In their view, the roots of its development as an economic activity lie in the market mechanism – supply and demand. A consumer of educational services, its choice and interest affects the scope, price and quality of education. The state should not interfere in the system of education, however it shall create the necessary conditions for its existence²³⁸.

The first steps to distinguish economics of education from the economics occurred with the scientific attempts to evaluate the influence of education on the productivity of labour and the development of the state in a whole. In the 20s of XX century the first research on education was done by the Russian economist S. Strumilin²³⁹. Spending money on education and formation of individuals the society and state would like to receive some benefits. It's a mutual profitable process. The benefit of the individual is expressed in remuneration for future work and change of the social status after the graduation. The state and society demand for educated workers who will guarantee the economic growth. Later Strumilin's idea was developed in the monographic research by other economist in the USSR²⁴⁰.

In the Western society the inquiry of economics of education as an autonomous field of science appeared in the early 1960s. The recognition of the economics of education as an independent field of study is connected with the appearance of the term “human capital”. Theodore Schultz presented to the American Economic Association the topic of human capital²⁴¹. He was the first who spoke up the idea that education and its expected results in form of knowledge and practical skills are more than just consumption goods but instead assets. Times and money invested to education create something called human capital (material and intellectual outcomes), hence it is expected to be possible to estimate the rate of return on such investment.

In 1964 Gary Becker published his paper “Human Capital” which is considered a masterpiece of his scientific efforts. Indeed, this book was published three times so far

²³⁸ И.С. Каленюк, О.В. Куклин, *op.cit.*, с.16.

²³⁹ К. Кирсанов, *Экономическая безопасность образования и образовательных учреждений: проблемы периодизации*. Вестник ЮРГТУ (НПИ), 2012, №2, с.66.

²⁴⁰ For example, Zhamin, Kostanian, Levitskiy. К. Кирсанов, *op.cit.*, p.66.

²⁴¹ P. Teixeira, *A portrait of Economics of Education, 1960-1997*. Economics of Education, 2000, p. 257-258.

(1964, 1975 and 1994)²⁴² and is cited in all works dedicated to education in the light of an economic perspective. Tangible assets in form of goods, machinery, buildings are obviously production results. On the other hand, schooling, a virtual education, expenditure on medical care and lectures on the virtues of punctuality and honesty are also capital²⁴³. They improve health, provide wealth or train good habits of a human being. Therefore, economists consider expenditure on education and medical care as investments in human capital. The capital is called human because people's knowledge, skills, health or values cannot be separated from individuals.

The distinction between education-consumption good and education-investment is tracked well in the classification of plenty of scientific research. The first category (classical theory) deals mainly with works concerning the labour market, the earnings profile and training. The latter category includes most of the research on schooling, educational production and the benefits and costs of education. It is worth to admit that the classification is quite artificial and economics of education covers various topics, including but not limited to the contribution of education to economic growth, the profitability of investments in education, the role of the state regulation, the role of manpower in economic development, the cost and finance of education, etc²⁴⁴.

It is worth to examine another economic approach to education which was dominant in the socialist and communist countries. Marx and Engels didn't contribute much to the development of economics of education, but some thoughts on education resulted in the free and compulsory education and high level of educated people in the post-soviet countries. Marx and Engels in their work „About schooling and education”²⁴⁵ viewed education as a propaganda for the struggle of the working class. Schooling and education serve ideological function in the society to raise awareness of the significance of socialism and create possibilities for better life. Education shall be free and compulsory for all. It will reduce the inequality between working and ruling class, in particular the equality of education for the poor strata of the society. On the other hand, mothers leaving their children in the state-funded education institution can contribute to the production and the economic development of the country competing along with men²⁴⁶.

²⁴² Ibidem, p. 259.

²⁴³ G. Becker, *Human Capital: A Theoretical and Empirical Analysis, with Special Reference to Education*, University of Chicago Press, 2009, p.15.

²⁴⁴ G. Psacharopoulos, *Economics of Education: Research and Studies*, Elsevier, 2014, p. 1.

²⁴⁵ К. Маркс, Ф. Энгельс, *О воспитании и образовании*, Москва, 1957.

²⁴⁶ И.С. Каленюк, О.В. Куклин, *op.cit.*, с.19.

Like classical economists the representatives of the communist theory highlights the role of education in social and political development of the country in no less extent than its influence on the economical development of the state. In the early days of the Soviet Union's existence, Lenin paid special attention to the development of book publishing, often pointing out that only an educated person can take an informed part in his country's political life and in the management of the state²⁴⁷.

Although economics of education is a young field of science, it is worth a lot of the scientist's attention. First and foremost economics of education provides the statistic data on education in different countries, e.g. "Education at a Glance" by the Organisation for Economic Co-operation and Development (OECD)²⁴⁸, "Development Indicators"²⁴⁹ and "Living Standards Measurement Study"²⁵⁰ by the World Bank, United Nations Educational, Scientific and Cultural Organization (UNESCO) statistics data²⁵¹, "Human Development Report"²⁵² by United Nations Development Programme (UNDP). In the frame of the European Union the statistic data collection is one of the responsibilities of Education information Network in European Community – Eurydice. It also prepares the reports on the education system of the EU countries, analyses the certain problems of education in the selected countries²⁵³.

Secondly, the term "educational policy"²⁵⁴ hiding its roots in the concept of the role of the state in education is often heard in the ministerial departments, education institutions bodies and even in the non-governmental organisations. Unfortunately, theoretical findings of economics of education are sometimes wrongly applied to the practice and the governments don't learn their lessons from the past²⁵⁵. The national educational policy is a matter of internal affairs of each country, however the international organisations

²⁴⁷ B.I. Stukalin, *Books in 151 languages. A major exhibition of translated works – one of many events marking the 60th anniversary of the October Revolution*. UNESCO Courier, November 1977, Paris, p. 34.

²⁴⁸ The mission of OECD is to promote policies that will improve the economic and social well-being of people around the world. Statistic data and more about the organisation available at <http://www.oecd.org> [accessed on 9 January 2017].

²⁴⁹ The primary World Bank collection of development indicators is compiled from officially-recognized international sources. It presents the most current and accurate global development data available, and includes national, regional and global estimates. Available at <http://data.worldbank.org> [accessed on 9 January 2017].

²⁵⁰ Available at <http://econ.worldbank.org> [accessed on 9 January 2017].

²⁵¹ Available at <http://data.uis.unesco.org> [accessed on 9 January 2017].

²⁵² Available at <http://hdr.undp.org/en/data> [accessed on 9 January 2017].

²⁵³ R. Nowakowska-Siuta, *op.cit.*, s.25.

²⁵⁴ Educational policy means a way to define and establish priorities in education, i.e. how much and where the state intervenes the educational system. See more G. Psacharopoulos, *op.cit.*, p. 350.

²⁵⁵ For example, the ministries concern for quantity rather than quality, prohibit the private schools or regulate their fees, regulate university places, control curriculum and the content of textbooks etc. See more G. Psacharopoulos, *op.cit.*, p. 351.

mentioned above play their sufficient role in the development of education and, as consequences, in reduction of poverty and promotion of equality over the world.

Recently the typical thinking and human behaviour was pragmatic, exploitative if not say selfish. An individual recognized those things real which he could touch and consume, which could be possessed. With the development of the economic approach of the science, in particular the concept of human capital, the society can re-evaluate the role of education and its influence on the wealth of the nation. On the other hand, the state shall review its educational policy and make certain steps to achieve the balance of the quality and quantity of educational services, to provide the harmonic state intervention and academic autonomy. Thus, the purpose of the economic approach to education is to show a reasonable possibility and rational proportions of the mechanisms of state regulation of the educational sector at the free market of educational services bearing in the mind the consumer's interests.

2.5. Sociological approach to education

No detracting from the scientific achievements of pedagogy on the issue of education it is worth to focus on the science what looks at education in its relations with other social components of the life. Pedagogy is targeted at the learning characteristics of an individual, or putting the same differently, pedagogy applies the learner-centered approach of research to the educational process. Meanwhile the sociological approach underlines the importance of society as a whole, as against the individual,²⁵⁶ and emphasises social welfare as the ascribed aim of education.

In the second half of the XIX century in Europe the industrial revolution was successfully completed and the network of railways and highways pulled throughout the continent. In the scientific society an urgent need to make conclusions based on the achieved results and to give conceptual assessment of these processes raised up. However, there were two available branches of the science about society - philosophy and political economy – which didn't make possible a massive scientific research. Philosophy is a static science which doesn't reflect the development of relations between particular elements of the society throughout the times²⁵⁷, political economy views the production and division of

²⁵⁶ S.S. Chandra, R.K. Sharma, *op.cit.*, p.123.

²⁵⁷ Ю.Т. Волков, В.И. Добреньков, *Социология*, Москва, 2003, с. 15.

materialistic goods within the society, excluding non-materialistic results²⁵⁸. In these conditions, there was a demand for a new science sociology, as the most complete and accurate discipline about the society and its processes, elements. This science is responsible for the study of human social relationships and different institutions inside the society and their influence on the other spheres of life such as economic, political, and cultural. Sociology aims at understanding of mutual interaction of human actions and individual's consciousness with religious, health, crime, education, internet etc²⁵⁹.

As a separate branch of the science sociology of education was created in the end of XIX century under the influence of E. Durkheim's works²⁶⁰. Among the outstanding scientists who contributed to the evolution of the thoughts on sociology of education Talcott Parsons, Max Weber and Herbert Spenser shall be mentioned²⁶¹. The sociological approach to the phenomenon education is aimed to identify the role and place of education within the society and people. It results in defining the relationship of education and other elements of the social system – economics, politics, social and cultural subsystems, how education interacts with the social institutes which have the common tasks and functions.

The separation of sociology of education as an independent field of the study also means the recognition of education as one of the most important elements of people's way of life which is closely associated with other elements of daily rhythm. Therefore, the sociology of education looks at the impact of job, living conditions, leisure, value orientations and different forms of activities on education. However, on the other hand, sociologists are also interested in how education as an activity affects different sides of life of the social groups. The scientists carry out research on why people continue their education throughout the life, how the society appreciates lifelong learning. Sociology also analyzes the impact of the social reforms taken place in the politics and economics of the country on the education providers and consumers, i.e. learners. The sociological approach to education is not limited to identification of the main characteristics of education as a social phenomenon, but rather the correlation of all social elements with each other.

The sociological research is grounded on the integrated approach when education is a complex with its body structure, scope and functions. Therefore, in the framework of sociology of education it is considered either as a social institute or a social system.

²⁵⁸ Encyklopedia. The term „human capital” covering intellectual outcomes of the production appeared in the middle of XX century only.

²⁵⁹ Ю.Т. Волков, В.И. Добреньков, *op.cit.*, с. 12.

²⁶⁰ И.Г. Фомичева, *Философия образования: некоторые подходы к проблеме*. Новосибирск: Изд-во СО РАН, 2004, с.1.

²⁶¹ M. Szymański, *Socjologia edukacji*, Kraków, 2013, s. 15.

Education is an organizational form of the social life and joint activities of people which includes individuals and institutions possessing the authority and material resources for the implementation of social functions and roles. As a social institute education also includes the governance and social control aimed at training, development and socialization of the individual and then acquisition of a profession, specialty, and qualification²⁶². The institutional approach to education lies its roots in the work of J. Dewey for educators “The school and society”²⁶³. Dewey described his vision of education as a tool with help of which the community is enable to build up the democracy, he showed the interaction between different social institutes of the society – economics, governance, family. As a social institute education has its structure which embraces:

- a) a particular organisational style of human activity,
- b) institutions, i.e. organisations with the individuals who possess the authority to manage and control the social process,
- c) the scope of rules and regulations enabling the execution of control functions of the institution and application of sanctions to the members of the society for non-compliance of the policies,
- d) the required material resources to operate (buildings, equipment, finance etc),
- e) functions and directions of the activity²⁶⁴.

As a social institute education is not a static phenomenon, it is changing and developing under the influence of other institutes. Education is studied in the interaction of the institute of family, the institute of law, the institute of church²⁶⁵.

There are various theories in sociology of education based on the institutional concept, however there are also those which are linked to other fields of the science, such as psychology, anthropology, and criminology. The major sociological theories are the functionalist theory, the conflict theory, and the symbolic interaction theory²⁶⁶. They are wide spread, well enriched by the follower’s scholarship and also included in the programme²⁶⁷ of sociology of education.

²⁶² Г.Е. Зборовский. *Образование: от XX к XXI веку*. Екатеринбург, 2000, с.28

²⁶³ В. В. Фурсова, О. В. Горбачева, *Современное российское образование: проблемы и перспективы развития*, Директ-Медия, 2014, с. 11.

²⁶⁴ Г.Е. Зборовский. *Образование: научные подходы к исследованию*. СоцИс, 2000, № 6, с.24.

²⁶⁵ Auguste Comte viewed the society as an alive organism, different institutes are the bodies of it, they have their hierarchy and functions. Г.Е. Зборовский, *Социология образования*, Екатеринбург, 2005, с. 26.

²⁶⁶ В. В. Фурсова, О. В. Горбачева, *op.cit.*, с. 15-16.

²⁶⁷ For example, it is researched in the first topic „Introduction to the history and methodology of foreign sociology of education”. В.В. Фурсова, *Социология образования*. Учебно-методическое пособие, Директ-Медия, 2014, с.84.

The particularity of the functionalist theory lies in the examination of the phenomenon of education through its objectives. This theory is developed by the ideas of the functionalists (Durkheim, Parsons, Bourdieu) who discovered the functions of education and at the same time examined the factors which can impact education²⁶⁸. Education, to their mind, is the main social institute transferring the moral values and cultural heritage throughout the years. Education serves:

- a) to maintain the social order in the society, not limiting to the realms of education;
- b) to keep the social integrity of all members of the educational system under the influence of changes;
- c) to control the behaviour of its members in the learning process;
- d) to stimulate the proper pattern of learning, teaching and cooperation of social groups²⁶⁹.

Beside the function of the social regulator education plays an important role in the economic, cultural and political spheres. The economic function of education aims at the preparation learners to the production activity, providing them with sufficient knowledge and skills and building the economic potential of the society. They apply their knowledge and skills beyond their job roles and it limits the risk of poverty. The cultural function of education implies the awareness of the art and spiritual legacy of the nation and includes the development of creativity, personality and demand for the enlightenment. In the political sphere education is essential as it develops the deeper understanding of the political process, democracy and principles of conflict regulation. Educated people also recognize the significance of social justice and aware of the right's violation consequences. As a whole, education has multiple functions which aim to improve the life of a particular individual and the whole society.

The conflict theory views the society as unequal groups of individuals who co-exist living in a conflict with each other. Karl Marx, Engels, Weber are the proponents of the conflict theory. They convinced that conflicts arise due to the different distribution of resources, power, and status. In the class society the more powerful groups rule the less powerful. The theory of conflict is built on the acknowledgement of discrimination and prejudice, therefore education is a tool of peaceful or revolutionary changes in the society and in the human mind. The elite class holds the educational system in its hands to

²⁶⁸ В. В. Фурсова, О. В. Горбачева, *op.cit.*, с. 15-16.

²⁶⁹ Г.Е. Зборовский, *op.cit.*, с. 75.

socialize learners to believe in the values and norms dictated by the ruling strata and prevent any social changes²⁷⁰.

Moreover, in the literature there are some theories which currently look absurd or incomplete or just didn't find the massive support among the sociologists. The moralist theory of G. Payne²⁷¹, the genetic theories²⁷² applied for the justification of apartheid in the South Africa and the Nazism policy during the World War II²⁷³.

The other conception – education as a social system – is also a subject matter of various scientific interests. The systematic approach is based on the fact that education is an entire and autonomic entity excluded from the interaction with other social elements. In the literature education is perceived as the system which includes pre-school, school (primary, secondary, tertiary), professional or vocational, post-graduate education. According to the Law on the system of education²⁷⁴ in Poland the system of education is a complex of a) educational programs and state educational standards at various levels and orientation; b) a network of educational institutions of various organizational forms, legal status and types; c) the hierarchy of education authorities and their subordinate agencies and enterprises.

Although the institutional and systematic approaches have the right for existence in the science, the weak and strong sides of each approach are visible in the comparison. The institutional approach focuses on education as an integral part of the whole construction, i.e. society. The sociologists determine how education co-exists with the science, economy and culture – other social institutes. Education as a system is a self-sufficient entity, hence the scientific attention is given to the structure and the hierarchy of the elements only²⁷⁵. Moreover, the systematic approach to education is defective taking into consideration that learners as a subject of the learning activity are excluded from the research.

Within the institutional approach education is a way of cooperation of social groups, communities, individuals gathered together for achieving the common goals in the realm of

²⁷⁰ В. В. Фурсова, О. В. Горбачева, *op.cit.*, с. 13-14.

²⁷¹ He believed that education can solve all social problems in the life. He described his ideas in the paper “*Principles of Educational Sociology*”, New York, 1928, p. 242-255.

²⁷² Francis Galton thought that an intelligent by nature person will overcome the social inequality and move upward in the society thank to its intellectual capacity. He measured the size of brain to evaluate the intelligence level. Jencen explained the differences in the intellectual capacity by genes. People with the black skin are less intelligent than white-skinned, Irish people are less smart than Englishmen. *See more* A.Jencen, *How much can be boost IQ and Scholastic achievement?* Harvard educational review, 1969. №39, p.111-123

²⁷³ В. В. Фурсова, О. В. Горбачева, *op.cit.*, с. 19.

²⁷⁴ Ustawa o systemie oświaty z dnia 7 września 1991, Dz. U. z 2016 r. poz. 1943, 1954 i 1985 ze zmian.

²⁷⁵ Г.Е. Зборовский, *Общая социология: Учебник*. 3-е изд., испр. и доп. Гардарики, 2004, с.592.

training, nurture and professional development of human beings. Since the interests of social communities in this area are not the same and their interaction, as a rule, full of contradictions, institutional analysis concerns not only the organisation of the system, but also forms of cooperation of the various groups. The institutional approach allows to identify the objective characteristics of education and subjective opinions, assessments, attitudes and interests of social interacting communities²⁷⁶. In other words, sociologists identify the prestige and reputation of the education providers and its programmes and point at the gap between different levels of the system of education. For example, the institute will not enroll enough students to start a new programme if the offered specialisation is not in demand on the labour market or the graduates will not be trained the necessary professional skills and knowledge to step on the independent career path after the graduation.

Not surprisingly, when the institutional approach to education was applied in many works a non-institutional model of education sought to prove that education can exist outside of the formal system. Non-institutional approach is guided by the idea that education can be provided by nature, Internet, massive open courses etc. In 1964 P. Goodman argues in “Compulsory Mis-education” against the necessity of schools for the socialization of youth and offers a farm or a city as a place to be taught, the guided travels and youth organisations teach living rules better than formal schooling²⁷⁷. Following Goodman’s critique of the system of education in the USA I. Illich proposes to abolish the compulsory education and to ban the requests for the documents confirming the level of education when applying for a job²⁷⁸. According to the author, school does not develop a child, but just prepares the details for a public machine and causes the “psychological impotence”²⁷⁹ destroying the human personality. Among other critics of the formal system of education it is worth to mention H. Kohl with his idea of open schools, J. Holt who believed in the power of homeschooling etc²⁸⁰.

The mentioned above theories proved the dependence of education from the particular type of society, from the cultural and historical conditions of the country. They revealed the link between education and other social spheres: economics, politics, social sphere, including traditions, customs, religion, moral and social norms. However, they quite

²⁷⁶ Ibidem, p.592.

²⁷⁷ P. Goodman, *Compulsory Mis-education*. Horizon Press, 1964, p. 165.

²⁷⁸ I. Illich, *Deschooling society*. New York, Harper and Row, 1971, p. 3.

²⁷⁹ Ibidem, p. 1.

²⁸⁰ Н. Бордовская, А.Ренн. *op.cit.*, с. 71.

clearly showed that it is impossible to study education in the strict cultural or historical context, not taking into account the impact of many other social factors.

The significance of sociology of education in the row with other knowledge is very high, because this field of science displays the actual portrait of education in the light of political reforms, including those which concern education. Sociology of education makes obvious the impact of the scientific revolution and economic growth on the intelligence of nations. Last but not least, this science reflects the cultural and moral development of individuals and society under the influence of education. “According to sociologists, education is the best means of social control, social change and, thus, finally of social progress. All social changes that may become necessary for social progress can be easily brought about through education”²⁸¹. Consequently, sociology of education is an appropriate science with its methods and approaches to confirm the Nelson Mandela’s statement “education is the most powerful weapon which you can use to change the world”²⁸².

Summarizing the mentioned above idea, it is doubtless that education is a multiple category favourable for the studies in different disciplines. It is also clear that various researchers defined education in various ways emphasizing one or other its side. Understandably, the term education is so vast that makes impossible to elaborate a unified meaning of the word with which all scientists agree. Moreover, it is not the aim of the current dissertation. There is neither an aim of the research to explain all scientific approaches linked with education. It’s evident that they are valuable and take their place in the hierarchy of sciences. The major scientific thoughts of education originated from philosophy, economy or pedagogy are widely being learned and developed by the followers. As consequences, new ideas and schools of thoughts result in appearance of new disciplines. For instance “educational psychology is the psychology of learning towards which the scientists define the determinant factors and conditions of learning from birth to old age. This science makes a study of human development, maturity and learning and applies the scientific results to actual teaching reality”²⁸³. Educational anthropology is also in a close tight with education, sociology and philosophy. It focuses on raising awareness of what is the role of culture in education. This school of thoughts is popular among the

²⁸¹ S.S. Chandra, R.K. Sharma, *op.cit.*, p.124.

²⁸² The statement is widely cited in the literature on education without the exact source. It belongs to Nelson Mandela, the first democratically elected President of the Republic of South Africa.

²⁸³ S.S. Chandra, R.K. Sharma, *op.cit.*, p.122.

Western scientists, mostly Germans, and developed by the works of Andreas Flitner, Heinrich Goth, Josef Derbolav, Otto Bollnow etc²⁸⁴.

The different fields of science are connected to each other, some scientific theories are modified by followers, researchers are recognized as specialists in different sciences. The bright example of this is J. Dewey who is considered a sociologist, philosopher, educator and etc. As it is mentioned above, Dewey developed a philosophy that called for the unity of theory and practice, i.e. experiential approach to education in philosophy. His institutional research of education in sociology contributed a lot to discovering functions of education within the society. Such kind of connections proves that the phenomenon of education shall be researched in its fullest potential from the perspective of various scientific approaches. What is more important is that the interdisciplinary research of education enables to reflect its interaction with other social components.

2.6. Functions of education

It is healthy to assume that the approaches to the functions of education vary as much as the approached to the content of the term. It is evident in some theories presented above that the scientists, regardless of the sphere of their scientific interests, didn't provide the definition of education, but define the word in terms of how education looks like or shall be. They often explained the meaning of education by giving the answer to the question "what education does" or "what education shall be directed to". There is no sense to repeat the theories and clarify the thoughts of philosophers, sociologists, economists and others with the stress on the purposes of education in people's life. Like the diversity of approaches to the content of education, the functions of education can be merged a few large groups by the criteria of scientific interest. The applied indicator for such classification is a question "what education serves for".

Why is it significant to define the aims of education? Education is one of the processes of human being's life with the great impact on individuals, the local and national community and in the tight connection with the international challenges and changes. The well-designed aims of education impact the content of educational programmes, curricular provisions and teaching methodology applied in the educational process. In a broader extent the educational goals are sources of transformations and development in different sectors of economy, national development policy and the social life. The aims of education

²⁸⁴ М. Лукацкий, *Педагогическая наука: история и современность*. Учебное пособие, ГЭОТАР-Медиа, 2012, с.119.

serve for being signs and orientation for teachers and educators, educational policy makers and administrating staff on the way to achieve a human ideal and to foster a humane nation, to create the wealthy community and to develop the powerful country. The educational goals can be called a lighthouse or a compass for ships in the ocean of all processes occurring within the society at the local, national and international levels.

Bearing in mind the variety of meanings of the notion “education” the following general functions shall be marked out: social, economic, political, cultural and other functions. The division of the aims and goals of education within the classification is rather subjective and accepts the free movement between groups. A few goals could be placed at the same time in different groups due to their complex characteristic of the results of the learning activity, e.g. socio-cultural or politico-economic assignment. In other words, the classification of the functions implies the arrangement of the expected results of education as a social phenomenon.

The various schools of thoughts illustrated in the previous part of the research justify the idea that education seeks to achieve the transformation of human beings in the personal as well as in the social dimension. At the same time the function of education in general also has the world, i.e. universal, impact, although it may not be obvious in each single case. While upbringing a child it’s worth to remember that in the future this child may become Nelson Mandela or Martin Luther King.

1. Social function.

Human being. Education plays the important social role in the life of a person and the entire society, sociologists and philosophers numerously emphasized the intellect and mind as a particular characteristic of human beings only. It’s difficult to argue with the Comenius’s statement: “All those who are born as human beings need education because they are destined to be real men, not wild beasts, dull animals and clumps of wood”²⁸⁵. The ability to learn, discover new things and then make conclusions belongs to mankind. Although the science doesn’t neglect the animal’s ability to be trained, many neuroscientists are more interested in the research of all potential of the human brain. Mental capacity of human beings and ability to gain knowledge, train skills and grow in terms of intellectual development is a particular trait of people.

Education is that what makes man a rational being. People gain knowledge on general and specific topics, they learn social science and economics, ecological and legal issues.

²⁸⁵ S.Ravi, *op.cit.*, p.11.

People learn to work and travel, to live in the city or in the rural area, to enjoy the life and reflect the future of the mankind. A rational being is interested in rights and freedoms. A rational being is aware of health, social justice, democracy, world and local problems. The scope of knowledge that people can attain is endless, but the period of learning ends with the end of a human being's life.

Humanity. Immanuel Kant's imperative "act so as to treat people always as ends in themselves, never as mere means"²⁸⁶ describes in its fullest potential the humanitarian aim of education. In the time of industrial revolutions people were recognized as manpower, a means to achieve the economic stability and prosperity of the nation. In fact, education aims to see a value in all human beings regardless their nations, race, religion or colour of skin. Nowadays, the human rights-based approach in education evolving human values and attitudes is wide spread in non-formal education. One of the requirements for the organisers of summer schools for youth, international exchanges and other educational events on socially sensitive topics within the European programme Erasmus plus (action Youth) is to apply interactive teaching methods developing attitudes of the participants²⁸⁷.

Goal attainment. The human intelligent becomes apparent in the ability to think and reflect on the experience, to plan and manage the own life, to formulate wishes and go forward to make them real. The main idea of education is to help the individual to fulfil the goals and dreams. Reading books a child is dreaming of the trip to space, carrying out a chemical experiment students desire to discover a new chemical element, drafting a fiction a writer might imagine how his talents would be awarded. In addition education supports to create aims and adjust them to the changing conditions. An educated person may realise a decision to study a new profession or learn a new language in the time of high level of unemployment. Thus, education is something that expands the horizons and outlook of individuals, satisfies the needs and fulfils hidden desires.

Image of the society. Each individual lives its own life following the rules, traditions and values gained through any forms of education. All individuals constitutes the society as a community, education of each member of the group affects the general level of intelligence of the whole society. In the 20s of the XX century the Russian sociologist P. Sorokin found out the relation of the level of development of the society and the qualitative

²⁸⁶ In a plain English it means that people have their value – feelings, dignity – and shall be treated as a rational being. Using other people in order to satisfy the personal goals and interests is selfish. K. Kuźmicz, *op.cit.*, s.60.

²⁸⁷ See more Programme of the European Comission Erasmus plus, action Youth available at <http://erasmusplus.org.pl/> [accessed on 15 January 2017].

characteristics of population. In his famous paper “Current situation in Russia” he wrote: “The future of any society depends primarily on the “quality” of its members. A society composed of idiots or unskilled people will never be a prosperous society. A magnificent constitution given to the group of devils doesn’t result in a good society. [...] a society consisting of talented and determined people will inevitably produce a perfect form of the social existence”²⁸⁸. Taking care of the literacy and education for each person the government thereby invests in the wealth and success of the entire nation. This idea is one of the grounds of the theory of human capital.

Social inquiry. Education is one of the basic necessities of a modern life. A newborn child makes its first breath and the society has already decided that education is at least at elementary level shall be compulsory for everyone²⁸⁹. Everybody needs food, water and a residence as minimum of living, education is essential for the existence among other people. Integration in the multicultural society, cooperation the young and old generations, awareness of the world challenges and other social issues may be conceived by the means of education.

As it is obvious in the previous part of the research the end of the XX century was fruitful time in terms of the development and appearance of new sciences. The XXI century is called a technology age. Numerous theoretical and practical achievements, scientific discoveries, intellectual innovations become possible due to the science and technology. Education serves a tool to move forward and conduct new research in different spheres of life.

Socialization. *Homo sapiens*, or a person living in the society, is shaped among other people. The development of a biological body and its major functions are completed by the birth of a child, however its social side of the mind starts developing in the interaction with the surroundings and in particular other people²⁹⁰. One of the types of education (upbringing) is responsible for preparation of a child to living in the society. Learning different aspects of life – moral rules and family traditions, aesthetics and politeness – people acquire knowledge how to be an integrated member of the society.

2. Economic function.

²⁸⁸ П. Сорокин, *Современное состояние России*, Прага, 1923, с.168-169.

²⁸⁹ Art. 26 Universal Declaration of Human Rights. Adopted by the General Assembly of the United Nations on 10 December 1948.

²⁹⁰ Б.В.Марков, *Философия. Учебник для ВУЗов. Стандарт третьего поколения*, Питер, 2016, с.303.

Classification and social mobility. Education stipulates firstly the creation of the professional strata of society and the workers owning the necessary knowledge to complete the skilled work. The economic function refers to the stratification of the society by the level and content of education required to be employed. White-collar and blue-collar employees, ruling and working class, a master and slaves, an expert and an apprentice are some examples of the classification of workers depending on different factors, including education. The proponent of the professional stratification is recognized P. Sorokin. He considered that socially important professions are always those that are associated with the leading role and embracing the functions of group organization and control. Successful execution of these functions requires a higher level of intelligence than any physical or routine work. Thus, in any society people who are engaged in unskilled manual labour, low-paid workers stay on the bottom of the social hierarchy, while people with the high level of education are at the top of the social ladder. They are the leaders, priests, managers, scientists, politicians and inventors²⁹¹.

Obviously, education in the current reality is not the single criterion to follow the career path, nevertheless it is a significant credential in the case of promotion. For instance, in order to be assigned to a managerial position²⁹² or receive a job in the banking or economic area²⁹³ a candidate must possess the higher education. The book about the role of education in the economy, democracy and society of country written by the economist J. Galbraith in the middle of the XX century with the title “Good Society” didn’t lost its actuality so far. He pointed out the significance of education in the social movement. “Education has a vital bearing on social peace and tranquillity; it is education that provides the hope and the reality of escape from the lower, less-favoured social and economic strata to those above”²⁹⁴.

Professional mental furniture²⁹⁵. The phenomenon of education affects the economy mainly through the appropriate training of the participants of the production process – in the both professional and social dimension. In the professional dimension education equips

²⁹¹ П.А. Сорокин, *Человек. Цивилизация. Общество*, Москва, Политиздат, 1992, с. 353-354.

²⁹² In the unified guideline of the qualified manpower a position of a manager of the laboratory shall possess the higher education, meanwhile a specialist position can be offered to a person with the vocational education. Единый квалификационный справочник должностей служащих (ЕКСД), выпуск 23, Должности служащих, занятых в жилищно-коммунальном хозяйстве, утв. постановлением Министерства труда и соцзащиты от 30 марта 2006 № 42 с изм.

²⁹³ The position in these areas often requires specific knowledge that can be gained in the higher education institute only.

²⁹⁴ J.K. Galbraith, *op.cit.*, p. 69.

²⁹⁵ The phraseological expression “mental furniture” means the scope of knowledge possessed; brainpower, intelligence. K. Duncan, *The Dictionary of Business Bullshit*, LID Publishing, 2013, p. 132.

learners with the specific knowledge and provides practical abilities to complete the assigned work. Those skills and knowledge are rarely transferred within the family contacts or through other social and life activity, however it doesn't mean that professional training is organized within the education institutions only. In the contemporary society open massive courses and self-education is not an innovation anymore. The leading universities²⁹⁶ as well as non-governmental organisations or business²⁹⁷ provide distance learning courses for those who prefer this type of learning.

In the social dimension education develops the time-management and planning skills, work organization ability, teamwork and communication skills. Playing in the street with other children, studying in the school or at the university learners enhance their interpersonal relationship by means of interaction with other people - teachers, students, surrounding environment.

3. Political function.

A means of changes. Education is a powerful instrument for changes in the society. The changes may concern any aspect of human life – social, political or cultural. The reverse influence, i.e. political changes on education, also occurred and still occurs in the world. The vivid example of the changes in the curriculum, content and organisation of education can be found in the recent history. It is the system of education in the Soviet Union. The ideology of the communist party penetrated all elements of the system – the content of the textbook, the organisation of learning process and leisure of pupils (summer camps of pioneers).

Returning back to the political function of education it's worth to cite again J. Galbraith: "It [democracy] is also the natural consequence of education and of economic development. That is because there is no other practical design for governing people who, because of their educational attainments, expect to be heard and cannot be kept in silent subjugation. [...] education makes democracy possible, and, along with economic development, it makes it necessary, even inevitable"²⁹⁸. He argued for the democratic role of education. Indeed, education results in raising awareness of all processes of life and undoubtedly politics is one of them. However, it hard to agree with the statement that

²⁹⁶ Harvard Extension School offers some free and about 800 credited online courses. Available at <https://www.extension.harvard.edu/open-learning-initiative> [accessed on 16 January 2017].

²⁹⁷ On the web-page www.mooc-list.com the courses can be selected by the providers, among which Yahoo, Microsoft, Linux Foundation and others [accessed on 16 January 2017].

²⁹⁸ J.K. Galbraith, *op.cit.*, p. 71-72.

democracy becomes inevitable whereby education. The historical example above proves the tight connection of a form of the government with education. In the dictatorship free thoughts or ideas in controversy with the main ideology are limited and even forbidden, censorship dominates in all spheres of life - media, education, social life. Education of democracy creates a class of the society that is aware of the rules and principles of true democracy, but the change of the government may occur at the cost of human lives. This happened many times from the ancient time to the nowadays.

4. Cultural function.

Cultural literacy. Education is one of the most effective and intensive methods of learning the world of science and culture. The cultural function of education implies the enjoyment of the creative achievements of mankind by all members of the society and aims at the development of the cultural capacity of the population. Education is not limited to simple writing and reading skills, it's something more, education unwrap the hidden world of art for curios and open-minded people. "It is education that opens the window for the individual on the pleasure of language, literature, art, music, the diversities and idiosyncrasies of the world scene"²⁹⁹. Education is the process of a spiritual revival, it tends to formation of the interest in the creation, consumption and dissemination of cultural values by every single person, but in particular the youngest generation.

Thus, by the means of education people may become familiar with the cultural legacy of the world, on the other hand they reveal their sense of beauty and contribute to the production of new masterpieces.

Character training. Bringing up the personal dignity and humanity, formation of the character and development of the strength of will are all the traits that belong to a well-educated person. Inner power to overcome challenge and spiritual faith in the own capacities help to face bravely the difficulties and find the solutions in different life situations. Someone once said: "The more you sweat in times of peace, the less you bleed in times of war". It would be a good motto of any learning activity for people striving for success.

5. Other functions

Balance of inner and external shape. In ancient times education was centered around the mental, spiritual and moral development of the child. The child was trained to lead a

²⁹⁹ Ibidem, p. 72.

holy life for salvation. Ancient education and its aims were fully based on the ideas of idealism which held faith in the internal values and spiritual world. Later philosophers lay stress on the development of physical, mental, social, vocational and aesthetic aspects. Locke's expression "A sound mind in a sound body" was already mentioned³⁰⁰. Thus, the aim of modern education implies the balance of inner curiosity, physical health and intelligent power. "Today the aim of education is to achieve social and economic development, build up national integration, develop international understanding and prepare world citizens for the progress of the whole world"³⁰¹.

Family life education. One of the functions of education is to prepare a child to the adult life. Talking about the adult life the first thing that comes to the mind is to be financially independent from parents. However, adult life is not limited to obtaining a work only, although it is very important either, but to be a self-sufficient person that knows how to build up and maintain relations, what family life looks like and takes responsibility for the decisions.

In the Soviet Union times children were prepared to the future family life through physical work. School created an image of family life where the home tasks are divided between members of family. The course was called "Labour education" and included the lessons on cooking, knitting, sewing for girls and handicraft with wood and iron for boys. According to the vision of family and the communist ideology in the society at that time the idea of the training on family life deserves the attention. On the other hand, it is apparent that the course supports the cultivation of cultural and gender stereotypes, but not a real preparation to family life. There is an evident lack of attention to the interpersonal communication, family values and traditions.

The Soviet tradition has been transferred to the current system of education in Belarus and Russia with the essential changes of the content relevant to the current reality. For instance, in Belarus an optional course titled "Human being in the family relationship"³⁰² is offered for 14-15 years old students on the secondary school and includes lessons on family budget, duties and responsibilities in the family, communication and children upbringing etc. In the Russian pedagogic literature there are also discussions on the content

³⁰⁰ J. Locke, *op.cit.*, p.1

³⁰¹ S.Ravi, *op.cit.*, p.27.

³⁰² Человек в мире семейных отношений. Программа курса по выбору для 9 классов общеобразовательных учреждений, Минск 2007, available at <http://oroik.by/uchebnye-materialy/podgotovka-k-semejnoj-zhizni/> [accessed on 16 January 2017].

and teaching methods of such courses and also suggestions how to organize it for children at different ages³⁰³.

In the Western education the family life education is considered an important educational tool to prevent or minimize societal problems like domestic violence, unemployment and child abuse. In Poland this is also an optional subject for pupils of the primary school and gymnasium starting from 1999³⁰⁴.

Summarizing up the main points the following general goals of education shall be mentioned:

- to promote the idea of citizenship,
- to enforce self-education, personal and spiritual development,
- to cultivate a skilled workforce,
- to encourage learners in the marketplace competition,
- to provide cultural literacy,
- to teach critical thinking and reflection.

The goals are related and complementary. In its complex the functions demonstrate the diversity of expectations and priorities that society and education providers must direct to. It is rather warranted to recognize the mission of education in its complex than to prioritize the significance of the universally recognized goals of education in comparison with the goals of the regional importance. It is either impossible and not rational to select the main or few major purposes of education in the variety of approaches to education within the different sciences.

The evaluation of the functions of education is also a difficult task. The importance of each of these educational goals can vary upon the personal or country specific priorities. The varied emphasis is a result of the diverse economic, social, moral, cultural and political realities of human being's lives and the educational policy of the country. Talking about the policy it is understood in a broad sense as all scope of the government activities directed to the enhancement and wide spreading of education. Each country formulates the

³⁰³ In the article the author describes various forms of learning activity for children on the topic of family relations, Barents-children conference, an interview with a member of the family, charity actions in the orphans house, etc. *See more* A.B. Гамаюнова, *Формы и методы подготовки подростков к семейной жизни: возможности общего среднего образования в мировом опыте*, NovaInfo, № 30-1, 2015, с. 273-275.

³⁰⁴ Rozporządzenie Ministra Edukacji Narodowej z dnia 12 sierpnia 1999 r. w sprawie sposobu nauczania szkolnego oraz zakresu treści dotyczących wiedzy o życiu seksualnym człowieka, o zasadach świadomego i odpowiedzialnego rodzicielstwa, o wartości rodziny, życia w fazie prenatalnej oraz metodach i środkach świadomej prokreacji zawartych w podstawie programowej kształcenia ogólnego, Dz. U. 2014 poz. 392 ze zm.

educational policy according to the situation inside and outside the state. The government adapts the goals of education to the present conditions. As a rule, the targets of education are composed in a way to take into consideration the historical experience of the society and to underline the perspectives of the further development.

In a religious society education aims at the formation of a person who believes in the existence of the absolute truth of the universe and perceives the human beings as a reflection of the supreme power, or God. A secular society expects education creates a liberal person in outlook, education in a democratic society serves to teach people be tolerant towards conflicting view points. A socialist society views education as a means to cultivate scientific and rational outlook and cooperative attitude of individuals³⁰⁵.

The goals of education are not static, they periodically undergo changes in tune with the transformation of social reality and needs. Those changes can be observed on the example of physical education from the ancient times until nowadays. In Sparta physical training was primarily for military purposes, the citizens were exhausted by the strict discipline and intensive exercises to constitute the unconquerable army³⁰⁶. Reading and writing were not very important. Education was very military focused, so the majority of skills learnt by students in school were combative and war oriented. In Athens, on the contrary, physical education was perceived as a way to improve the body shape for the aesthetic purposes. The idyllic body was harmoniously proportioned, sporty enough for both civil and military duties³⁰⁷. In the medieval times physical training lost its actuality. It was “time of fear of death and dread of the last judgement were omnipresent, men were more concerned about their spiritual well-being than their physical well-being. [...] Knights were expected to possess strength, endurance, and military prowess; to have seen blood flow; and to have felt their teeth crack under the blow of adversaries, but they were not expected to be concerned about the health, cleanliness, grace, or beauty of their bodies”³⁰⁸. Today the task of physical education is not more than healthy. However, there are opinions that physical training in the school teaches endurance and capacity to complete what has been started.

The educational goals in the present day in the Russian Federation are different from the purposes of education in the USSR. The system of education in India colonised by the

³⁰⁵ *Basics in education*, Textbook for bachelor in education course, S. Uppal (ed.), National council of educational research and training, 2014, p.48.

³⁰⁶ R. Mechikoff, *A History and Philosophy of Sport and Physical Education: From Ancient Civilizations to the Modern World*, McGraw-Hill Education, 2009, p.74-75.

³⁰⁷ *Ibidem*, p.75.

³⁰⁸ E.F. Zeigler, *Sport and physical education in the middle ages*, Trafford, 2006, p. XX.

British Empire performed the functions that were not the same with the current Indian policy. Education in the XX century varies from education in the XXI century, hence the mission of education varies accordingly. A religious factor also determines the aim of education. For the long time church was the only education provider in the society, therefore the content of education, the system of education and educators were prepared in consistence with the outlook of church³⁰⁹. With the development of statehood and the rule of law the educational process was brought to the tasks of the secular power. As a result, the diversity of scientific thoughts and ideas opposite to the religious beliefs emerged and the state was assigned the possibility not only to enlighten the society, but also the obligation to ensure education in conformity with the international ideals.

In fact, the functions of education vary from country to country based on the needs of the time and place. Moreover, some functions can be dominating and propagated by the government in a particular country in a certain time and other functions, even being desirable by members of the society, are not offered at all. It concerns the situation when education is provided in the language that is not well known by learners. There are known cases when the number of education institutes in the country is much fewer than the number of students willing to study. As a result, the functions of education are considered impracticable as they don't satisfy the social needs.

Carrying out a research about education and its functions it is inevitable to take into consideration the various factors affecting the achievement of targets of education. The historical experience of the country, current political and social circumstances, the politics and economics of the country influence the definition of educational goals. The functions identify the priorities of the educational policy of the state and direct the system of education towards the proper implementation of the policy. In the practice it means that the educational goals affect directly the structure of the curriculum and the main paradigms to be taught, the aims of education determine how the content shall be taught and what learning outcomes are expected. Consequently, the goals of education in a particular society at a particular epoch in the large extent determine the content and structure of scientific knowledge as a whole and the organization and realization of higher education (or any other level of education) in particular.

³⁰⁹ M. Kozak, *op.cit.*, s. 98.

2.7. Education in the light of the legal science

In the previous part of the thesis among the scientific approaches applied to the analysis of education as a social phenomenon the legal approach is missing. The legal approach is demonstrated through the prism of the functionality of law in the society. Law is an essential element of the social structure and plays the important role to maintain the balance of the social relationship. The theory of law describes different functions of law, though there is no need to mention them all. To avoid the scientific polemics on what law serves for, only major functions relevant to the society and education are being illustrated.

Law exists as a tool to lead people to social order and acceptable behaviour in the society. First of all law describes what behaviour is recognized as proper in the communal life. The descriptive function of legal provisions is important because it sets up the policy, rules and explains what the standards of the communal conduct shall look like. Legal provisions describe the limits of acceptable behaviour and the consequences of certain forms of behaviour. Thus, creating legal regulatory frameworks law gives the directions and guides to the peaceful and harmonic cooperation and coexistence of people. Providing the minimal standards of behaviour that is expected from the members of the society law prevents deviant actions in the future.

Once the unacceptable behaviour occurs in the reality the law performs its regulatory duty. Disputes and conflicts are stipulated by the difference of needs, interests and views in the community, the law acts to make peace and resolve the conflict. The disputes are resolved in the judicial way or through alternative dispute resolutions, such as negotiations and mediation. Thus, law as a social regulator of conflicts executes another function.

When the violation of the widely recognized standards occurs law prescribes a punishment execution. Various legal disciplines define their types of punishment, though there are a few common forms for different legal branches. The imprisonment, penalty, custodial restraint and other measures are typical for the criminal offences. In the civil law financial penalties, e.g. late fees, or contract termination are applied along with the restorative justice measures, such as satisfaction of debt, restitution etc. The restrictive function of law is combined with the idea of balance in the society. As a result, a punishment provided by the law and executed according to the legal procedure aims at the maintenance of justice in the society and serves as a hortative sign for those who don't fulfil the legal rules.

Law and education are both essential for the development of the society and maintenance an order in the life. These phenomena don't exist independently from each other, they interact and affect each other. Their interaction results in the balanced educational policy and the precise rules regulating education. In realm of education law performs all its functions, at the same time education contributes to the adaptation of the legal provisions to the needs of people and requirements of the changing conditions.

Concerning education the legal norms provide the definition of main concepts on education, describe the rights and responsibilities of the subjects participating in the learning process and set up the principles of education. In the Code on education in Belarus the article 1 is entirely devoted to the meaning of the principal terms mentioned in the Code, education means “the process of upbringing and teaching in the interests of individuals, society and state aimed at the obtaining knowledge, skills and development of the harmonious and intelligent personality of a learner”³¹⁰. Moreover, law in its descriptive role gives authority to the state agents to take actions – to establish an education institution, to provide changes in the existing system of education, to adopt law on teacher's qualifications etc. As a social regulator the legal provisions prevent the abuse of power by officials. If the right to education is somehow violated a victim may apply to the judicial or other institution³¹¹ to resolve the situation and restore³¹¹ the justice. The law concerning education has its kind of penalty that is distinctive from criminal or civil law. Cancellation of licence or permission issued for an education provider is a kind of punishment and an instrument to control the quality of education and observance of the law. In Poland the Minister of Education can withdraw the permission for creation of the international department in school in case when the activity of the international department contradicts the school regulation or the current law³¹².

It is obvious that education is a powerful tool to affect the outlook of people. The perception of education as a result of human activity illustrates that the scope of knowledge and ideas gathered by individuals during their life is a legacy of human generations and their achievement. Law consists of different sources, a legal doctrine is one of them. All complex of theories, ideas and legal research in the form of monographs, textbooks, commentaries to codes composes the systematic consideration of the substance of legal disciplines. In the civil law countries where the legislation is considered the major source

³¹⁰ Кодекс об образовании от 13 января 2011 г. №243-3, НРПА, 2011, № 140, 2/1877 с изм., ст.1 п.1.6.

³¹¹ As an example art.128 ust.7 Ustawy Prawo o szkolnictwie wyższym i nauce z dnia 20 lipca 2018, Dz. U. 2018, poz. 1668.

³¹² Ustawa o systemie oświaty z dnia 7 września 1991, Dz. U. nr 95, poz. 425 ze zm., art. 7c ust.1.

of law, the doctrine contributes to the interpretation and systematization of the legal provisions in the great extent³¹³. In the common law tradition education in form of theoretical knowledge lies in the roots of legal precedents and the principles of justice that arise naturally from humanity and govern all human societies. Education as knowledge of different sciences contributes to the practical work of legal specialists. Knowledge of other branches of science is particular essential in the criminalistics, the specialists in IT technology, people with technical education or knowledge of biology support the criminal investigation of crimes. The legislative process is also an activity requiring the high level of education and broad-mindedness of people who will create the standards of living and laws.

At this stage it's important to pay attention to different approaches to education in the framework of the legal disciplines. The legal science provides two approaches to the investigation of the term education³¹⁴. The first way implies the research of all legal regulations (national, international and internal, i.e. adopted by the education institutions within their jurisdiction) as an object of the scientific interest. Such research is focused on the study of the legal provisions that determine the learning process. It may include the analysis of the regulations concerning the education providers that form the national system of education, its effectiveness and organization; the research may concern the development of laws regulating the requirements to educators and the content of educational programmes.

In some countries the science focusing on the study of legal regulations on education is called education law. It is already known that during a long period of time education has been researched in the light of philosophy, sociology or economics only. The appearance of pedagogy was helpful to clarify the borders between sciences, pedagogy seeks to distinguish the educational relationships as an object of the research from other sciences. Nevertheless, legal norms on education have never been considered as an object of a separate science. So far, in Poland education law has been studied as a part of administrative law, although it regulates also labour and civil relations of the subjects of the system of education³¹⁵. In the Soviet Russia education law was a part of administrative

³¹³ A. Peczenik, *Scientia Juris, Legal doctrine as knowledge of law and as a source of law*, w: E. Pattaro (ed.), *A treatise of legal philosophy and general jurisprudence*, Vol.4, Springer, 2005, chapter 1.

³¹⁴ Law is viewed as legislation and a subjective right of an individual. A. Balicki, M. Pyter, *Prawo oświatowe*, Beck, Warszawa, 2011, s. 1.

³¹⁵ *Ibidem*, s. 4.

law until 70s of the XX century³¹⁶. Nowadays the debates on the place of education law in the system of legal science still occur in the scientific literature. Some lawyers (Y. Starilov, E. Suchanov) still view it within administrative law and don't accept it as a separate discipline, others (V. Borisenkov, V. Syrych, V. Shkatulla and others) justify the significance to study education law as a separate field of science with its own subject and methodology³¹⁷.

In the Russian Federation the discipline titled education law was launched for the first time in the curriculum for lawyers a few decades ago³¹⁸. The first Russian textbook approved by the Ministry of Education on education law with the systematic approach to this branch was published in 2001³¹⁹. The object of the scientific interest of this legal discipline embraces, in a broad sense, all legal relationship arising in the realm of education (including ownership, management and labour relationship arising in the system of education) and strict pedagogic relationship regulating the teaching process, in a narrow sense³²⁰.

Education law in Belarus has not been considered as a separate branch of legal science yet. Being a member state of the Soviet Union Belarus developed its legislation in line with the main policy of the country. After the proclamation of the independence of Belarus the country enhanced the idea of sovereignty. However, the Soviet tradition and the practice to follow an order of the ruling power affect the development of the Belarusian legal science. The first attempt to make education law independent from other legal disciplines was done in 2011 by the adoption of the Code on education³²¹. It was a big progress in the unification of all legal documents concerning the system of education, education institutions and government policy in this realm. The Code unified the approaches to all level of education in Belarus, gathered the legal regulations together and defined the object and subject of the regulation, the principles of education. Thus, its own methodology and a subject of scientific research are missing in order to complete the process of the creation of a new legal branch and a discipline. The Belarusian scientists are working on this. Taking

³¹⁶ А.О.Мазурина, *Образовательное право как комплексная отрасль в системе российского права*, Наука и современность, 2014, № 34, с. 216.

³¹⁷ Ibidem, с. 217-218.

³¹⁸ The first course on education law was taught in 1996 in the Academy of law and social relations. В.И. Шкатулла, *op.cit.*, с. 14.

³¹⁹ Ibidem, с. V.

³²⁰ Ibidem, с. 21-22.

³²¹ Кодекс об образовании.

into the consideration that the Code was adopted a few years ago there are a few articles devoted to education law in the legal literature³²².

As it is admitted above education law in Poland is not separated from administrative law. Education law includes the legal norms of all levels regulating the activity of state bodies and other institutions involved in education which activity concerns upbringing and teaching³²³. The major difference of the Polish approach to education law from the Belarusian and Russian theories lies in the scope of education providers. According to the Code on education the system of education in Belarus implies all level of education starting from pre-schooling and ending with higher education. There are also chapters devoted to additional education, adult and special education in Belarus. The management of the education providers and educational policy is provided by the group of the state bodies headed by the Ministry of Education³²⁴. Meanwhile the Polish system of education is divided into two parts – education, including pre-school, school and vocational training, and higher education along with science. There are two separate governmental bodies responsible for the educational policy in the framework of two systems – Ministry of Education and Ministry of Science and Higher education. Accordingly their scope of duties is regulated by two legal documents - Law on the system of education³²⁵ and Law on higher education and science³²⁶.

The second approach to study education in the light of legal science is based on the recognition of education as an individual right of human beings³²⁷ in all its aspects. The research includes the analysis of nature of the right and the history of its development. The science is also interested in the ways to protect and guarantee the right to its holders. The right to education is acknowledged a significant right of every single person of the world. It is a human right included in the main international documents and protected on the national as well as international levels. As a rule, the right to education is included in the main national law – Constitution³²⁸. There are countries that don't have a constitutional

³²² For example, О.С. Пахучая, *Образовательное право: новация национальной системы права*, Издательский центр БГУ, 2012; А.А.Василенко, *Принципы образовательного права: опыт Республики Беларусь*, Право и образование, 2013 №6, с.68-72.

³²³ D. Kurzyna-Chmiel, *Podstawy prawne i organizacyjne oświaty: Prawo oświatowe w zarysie*, Wolters Kluwer, Warszawa, 2009, s.30.

³²⁴ Ст.109 Кодекса об образовании.

³²⁵ Ustawa o systemie oświaty.

³²⁶ Ustawa Prawo o szkolnictwie wyższym i nauce.

³²⁷ A. Balicki, M. Pyter, *op.cit.*, s. 1-2.

³²⁸ There is a Constitution Project tool that enables the reading and comparison of constitutions of all countries. By applying the filter with a particular word the tool provides the quantitative results how many times and in what countries a searched word or a phrase is mentioned in the main law. The word education is

commitment to guarantee the right to education, but they regulate the state's obligation in education by other legal acts³²⁹. Thus, unlike moral or custom law, the right to education is an element of the written law, thereby the right is formally legalized and accepted by the state. In the current work education is researched within both approaches - as the fundamental human right guaranteed by the state and as the scope of the national legal norms regulating higher education in Poland and Belarus.

Conclusion

“The concept of education is like a diamond, which appears to be of different colours when seen from different angles”³³⁰. Various people view the concept of education in their own way due to their outlook on life, experience and beliefs. Education is called a process or a result by some, by others it is measured in terms of produced goods and employed graduates. There are also those who view education as a gift or a product of nature, God's grace or life experience. It seems education is a matter for all and nearly every academic feels qualified to have an opinion on it. Many researchers highlight the role of education in human achievements and create a separate scientific discipline or science for it, such as philosophy of education or sociology of education. In pedagogy, education is conceptualised as a general process of human spiritual formation, which ingrains a certain level of intelligence and readiness for a future profession. Education is considered a cultural and historical phenomenon, which acknowledges, transfers and multiplies the accumulation of humanity's cultural legacy. Sociologists admit that education has all the attributes of a social institute. Education is a social subsystem with its own structure – educational institutes, social communities (teachers and students) and the educational process itself.

However, when considering education within the framework of each separate science, one can learn only a few characteristics of this phenomenon in a narrow sense. What is more important is to obtain a whole vision of education from the perspective of all disciplines together. The brightness of this diamond is visible through an eclectic approach

included in the constitutions of 187 of 194 countries in the world. It's almost all countries. The tool is available at www.constituteproject.org [accessed on 18 January 2017].

³²⁹ For countries with no formal constitution, many have included the right to education in supplementary documents like the Human Rights Act of the United Kingdom (1998) or the Australian Capital Territory Human Rights Act (2005). See more S. Lurie, *Why doesn't the Constitution guarantee the right to education?* The Atlantic, 2013 available at <https://www.theatlantic.com/education/archive/2013/10/why-doesnt-the-constitution-guarantee-the-right-to-education/280583/> [accessed on 18 January 2017].

³³⁰ S. Ravi, *op.cit.*, p.4.

or, in other words, by means of interdisciplinary research. Selecting the proper research tools from the different sciences enables us to understand the concept of education in its many aspects. Taking into account the functions of law that penetrate all spheres of life, it is obvious that viewing education through the prism of legal science enables the study of various sides of the researched matter. Law serves as an indicator of socially-accepted behaviour, a regulator of conflicts and a judge for violations of rights. Therefore, it is bound to interact with other elements of human life, including education. As a social phenomenon, education implies a system of educational institutions regulated by law. From the socio-political-economic dimension, the legal provisions force changes in the provision of educational services and define the major directions of education policy. The legal norms set up expected outcomes of the learning process and define the credentials for execution of professional duties by graduates. Unlike other scientific approaches, the legal approach to education discovers learning in a practical way, or in other words, how the right to education is implemented in life. Different philosophical, pedagogical or economic theories of education deserve their place in the doctrine and are also researched by scholars; however, some of them, Marxist theory for example, have become mere theoretical concepts and fail to illustrate the practical reality. The legal approach to education reflects its current perception and implementation. Moreover, law possesses measures of enforcement, which other sciences lack.

Another important characteristic of the legal approach is that law enhances the power and impact of education on society in the international dimension. Education is considered a fundamental human right regulated by various international treaties. Acknowledgement of the significance of human rights results in the emergence of a special field of legal science – human rights law. Among human rights, the right to education plays an important role. The opinion of the Special Rapporteur on the right to education affirms it. “Human rights law specifies the purpose and objective of education and requires the mainstreaming of human rights throughout the process of education. From the human rights viewpoint, education is an end in itself rather than merely a means for achieving other ends”³³¹. Bearing in the mind that human rights are studied within many disciplines³³², it is valid to research the human right to education using an interdisciplinary approach.

³³¹ Preliminary report of the UN Special Rapporteur on the human right to education to the Commission on Human Rights, E/CN.4/1999/49, para.13.

³³² The concept of human rights is in the focus of the studies by philosophers, theologians, sociologists and others. See more J. Łakomy, *op.cit.*, s.133-134.

CHAPTER 3. THE HUMAN RIGHT TO EDUCATION

3.1. Aims and objectives of education

In the previous chapter discovering the approaches to education by the eyes of philosophers, economists and sociologists the meaning of the notion “education” is often reflected in its predestination and certain aspirations. In other words the social sciences display for what education is needed and what outcomes it may give to the society, individuals and the whole mankind. Among social sciences one may find law and its component – human rights law. The goals of education are set up by the international human rights instruments either. The human rights-based approach to education is strengthened by the idea that education of all kinds and levels shall meet the goals defined by the international community, otherwise it will result in the violation of the human right. Thus, the violation of the right to education will take place when curricula inconsistent with the educational objectives set out in Article 13 of the International Covenant on Economic, Social and Cultural Rights are applied in the education process³³³. The state’s duty to meet the education objectives is also included in the minimum core content of the human right to education along with other characteristics of the right³³⁴.

The right to education occupies a particular place in the row of other human rights because it has its certain objectives defined by the clauses of international law. There is no other human right that is supplemented with the normative description of its aims. In human rights law and mainly in the pedagogical scholarships the objectives of education are often called “educational ideal”³³⁵, i.e. a picture of human perfection with the scope of attitudes, values and models of behaviour obtained by individuals throughout education. To define a pattern of educational ideal and to set it up in the legal instruments was a primary goal of the authors of the right to education included in the International Bill of Human Rights³³⁶. The false educational ideals of the well-organised system of education in

³³³ General Comment 13: The Right to Education, para. 59.

³³⁴ Ibidem, para. 57.

³³⁵ See I. Hajscewicz-Zimek, *Prawo dziecka do nauki*, w: R. Tabaszewski (red.), *Człowiek - jego prawa i odpowiedzialność*, KUL, 2015, s. 148. M. Judycka, *Problematyka dyscypliny szkolnej w świetle międzynarodowych standardów praw człowieka*, *Polski Rocznik Praw Człowieka i Prawa Humanitarnego* 4, 2013, s.44. In fact, the notion „educational ideal” is rooted from the philosophy of education and can be described as the excellent or perfect values that prevail in education, values that are seen highly important but that are not yet realised. D.de Ruyter, *After All, How Small is the World? Global Citizenship as an Educational Ideal*, in: *Philosophy of Education in the Era of Globalization*, Y. Raley, G. Preyer (eds.), Routledge, 2009, p.53.

³³⁶ The International Bill of Human Rights consists of the Universal Declaration of Human Rights and two Covenants – on Economic, Social and Cultural Rights and Political and Civil Rights. The Optional Protocols to the Covenants are also included.

Germany penetrated with racial hatred; blind obedience led to the disastrous consequences of the II World War³³⁷. Defining the aims of education the creators of the Bill tended to avoid a new threat to the world peace.

The Universal Declaration of Human Rights is a principal document introducing a new view on the world processes through the prism of human rights. The Universal Declaration made a revolutionary progress towards the formation and development of the educational ideal in the legal doctrine, the first steps were done by defining the objectives of education in Article 26³³⁸. The educational ideal refers to an image of an individual who by a means of education has obtained knowledge, developed skills and formed attitudes that satisfy a conception of perfect human co-existence in the diversity of cultures, values and behaviour. During times the educational ideal has been changed either strengthening the personal inner development or focusing on social life of individuals among various races, cultures and religions.

The debates on the Declaration text were held at the time of the Cold War between countries and the consensus was a sufficient requirement to make the Universal Declaration an influential instrument in the future. The confrontation of the capitalist countries and the governments of the socialistic block on economic items, on the other hand the differences of Asian and European social concepts made the discussions on the content harsh and the achievement of the consensus seemed less promising³³⁹. There are a few scientific works³⁴⁰ dedicated to the history of creation of the Universal Declaration. Their authors display a challenging way to agreement and reflect on the controversial discussions what human rights should mean. In total the preparation of the Universal Declaration took over two years, finally the draft of the Declaration with its 30 articles was adopted by the consensus of the country³⁴¹.

In 1947 the UNESCO leaders requested the essays as the means of resolving philosophical differences on human rights from the perspective of different ideologies. The essays should serve a background for the drafters of the Universal Declaration of Human

³³⁷ K. Beiter, *op.cit.*, p. 463.

³³⁸ M. Judycka, *op.cit.*, s.44.

³³⁹ J. Spring, *op.cit.*, p. ix and 3. The author in his work discovers and analyses the debates occurred between the representatives of communist and capitalist conceptions of the social right in general and the right to education in particular.

³⁴⁰ For example, see J. Morsink, *The Universal Declaration of Human Rights. Origins, Drafting and Intent*. University of Pennsylvania Press, 1999. G. Alfreosson, A. Eide (eds.), *The Universal Declaration of Human Rights: a common standard of achievement*, Martinus Nijhoff Publishers, 1999.

³⁴¹ K. Roth, *Article 26: A Principled Statement on Education*. Journal of Human Rights, 2009, nr.8, p.140, 142.

Rights. Scholars and political leaders of the United Nations aimed to find a common philosophical foundation for protection of human rights. Despite this important mission to overcome the cultural differences, the reading of the 31 submitted essays revealed important divisions over the meaning of human rights³⁴². In these essays the various statements on the right to education were also presented reflecting the different justification and positions of the aim of education in the society.

“The right to education, considered as part of the inevitable evolution to a communist society, has a variety of meanings. In the absolutist state, education served the purpose of creating obedient citizens who agreed to the rule of law. In a liberal state, people had the freedom to choose an education that reflected their religious, political, and economic beliefs. In a democratic state, education was a claim right, and government was obligated to provide free universal education. In a socialist society, a fair wage ensured that all people had an equal chance to use free universal education. Finally, in a communist society, education ensured equal educational opportunity by teaching an ideology that maintains a communist society”³⁴³. This evaluation proves that the right to education in different societies has the same footing. The primary goal of the right is to ensure and maintain obedience, another question concerns for what political or social order education shall serve – communist laws or the rule of law, the dictatorship or democracy.

Unlike the authoritarian and absolutist concepts of human rights, S. V. Puntambekar³⁴⁴ presented in his essay a Hindu concept of human rights that underscores the spiritual nature of humans. According to a Hindu perspective “the content of education should lead the individual to an escape from worldly desires to spirituality”³⁴⁵. This approach to human rights demonstrates an outstanding difference between Buddhist traditions in education and Western educational traditions of bringing up good citizens and workers.

The Chinese philosopher Chung-Shu Lo³⁴⁶ demonstrated a place of education in the society in the view of Confucianism. Overall, the Chinese philosophy supports the class division in the society, Confucius classified people according to their level of knowledge³⁴⁷. “Those who are born with knowledge are the highest. Next come those who

³⁴² J. Spring, *op.cit.*, p. 9-10.

³⁴³ The socialistic position was presented in the essay of Boris Tchechko who analyzed the 1936 Constitution of the Soviet Union. The liberal school of human rights was illustrated by the Polish professor of history of education at the University of Lodz Sergius Hessen. He was writing about education from a Eurocentric perspective. *Ibidem*, p. 13.

³⁴⁴ Professor at the department of Politics of the Nagpur University, India.

³⁴⁵ J. Spring, *op.cit.*, p. 16.

³⁴⁶ The essay was titled „Human rights in the Chinese tradition”.

³⁴⁷ J. Spring, *op.cit.*, p. 15.

attain knowledge through study ... Those who do not study it even under duress, they are the lowest of people”³⁴⁸. Confucius believed that the common people were incapable of learning and consciously following the moral rules.

These are a few examples of how different, if not to say contrary, positions on human rights nature may be evolved in the different countries and cultures. To reach an agreement on the 30 fundamental human rights in the diversity of political, philosophical and religious views is not an easy task. However, having faced the horrors of military conflicts, particularly the experience of the Holocaust and Nazi crimes, the world community was eager to create the world recognized rules to promote peace, tolerance and respect for human rights. On the other hand, it is unsurprisingly that various ideas and traditional values prevented to elaborate a common, thoroughly clarified concept of the right to education. Education means different things to a Buddhist, a Confucian and to a communist. Consequently, the provisions of Article 26 of the Universal Declaration lacked any definition of education that overcomes ideological and cultural obstacles, but it was replaced by the objectives of education in which each philosophy can find the corresponding reflection.

The economic and social rights in general and the right to education in particular were a cornerstone point for the countries with the different ideologies during the preparation of the Universal Declaration of Human Rights. The draft of Article 26 concerning the right to education had several versions and a few experts composing the drafting Committee were elaborating the wording of Article on education³⁴⁹.

An enlarged drafting Committee composing of representatives of eight countries³⁵⁰ was created to draft Article of the Universal Declaration defining the right to education. During the first meeting of the Committee a raw provision on education was called “a technical framework of education”³⁵¹ and required improvement. The cruel neglect of the moral principles in Germany in the past led to the wars, therefore it was considered essential to enrich the article with the spirit of education. At the second session the experts of the working group presented a new version of Article with the clauses on aims and purposes of education³⁵². The moral part of Article with the educational goals breathed a

³⁴⁸ The Analects of Confucius, in: R.Eno, An online teaching translation, 2015, p.92.

³⁴⁹ K. Roth, *op.cit.*, p. 139, 142.

³⁵⁰ It was a group of experts from different continents and hence with various values. There were scholars from Australia, Chile, China, France, Lebanon, the USSR, the United Kingdom and the United States. *Ibidem*, p. 140.

³⁵¹ *Ibidem*, p. 142.

³⁵² *Ibidem*, p. 142-143.

soul into a skeleton of the right to education. At that moment the provision contained two paragraphs.

It's interesting that the wording concerning the educational goals, as it is presented nowadays in the Universal Declaration, appeared in Article 26 after many amendments. The first draft of the paragraph identifying the aims of education stated “[education] shall combat the spirit of intolerance and hatred against other nations or racial or religious groups everywhere”³⁵³. However the tone of the text was admitted too negative and pessimistic although the idea that the clause expressed was a noble one. During the drafting Committee discussion the balance including the provision about the promotion of tolerance as well as effective support of the actions taken by the United Nations for the maintenance of peace was voted for³⁵⁴. However, a French representative R. Cassin, an author of the basic draft of Article, argued against this formulation. He affirmed that intolerance and hatred unfortunately did exist in the world and the positive sound of the revised clause would not eradicate them by being passed over in silence³⁵⁵.

At the final third stage the draft of Article 26 was developed with the third paragraph concerning the parents' priority right to choose education for their children. It implied further democratic ideals. In other words the latter amendment was an answer to avoid the experience of Nazi Germany and its system of education where learning was aimed to prepare youth for further service of the people and the state and where education being under the entire control of the government tended to atrophy children's educational abilities³⁵⁶. The whole Declaration including Article 26 was adopted and recognized “a common standard of achievement for all peoples and all nations”³⁵⁷. A joint effort of the international community proves that despite of various traditions, ideologies and theories dominating in every single country the educational goals shall be beyond them. The Universal Declaration declares the following aims:

“Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or

³⁵³ *The writing of Article 26 of the Universal Declaration of Human Rights*, in: World Education Report 2000. The right to education: towards education for all throughout life, UNESCO publishing, 2000, p. 103.

³⁵⁴ *Ibidem*.

³⁵⁵ *Ibidem*.

³⁵⁶ The statement refers to the opinion of the US delegates voted against the parents' right of choosing education for their children as the precision of the provision means also the parents' right to supervise school curricula which is undoubtedly not desirable.

³⁵⁷ The preamble of the Universal Declaration of Human Rights.

religious groups, and shall further the activities of the United Nations for the maintenance of peace”³⁵⁸.

The wording of the Universal Declaration points out that the right to education has philosophical basis that makes the right human, fundamental for all mankind. The right to education is not limited to ability to read and to count, education doesn't imply merely literacy. Obviously an educated person can do much more, for example to participate in the political life, vote and exercise its citizen rights, however well-educated citizens express their political will with a broader consciousness than people with low level of competence. Education is often seen as a tool for survival as it secures employment and thereby can satisfy the basic living needs in food and shelter. However, the Universal Declaration bears the global attention to the inherent dignity of individuals as the core foundation of all human rights and the right to education as well.

Referring to the right to education the human dignity has two sides. On the one hand the dignity is essential, if not say principal, for realization of human rights, including the right to education. It is hard to argue with the opinion that the dignity is seen as a theoretical notion³⁵⁹ without a materialistic expression. Nevertheless the international instruments on human rights identify the man's dignity as a key element for the human rights supremacy. The first paragraph of the Declaration preamble underscores that “recognition of the inherent dignity and of the equal and inalienable rights [...] is the foundation of freedom, justice and peace in the world”. Without the acceptance of human dignity the recognition of the human right to education in particular and all human rights in general will not be possible. On the other hand, human dignity is dependent on the human rights that affect the provision of social security of human beings and the maintenance of the worthy level of their existence. According to Article 22 of the Universal Declaration “everyone [...] is entitled to realization [...] of the economic, social and cultural rights indispensable for his dignity”. The right to education performs a particular task among other economic, social and cultural rights. Education is a powerful tool to be considered a prerequisite for a dignified existence. Education ensures the total development of the human personality³⁶⁰ and supports the discovery of the potential of human power defined by nature. Through the right to education human dignity is provided and made clear to

³⁵⁸ Article 26, para.2.

³⁵⁹ The notion „human dignity” is seen as an interdisciplinary term that is lied in the focus of different sciences starting from philosophy of Christianity to ethics. J. J. Mrozek, *Godność osoby ludzkiej jako źródło praw człowieka i obywatela*, Civitas et lex, 2014/1, s. 42-43.

³⁶⁰ Paragraph 2 of Article 26 of the Universal Declaration of Human Rights.

every single individual while other human rights merely ensure the level of living worthy to human dignity³⁶¹. Hence, the ultimate goal of education is not limited to literacy, but goes to the creation and development of moral foundation of human existence. The human development and conscious inner growth of human beings is one of the aims of education defined by the Universal Declaration of Human Rights.

Enlightenment on peace is the second goal of the human right to education in the context of the Universal Declaration. “It [education] shall promote understanding, tolerance and friendship”. Various activities of the state, members of the civil society and citizens are expected in spreading the high ideals on non-violence communication and preventing conflicts. As it was expressed during the drafting of the Universal Declaration, intolerance and hatred are faced in the society all the time, the spreading of the idea of non-violence and peaceful communication won’t resist the acts of discrimination in the full extent. Therefore, the second part of the sentence was added to the final version stating that education shall effectively support the activities of the United Nations for the maintenance of peace³⁶². In effect, the international community fights with the acts of racial, national and other discrimination at a few levels – through educational process in order to prevent the cases of intolerance and by applying restrictive or punitive measures in the scope of the appropriate international institutions when the violation of the human rights takes place.

The last but not least educational goal defined by the Universal Declaration is the strengthening of respect for human rights and freedoms. Bearing in mind the essence of education to transfer knowledge, skills and attitudes from the current generation to subsequent ones the delivery of information of the history and theory of all human rights and freedoms to people shall be performed in and through educational process. Undoubtedly, the right to education can be called an engine of the whole mechanism of human rights. Since the Declaration proclamation the international community took various, mainly isolated from other action plans, attempts to teach human rights within the formal system of education³⁶³. The work on the global normative legislation was finalized

³⁶¹ For example, according to Article 23 the right to work shall guarantee the remuneration ensuring an existence worthy of human dignity for a person and his family.

³⁶² Paragraph 2 of Article 26 of the Universal Declaration of Human Rights.

³⁶³ UNESCO Associated Schools Program in 1953 was an initial step towards teaching the human rights in schools. The next one is the adoption of the UNESCO Recommendation concerning Education for International Understanding, Cooperation and Peace, and Education Relating to Human Rights and Fundamental Freedoms in 1974. The international meetings like the International Congress on the Teaching of Human Rights in 1978 and the World Congress on Human Rights in 1993 resulted in the setting of the issue of human rights education to the top of priority list at the national and international level. The Vienna Declaration and Program of Action adopted in 1993 called on all States to include human rights education programmes as subjects of the curricula within formal and non-formal education.

with the adoption of the United Nations Declaration on Human Rights Education and Training in 2011³⁶⁴. However, the most sustainable and comprehensive initiative shall be acknowledged the formalized concept of human rights education. For the systematic realization of this educational goal the idea of teaching history, theory and law on human rights was implemented in 1995 with the beginning of the UN Decade for Human Rights Education. The findings and lessons learned during this period demonstrated the significance of human rights education in all sectors and the United Nations proclaimed the World Programme for Human Rights Education that is lasting so far.

The dissemination of human rights among lawyers is underlined in the international provisions. Lawyers are not only individuals who enjoy the human rights and freedoms, but also guarantors for others that their rights and freedoms are ensured and protected. The Basic Principles of the Role of Lawyers state that „governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law”³⁶⁵. The Special Rapporteur on independence of judges and lawyers underlines in her report submitted to the UN General Assembly the importance of inclusion of human rights education in the curricula of the national legal education and post-graduation training of lawyers³⁶⁶.

The objectives of education stated in Article 26 (2) of the Universal Declaration in the great extent is repeated and sometimes expanded in the text of other human rights instruments. For instance, clause 1 of Article 13 of the International Covenant on Economic, Social and Cultural Rights is dedicated to the objectives of education and has similar with the Universal Declaration statements. The Declaration of the Rights of the Child³⁶⁷ in Principle 7 outlines in general terms the aims of education in line with the Universal Declaration.

The Universal Declaration was proclaimed more than half a century ago. At that time the educational objectives were addressed mainly to the struggle with intolerance and hatred between nations, racial and religious groups that caused the II World War. Having

³⁶⁴ Resolution of the General Assembly 66/137 on 19 December 2011.

³⁶⁵ Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990, p. 9.

³⁶⁶ D. García-Sayán, Report of the Special Rapporteur on the independence of judges and lawyers, UNI Doc A/71/348, 2016, p. 91.

³⁶⁷ Proclaimed in 1959 the Declaration was the basis for the Convention of the Rights of the Child.

suffered from the Holocaust and Nazi Germany politics the international society intended to bring certain desirable humane changes to thoughts and acts of behaviour of people throughout education. Following the idea of peaceful existence and a combat with intolerance due to various grounds the international community adopted the Convention against Discrimination in Education. The text of Article 5 (1) of the Convention repeats *expressis verbis* the aims of education embodied in the Universal Declaration. Even though the Convention against Discrimination in Education doesn't provide new provisions with the objectives of education, it supports the international collaboration of nations in combating with any concept of inequality in education. The other significance of the Convention against Discrimination in Education is its enforceable nature, the document is binding in 102 countries³⁶⁸.

In the course of time the focus of the objectives of education was shifted from the international dimension of equality and tolerance in education towards the individual growth of human beings. The interpretation of educational goals has been expanded and deepened with the adoption of the International Covenant on Economic, Social and Cultural Rights to ensure the intellectual, physical, moral growth of individuals. The objectives described in the International Covenant almost repeats the objectives of education embodied in the text of Article 26 of the Universal Declaration. Nevertheless the minor changes in the content of the international human rights instruments along with the abatement of international tension between countries have affected a new perception of aims of education. Article 13 of the International Covenant on Economic, Social and Cultural Rights asserts:

“education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms [...] education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace”.

In comparison with the provision of the Universal Declaration the right to education according to the Covenant is considered in bigger extent an empowerment right of each

³⁶⁸ The data provided by UNESCO, available at <http://www.unesco.org/eri/la/convention.asp?KO=12949&language=E&order=alpha> [accessed on 2 July 2016].

human being than a tool of countries to maintain the peace in the world. There are various reasons to ascribe the empowerment potential to the right to education.

Firstly, the right to education is a prerequisite for exercise of other human rights and the provisions of the Covenant literally points to this fact. Education is aimed to formation of the sense of human dignity that in its turn gives the ground to all human rights. “These [human] rights derive from the inherent dignity of the human person” is fixed in the preamble of the Covenant. Secondly, education stands for political, civil, economic and cultural empowerment of persons. Such notion like “participate effectively in a free society” underlines the significance of education in the different spheres of human life. Education enables individuals to think critically of their life, to select the directions of further movement what is possible in the truly free and democratic state and to make decisions that change their life. The decision may concern economic or social sphere of interests. At the same time education also entitles human beings become an active participant of political life. It is worth to agree with Beiter admitting that well-educated persons compose the substantial representation among political dissidents over the world, similarly only educated people make a conscious decision in the political lottery and duly exercise their right to vote or stand for political office³⁶⁹. On the other hand, this argument has a negative side. Some governments are not interested in development of the system of education or to invest money to the improvement of the right to education in order to prevent the political activity of individuals. Hence, we can agree with Katarina Tomasevski, the former UN Special Rapporteur on the right to education, describing the right to education “as a multiplier, enhancing all rights and freedoms when it is guaranteed while jeopardizing them all when it is violated”³⁷⁰.

The clause of the International Covenant regarding the aims of education is sometimes considered a declarative character. Indeed, the wording of the exalted aims seems to be similar with the notions applied in the preamble of other human rights documents. The reference to the statements “inherent dignity of all members of the human family”, “development of friendly relations between nations” and “universal respect for and observance of human rights” that precede the main text of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights indicates the declarative nature of the provisions of Article 13 (1). Nevertheless, this opinion is not duly

³⁶⁹ K. Beiter, *op.cit.*, p. 29.

³⁷⁰ V. Sedletzki, *Fulfilling the right to education for minority and indigenous children: where are we in international legal standards?* in: P. Tanje (ed.), *State of the World’s Minorities and Indigenous People*, 2009, p. 43.

justified and contradicts the rules of legal interpretation and application. The educational ideal is ascribed to the article of the Covenant, but not the preamble; hence the clause has the same obligatory power as other articles of the document. Moreover, the decision to include the aims of education to the principal text of the Covenant was well-considered. The intention of the authors of the Covenant was to provide the state's obligation in the organisation of education in the country, at the same time to define certain standards of the content of education binding for the governmental bodies³⁷¹. The Committee on Economic, Social and Cultural Rights is entitled to observe whether the states ensure that curricula, for all levels of the educational system, conform with the educational objectives identified in Article 13 (1) of the International Covenant. The appropriate state institutions are also obliged "to establish and maintain a transparent and effective system which monitors whether or not education is, in fact, directed to the educational objectives"³⁷². The practice of application of the International Covenant on Economic, Social and Cultural Rights reveals that the Committee concerns the insufficient realization of the aims of education at the national level of certain countries. This approach is demonstrated in the Concluding Observations of the Committee to the national reports of the country members³⁷³.

In addition to the empowerment character of the right to education the educational ideal described in the Covenant is considered person-centred. The focus on the development of human personality can be found both in the Universal Declaration of Human Rights and the text of the Covenant. However, Article 13 (1) of the latter document adds "the sense of the dignity" that underlines more the primacy of individual's interest to education. The General Comment to Article 13 also strengthens the orientation towards individual interests by admitting the full development of personality as the most fundamental clause³⁷⁴. In this context it shall agree with M. Mehedi's statement that regardless of the nature of the objective of education – individual or social – education shall be seen as the process mostly directed to the sake of human being development, but not the interests of the society. As a consequence, the next objective of education "to

³⁷¹ K. Beiter, *op.cit.*, p. 469.

³⁷² General Comment 13: The Right to Education, para. 49.

³⁷³ The government should increase its efforts in relation to human rights education so as to ensure that all categories of students and teachers are covered. Concluding observations: Belarus (third periodic report), UN Doc. E/1997/22, para. 293. Human rights education should be ensured in curricula at all levels of education, Concluding observations: Armenia (initial report), UN Doc. E/2000/22, para. 311. The Committee pays attention that the educational curricula be reviewed in order to promote mutual understanding, tolerance and friendship, and that any educational material that is discriminatory or derogatory towards others should be removed. Concluding observations: Croatia (initial report), UN Doc. E/2002/22, para. 920.

³⁷⁴ General Comment 13: The Right to Education, para. 4.

participate effectively in a free society” shall mean that a person plays a useful role in the society for its personal benefit in the first priority and then for the sake of the community where he or she lives.

The importance of education directed to the progress of human beings is beyond any doubts and confirmed by the multiple references in the international human rights instruments. Though the content of the notion “full development of human personality” remains unclear, neither General Comments nor soft law sources provide the precise clarification to this concept. The legal doctrine sees this education objective as the provision of those educational opportunities that enable the development of human beings at all dimensions – physical, intellectual, social, spiritual and psychological³⁷⁵. Such idea proves the consideration of education in a broad meaning as a transmission of all scope of knowledge of mankind, not limiting by the academic learning and curriculum. Another statement supporting the concept of all-round development of people through education is illustrated in the paragraph 4 of General Comment 13 to the International Covenant on Economic, Social and Cultural Rights. The first sentence of the provision underlines that educational objectives identified in Article 13 are applied to any kind and type of learning process regardless education is provided in public or private educational institution, it is formal or non-formal education. Hence, by a means of learning activity a human being as an object of educational goals develops its mind, capacities, talents in all their spectrum and also gains knowledge, skills and attitudes essential for worthy existence and participation in the family, society and world.

The following step of the international community to develop the normative context of the educational goals is the Convention on the Rights of the Child³⁷⁶ which describes the objectives in Article 29 (1). Moreover, the clauses of the Convention are enriched by the General Comment 1³⁷⁷ that is entirely dedicated to the aims of education. The content of aims has been expanded and enriched in comparison with the Universal Declaration and the International Covenants by new clauses in the consistence with the influence of time. Indeed, the Convention on the Rights of the Child put into force in 1990³⁷⁸, almost half a

³⁷⁵ K. Beiter, *op.cit.*, p. 470-471.

³⁷⁶ The Convention has been ratified by 196 States. No other international treaty on human rights has provoked such a consensus on the part of governments. The data provided by the United Nations, *available at* <http://indicators.ohchr.org/> [accessed on 2 July 2016].

³⁷⁷ General Comment 1: The aims of education.

³⁷⁸ Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

century later after the Universal Declaration proclamation. Article 29 consists of 5 parts stating that „education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment”.

Unlike the Committee on Economic, Social and Cultural Rights the Committee on the Rights of the Child prepared the General Comment 1³⁷⁹ providing the broad clarification and further insight into the aims of education. The Committee highlights the significance of the right to education for the current child’s life and its future adult living in the society and the universe. There are 5 pillars of educational ideal that support a child to be conscious of the essence of his or her life and to prepare an independent and full-fledged member of the human community: holistic discovery of child’s capacities (29 (1) (a)); respect for human rights and freedoms and their obedience (29 (1) (b)); an enhanced sense of identity and affiliation (29 (1) (c)); social interaction (29 (1) (d)); responsible use of natural resources (29 (1) (e)).

For the purposes of the scientific research the educational objectives defined by the international law can be merged in a few groups with the consideration of the spreading of their final target. The first group embraces learning activities oriented mainly to the progress in the individual dimension. Education directed to the personal development of an individual empowers the child, strengthen his or her awareness of human dignity and provides him or her with self-respect, self-confidence. The legal provisions of the Convention highlight that by a means of learning a child shall develop his or her “talents,

³⁷⁹ The General Comment is entirely dedicated to the educational objectives identified in the Convention of the Rights of the Child. General Comment 1: The aims of education.

mental and physical abilities to their fullest potential”³⁸⁰. This is an evidence of the concept that education is seen broader than merely the transmission of academic knowledge and skills, but a holistic development of human potential. The academic learning emphasizes secondary values, merely making individuals proficient in some branch of knowledge. Though professional knowledge and productivity are necessary for living, to lay the principal emphasis on them only leads to the limited perception of life and existence. The cognition of the meaning of life as a whole seems not an issue of primary importance for the majority of people. However, education in all its types and forms is a way to comprehend the philosophy of life and the human predestination, to discover the individual capacities granted by nature, to develop talents and interests. As a result, education in the context of the Convention of the Rights of the Child is considered as a learning process with the broad thematic content not limited to the professional development of individuals within the formal education.

Discovery of the inner world of a human being may result in the conscious learning of the originality of the family, culture and even nation. In the light of the Convention education supports the interest to the roots and values of the country in which the child is living, the country from which he or she may originate³⁸¹.

The second group of educational goals is of social dimension, or in other words interpersonal skills and values. Education develops the capacity of a person that is effective in the socialization and coexistence in the society with the diversity of interests, needs and cultures. The clauses on respect for and promotion of human rights and freedoms, understanding and tolerance to difference, equality and friendship among all peoples, ethnics and nations are not new provisions in the human rights law. The Universal Declaration of Human Rights, the Convention against Discrimination in Education and later the International Covenant on Economic, Social and Cultural Rights possess the identical aims of education in their texts. Nevertheless, the Convention on the Rights of the Child introduces the innovative and at the same time actual for the time of drafting provisions. Promotion of gender equality and upbringing the tolerance to people of indigenous origin are just a few pioneering mottos in the whole spectrum of worldwide statements that recently appear in the policy of the international organisations directed to the holistic struggle against racism, racial discrimination and xenophobia. Recognizing education as a powerful weapon against the evils of racism and related intolerance,

³⁸⁰ Article 29 (1) (a) of the Convention on the Rights of the Child.

³⁸¹ See Article 29 (1) (c) of the Convention on the Rights of the Child.

emphasis shall be done on the teaching and dissemination of the values identified in the human rights law and the provision of examples of racism as it has been occurred historically, particularly within certain communities³⁸². Living within the society requires decision-making skills because human beings interact with each other and decide on the common future. The decisions may concern all spheres of life of the individuals – private and public, political and social – and awareness of the social processes and their consequences allows making conscious conclusions. Then the role of education is crucial in creation of the feeling of responsibility of persons. In line with the provision defined in the International Covenant on Economic, Social and Cultural Rights the Convention on the Rights of the Child reaffirms that education shall be directed to “the preparation of the child for responsible life in a free society”.

The last but not least group of objectives is presented by educational ideal of the global dimension. It is not the first time when the international community pays attention to the role of education in the solving of problems of interdisciplinary character, some of which are spread on the globe scale. Recognizing education as an empowerment right the international community places its hopes on it in lifting the poorest out of poverty, safeguarding children from exploitative and hazardous labour and sexual exploitation³⁸³, controlling population growth³⁸⁴. Although these postulates are enshrined in the soft law sources and don't have binding power for the states they take roots from the content of other human rights, like the right to health, right to work. One more time it illustrates the integrity and interdependence of human rights and fundamental freedoms. The dimension and affect of these problems on the mankind is so enormous that these issues must be spoken up many times until to be heard. The international request has been finally heard. The Convention on the Rights of the Child calls upon for the development of respect for the natural environment³⁸⁵. Thereby the international law underlines the significance of education in the struggle against the global challenges.

The interdependence of human rights means also that the global problems concerning various human rights are more complex in the resolving. The solution for these globally raised issues requires the mutual efforts and integrated approach by a means of education and other tools. For reaching the educational goal aimed at care of natural resources

³⁸² General Comment 1: The aims of education, para. 11.

³⁸³ General Comment 13: The Right to Education, para. 1.

³⁸⁴ UNESCO has released the evidence-based recommendations on the key role education plays in preventing and responding to early and unintended pregnancy. *Early and unintended pregnancy: Recommendations for the education sector* – Technical Brief, UNESCO, 2017.

³⁸⁵ Article 29 (1) (e) of the Convention on the Rights of the Child.

“education must link issues of environment and sustainable development with socio-economic, socio-cultural and demographic issues. Similarly, respect for the natural environment should be learnt by children at home, in school and within the community, encompass both national and international problems, and actively involve children in local, regional or global environmental projects”³⁸⁶.

In the legal doctrine one can find different classifications of the educational objectives based on the subject or the content of education. For example, by the thematic characteristic the aims and purposes of education are merged in two groups. The first one is broadly labeled education for peace, human rights and democracy, the other one is education for development³⁸⁷. Education for peace, human rights and democracy takes mainly its roots from the content of the Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms that was influential and to certain extent ahead of its time in promotion of ideas of tolerance, mutual respect and interdependence between people and nations³⁸⁸. The second sub-group emerged in the international dialogue since the Universal Declaration proclaimed in Article 26 that education should be directed to the development. This group embraces the purposes and objectives of education that strengthen both the personal growth of individuals and the development of the whole society³⁸⁹.

Another classification is presented in the Delors report³⁹⁰ titled “Learning: the Treasure Within”³⁹¹ where four main functions of learning are defined. The modern education throughout life shall be based on 4 pillars: learning to know, learning to do, learning to live together and learning to be. In a nutshell, according to the Delors report learning to know is understood broader than merely to gain knowledge on a number of subjects. A learner combines sufficient information and facts on the theme in order to go deeper on the subject, to define the concepts and principles, or in other words learners shall

³⁸⁶ General Comment 1: The aims of education, para. 13.

³⁸⁷ *A renewed concern for education's purposes*, in: World Education Report 2000. The right to education: towards education for all throughout life, UNESCO publishing, 2000, p. 76.

³⁸⁸ *Ibidem*, p. 77-78.

³⁸⁹ *Ibidem*, p. 82.

³⁹⁰ The chairman of the Commission was Jacques Delors, therefore the report is often called the Delors report. See for example, S. Tawil, M. Cougoureux, *Revisiting learning: the Treasure Within. Assessing the influence of the 1996 Delors report*, UNESCO Education Research and Foresight, Occasional papers, №4, January 2013; A. Klim-Klimaszewska, *Podstawy edukacyjne na przełomie XX-XXI wieku w świetle raportów oświatowych*, Rozprawy Społeczne, Nr 1 (V), 2011, s. 3-10.

³⁹¹ *Learning: the Treasure Within*, Report to UNESCO of the International Commission on Education for the Twenty-first century, UNESCO, 1996, p. 145.

be trained for the independent continuous education during the life. Learning to do means gaining the professional as well as day-to-day skills, such as resistance to stress, teamwork skills, problem-solving skills etc. That experience can be taught both in the formal and informal educational activities, at the international, national and local level. Learning to live together refers to the promotion and enhancement of values and rules of peaceful co-existence in the variety of ideas and interests. Learning to be implies a process of preparing a person to identify and develop his or her identity, aspirations, strengths and weaknesses. On the basis of the reflection on the personal experience and observations a human being shall be able to create her or his own viewpoints, beliefs, values and to make conclusions.

The majority of countries in the world are members of the core human rights treaties and share their national aspirations concerning the objectives of education with the global vision on the right to education. Nevertheless, the national educational ideals may differ from the global ones due to the historical or cultural traditions and the current development status. The national aspirations of the country in terms of education are reflected in the constitution, national laws and policies. A secular society is aimed to develop secular values and rational outlook of its citizens. In a multilingual, multireligious and multicultural society education shall promote national and emotional integration, it also develops the feeling of respect for diversity. In a theocratic state education serves a learning tool for the benefit of religion³⁹². For example, for Moslems the fundamental goal for literacy is to be able to discover the teachings of the Quran. During the discussion on the aims of education to be set up in the Universal Declaration of Human Rights A. Boutaleb referred “The first revealed word in the Holy Quran is to read”³⁹³. The countries with liberal democracy may strive to develop democratic values, openness and to maintain liberal attitudes, while a totalitarian society expects people to conform to the rules established at the national level. The realization of human rights and fundamental freedoms is performed at the national and regional levels and the tension between the global ideal and others is not inevitable in case they differ. However, it is worth to agree that the preservation of the national and cultural identity and the country’s aspiration to get integrated with the international community may occur in a large extent in conformity.

In additional to the global dimension the right to education is reflected also in the legal documents of the European level – the Protocol 1 to the European Convention on Human

³⁹² *Basics in education*, Textbook for bachelor in education course, S. Uppal (ed.), National council of educational research and training, 2014, p.48.

³⁹³ J. Spring, *op.cit.*, p.4.

Rights, the both European Social Charters and the case law of international institutions. The educational objectives in the regional legal acts are defined in the consistency with the educational ideal illustrated by the fundamental worldwide documents. The brief provision of Article 2 of Protocol 1 to the European Convention on Human Rights regulating the right to education doesn't provide the precise identification of the objectives of education. However, the legal practice of the European Court of Human Rights enriches the interpretation and understanding of the clauses of the Convention to a great extent. There are various legal cases where the right to education was in consideration and the educational goals were underscored. For example, the European Court agrees with the position of the German authorities that education shall not be limited to the acquisition of knowledge only, but shall be directed to integration [minorities] into society and gaining the first experience with the diversity of views, beliefs and opinions³⁹⁴. The formal education system with the obligatory primary school attendance prepares responsible citizens capable to participate in a democratic and pluralistic society while home schooling cannot be considered equally effective³⁹⁵. "The acquisition of social skills in dealing with other persons who had different views and in holding an opinion which differed from the views of the majority was only possible through regular contact with society. Everyday experience with other children based on regular school attendance was a more effective means of achieving that aim"³⁹⁶.

The right to education plays the fundamental role for the development of all human rights in a democratic society. The European community underlines the significance of pluralism in education, including within the content of curricula and the type of education institutions, in order to ensure the preservation of other human rights, such as the right to private and family life, freedom of religion and thought, freedom to receive and impart information³⁹⁷. In the case *Kjeldsen, Busk Madsen and Pedersen v. Denmark* the Court recognises the effectiveness of the introduction of compulsory sex education to the curriculum towards the prevention or reduction of disturbing facts, including but not limited to unwanted pregnancies among the youth, unwilling abortions and venereal

³⁹⁴ *Konrad and others v. Germany*, ECHR, App. No 35504/03, Decision, 11/09/2006.

³⁹⁵ The European Court of Human Rights accepts as falling within the member state's margin of appreciation the rule whether home schooling is permitted within the national system of education.

³⁹⁶ *Konrad and others v. Germany*.

³⁹⁷ Guide on Article 2 of Protocol No. 1 – Right to education, European Court of Human Rights, 2015, p.6.

diseases³⁹⁸. Hence, learners gain knowledge practically important for planning their further lives.

At the regional level the human rights law doesn't elaborate anything distinguishing from the worldly spread treaties in terms of mission of education. The precise definition of educational ideal can be found neither in Article 14 of the Charter of Fundamental Rights of the European Union nor the both European Social Charters.

In the majority international human rights instruments the right to education is regulated in its fullness, the provisions refer to all types and levels of education unless otherwise specified. On the other hand, there exist numerous soft law internationally agreed sources regulating a particular type of education, e.g. basic education or vocational education. These documents are more detailed in definition of the mission of a certain type of education and less linked to the wording of Article 26 of the Universal Declaration of Human Rights and other binding international treaties.

The international community pays the great attention to the provision of basic education for all. Not surprisingly, one of the millennium development goals and later adopted sustainable development goals is to achieve primary universal primary education³⁹⁹, in other words the international society strives to ensure that all boys and girls not only get an access to school, but complete a full primary school course. The World Declaration on Education for All and the following Incheon Declaration devoted entirely to the basic education provide the description of educational ideal in the context of primary level of education.

The World Declaration on Education for All recognizes the right to education as a fundamental⁴⁰⁰ and empowerment⁴⁰¹ human right and recalls the educational objectives in the manner embodied in the previously adopted human rights documents. Education affects personal and social improvement of individuals, can ensure healthy and environmentally sound world, contributes to social, economic and cultural progress and international

³⁹⁸ Kjeldsen, Busk Madsen and Pedersen v. Denmark, ECHR, App. No. 5095/71, 5920/72, 5926/72, Judgment (Merits), 07/12/1976, para.54.

³⁹⁹ In 2000 the world leaders gathered by the United Nations defined 8 global goals aimed to eradicate the poverty in the developing countries. The goal 2 is dedicated to the primary education. The Millennium Development Goals Report 2015, United Nations, 2015, p.4. In 2015 based on the success of the millennium development goals the international community made attempts to go further in the struggle against all forms of poverty over the world. The 17 sustainable development goals were defined recognizing the mutual efforts of countries in the solving social problems. The goal 4 refers to inclusive and equitable quality education and promotes lifelong learning opportunities for all. More information is *available at* <http://www.un.org/sustainabledevelopment/> [accessed on 14 August 2017].

⁴⁰⁰ World Declaration on Education for All, preamble.

⁴⁰¹ Ibidem, Article I (2).

cooperation. Bearing in mind that the document concerns the basic learning needs only the authors also highlight the possibility and even necessity to access and complete the higher levels of educational career. “Basic education is more than the end itself. It is the foundation for lifelong learning and human development on which countries may build further levels and types of education and training”⁴⁰². Knowledge and skills gained at the lowest level of education are fundamental to further the scientific and technological development of the whole society.

The authors of the Incheon Declaration composing the strategy for achieving the sustainable development goals recognize education as an engine of the transformation process⁴⁰³. Having learned the lessons in realization of the millennium goals, having examined the challenges faced mankind in the recent decades and having evaluated the scientific development the international leaders reaffirm education is a tool that develops life and thoughts of people, a main driver of progress and a fundamental but not sufficient element for guaranteeing the realization of other human rights.

Despite of the fact that higher education institutions exist for a few centuries there is no a consensus as to what a university serves for. Some opinions state that the aims of higher education differ by countries or by the type of institution and they adjust their mission by the influence of social and international factors. There are other opinions supporting the idea of the core aims of higher education. Nevertheless it is hard to disagree with the statement that higher education institutions attend to multiple aims. The provision of attention to one aim is at the expense of others, on the other hand it is worth to remember that each aim contributes to the development of individuals and the prosperity of the entire society.

In this point it would be important to note the World Declaration on Higher Education for the Twenty-first Century: Vision and Action⁴⁰⁴. About 4000 participants of the World Conference from all over the world responsible for education in general and higher education in particular reaffirmed the core mission of higher education - to educate, to

⁴⁰² World Declaration on Education for All, Article I (4).

⁴⁰³ The Incheon Declaration, preamble, para.5.

⁴⁰⁴ The World Conference on Higher Education happened in 1998 in Paris came into history as the first world meeting gathering representatives of 182 countries to discuss matters of higher education and to agree on the common vision on higher education in the next century. The Conference has defined the principles and determined the ways of achieving more humane, just and caring world in the texts of the World Declaration and the Framework for Priority Action. *World Declaration on Higher Education for the Twenty-first Century: Vision and Action*, World Conference on Higher Education, 5–9 October 1998, Paris, UNESCO, p. 3.

train, to undertake research and to provide services to the community⁴⁰⁵. At the same time higher education shall not be limited to preparation strictly of qualified graduates. “Beyond its traditional functions of teaching, training, research and study, all of which remain fundamental, [...] the importance of the educational mission of higher education consists in promoting development of the whole person and training responsible, informed citizens, committed to working for a better society in the future”⁴⁰⁶. The participants of the World Conference stressed that higher education institutions must strive to educate individuals who are responsible for living in a free society. Higher education as any other type of education shall ensure opportunities for learning throughout life of social, economical, cultural and political processes happening in the society and thereby develops the whole potential of human personality. During the World Conference the international community underlined that “curricula need to be recast so as to go beyond simple cognitive mastery of disciplines and include the acquisition of skills, competencies and abilities for communication, creative and critical analysis, independent thinking and team work in multicultural contexts”⁴⁰⁷. All these aims of higher education can be found in Article 1 of the World Declaration on Higher Education. Higher education contributes in the struggle against the major problems of global, regional and local importance (poverty, homelessness, worsening inequalities, environmental pollution, etc.) (Article 1 (a)), promotes individual development and the sharing of knowledge through mobility (Article 1 (b)), preserves and disseminates national and regional cultural traditions (Article 1 (d)), protects and enhances societal values, such as solidarity, the universal respect of human rights, democracy, gender equality (Article 1 (e)). Moreover, the cultural and ethical mission of higher education as one of the highest priority of learning was strongly highlighted by the participants of the World Conference⁴⁰⁸, what justifies the recognition of the mission of higher education in the line with the core human rights treaties – the International Bill of Human Rights.

Summarizing up the analysis of the international and regional vision on the educational objectives it is worth to acknowledge that there is no a single correct answer as to what the main mission of education is. Different reasons stipulate the creation of the multifunctional vision on education. They are the historical experience of social living of mankind, the perception of education by scientists, practitioners, politicians and other

⁴⁰⁵ Ibidem, Article 1.

⁴⁰⁶ *World Declaration on Higher Education for the Twenty-first Century, op.cit.*, p. 4.

⁴⁰⁷ Ibidem, p. 1.

⁴⁰⁸ Ibidem.

stakeholders, the national social and cultural traditions, the global challenges and contemporary environment. Nevertheless, all aims of education presented in the legal doctrine have their rationale and consequences.

In the international human rights law education is presented within both the formal system of learning and non-formal educational activities which are directed to the achievement of a broad range of outcomes. Regardless of the type and level of education the learning process embraces a broad spectrum of the life experience which enables human beings, individually and collectively, to develop their personalities, talents, abilities and get the full enjoyment of living within the society. Education has different faces and is seen both a human right that possesses the features of social, cultural and economic rights and, on the other hand, an indispensable means of realising other human rights⁴⁰⁹. Nowadays, it is hard to imagine the economic progress of the country or the political reforms without an image of an educated person.

The perception of human life and the philosophy of existence, the understanding of the social, political and economic phenomena are neither static nor stable in time. Throughout the previous century the vision on the objectives of education in the context of human rights instruments has been changed either. In the post-war period in the middle of the previous century the perception of education as a means of peaceful and respectful co-existence in the multicultural world was the principal in the theory of human rights. With the strengthening of the human potential the understanding of the humanitarian role of education has been widely expanded, the development of human dignity and personality have been prioritized as the key elements what education shall be directed to. Education is considered an empowerment right enabling to lift the poorest out of poverty and providing people with the consciousness of the social, political and economical changes and their role in it. Moreover, the modern society underlines the power of education towards the solution of global challenges – protection of environment, control of population growth, gender inequality. Indeed, the significance of education is not just practical: “a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence”⁴¹⁰. In the discussion on the purposes of education it is fair to admit that all purposes of education are equally important and remarkably perform their outstanding mission. In the contemporary reality it is hard to assign the leading role of education guiding to the personal growth, the development of the human personality and

⁴⁰⁹ General Comment 13: The Right to Education, para. 1.

⁴¹⁰ *Ibidem*.

dignity and a supplementary role of education for peace, tolerance and democracy. They both are considered interdependent.

Moving from the general concept to a particular the international community defines firstly the objectives of any education in the light of human rights law and follows them with the goals of particular level of education. Thus, the International Bill of Human Rights, the Declaration of the Rights of the Child and then the Convention on the Rights of the Child defined the mission of the right to education as it is. Later, the soft law acts concerning a particular type of education (fundamental or basic education, human rights education, higher education etc.) supplemented the general mission of education with the certain educational goals typical for the selected education.

The variety of purposes of education furthers the emergence of classifications of educational ideals. They all are justified for existence at least in the scientific interests, however it's impossible to prioritize them as all educational goals are mutually dependent. What is remarkable is that the aims of education identified within the human rights law pierce the scope of all sciences. The sub-chapter of the current research dedicated to the functions of education within various sciences illustrates the same spectrum of educational goals as international human rights treaties do. This fact demonstrates the interdisciplinary background of human rights and justifies that the roots of the right to education go from various social sciences.

3.2. Definition of education

There are various meanings of the term “education”. It causes situations favourable for manipulation and vast perception of the term what is not desirable in the legal practice. „The prevailing linguistic variety in the sector of education reflects different visions of what education should be. Neither the terminology nor the underlying concepts are necessarily rights-based. Education can be treated a means for increasing the individual's earning capacity or for lowering women's fertility rates. [...] When economists define education as efficient production of human capital and classify all its human rights dimensions as externalities, the resulting image of people as human capital obviously clashes against people as subjects of rights”⁴¹¹. It is impossible to deny that education contributes to the state prosperity, though the creation of human capital cannot be seen solely as the most significant function of education presenting the right to education in the

⁴¹¹ Preliminary report of the UN Special Rapporteur on the human right to education, E/CN.4/1999/49, para. 13.

reductive meaning. The cited above statement of the United Nations Special Rapporteur on the human right to education urges to define the notion “education” through the human rights-based approach.

Saying that somebody is a holder of the right to education it doesn't provide a clear understanding what this person has or may demand concerning education. The thorough outline what is meant by the term “education” enables the effective application of the right to education and full enjoyment of the right by its holders. The cultural and spiritual variety stipulating different scientific ideas and approaches to education presented earlier in the research justifies a lack of the universal understanding of the term “education” in the frame of different sciences. Philosophers, educators, economists and sociologists consider the term education through the prism of their concepts and outlook. Education serves as a many-sided object for the scientific research.

Bearing in mind the goal of the international community to spread human rights and freedoms over the world, it is worth to admit the specific feature of the international human rights law – its broad exercise in the world, if not say, the worldwide dissemination. In this regard the universal definition of the term “education” is expected to guarantee the common approach to the protection of the right to education by countries. At the same time, it is important to take into consideration that the application of international law at the national level is limited by the state sovereignty and its will to implement the international law in the country. In order to match the diversity of cultures, interests, traditions and nations with the preciseness of the legal provisions, international law refers to vague definitions and statements prevailing in the legal instruments including those devoted to human rights.

Developing the comprehensive definition of education in the legal instruments legislators should take into consideration many aspects of the phenomenon. Moreover, it shall be as clear as possible to enable the duly exercise of the duties entailed by its content. Insofar as it can be ascertained, the universal legal definition of education has not been created by the international community⁴¹², although a few attempts were close to make it possible. International human rights law has worked out a few approaches to the meaning of education:

⁴¹² None of the international human rights instruments provides the definition of the term “education”, but allerge the right to education and describe its core content. H.C. Семенова, *op.cit.*, c. 36.

- a. education as means of development of basic skills⁴¹³, in other words a treatment against illiteracy,
- b. “transmission to a subsequent generation of those skills needed to effectively perform the tasks of daily living, and further to the inculcation of the social, cultural, spiritual and philosophical values of the particular community”⁴¹⁴,
- c. instructions within the formal system of education⁴¹⁵.

The fundamental document concerning human rights and freedoms is the Universal Declaration of Human Rights. Article 26 of the Declaration proclaims an overall, universal character of the right to education calling it the right for all. However, the Declaration doesn't give the definition of education, merely splits education into levels and types – elementary, fundamental, technical, professional and higher. At the first glance such classification of education embodied in the UN Declaration displays the formal system of education in the country. For comparison, in the current system of formal education in Poland⁴¹⁶ everyone has an access to the pre-primary, primary, secondary and, if wanted, post-secondary or higher education. On the other hand, the wording of the Declaration referring to elementary and fundamental education reflects neither level nor type of education regulated by the national law. Some researchers⁴¹⁷ assume that the legislators of the Declaration intended to cover the primary level of education by the term fundamental education. Such statement sounds unreasonable, because the term “fundamental education” appeared in the United Nations vocabulary prior to the UN Declaration proclamation.

The importance of fundamental education is mainly reflected in the documents of UNESCO. Fundamental education is a core subject matter of UNESCO's activity from the creation of the Committee. The expression “fundamental education” was used at the first session of UNESCO General Conference in 1946⁴¹⁸ and then has been widely applied in the any kind of reports and working papers adopted by the Committee experts. It is worth to mention the following document – the report of a special committee to the Preparatory Commission of UNESCO titled “Fundamental education: Common Ground For All

⁴¹³ M. Verheyde, *op.cit.*, p.11.

⁴¹⁴ K. Beiter, *op.cit.*, p.19.

⁴¹⁵ *The child's right to education*. G. Mialaret (ed.), *op.cit.*, p. 11 and K. Beiter, *op.cit.*, p.19.

⁴¹⁶ All levels of the system of education in Poland are regulated by two laws – Ustawa o systemie oświaty, Ustawa Prawo o szkolnictwie wyższym i nauce. The English equivalent of all levels of education is described in *The System of Education in Poland*, Polish Eurydice Unit, Warsaw 2014, p. 8.

⁴¹⁷ See more L. McMillan, *What's in a right? Two variations for interpreting the right to education*. *International Review of Education*, Dec. 2010, Vol. 56 Issue 5/6, p. 536.

⁴¹⁸ The Working Paper on The Definition of Fundamental Education, UNESCO, 15 June 1956, p.1

Peoples”⁴¹⁹. The document provides a preliminary action plan for fundamental education as the first major field of interests of UNESCO.

The reflection on the concept of fundamental education elaborated in the United Nations documents enables the understanding of the legislator’s intention to include fundamental education in the Universal Declaration. The particular attention shall be paid to the Working Paper on the Definition of Fundamental Education⁴²⁰ and its continuation called the Working Paper 2 on the Description of Fundamental Education⁴²¹. At that time there was some uncertainty of what fundamental education means. The doubts were increased by the lack of an adequate equivalent in use corresponding to any level or a part of the educational system of the member countries⁴²². The hard work of a group of international experts resulted in preparation of an official definition of fundamental education included in the both documents. “Fundamental education is a kind of education which aims to help children and adults who do not have the advantages of formal schooling, to understand the problems of their environment and their rights and duties as citizens and individuals, to acquire essential knowledge and skills for the progressive improvement of their living conditions and to participate effectively in the economic and social development of their community, making full use of facilities and techniques brought to the community from outside”⁴²³.

Interestingly, the Committee acknowledges and encourages the differences in the term education existing over the world. For example, fundamental education has various names even in English-speaking countries, one may find mass education in non-self-governing territories under British administration, social education in India and community education is sometimes used in the USA⁴²⁴. In the Working paper it was highlighted that “a healthy diversity of aims and practices” in terms of fundamental education shall be saved and UNESCO doesn’t try to uniform the terminology and introduce the globe standardisation in terms of education. The created definition of fundamental education serves as a starting point in the solidary struggle with poverty, illiteracy and diseases over the world.

The presented definition points to a fact that fundamental education provides learners with knowledge and skills that are applicable in their daily life as individuals and inside the

⁴¹⁹ *Fundamental education: Common Ground For All Peoples*. Report of a Special Committee to the Preparatory Commission of UNESCO, New York, 1947.

⁴²⁰ The Working Paper on The Definition of Fundamental Education.

⁴²¹ The Working Paper 2 on the Description of Fundamental Education, UNESCO, 18 June 1956.

⁴²² *The writing of Article 26 of the Universal Declaration of Human Rights*, *op.cit.*, p. 27.

⁴²³ The Working Paper on The Definition of Fundamental Education, *op.cit.*, p.1.

⁴²⁴ *Ibidem*.

community. It means the scope of knowledge is not limited merely to ability to read and write. Fundamental education is based on conscious learning⁴²⁵ and aims to put a background in human mind for the further intellectual and spiritual growth. Awareness of the medical care, knowledge about the social support from the side of the government and non-governmental institutions, information of potential threats is gained within fundamental education. Such education is indispensable for individuals to overcome challenges of daily life and to “understand the problems of its environment”. Participating in the development of the community individuals make decisions and understand why they have decided in this or that way. Education also enables members of the community to understand their duties and, what is more important, to realize their rights. Gaining fundamental knowledge is a prerequisite of the social progress and personal development of human beings. The cultural and spiritual values of their community are transmitted from one generation to the subsequent being achievable by those who possess skills and knowledge to percept such legacy. Thus, the first approach to education as a tool in the battle with illiteracy is too narrow to interpret fundamental education as well as the right to education in the form presented in the Universal Declaration.

Secondly, the Working Paper makes a strong accent on a broad perception of fundamental education, bringing it beyond the system of formal learning. The UNESCO experts primary address fundamental education to children for whom there is no adequate learning opportunity and adults deprived of education. Clubs and recreational projects can be a feature of fundamental education in the areas where there are no primary schools or difficult to accommodate all children of school age in them⁴²⁶. Informal meetings to share elementary skills in weaving and other crafts, technical workshops devoted to agriculture, mass media production telling about how to cook food and care of children produce the content of fundamental education. Understandably, it is possible to find the formal classes in school or vocational education activities transferring the similar scope of knowledge and skills. Nevertheless, they are mostly extra-curriculum activities and do not imply the primary goal of the formal education. The significance of fundamental education in the life of community can be vividly described by the saying coming from human wisdom: “instead of giving a fish to starving man, teach him to fish and you feed him for a life time”.

⁴²⁵ In the session „Methods and media” the experts refer to the active methods aiming to develop an interest and desire in learning and to encourage individual thoughts and reflective thinking. Such education is training for democracy. *See* The Working Paper on The Definition of Fundamental Education, *op.cit.*, p.2.

⁴²⁶ *Ibidem*, p.3.

Thus, the understanding of fundamental education as all activities by which essential knowledge, skills and moral code rules are fostered for the better subsistence of the next generations is consistent with the second approach to education presented above. Such perception of education in a broad sense takes its place in the scholar's works and the international legal instruments.

This wide meaning of the term "education" is ascribed by article 1(a) of Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms adopted by UNESCO in 1974. This article states that education implies "the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge". Any educational activities aimed to encourage the entire personality development are not limited by any specific criteria – place, target groups, content, etc. Moreover, by stating that the Recommendation refers to all stages and forms of education⁴²⁷ the meaning of education is assumed to merge in its content the systems of formal, non-formal and informal education in its variations. Notably, the broad perception of education is applied in the majority of other UNESCO or UN legal documents examined in the current research.

The third approach to education presents a formal educational process. This approach has a right to existence in the legal provisions along with other interpretations of the term. By "education" it usually understood a prescribed way of learning when learners gain intellectual capacities in the school or other officially established institutions regardless they are private or public. Education in a narrow sense as the instructions in the formally established education institutions is embodied in the legal instruments with the mechanism of enforcement. Such understanding can be found in Article 1(2) of the Convention against Discrimination in Education. "For the purposes of this Convention, the term "education" refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given". Like the wording of the Universal Declaration and a few international documents the literal interpretation of the norm of the Convention against Discrimination in Education refers to any kind of learning activity. It may confuse and cause the wrong perception of education in a broad meaning. However, the interpretation of the whole provision of the Convention guides to treat

⁴²⁷ Article 2, Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, UNESCO, 1974.

“education” through the prism of the officially prescribed standards and rules. Obviously, the scope of family upbringing or the quality of spiritual personal growth is beyond the legal monitoring. Consequently, the term “education” enshrined in the Convention against Discrimination in Education is limited to the formal process of education or in other words the instructions imparted within education system of the country.

There are no doubts that the universal definition of education requires much empathy and compromise from legislators. Cultural, economical and even political differences in the world prevent the achievement of a common vision on the issue. On the other hand, differences make nations unique, original and preserve their identity in the vivid diversity. UNESCO as well as the United Nations agents do not seek to eliminate these particularities, but intend to find the common points and ideas in order to strengthen the protection of the right to education in the challenging environment. The statement that “education is a culturally defined idea which, consequently, cannot be universally conceived”⁴²⁸ seems ungrounded in the light of the latest efforts of the international community.

Indeed, the most recent and comprehensive attempt to elaborate a universal concept of education which is consistent with various cultures, traditions and faith was done on 5-9 March in 1990 at the World Conference on Education for All organized by UNESCO, UNDP, UNICEF and the World Bank. The conference resulted in the preparation of the World Declaration on Education for All⁴²⁹. The document is complemented by Framework for Action to Meet Basic Learning Needs.

Firstly, it is worth to admit that the Declaration on Education for All is not a legally binding act. The World Declaration is a historical demonstration of a good will of countries to find the common approach in the struggle with the challenges facing the world. Wars, financial debt burdens, rapid population growth, environmental degradation imply the obstacles in obtaining basic education by millions of children and adults. Although the World Declaration doesn’t provide the monitoring mechanism of the right to education it recalls the states to pay more attention to the basic learning needs of individuals where roots of contemporary problems are hidden.

Secondly, the document concerns the basic education only. The lack of description how to understand basic education is replaced by the outline of expected learning

⁴²⁸ L. McMillan, *op.cit.*, p.542.

⁴²⁹ For the report and studies purposes the Executive Secretariat of the Inter-Agency Commission prepared a Background Document which includes the World Declaration on Education for All, Framework for Action to Meet Basic Learning Needs, suggestions generated by the experts from five continents, NY, 1990.

outcomes or how they are called in the Declaration “basic learning needs”. The needs comprise both fundamental skills, such as ability to express own thoughts, problem solving, numeracy, and the basic learning outcomes in the form of knowledge, skills, values and attitudes. Interestingly, the authors of the World Declaration affirm the diversity of basic learning needs according to individual countries and cultures and accept the different ways to meet them. This again proves the approach applied previously in other legal documents of the United Nations – the human rights law provisions respect the variety of practices and traditions which countries and individuals possess, the human rights law serves to unify the international efforts by showing the common points of mutual actions. Analyzing the entire Declaration it is fairly to call it a gentle reminder of the Working Paper on the Definition of Fundamental Education, as its goals, structure and content have much in common. This opinion can be proved by the reference to the UNESCO documents. At the time when the Universal Declaration of Human Rights was proclaimed, it [the notion of fundamental education] was more in vogue. Later the wording “elementary and fundamental education” has been replaced by “basic education”⁴³⁰.

Last but not least, like the Universal Declaration of Human Rights the World Declaration on Education for All understands the term “education” in the broad sense. The document emphasises the intention and commitment of countries to generate new learning opportunities in the area of child, adult and family education. Education is not limited to the formal system of learning. Article V states that “learning begins at birth”, people study in various environments - in family, in the community, in school. The scope of learning opportunities is also very broad, education embraces formal and non-formal education programmes, apprenticeship, social action and skills training⁴³¹. Although the World Declaration doesn’t give the precise definition of education, it obviously reaffirms the significance of the human right to education and outlines the main goal to be achieved by the mutual efforts of the international community, individuals and organisations – education for all.

Other human rights instruments don’t provide the definition of education, however it doesn’t depreciate the significance of these international legal instruments and their role in the clarification of the human right to education at the international level. On the contrary, human rights treaties enrich the understanding of the term given in other sources, including

⁴³⁰ *The writing of Article 26 of the Universal Declaration of Human Rights, op.cit.*, p. 26.

⁴³¹ Article 5 of the World Declaration on Education for All, Framework for Action to Meet Basic Learning Needs.

the soft law. The Convention of the Rights of the Child is one of the examples of the legal instrument without the official definition of the term, but with the powerful mechanism of protection of the child's rights. Articles 28 and 29 of the Convention concern the right to education. Although Article 28 seem to refer to the formal education system by using such vocabulary, like school discipline, drop-out rate, free primary and available secondary education, the combined interpretation of both provisions indicates a broad sense of education as a way of development of the intellectual, spiritual and emotional potential of individuals⁴³². The goals of education embodied in Article 29 (1) guide the state to the development of human personality what may be achieved in a full extent in the combination of formal and non-formal education. According to the Convention provisions education serves means to develop personal capacities, to promote the respect for human rights and freedoms and to enhance the interest to the cultural identity and national values. The perception of education under the Convention in its broad meaning as a complex of formal and other types of learning activities is consistent with other scientific opinions⁴³³.

Moreover, the approach to education in its broad sense is justified by the statements of the Committee on the Rights of the Child included in the General Guidelines regarding the form and the contents of the periodic reports⁴³⁴. In the paragraph 106 the Committee recommends to the governments to describe in their country reports any system of non-formal education. The Committee considers each national report and addresses its concerns and recommendations to the country in the form of "concluding observations". So far, the Committee on the Rights of the Child prepared over 400 concluding observations for about 190 countries⁴³⁵. The concluding observations along with the General Guidelines are helpful in understanding of the concept of education from the view of the international community. Children who are under the threat to be deprived of educational opportunities due to their status (older and street children) or work engagement shall have an access to

⁴³² M. Verheyde, *op.cit.*, p. 11-12.

⁴³³ See *Ibidem*, p.12 and M. Nowak, *The right to education—Its meaning, significance and limitations*, Netherlands Quarterly of Human Rights, Vol. 4, 1991, p. 423.

⁴³⁴ General Guidelines regarding the form and the contents of the periodic reports, the Committee on the Rights of the Child, CRC/C/58, 1996. According to Article 44 of the Convention of the Rights of the Child the member states are obliged to submit a regular report concerning their actions undertaken in order to give effect to the rights of the Convention. An initial report is to be prepared within two years after acceding to the Convention, a regular report is submitted every five years.

⁴³⁵ The texts of the Concluding Observations issued until 2014 and the lists of the countries they refer to are collected at the online human rights library of the University of Minnesota, *available at* <http://hrlibrary.umn.edu/crc/crc-country.html> [accessed on 3 June 2017]. The recent documents are also available in the UN online database <https://documents.un.org> [accessed on 3 June 2017].

alternative and non-formal education⁴³⁶. The quality of non-formal education shall be “monitored and guaranteed and that working and other children who participate in such schemes are integrated into mainstream education”⁴³⁷. The Committee encourages the countries to develop non-formal education to ensure children with disabilities the full enjoyment of the right to education⁴³⁸. It also suggests harmonisation of the formal and non-formal education systems and elimination of gaps between them⁴³⁹.

Summarizing the position of the Committee on the Rights of the Child it is fair to admit that the notion “education” illustrated in the Convention of the Rights of the Child and other documents adopted by the Committee is extended outside the frame of the system of formal education. It embraces non-formal and alternative education addressed to all children, but in particular to vulnerable social groups such as working and street children, girls and children involved in the conflict. From the perspective of the protection of the right to education it is important that the states ratifying the Convention of the Rights of the Child undertake an obligation to ensure the quality and the access to education regardless of its type, level and system.

The most informative document as to the human right to education is considered the International Covenant on Economic, Social and Cultural Rights⁴⁴⁰ and its complements in the form of General Comment 13⁴⁴¹ and General Comment 11⁴⁴². They describe the right to education in line with the Universal Declaration of Human Rights, at the same time provide the comprehensive outlook on the content and main characteristics of the right to education that are missing in the UN Declaration. Although no definition of education can be found in the clauses of these tools, these legal instruments are not considered less important. On the contrary, their provisions create a core basis of the right to education in the international human rights law.

The Covenant on Economic, Social and Cultural Rights describes the right to education in its fullest extent in Article 13. Paying the particular attention to the primary education provided free of charge Article 14 defines an obligation of the member states

⁴³⁶ This recommendation takes place in a few concluding observations, *see* Concluding observations: Myanmar, UN Doc. CRC/C/MMR/CO/3-4, 2012, para.84; Concluding observations: Niger, UN Doc. CRC/C/15/Add.179, 2002, para.65(d).

⁴³⁷ Concluding observations: India, UN Doc. CRC/C/15/Add.115, 2000, para.58.

⁴³⁸ Concluding observations: Syrian Arab Republic, UN Doc. CRC/C/SYR/CO/ 3-4, 2011, para.62.

⁴³⁹ Concluding observations: Gabon, UN Doc. CRC/C/15/Add.171, 2002, para.54; Concluding observations: Madagascar, UN Doc. CRC/C/15/Add.218, 2003, para.58(e).

⁴⁴⁰ The Covenant was adopted in New York in 1966, entry into force in 1976. It is binding for 164 countries, the data provided by the United Nations, *available at* <http://indicators.ohchr.org/> [accessed on 2 July 2016].

⁴⁴¹ General Comment 13: The Right to Education.

⁴⁴² General Comment 11: Plans of action for primary education.

where such right is not guaranteed to prepare and adopt the plan of action to achieve the principle of compulsory education free of charge for all in a reasonable time limit.

Regarding the meaning of education elaborated in the Covenant the term is applied in a broad sense. This approach is similar with the concept of the right to education enshrined in the Universal Declaration of Human Rights what is confirmed by the analysis of the second paragraph of Article 13 of the Covenant. There the legislators point to a few levels of education such as primary, secondary and higher education underlining the principle of availability and accessibility of education for all. In other words, in the light of the Covenant provisions learning process seems to be understood as the system of formal education, i.e. education in a narrow sense. Nevertheless, it is not correct. Article 13 (2d) states that the right to education may also be realized by a means of fundamental education addressed to those individuals who have not received or completed their primary education. As it is discussed above while analysing the Working Paper on the Definition of Fundamental Education this term refers to various types of educational activities including, but not limited to, community clubs, family and home tasks imitations, recreational projects. Thus, education embraces all learning activities regardless of the pattern of ownership or legal status of a provider of education.

The significance of the International Covenant on Economic, Social and Cultural Rights is also recognized by the possibility to establish by individuals or legal entities educational institutions in addition to existing ones⁴⁴³. The international law prescribes that such institutions shall comply with the standards defined by the government in order to guarantee the sufficient quality of education in comparison with education provided in the state-founded institutions. It enables *inter alia* parents and legal guardians to choose for their children schools in conformity with their own convictions if they differ from the ideas spread in institutions established by the public authorities⁴⁴⁴. As a result, education in a broad sense is served by formal institutes established by the state as well as by other education services providers. They implicit first of all private schools and then various educational organisations, youth clubs, social movements and pupil's parents associations which strive for dissemination of the peaceful coexistence in the diversity of cultures, languages and religions. Each kind of education, whether it is formal or non-formal, provided within a private or public school, shall be directed towards the aims and

⁴⁴³ Article 13 (4) of the Covenant on Economic, Social and Cultural Rights.

⁴⁴⁴ This parents right is thoroughly described by K. Beiter, *op.cit.*, p.47-50.

objectives identified in Article 13 (1) of the International Covenant on Economic, Social and Cultural Rights.

The examined above international legal instruments concerning the right to education have been adopted at the universal level. At the regional level the right to education is affirmed in the European Convention on Human Rights, or precisely saying in Article 2 of Protocol 1, and the decisions of the European Court of Human Rights. Even though the regional legal instruments are not globally binding, they shape the important source of international law and contribute to the better understanding and exercise of the human rights at least on the European scale. The right to education is composed of two sentences. The first sentence states that “no person shall be denied the right to education” and doesn’t provide any definition of education or the meaning of the right to education. The second sentence underlines the parents’ right in education and teaching, i.e. “in the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”⁴⁴⁵.

The scant provision doesn’t answer how education shall be understood and what characteristics it has. Nevertheless this defect is eliminated by the case law of the European Court of Human Rights. The judicial decisions distinguish the narrow and broad meanings of education under the European Convention. The court states that [education in a wider sense refers to] “the whole process whereby, in any society, adults endeavor to transmit their beliefs, culture and other values to the young, whereas teaching or instruction [education in a narrower sense] refers in particular to the transmission of knowledge and to intellectual development”⁴⁴⁶. The broad meaning of education means the transmission to the next generation of those skills needed to effectively perform the tasks of daily living, and further to the inculcation of the social, cultural, spiritual and philosophical values of the particular community⁴⁴⁷. The narrow understanding of education amounts to instructions within the system of formal education. One may justify the narrow meaning of education as formal instruction within the international legal instruments by the fact that the human right results in certain obligations to be publicly monitored. The instruments of monitoring of the right to education can hardly be applied in education provided outside

⁴⁴⁵ Article 2 of Protocol No.1 to the European Convention on Human Rights.

⁴⁴⁶ Campbell and Cosans v. The United Kingdom, ECHR, App. No. 7511/76, 7743/76, Judgement (Merits), 25/02/1982, para.33.

⁴⁴⁷ K. Beiter, *op.cit.*, p.19.

the formal institutions, e.g. inside family or any social groups where the right to private life is prevailing.

A lack of the universal definition of education in international human rights law has its weak and strong sides. Among the disadvantages of the absence of the universal definition it is worth to mention the variety of approaches applied to the meaning of education and challenges to harmonize the legal provisions with different notions. The application of legal provisions by analogy is hardly possible in the international law, but can be helpful in the discovery of the terminological content. Secondly, a lack of the precise description of the rights and freedoms in the binding documents provides a gap in the legal regulation of the international order and thereby weakens the protection of the human rights and fundamental freedoms. The duration of education has not been defined by the international documents, neither the beginning nor the end of learning process is clarified. Therefore it remains unclear whether pre-primary education is included in the scope of the state's obligations in the framework of the right to education. The majority of binding universal and regional human rights documents is silent on the right to pre-primary education, while some sources of soft law recommend the states to implement and develop early childhood education⁴⁴⁸. Recognizing that early childhood education affects the ethical and moral development of the personality it would be desirable to embrace pre-primary education by the legal regulations of binding international instruments and thereby to create a tool of influence on the states. Such approach would be consistent with the goals of education enshrined in various human rights documents and the position of the Committee on the Rights of the Child. The practice of the Committee affirms the inclusion of pre-schooling in the notion "education". According to the General Guidelines regarding the form and the contents of the periodic reports the member states are asked to include in the report the information concerning "any system or extensive initiatives to provide early development and education services for young children, especially for young children from disadvantaged social groups"⁴⁴⁹. Numerous countries⁴⁵⁰ submit their reports with the measures enhancing the system of pre-primary education and their efforts are appreciated

⁴⁴⁸ *Ibidem*, p. 13.

⁴⁴⁹ General Guidelines regarding the form and the contents of the periodic reports, para.106.

⁴⁵⁰ There are more than 20 references to the concluding observations as to pre-primary education in member states. *See more* K. Beiter, *op.cit.*, p. 14.

by the Committee on the Rights of the Child. Moreover, it is further suggested governments to include early childhood education within basic or primary education⁴⁵¹.

Thirdly, the absence of a common language in the realms of education was noted by the Special Rapporteur on the right to education K. Tomasevski in the first preliminary report submitted to the Commission on Human Rights in 1999⁴⁵². The report covers the actual issues of the realization of the right to education throughout the world. The Special Rapporteur admits that the international dialog with the governments and other international organisations such as UNICEF, UNESCO, UNDP, the World Bank faces a considerable challenge due to increasing linguistic variety in the field of education. The linguistic diversity causes different views of what education should be. “Education can be treated as a means for lowering women’s fertility rates. [...] Some economists may, however, define education as efficient production of human capital and classify all its human rights dimensions as externalities”⁴⁵³. The variety of levels and types of education may confuse and cause the misunderstanding what states shall improve in the system of education. For example, the meanings of primary and basic education overlap but not synonymous. “UNICEF has affirmed that primary education is the core of basic education, but basic education goes beyond the confines of formal schooling to encompass non-formal education as well as early childhood education, including also “second chance” primary education for youth, adults and parents’ education”⁴⁵⁴. Such various definitions affect the statistic data and strategies developed by the international institutions to fight with the limited access to education⁴⁵⁵.

On the other hand, a lack of the universal definition of education is naturally healthy. The researchers interested in the social and human sciences define the concept “education” differently through its functions, goals and outcomes. Each science has its own subject of study, methodology and hypothesis, therefore it is hard to develop a universal meaning of education from the perspective of different scientists. Each field of science may fill in gaps have been left by a monodisciplinary research.

⁴⁵¹ Day of General Discussion on Implementing child rights in early childhood, UN Doc. CRC/C/143, 2005, para. 553.

⁴⁵² Preliminary report, E/CN.4/1999/49, para. 12-13.

⁴⁵³ Ibidem, para. 13.

⁴⁵⁴ Ibidem, para. 15.

⁴⁵⁵ The Special Rapporteur provides an example of mismatch with the age ranges in education. Basic education is usually delivered to children of 6-11 years old, while the human rights approach to education points to 6-15 age categorization for primary education until the minimum age for employment. An age gap between 11 and 15 years old is not displayed in the educational statistics and thus is not monitored. Preliminary report, E/CN.4/1999/49, para. 16.

The variety of scientific approaches to education is also justified by the diversity of individual capacities, ages and expected learning outcomes of learners. The way of discovery of the world for a child is different from learning process of adults, one person gains professional skills during the internship at the factory while others gain the experience during the digital learning, learners with special needs require particular attention of a teacher and special teaching techniques. Fundamental knowledge necessary for living in the society, professional skills to perform the practical activity, moral or religious attitudes, cultural legacy are a few examples of what education embraces. To find a universal definition to all these processes, methods and activities is not an easy task, in particular within the legal science where the precise wording defines the frames of law application.

Summarizing up the mentioned above, the international community made attempts to describe the notion “education” in the international human rights legal documents. There are two main approaches to define education in the legal instruments – a narrow and broad meaning. Education in the narrow sense is meant any learning activity aimed to transfer the experience of the previous generations to the consequent ones provided within the formal system of education established by the state or private entity. Education in the broad meaning is not limited to the formal system of education and spread to upbringing and family education, early childhood education and social education activities organised in addition to the formal education.

3.3. The right to education in the system of human rights

The identification of the right to education place among all human rights and freedoms is based on the classification of the rights and freedoms into groups by some criteria. The international law doctrine splits the human rights and freedoms into three generations⁴⁵⁶. According to the classical division, civil and political rights belong to the first generation, economic, social and cultural rights form the second group. The last third group consists of the rights of all society or group of people, the third-generation human rights are also called collective or solidarity rights as, despite of being the individual rights, they are exercised by groups of people⁴⁵⁷. The right to a healthy environment, right to sustainability

⁴⁵⁶ The Czech-French lawyer proposed this division which currently lies in the background of international human rights law. K. Vasak, *Human rights: A thirty year struggle. The sustained efforts to give force of law to the Universal Declaration of Human Rights*. UNESCO Courier, Paris, November 1977, p.29.

⁴⁵⁷ In the human right literature the rights of the third generation are called differently: collective rights, solidarity rights or event group rights. Initially the solidarity rights arose in the context of former colonies

and self-determinations of nations and minorities are included in the last group. Since the past decades the fourth group of rights has been sometimes defined, although the existence of fourth-generation rights is disputed as well as what rights a new generation refers to⁴⁵⁸. These are rights rooted from the application of new technologies and aimed to the scientific discovery like, for instance, exploration of cosmic space. The rights concern bioethics issues, freedom of information and communication.

There is also a classification where the human rights and freedoms are divided by the positive and negative obligations of the states regarding the implementation and protection of a particular right at the national level. This theory is tightly linked with the classification of the rights into a few generations. Indeed, Karel Vasak assigned the particular human right to either first or second generation taking into account whether the state does nothing to interfere with individual liberties or vice versa the state is to take positive actions in order to guarantee the exercise of the right. Such approach results in the undefined status of the cultural rights. “They [cultural rights] sometimes appear in both categories of human rights in documents produced by the same organisation”⁴⁵⁹. In the German constitutional law human rights have received two separate terms reflecting the state abstention obligation (*Abwehrrechte*, i.e. rights protected from the state intervention) and a duty to act towards the right realization (*Leistungsrechte*, in other words rights aimed at state performances)⁴⁶⁰.

Another reason why economic, social and cultural rights are called the second-generation rights is that their origin is defined later than civil and political rights. The Age of Enlightenment in the XVIII-XIX centuries produced such historical documents as the French Declaration of the Rights of Man and of the Citizen, American Declaration of independence⁴⁶¹ which formulated civil and political rights of individuals. The

becoming independent from their mother countries and based on the third element of the motto of the French revolution – fraternity or solidarity. The discourse on the content of the solidarity rights takes place in various works. See for example C. Tavani, *Collective rights and the cultural identity of the Roma: a case study of Italy*, Martinus Nijhoff Publishers, 2012, p.139-143; W. Kymlicka, *The rights of minority cultures*, Oxford, 1995, p.1-27; N. Casals, *Group rights as human rights: a liberal approach to multiculturalism*, Springer, 2006.

⁴⁵⁸ The right to sustainable development of future generations is included in this generation. A. Meena, *Globalization and Human Rights*, w: E.Sieh, J. McGregor (eds.), *Human Dignity: establishing worth and seeking solutions*, Palgrave Macmillian, 2017, p.57. Other authors mark out the fourth generation of the rights without presenting the list of the rights, however they point out to their necessity to protect human rights due to the space exploration and bioethical issues in the science development. M. Ciszek, *Postulal czwartej generacji praw człowieka w politycznym systemie międzynarodowej ochrony: próba filozoficznego uzasadnienia z perspektywy personalizmu etycznego*, *Studia Ecologiae et Bioethicae* 8/1, 2010, s.113.

⁴⁵⁹ K. Vasak, *op.cit.*, p.32

⁴⁶⁰ K. Beiter, *op.cit.*, p.38.

⁴⁶¹ *Human rights: Handbook for Parliamentarians*, *op.cit.*, p.19 and 41.

development of labour movement and the growth of socialist ideas in the society occurred in the XIX or even early XX century and produced the concept of economic, social and cultural rights⁴⁶².

Traditionally, the right to education is mentioned among economic, social and cultural rights, i.e. the rights of the second generation. According to Vasak's proposal the second-generation rights require an effort on the part of the state to implement the right in practice. The governmental institutions create the system of education in the form of public schools and institutes, they support its maintenance financially and technically, teachers are trained in consistence with the syllabus designed by the state to fulfil the educational mission in the country. Therefore, the right to education is said to belong to the group of positive rights.

In the scientific works in addition to the positive or negative rights, or better to say state's duties, one can find the approach based on the financial input of the state to realization of the rights⁴⁶³. Civil and political rights are recognized as negative because the state has a duty to abstain from unduly interaction in the time when individuals realise these rights, therefore these rights are said to be exercised without the financial support from the state side. On the other hand, the financial expenditure on the realization of the second-generation rights can be enormous because they require the active measures undertaken by the state. In the current scholarship this view on the division of the human rights into "expensive" and "free-cost" seems simplistic and cited for the evidence of different theoretical approaches to the right categorisation. In practice, all human rights in a more or less extent require resources for not only their realization and protection, but also monitoring. The establishment of governmental institutions to guarantee the compliance the human rights *de jure* and *de facto* is also cost-based. Obviously, the construction of school buildings, transport for children from remote areas, textbooks and the equipment for learning are a few examples of the expense items in the state budget. When parents are going to create private schools the governmental bodies have to provide the monitoring of the quality of education in these education institutions what in turn involves expenditure. As a result, the strict financial approach seems not to be fully correct and has been criticized by scholars⁴⁶⁴ along with the positive-negative division. The scholars suggest the

⁴⁶² K. Beiter, *op.cit.*, p.37.

⁴⁶³ Marc Bossuyt's theory of expenditures on the rights realization is cited by K. Beiter, *op.cit.*, p.37-38 and 57-58.

⁴⁶⁴ M. Sepulveda, *The nature of the obligations under the International Covenant on Economic, Social and Cultural Rights*, Intersentia, 2003, p.127.

revised theory and it is a reasonable solution grounded by the real practice. The human rights vary by the content and the spectrum of obligations carried by the state agents. The variety of state's duties means the difference of governmental bodies' involvement in their fulfilment and therefore the level of financial input is varied either⁴⁶⁵. In the category of positive rights, if not better to say positive obligations, the government expenditure will be higher than when the rights requiring state abstention are realized.

Nevertheless, both civil and political rights and economic, social and cultural rights require in a certain extent the state's activity and financial contribution. For instance, the right to education has the characteristics of both positive and negative right theories. According to Article 14 of the International Covenant on Economic, Social and Cultural Rights each state that doesn't provide primary compulsory education free of charge shall undertake a plan of action for the implementation of this right. This is a positive duty of the state which requires assigning experts for the elaboration of a plan, to undertake legislative measures for the plan implementation and then monitoring of a new law application. On the other hand, the right to education possess the element of freedom of choice, in other words it assumes the negative duty of the government. Article 13 (3) of the International Covenant on Economic, Social and Cultural Rights guarantees the respect for the parents' choice what school to select for a child. Another example of mixture of positive and negative duties is reflected in Article 13 (4) of the Covenant. There is a liberty of individuals to set up and manage the private schools, the state intervention is limited in this part. At the same time the state undertakes to ensure the minimum of required quality of education provided in such education institutions, thereby it fulfils the positive duty. Identifying the negative duty of the state towards the human right to education it is fair to recognize it as a civil and political right. Such approach can be found in the human rights scholarship⁴⁶⁶.

There is much criticism towards the classification of human rights into generations⁴⁶⁷. The application of the terms "first", "second" presumes a kind of ranking of human rights what is totally inconsistent with the human rights theory. As it is admitted in the Vienna Declaration all human rights satisfy the following general principles. Human rights and

⁴⁶⁵ Ibidem, p.128.

⁴⁶⁶ Beiter lists a number of authors supporting this idea, i.e. Coomans, Delbruck, Nowak, Mehedi etc. K. Beiter, *op.cit.*, p.38-39.

⁴⁶⁷ Henry Shue has shown that the distinction of rights by positive and negative state obligations is of little moral significance and in any case fails to correspond the division of the first and second-generation rights. J. Donnelly, *Human rights in theory and practice*, Cornell University Press, 2013, p.42-43.

freedoms are universal, indivisible and interdependent, in addition they are interrelated⁴⁶⁸. The international society must percept human rights globally in a fair and equal manner. Human rights can't be ranked or identified as more important and less significant. The idea of interdependent and indivisible rights is laid down in numerous documents adopted in the framework of the United Nations. Moreover, the classification of human rights generations based on their appearance in the time range is partly proved. Obviously, the political and civil rights *de facto* were defined as a subject of protection much earlier in the time frame than economic, social and cultural ones. Nevertheless, *de iure* two categories of human rights were formalized in the forms of the Covenants⁴⁶⁹ approved by the General Assembly simultaneously and opened for signature at the same time⁴⁷⁰. "In order to emphasise the unity of the aim in view and to ensure respect for and observance of human rights" the formulations of both Covenants have been drafted in as much as possible a corresponding manner.

In order to avoid the terms „generation” one can find other classifications of human rights. The division between classic and social rights takes place in the literature⁴⁷¹. Classic rights mean the rights restricting the government power in respect of individual's actions and autonomy (negative obligation). Under social rights it is understood human rights that require active intervention on the part of the state to create the necessary conditions for good life and personal development (positive obligations). In other words, classic rights entail a duty of the state to refrain from activities, while social rights oblige it to provide certain guarantees. It is not law grounded and aimless to face one group of human rights against another. The right to education, as it is embodied in the international human rights instruments, includes the state duty to act and at the same time in specific conditions the law requires the state to refrain from pervasive presence in the field of education.

Following strictly the division of human rights in respect with positive and negative duties of the state it is fair to ascribe the right to education to both groups. Nevertheless, the scientific discourse of where the place of the right to education among all human rights is not interrupted. Before the 18th session of the Committee on Economic, Social and

⁴⁶⁸ The Vienna Declaration and Programme of Action, 1993, para 5.

⁴⁶⁹ The International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights.

⁴⁷⁰ Resolution 543 (VI) called the Separation Resolution which reflects the General Assembly's position to prepare two separated enforcement mechanism for civil and political rights and economic, social and cultural rights was adopted by the General Assembly in 1952. The initial idea to contain all human rights in a single document was implemented in the Resolution 421 (V) two years earlier in 1950.

⁴⁷¹ J. Hołda, Z. Hołda, D. Ostrowska, J. Rybczyńska, *Prawa człowieka, zarys wykładu*, Warszawa, 2014, s.26.

Cultural Rights in 1998 the international experts submitted 12 reports and background papers on the various issues of the right to education⁴⁷². One of the papers is the Comparative Analysis of the right to education as enshrined in Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights and provisions contained in other universal and regional treaties⁴⁷³ composed by Jose Gomez del Prado. He states that human right to education is an economic right in case when “education promotes the integration into modern economy”⁴⁷⁴, it is considered “a social right inasmuch as it enable individuals to participate effectively in a free society”⁴⁷⁵. But the most outstanding characteristic of the right to education is its cultural trait. Not surprisingly, education and culture are understood in the tight link to each other. Education is an essential element to provide an access to the cultural model, history and cultural achievements produced by the society. By the means of education members of the social group participate in the cultural life and appreciate the benefits of the scientific progress⁴⁷⁶. This idea finds the support in other papers submitted to the Committee. “The right to education clearly occupies pride of place among cultural rights, since it is the one by which respect for and the protection and development of the right to identity can be achieved”⁴⁷⁷. The international human rights law strengthens the influence of the right to education on the cultural sphere by adopting the General Comment 21 to the International Covenant on Economic, Social and Cultural Rights. “The right of everyone to take part in cultural life is also intrinsically linked to the right to education (arts. 13 and 14), through which individuals and communities pass on their values, religion, customs, language and other cultural references, and which helps to foster an atmosphere of mutual understanding and respect for cultural values”⁴⁷⁸.

At this place it is worth to draw attention to the fact that the right to education is placed in the tight connection with the collective human rights⁴⁷⁹. Numerous scholars⁴⁸⁰ underline the significance of the right to education in the realization of the solidarity rights,

⁴⁷² The reports were submitted before the 18th and 19th sessions of the Committee on Economic, Social and Cultural Rights, E/C.12/1998/26) Supp.2, Para. 464.

⁴⁷³ UN Doc. E/C.12/1998/23.

⁴⁷⁴ Ibidem, para. 4.

⁴⁷⁵ Ibidem, para. 2.

⁴⁷⁶ Ibidem, para. 3.

⁴⁷⁷ The statement of Meyer-Bisch from his report “The right to education in the context of cultural rights” submitted to the Committee on Economic, Social and Cultural Rights is cited by K. Beiter, *op.cit.*, p.42.

⁴⁷⁸ UN Committee on Economic, Social and Cultural Rights, General Comment 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a) of the Covenant), E/C.12/GC/21 (2009).

⁴⁷⁹ One more classification of the rights is based on the subject of the right – an individual or a groups or event on tire society. M.Chmaj, *Wolności i prawa człowieka w Konstytucji Rzeczypospolitej Polskiej*, Warszawa, 2008, s.11.

⁴⁸⁰ See for example, C. Tavani, *op.cit.*, p.114; M. Płońska, *Samoidentyfikacja mniejszości narodowych i religijnych w Europie Środkowo-Wschodniej: problematyka prawna*, Lublin, 1998.

in particular the right of minorities to self-determination. Education is a primary means in preserving a minority's language, culture and identity. The social function of education is performed in two parallels - to transfer the cultural heritage to all groups of society and the entire world and to provide subsequent generations with the cultural legacy of precursors. What is remarkable is that the right to education is included in the main international legal instruments concerning the rights of minorities and indigenous groups. Here a few of them are⁴⁸¹ - the Polish Minority Treaty (Article 8)⁴⁸², the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Article 4 (4))⁴⁸³, the UNESCO Convention against Discrimination in Education specifically refers to the education right of minorities in Article 5 (c), the UNESCO Declaration on Race and Racial Prejudice (Article 5)⁴⁸⁴. The important role of education in preserving the minority's language, developing its society and promoting minority's culture was announced at the United Nations Forum on Minority Issues⁴⁸⁵. The High Commissioner for Human Rights Navi Pillay underlined that the states that promote and protect the right to education are enabled to complete a big mission for the whole society and especially for minority groups, by the means of education many other rights, whether civil, cultural or economic, political or social are achieved⁴⁸⁶.

It is not surprisingly to find out that some scientists ascribe the characteristics of all three generations to the right to education. M. Nowak and M. Mehedi submitted their reports to the Committee on Economic, Social and Cultural Rights in which they admitted that the right to education possesses the characteristic of the positive and negative rights, in other words the first and second generation of human rights, as well as the features of the solidarity rights⁴⁸⁷. Poor countries of the world strive to achieve the level of economic development that richer nations have been already achieved. The developed countries may "transfer financial and technical resources and their know-how in an effort to reduce the gap between educational facilities in industrialised and developing countries". Poor states need an access to the scientific and industrialized knowledge enabling their development

⁴⁸¹ *Education Rights and Minorities: international report*, Minority Rights Group, 94/1, 1994, p. 10-13. The chapter 2 illustrates the details analysis of the education right of minorities and indigenous groups.

⁴⁸² The treaty was signed as bilateral agreement between Poland and the League of Nations in 1919 and served a template for the consequent documents.

⁴⁸³ The Declaration was adopted by General Assembly in 1992.

⁴⁸⁴ Adopted in 1978.

⁴⁸⁵ The Forum was established by the Human Rights Council in 2007 and takes place each year.

⁴⁸⁶ Compilation of Recommendations of the First Four Sessions 2008 to 2011, United Nations Forum on Minority Issues, p.3.

⁴⁸⁷ *The realization of the right to education, including education in human rights*, Working paper submitted by M. Mehedi, UN Doc E/CN.4/Sub.2/1998/10, para.5-7. M. Nowak, *The Right to Education*, *op.cit.*, p.196.

and eradiating the poverty in the world. This view is grounded by the provision of Article 28 (3) of the Convention on the Rights of the Child. According to it “the state parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.” It’s logically to agree with K. Beiter who states that such claim of the poorest is considered to be an expression of the right to development, i.e. the solidarity right. This right is oriented at the final goal of realising all human rights⁴⁸⁸.

The diversity of views on the right to education among all human rights is justified by the multifunction role of education in the human society. The perception of education as a commodity or a tool for economic development, a way of integration of indigenous groups to the society and enlightenment of the majority strata of population of cultural values of minorities and other mission of education have created a premise to consider the right to education as a right of all types. One can find the confirmation of this statement in the General Comment 11 of the Committee of Economic, Social and Cultural Rights⁴⁸⁹. “It [the right to education] has been variously classified as an economic right, a social right and a cultural right. It is all of these. It is also, in many ways, a civil right and a political right, since it is central to the full and effective realization of those rights as well. In this respect, the right to education epitomizes the indivisibility and interdependence of all human rights”⁴⁹⁰.

Acknowledging the significant role of education in all processes of human beings’ life lawyers, politicians, human rights defenders don’t label the right to education with a particular category or generation of human rights. On the contrary, they proclaim on the international forum that the states shall strive to promote and protect all rights at the same time regardless of how powerful the enforcement mechanism is or when the rights are to be implemented in practice⁴⁹¹. “Without economic, social and cultural rights, civil and political rights might be purely nominal in character; without civil and political rights, economic, social and cultural rights could not be long ensured”⁴⁹².

⁴⁸⁸ K. Beiter, *op.cit.*, p.43.

⁴⁸⁹ General Comment 11: Plans of action for primary education.

⁴⁹⁰ *Ibidem*, para.2.

⁴⁹¹ The civil and political rights are realised immediately, while the economic, social and cultural rights are implemented progressively. The International Covenant on Civil and Political Rights has a strong mechanism of enforcement in comparison with the economic, social and cultural rights. K. Beiter, *op.cit.*, p.67.

⁴⁹² UN Doc. A/2929, para. 8.

In fact, the merge of the different legal provisions on human rights into groups and, as consequences, the creation of classifications of rights embodied by these provisions is an artificial process allowing the deeper analysis and the recognition of common features and principles of human rights. The assignment of the right to education to the second-generation rights means the active state's duty in the realization this right in life. The categorization of the right to education as the negative right, or the first-generation right, means the state abstention and freedom of the right holders to some extent. The similar approach of evaluation can be applied to some social rights, such as the right to housing, right to food and the right to education.

3.4. State's obligations in the realm of education

The observance of human rights development through decades reflects that human rights doctrine is not static. The human rights instruments imply a living mechanism, hence human rights theory is developing throughout years either. A particularity that distinguishes human rights treaties from other international treaties relates to the state's duties. Human rights treaties reflect consent between the state-parties which grant certain rights to individuals who are not themselves parties to the international agreement, but for whom the correlative duties entailed in the treaties lie primarily on state's side. As the nature of human rights is controversial, their wording is vague and the meaning varies from the perspective of different sciences human rights lawyers discover the essence of human rights through the state's obligations.

The international human rights law refers to the nature of state's obligations in order to clarify the content of economic, social and cultural rights and thereby to give them more justiciability⁴⁹³. In the philosophy of law it is regularly observed the statement that if some individuals hold rights it implies duties for others⁴⁹⁴. Within the universal and global framework human rights belong to individuals or a group of people, meanwhile the state agents are considered the major duty bearers.

3.4.1. To respect, protect and fulfil

In addition to the positive-negative duty classification there is a different way to look at the special role of the state in fulfilment of its duties towards human rights. Human rights lawyers, scientists and policy makers present the scientific approach based on the

⁴⁹³ O. Schutter, *International human rights law: cases, materials, commentary*, Cambridge, 2010, p.285.

⁴⁹⁴ See for example M. Błachut, *Pojęcie prawa podmiotowego we współczesnej liberalnej filozofii prawa*, *Ruch prawniczy, ekonomiczny isocjologiczny*, Rok LXVI, zeszyt 1, 2002, s.36.

analysis of human rights nature. In 1983 the Rapporteur on the Right to Adequate Food as a Human Right to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities performed by Asbjorn Eide defined four dimensions to analyze the states duties in realization of the right to food⁴⁹⁵. He offered to evaluate the state's duties in relation to the right to food as the obligation to respect, protect, ensure and promote. During all his performance as the Rapporteur his approach was revised and changed a few times⁴⁹⁶. According to paragraph 15 of the General Comment 12⁴⁹⁷ states have the obligation to respect, protect and fulfil the right to food. Nowadays the tripartite typology is widely adopted and applied in the doctrinal analysis of economic, social and cultural rights. It is reflected in various international human rights documents.

According to paragraph 46 of the General Comment 13⁴⁹⁸ “The right to education, like all human rights, imposes three types or levels of obligations prescribed to the states: the obligations to respect, protect and fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide”. These obligations are applicable to all human rights what is proved by the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights⁴⁹⁹. In paragraph 6 it is stated “like civil and political rights, economic, social and cultural rights impose three different types of obligations on States: the obligations to respect, protect and fulfil”. Hence, it is not surprisingly that scholars analyze human rights and freedoms in general and the right to education in particular within this formula⁵⁰⁰.

This typology is more comprehensive than merely a positive-negative approach because it allows the analysis of the right from different views and reflects the multisided nature of human rights. By origin this scheme was applicable to carry out a project on the

⁴⁹⁵ A. Eide, Preliminary Report on the right to adequate food as a human right, E/CN.4/Sub.2/1983/25.

⁴⁹⁶ The final theory implies the tripartite typology – to respect, protect and fulfil. O. Schutter, *International human rights law: cases, materials, commentary*, Cambridge, 2010, p.280.

⁴⁹⁷ UN Committee on Economic, Social and Cultural Rights, General Comment 12: The Right to Adequate Food (Art. 11 of the Covenant), UN Doc. E/C.12/1999/5.

⁴⁹⁸ General Comment 13: The Right to Education.

⁴⁹⁹ The guidelines were elaborated in 1997 to reflect the evolution of international law since the 10th anniversary of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights.

⁵⁰⁰ See J. Donnelly, *Human rights in theory and practice*, Cornell University Press, 2013, p.36-37. M. Verheyde, *op.cit.*, p.51-57.

right to food⁵⁰¹ only, over the time it is applied to analyze state obligations concerning other rights – civil and political rights⁵⁰² and women’s rights⁵⁰³.

The obligation to respect is similar with the negative state’s duty described above and means that states shall avoid depriving the existence of human rights. The right holder may enjoy the right in case if other members of the society as well as the state itself don’t deprive him or her of social security entailed by the international human rights instruments. The obligation corresponds to the vertical relations between the state and the right-holders.

The obligation to protect corresponds to the state’s duty to act actively in case when an individual is deprived of the enjoyment of the human rights by third parties. This duty is of a positive nature and is performed, not always, with the support of the police and judicial institutions. The state shall take all measures to defend individuals against potential treats in the future. In practice, it means the obligation on the government side to assure that some system of provision is in place that gives people a reasonable safeguard of the right realization. Criminalisation of certain actions and provisions that set up the minimum standards of quality or affordable service is a preferable way to prevent the right violation. On the other hand, self-protection, or one may find “self-help”, is considered a supplementary element to the state’s duty of protection⁵⁰⁴.

The duty to fulfil is the most demanding part which consists of two obligations - to facilitate and to provide⁵⁰⁵. In order to complete the first part of the obligation the state shall assist individuals and communities to exercise the right. Regarding the second part, the obligation to fulfil (provide) a specific right of the Covenant arises when human beings individually or in a group are unable to realize the right without the state’s support. The possible reasons of inability lie beyond individual’s control⁵⁰⁶. In this context the obligation to provide requires states to take appropriate legislative, administrative, budgetary, judicial and other measures. It is worth considering that the state’s obligations

⁵⁰¹ In 1984 the UN University in Tokyo conducted the project on the right to food and its results are presented in the publication titled “Food as a human right”. K. Beiter, *op.cit.*, p.73.

⁵⁰² K. Beiter analyzes the right to life through the scheme “respect, protect and fulfil” with the reference to para.5 of the General Comment 6: Article 6, UN Human Rights Committee, UN Doc. HRI/GEN/1/Rev.6 at 127 (2003), there mentioned positive obligations of the state as to the right of life. K. Beiter, *op.cit.*, p.77. The detailed analysis of the right to life under the universal and regional human rights treaties is presented in M. Sepulveda, *op.cit.*, p.138-152.

⁵⁰³ S. Chu, A. Symington and others, *Respect, Protect and Fulfil: Sexual and domestic violence*, Canadian HIV-AIDS Legal Network, 2009.

⁵⁰⁴ For instance, as to the protection of the right of life anyone can take the following measures to avoid deprivation of the enjoyment of the right: installing a better lock and alarm, selecting safer districts for living, being cautious of potentially dangerous neighbours. J. Donnelly, *op.cit.*, p.38.

⁵⁰⁵ General Comment 13: The Right to Education, para. 47. In the literature the last third obligation to fulfil may be replaced by the obligations to ensure and promote. K. Beiter, *op.cit.*, p.74.

⁵⁰⁶ General Comment 13: The Right to Education, para. 47.

to fulfil are often realised progressively in accordance with the resources at the government's disposal, though an immediate action may also be required in particular cases⁵⁰⁷. Taking into account the political, economical and even democratic situation in the country the full realization of the rights is a matter of time. The international society acknowledges that "there is no single road to their full realization. Successes and failures have been registered in both market and non-market economies, in both centralized and decentralized political structures"⁵⁰⁸. The cultural diversity or economic situation does not justify the non-compliance nature of the state's obligation which requires that certain steps be taken immediately and others as soon as possible.

At this point it is important to consider another issue concerning the realization of the right to education – progressive and immediate right realization. According to paragraph 72 of the Limburg Principles the violation of the Covenant on the Economic, Social and Cultural Rights occurs if the state fails to implement without delay a right which it is required by the legal instrument to provide immediately. Moreover, this provision was supplemented 10 years later by the Maastricht Guidelines affirming that the burden of evidence of measurable progress toward the full realization of the rights is carried by the state⁵⁰⁹.

Education plays a crucial role in defining the standards of living of individuals, education is essential in the maintenance of the political stability and development of democracy in the society. It is impossible to belittle the significance of education in terms of enhancement of the national prosperity and stimulation of economical development. Hence, the government is to be aware that the full realization of the right to education in the compliance with the international legal instruments is something more than merely the fulfilment of international commitments of the state.

Most of the state's obligations concerning the right to education is of positive nature and can be labelled with the obligation to protect and fulfil. The obligation to protect means that an active position of the state is expected in order to prevent the right violation by third parties and to guarantee the enjoyment of the right to education by all. In this sense the adoption of legal clauses in the national legislation aimed to forbid and fight with the discrimination in education can be an appropriate measure. It is enshrined in Article 2 (2) of the Covenant on the Economic, Social and Cultural Rights which requires states to guarantee that right [to education] will be exercised without discrimination by any ground.

⁵⁰⁷The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN doc. E/CN.4/1987/17, Annex, para.8.

⁵⁰⁸ Ibidem, para.6.

⁵⁰⁹ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 1997, para.8.

The national policy that makes sure that working children have an access to education and married girls continue the studies although parents or an employer may not be satisfied with that fact is other example of the state's obligation to protect. When private schools discriminate a child by the ground of disability or race and there is no law that may prevent it a state's obligation to protect is not fulfilled. The particularity of the obligation to protect is based on the protection of the right in the horizontal relations of the right holders⁵¹⁰. Since any kind of discrimination is understood as a serious obstacle for the enjoyment of the right to education the international society highlights that the obligations of the state directed to the struggle against discrimination in education have immediate character, while other steps can be realised progressively⁵¹¹.

The following category of state's obligation is aimed to make the various types of education available and accessible for all. These are the obligation to facilitate and obligation to provide education, they are both positive duties. The facilitation duty implies the guarantee to obtain education of sufficient quality, the identification of the age minimum for children employment in order to prohibit child labour that interferes with obligatory level of education. The second type of state's obligation within the obligation to fulfil, i.e. obligation to provide education, is fixed in the numerous hard and soft law sources. The main provisions concerning the obligation to provide can be found in Article 26 (1) of the Universal Declaration of Human Rights, Article 13 (2) of the International Covenant on Economic, Social and Cultural Rights, Article 28 (1) of the Convention of the Rights of the Child and Article 2 of the Protocol to the European Convention of Human Rights and Fundamental Freedoms. The analysis of the international treaties points out that states carry "a principal responsibility for the direct provision of education"⁵¹² at the national level. It is the government who is obliged to create a system of education in the country and build up schools. The state must train teachers and academic staff, prepare teaching materials and compose textbooks for students. The salary of teachers is also paid from the state budget.

What is remarkable is that the extent of the state's obligation to fulfil varies depending on the level and type of education. In relation to fundamental, primary, secondary, and higher education the wording of the international treaties is changing. While primary education shall be compulsory and available for all, higher education institutions shall be

⁵¹⁰ M. Verheyde, *op.cit.*, p. 51.

⁵¹¹ General Comment 13: The Right to Education, para. 43.

⁵¹² *Ibidem*, para. 48.

equally accessible on the basis of merit⁵¹³. Obviously, state-members of the international human rights treaties “have an enhanced obligation to fulfil (provide) regarding the right to education, but the extent of this obligation is not uniform for all levels of education. [...] this interpretation of the obligation to fulfil (provide) [...] coincides with the law and practice of numerous states parties”⁵¹⁴. In order to discover the scope of each type of education at the national level it is worth to refer to the 4As scheme, or in other words, availability, accessibility, acceptability and adaptability characteristics of the right to education. The detailed analysis of these terms is illustrated in the following part of the research.

There remained the obligation of the state to respect. It is the obligation of negative nature and less used in the formulation of legal provisions with reference to the right to education in comparison with the positive duty of the state-member. The obligation implies that the governmental institutions must refrain from interfering with the enjoyment of the right. The state by nature has more power and may affect, including limit, significantly the enjoyment of the rights. There are a few examples of legal clauses entailing the obligation to prevent the violation of the right to education from the state agents. “States must respect the availability of education by not closing private schools”⁵¹⁵. State-members of the International Covenant on Economic, Social and Cultural Rights are expected not to put obstacles to parents and legal guardians in choosing for their children schools different from established by the public authorities⁵¹⁶.

The notion “to respect” in the legal provisions may cause misunderstanding as to the nature of the state’s obligation. The European Convention on Human Rights and Fundamental Freedoms declares that the state shall respect the parents’ religious and philosophical beliefs in relation to education process of their children⁵¹⁷. At the first glance this provision entails negative obligation of the state to prevent interference to the parents’ and children rights, however the legal practice and case law⁵¹⁸ clarify the approach.

⁵¹³ Article 13 (2) of the International Covenant on Economic, Social and Cultural Rights. The similar formulation can be found in the Article 28 of the Convention of the Rights of the Child and Article 26 of the Universal Declaration.

⁵¹⁴ General Comment 13: The Right to Education, para. 48.

⁵¹⁵ *Ibidem*, para. 50.

⁵¹⁶ Article 13 (3) of the International Covenant of Economic, Social and Cultural Rights.

⁵¹⁷ Article 2 of the Protocol to the European Convention.

⁵¹⁸ *Lautsi v. Italy*, ECHR, App. No. 30814/06, 18/03/ 2011. Secular parents have the same human rights as parents practising any religion. Under the European Convention to respect religious and philosophical convictions is a positive obligation of the state towards all parents. The state is obliged to ensure that in a democratic society such convictions are worthy of respect if they are not in conflict with the fundamental right of the child to education and compatible with human dignity.

Moreover, the International Covenant of Economic, Social and Cultural in Article 13 (3) contains the wording concerning religious and moral education of children that points to the positive obligation of the state. “The states parties undertake [...] to ensure the religious and moral education of their children in conformity with their own convictions”. Indeed, the legal practice follows the way when the state shall provide children of different religious and morals ideas with non-discriminative curricula. The inclusion in the schedule of the religious study is a matter of each school, but it allows young people to acquire a better understanding of the function that religions play in modern pluralistic world. Although a better understanding of moral and philosophical ideas will not automatically enhance tolerance and respect to different beliefs, undoubtedly ignorance increases the likelihood of misunderstanding, stereotyping and conflict. To encourage countries for introducing teaching about religions and beliefs in public schools which will be non-discriminative, compliant with the human rights, including the right to education and freedom of religions and beliefs, a group of experts in co-operation with education specialists has offered the guidance⁵¹⁹ on preparing curricula for teaching, recommendations for assuring fairness in the development and implementation of teaching materials.

3.4.2. Progressive and immediate realization of obligations

Analysing the state’s obligations many authors pay attention to the time frame defined for the implementation of the duties. Within human rights international instruments two types of obligations can be identified – immediately and progressively realized obligations. Immediate realization of the rights assumes that the state puts efforts during a reasonably short time to make the international provisions effective in life after the international legal instruments enter into force. By the notion “efforts” is often meant the state abstention or minimum activity of the state agents that no interfere the individual’s enjoyment of the human rights and fundamental freedoms. Progressive realization of the rights is expected when active reaction from the state side is supported by available resources of the country and beyond its borders.

The idea to distinguish human rights by the moment of achieving the progress or full realization of the right is based on the discussion taken while the International Covenant on Civil and Political Rights was drafted. As the International Covenant on Civil and Political

⁵¹⁹ *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools*, ODIHR Advisory Council of experts on freedom of religion or belief, Warsaw, 2007.

Rights was drafted and discussed along with the draft of the International Covenant on Economic, Social and Cultural Rights the similar approaches and sometimes wordings were recommended to apply. By the idea of legislators both categories of rights should be implemented progressively. However, this idea was criticized in relations to the civil and political rights because their full realization requires rather state's abstention than the positive actions and hence immediate implementation is considered in its great extent available⁵²⁰. On the other hand, economic, social and cultural rights require active measures taken by the state to be considered fully realised. According to the Committee on Economic, Social and Cultural Rights "full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time"⁵²¹, what mainly assumes a progressive trait of these rights.

Currently it is well known that all human rights, regardless they are civil or economic, political or cultural, imply the mixture of positive and negative obligations of the state. Depending of the extent and content of the state's obligations constituting the human right the duties can be categorized as progressive or immediate realization. This position has been confirmed several times by the statements of the Committee on Economic, Social and Cultural Rights in the General Comments⁵²². The state's obligations enshrined in the international instruments concerning the right to education have the characteristics of both types either.

In the majority of clauses of international human rights regulating the sphere of education the term "progressively" guides the state institutions how fast the obligations shall be realised. In the International Covenant on Economic, Social and Cultural Rights one can find the following statements – "by the progressive introduction of free education"⁵²³, "to adopt a detailed plan of action for the progressive implementation"⁵²⁴. The Convention on the Rights of the Child also possesses such formulation, i.e. "to

⁵²⁰ M. Sepulveda, *op.cit.*, p.128.

⁵²¹ UN Committee on Economic, Social and Cultural Rights, General Comment 3: The nature of States parties' obligations, UN Doc. E/1991/23, para. 9.

⁵²² In terms of the right to compulsory primary education the plan of action composed by states must be aimed at securing the progressive implementation. However the State party's other obligations, such as non-discrimination, are required to be implemented fully and immediately. General Comment 11: Plans of action for primary education, para. 10. Core obligations in relation to the right to water (access to the minimum essential amount of water to prevent disease, non-discriminatory access to water, personal security while having an access to water, etc.) are of immediate effect. UN Committee on Economic, Social and Cultural Rights, General Comment 15: The right to water (Art.11 of the Covenant), UN Doc. E/C.12/2002/11, para. 37.

⁵²³ Article 13 (2).

⁵²⁴ Article 14.

achieving this right progressively”⁵²⁵. Nevertheless, there are some provisions containing the obligations where the time framework of their realization is missing. The notion “to recognize” applied in Article 28 (1)⁵²⁶ of the Convention on the Rights of the Child and both Article 13 (1)⁵²⁷ and 13 (2) of the International Covenant on Economic, Social and Cultural Rights disclose the progressive nature of the state’s obligations. The confirmation of this solution is found in the documents displaying the drafting of the International Covenant on Economic, Social and Cultural Rights. “Recognition meant first and foremost that States should accept the obligation to do all in their power to achieve certain clearly defined aims, without, however, undertaking to attain them in a specified period. Admittedly, they could be achieved only by slow degrees, and the time involved would vary according to the relative magnitude of the problems of each country and the means at its disposal”⁵²⁸. The verb “to make” in the statements “make secondary education available and accessible”, “make higher education accessible”, by the opinion of some scholars, also underlines the progressive effect of the state’s obligations⁵²⁹.

By default, economic, social and cultural rights are being realised progressively based on the resources at the state disposal, however, there are some obligations of an immediate effect. First of all the position of the Committee on Economic, Social and Cultural Rights is tough to prevent any type of discrimination in the realization of the human rights. It is one of priorities of the international society. According to Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights states have obligations to guarantee that the rights embodied in the text of the Covenant will be exercised without discrimination of any kind⁵³⁰. The notion “guarantee” along with “exercise without discrimination” in the context of the Covenant signifies measures of immediate realization. The right to education is not an exception from this rule and the immediate measures to overcome discrimination in education are expected from the governments that have joined the legal instrument⁵³¹.

Another wording pointing to the immediate obligations in realm of education is “take steps towards the full realization” of the right to education⁵³². It is obviously that changing totally or partly the situation in the country and introducing certain means of authority in

⁵²⁵ Article 28 (1).

⁵²⁶ The States parties recognize the right of the child to education.

⁵²⁷ The States parties recognize the right of everyone to education.

⁵²⁸ M. Verheyde, *op.cit.*, p. 52.

⁵²⁹ *Ibidem*.

⁵³⁰ General Comment 3: The nature of States parties' obligations, para. 1.

⁵³¹ General Comment 13: The Right to Education, para. 43.

⁵³² *Ibidem*.

life that change laws, outlook of people and the system of the government definitely takes time. The final goal of the international community is to achieve the full realization of the right to education, this goal may not be achieved in a relatively short period of time. However, it is important to interpret the legal instruments in the light of overall objectives enshrined in its content. In the opinion of the Committee on Economic, Social and Cultural Rights the notion “take steps towards the full realization” imposes a state’s duty to move as quickly and effectively as possible towards the defined goal⁵³³.

As it is demonstrated earlier in the research the provision regulating the fundamental learning needs is in a prior focus of the international community. The World Conferences, International Researches and Papers, The World Forums are devoted to the issue of basic or fundamental education for all. The first time the worldwide movement for Education for All was initiated in 1990 in Jomtien⁵³⁴. In 2000 during the World Education Forum in Dakar 164 governments reaffirmed the significance of an access to education for all⁵³⁵. Voting for the “Dakar Framework for Action, Education for All: Meeting our Collective Commitments” the states proclaimed the ambitious goal – to ensure universal primary education in the world by 2015. In despite of the tremendous progress in meeting the goal, unfortunately, the results of the monitoring display that 52% of countries achieved universal primary education, i.e. half of the planned number, but the most marginalised continued to fail⁵³⁶. Gathering in 2015 in the Republic of Korea the international community agreed on the next steps to provide education for all and adopted the Incheon Declaration⁵³⁷ which sets out a new vision on education for the next fifteen years. Remarkably, all efforts of governments, international community and civil society are a vivid evidence of the steps undertaken to realize the immediate obligation of the state in realm of fundamental education. This approach is consistent with the position of the

⁵³³ General Comment 3: The nature of States parties' obligations, para. 2 and 9.

⁵³⁴ The Education for All movement was originally launched by UNESCO, UNICEF, World Bank, UN Development Programme and UN Population Fund in the 1990s. The adopted World Declaration on Education for All: meeting basic learning needs declared in Article 3 that basic education should be provided to everyone. Later within this unique cooperation the international goals in education were developed in the form of the plan for action (e.g. the Dakar Framework for Action), where the primary goal is universal primary education free of charge.

⁵³⁵ *Education for All 2000-2015: achievements and challenges*, EFA Global monitoring Report, UNESCO, 2015, p.i.

⁵³⁶ Millennium target 2.A: Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling. Ibidem, p.77.

⁵³⁷ The entire title is Incheon Declaration. Education 2030: Towards inclusive and equitable quality education and lifelong learning for all. Along with the Incheon Declaration the Framework for Action was adopted in 2015 in Paris by 184 UNESCO member-states to ensure inclusive and equitable quality education and lifelong learning opportunities for all by 2030. This millennium goal has 10 sub-goals, one of which is free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes.

international community enshrined in the General Comment 3. “The obligation to provide primary education for all is an immediate duty of all states parties”⁵³⁸.

Bearing in the mind the final goal of the international community’s efforts, i.e. the full realization of the right to education, the development and progressive movement as a result of all measures taken by the state agents is highly expected in the monitoring reports. The Committee on Economic, Social and Cultural Rights highlights the impermissible character of retrogressive steps in the realization of the human rights⁵³⁹. Thus, introduction or increase of study fees may be considered a violation of the right to education if only the state could justify the necessity of the retrospective measures as a better solution in comparison with other alternatives⁵⁴⁰. To the deep regret, such steps limiting or depriving the enjoyment of the human rights in education take place in different countries⁵⁴¹. On the other hand, the fact of merely increasing study fees shall be considered entirely in the context of the development of the right to education in the country. In case when the study fees are introduced simultaneously with the improvement of the quality of education or expansion of the access to education in the rural or removed areas such retrospective steps may be admitted justified⁵⁴².

3.4.3. Available resources to perform obligations

The international monitoring and legal practice is evident in displaying the fact that state’s obligations may not always be fulfilled in a certain time framework and with the available resource. The international law prescribes to undertake efforts “to the maximum extent of state’s available resources”⁵⁴³. By the notion “resources” is understood both the resources inside the country, i.e. the public expenditure dedicated to education, and those available within the international cooperation and assistance⁵⁴⁴. Although the resources of countries are limited, the budgetary allocation for education is a key indicator in the

⁵³⁸ General Comment 13: The Right to Education, para. 51.

⁵³⁹ Ibidem, para. 45.

⁵⁴⁰ Ibidem.

⁵⁴¹ School fees in the primary education were introduced as a means for financially wick governments to fund the improvement and expansion of primary education in some sub-Saharan African countries. Recently the governments took measures to its abolition. T. Iscan, D. Rosenblum, K. Tinker, *School Fees and Access to Primary Education: Assessing Four Decades of Policy in Sub-Saharan Africa*, Journal of African Economies, Vol. 24, Issue 4, 2015, p.560.

⁵⁴² The question remains still controversial, however some authors support the idea of fair retrospective measures when the collected study fees remain in the school budget and don’t flow into a public purse. K. Beiter, *op.cit.*,p.388.

⁵⁴³ Article 4 of the Covenant of the Rights of the Child, Article 2(1) of the International Covenant on Economic, Social and Cultural Rights.

⁵⁴⁴ General Comment 3: The nature of States parties' obligations, para. 13.

international reporting process. For example, the Organisation for Economic Co-operation and Development has seven financial indicators analysing the budget expenditure in the realm of education of the member-countries⁵⁴⁵. The Committee on the Rights of the Child in the General Guidelines concerning the form and content of the periodic reports recommends including in the text of the country report the ratio of the overall budget at different levels of the state management devoted to children and distributed to the various levels of education”⁵⁴⁶. After analysing the country reports one can find the Committee’s concerns about insufficient resource allocation to education⁵⁴⁷ or on the contrary the endorsement for the increase in the budget the items on education expenditure⁵⁴⁸.

The similar approach, but with the focus on all rights of the second generation is applied in the practice of the Committee on Economic, Social and Cultural Rights. In the Concluding Observations on the initial report of Togo the Committee expresses its concerns on the insufficient spending in the state budget on the social sectors, in particular on housing, food, health and education⁵⁴⁹. The government of Kenya is recommended by the Committee to dedicate sufficient resources to fund school facilities and qualified teachers⁵⁵⁰. “The State party should increase the budget allocated to primary education and take all the measures necessary to improve access to and the quality of primary education for all without hidden costs, particularly for children living in informal settlements and arid and semi-arid areas”⁵⁵¹.

The given examples demonstrate the international particular attention to the realization of the right to education at the national level to the maximum extend of the available resources of the government. The data on the government expenditure on education enable the comparison and adequate analysis of the enjoyment of the right to education over the world⁵⁵². On the other hand, the international organisations remain silent on how to

⁵⁴⁵ Financial and Human Resources Invested in Education, in: Education at a Glance 2016: OECD Indicators, 2016, p. 180-279.

⁵⁴⁶ General Guidelines regarding the form and the contents of the periodic reports, para.106.

⁵⁴⁷ Concluding Observations: Myanmar, UN Doc. CRC/C/MMR/CO/3-4 (2012), para. 17; Concluding observations: Sudan, UN Doc. CRC/C/SDN/CO/3-4 (2010), para.17.

⁵⁴⁸ Concluding observations: Angola, UN Doc. CRC/C/AGO/CO/2-4 (2010), para. 16; Concluding Observations: Tuvalu, UN Doc. CRC/C/TUV/CO/1 (2013), para.14.

⁵⁴⁹ Concluding observations: Togo, UN Doc. E/C.12/TGO/CO/1 (2013), para. 10.

⁵⁵⁰ Concluding observations: Kenya, UN Doc. E/C.12/KEN/CO/2-5 (2016), para. 57.

⁵⁵¹ Ibidem, para. 58.

⁵⁵² The national statistics institutions gain data on education financing in various ways. In order to make them comparable from a state to state UNESCO Institute for Statistics works directly with countries to compile education expenditure data through an annual survey and helps to improve national statistical systems and adopt new methodologies. The complete data on education spending provides the stakeholders (donors and governments) with a quality picture on the trends in funding on education. The data are available at <http://uis.unesco.org/en/topic/education-finance> [accessed on 02 July 2017].

identify when the state investment in education is insufficient and the public schooling system is inadequately funded. The precise quantitative benchmarks and indicators of when to determine a failure of the obligation fulfilment are not elaborated, the states are given a large discretion⁵⁵³ as to the ways and approached to fulfil the financial part of the rights to education. Moreover, bearing in mind that the human rights instruments are a living mechanism and shall be interpreted in accordance with the time reality and overall situation, the content of the state's obligations vary from one state to others and within a certain state they are changeable over time⁵⁵⁴. In the legal doctrine concerning the right to education it has been stated that “educational success [...] depends only very secondarily on financial resources”⁵⁵⁵. The authors demonstrate the case study of Switzerland where the massive investment into an education system didn't bring the expected results, i.e. the progressive development. “It is known better today that it is not sufficient to increase the system's resources in order to combat failure and inequality effectively. It obviously cannot be concluded that the increase is not necessary [...] It is the use of resources that must be questioned, the way they are put to work”⁵⁵⁶. In other words, the amount of financial resources spent on education implies a supplement to the entire education policy of the country, but not merely an indicator of the violation of treaties obligations by the states.

In the background paper Fernandez and Nordmann raised other important issue concerning the recourses available at the disposition of the state. The use of the budget expenditure shall be taken into account along with the ratio dedicated to education. It is assumed that the budget allocation to education in the time of economic development of the country may be higher than in periods of the struggle with world crisis when the priorities shift to other sectors. Obviously, the education funding during the military actions is lower than in the peaceful times. The budget allocation is an internal matter of each state and the international organisations can only recommend how the available resources shall be distributed, but the decision is made by the governmental bodies. However, during the monitoring of the right to education implementation at the national level “the attention shall be paid to equitable and effective use of and access to the

⁵⁵³ The International Covenant on Economic, Social and Cultural Rights affords a margin of discretion in choosing the means of the realization of the state's obligations. The Limburg Principles, para.71.

⁵⁵⁴ M. Verheyde, *op.cit.*, p. 54.

⁵⁵⁵ *Right to education: survey and prospects*, Background paper submitted by A. Fernandez and J-D. Nordmann, UN Doc. E/C.12/1998/14, para.25.

⁵⁵⁶ *Ibidem*.

available resources”⁵⁵⁷. As it is fairly stated by Beiter the state must demonstrate the significance of the certain rights by giving the priority to the fulfilment of the human rights⁵⁵⁸.

3.4.4. Minimum core obligations

A failure to comply with the obligations enshrined by international law is considered a violation of the human rights legal instruments⁵⁵⁹. As it is already admitted, the vocabulary of international law is vague and often causes the diversity of interpretation of the legal provisions. A lack of certainty towards the state’s obligations embodied in the international human rights treaties may result in a low level of trust in the power of the international human rights instruments. The various classifications of the state’s obligations are analysed in order to discover the content of the right to education through the state’s duties. However, the question what failure of the realization of state’s obligation is considered a violation of the international treaty remains still open. Without a clear understanding in what extent and how obligations shall be fulfilled by the states it will be hard to admit the violation of the internationally guaranteed right to education. For this purpose the legal instruments developed the rules according to which the violation of the right to education must be alarmed. “States parties are obligated regardless of the level of economic development, to ensure respect for minimum subsistence rights for all”⁵⁶⁰. The core minimum of obligations refers to a level below which the government shall not fail to fulfil its functions in order to maintain the existence of an essence of human rights. In the absence of the core minimum of the human rights the nature of the rights is losing what thereby means the violation of Article 4 of the International Covenant on Economic, Social and Cultural Rights⁵⁶¹. The international human rights instruments⁵⁶² apply “core minimum” as a benchmark serving to notify of the potentially dangerous situation with the human rights. Summarizing the human rights observation practice in the different member-

⁵⁵⁷ The Limburg Principles, para.27.

⁵⁵⁸ K. Beiter, *op.cit.*, p.384.

⁵⁵⁹ The Limburg Principles, para.70.

⁵⁶⁰ *Ibidem*, para.25.

⁵⁶¹ Article 4 states that economic, social and cultural rights may be subject to limitation if only such limitations are compatible with the nature of the rights. There are other criteria of limitations of human rights to recognise them admissible.

⁵⁶² The Limburg Principles, para.70-73; The Maastricht Guidelines, para.6-32.

states the Committee on Economic, Social and Cultural Rights admits that the realization of minimum essential level of human rights is morally binding duty of each state⁵⁶³.

On the other hand, in line with the UN Committee the legal doctrine widely refers to the term “the core content of the right” in order to describe the nature of human rights, in particular the content of economic, social and cultural rights which are often described as vague and indeterminate⁵⁶⁴. Although the wording of the notions “the core content of the right” and “the core minimum of state’s obligations” differs, their meaning and, what is more important, their significance remain authentic. The minimum core content implies the non-negotiable scope of the right to education and is served as a foundation of the essence of the human right. However, it is worthy to accept the overlap of the content of human rights with the state’s obligations. From the perspective of the human rights law the difference between them is little because the core content of the right is displayed and realized through the state’s obligations. Nevertheless, some authors support the approach based on the core content of the right in a bigger extent arguing it by the central place of human beings in the concept of human rights⁵⁶⁵.

The findings of Coomans⁵⁶⁶ contribute to the identification of the core content of the right to education that implies the inherent value of the human right. The normative content of each human right has the main part and additional, in other words peripheral, elements constituting the consequences of the right. The main part corresponds to the core minimum of the state’s obligations and consists of a few elements. The peripheral elements are also important for the full realization of the human rights, however their implementation can be proceed progressively and requires resources in which the state may be limited, for example financial resources in developing countries⁵⁶⁷. Although the additional elements of the right to education are less important than the main scope of the rights, they imply the mandatory consequences of the core minimum of the state’s obligations. Once the minimum core of a right has been realized without much challenge, the state shall focus on the realization of the peripheral elements of human rights in order to declare the entire fulfilment of the treaty obligations⁵⁶⁸. By Coomans, the peripheral elements of the right to education are the availability of secondary, vocational and higher

⁵⁶³ General Comment 3: The nature of States parties' obligations, para. 10.

⁵⁶⁴ M. Verheyde, *op.cit.*, p.54.

⁵⁶⁵ F. Coomans, *op.cit.*, p.241.

⁵⁶⁶ The term „core content” is widely used by Coomans in describing the key elements of the right to education. *The right to education as a human right: an analysis of key aspects*, Background paper submitted by F. Coomans, UN Doc. E/C.12/1998/16, para.9-16 and F. Coomans, *op.cit.*, p.217-246.

⁵⁶⁷ *The right to education...*, Background paper submitted by F. Coomans, para.9-10.

⁵⁶⁸ *Ibidem*, para.10.

education, free higher education, education for refugees and children belonging to indigenous people, an adequate scholarship system and others⁵⁶⁹.

Regarding the core minimum of the right to education the international law and legal doctrine define a few state's obligations that compose the essence of the right to education⁵⁷⁰. Firstly, it is an obligation to ensure the access to education without discrimination. The right to education shall be available to everyone regardless race, sex, religion or other factors. No one shall be denied the right to education. Education for girls and boys is provided the same quality⁵⁷¹. Secondly, primary education is provided free of charge and implies the compulsory level of learning for all. Fundamental education is important for both enlightenment of each individual and development of the entire society, that is why the state is obliged to guarantee that every single person can obtain the essential learning knowledge and skills either within the formal system of education or beyond. Literacy classes, schools of basic learning needs leading to the provision of fundamental knowledge and skills for the most vulnerable strata of population or adult education for those who was deprived the opportunity to study shall be available and accessible in practice than merely a proclamation of the government policy. The primary education is essential for the enjoyment of all human rights, therefore the core minimum of the right to education includes also the positive obligation of the state to prevent the deprivation of the right to education by parents, guardians, employers and other third parties. It's an obligation to protect the right to primary education. The third obligation in the core minimum is considered an expansion of the second state's obligation – to protect the right to education in general, not limiting to the basic educational needs. To ensure freedom of choice in education without interference from the state or third parties is an important guarantee in the fair realization of the human right. The free choice of education concerns both the pluralistic curriculum in the public schooling and the possibility to establish and select the private institutions. Not surprisingly, the international treaties entail the separate clauses on freedom in education. Article 13 (3) of the International Covenant on Economic, Social and Cultural Rights emphasizes how essential is to provide for education in conformity with personal religious, philosophical and other convictions. The Universal Declaration of Human Rights gives the priority to parents to select the kind of education

⁵⁶⁹ F. Coomans, *op.cit.*, p.234-235.

⁵⁷⁰ The list of minimum core obligations varies based on the provisions of the international human rights sources. The core minimum is defined in para.57 of General Comments 3 of the UN Committee on Economic, Social and Cultural Rights, General Comment 13: The Right to Education. The legal doctrine is presented by the findings of Coomans, Mehedi. *See* M. Verheyde, *op.cit.*, p.54.

⁵⁷¹ *The right to education ...*, Background paper submitted by F. Coomans, para.11.

for their children⁵⁷². This core obligation is not limited to the free choice in the context of the content of education, but includes the possibility to establish private educational institutions. While public education may promote the political goal of the state or a leading party education in the private institutions may differ from the state-controlled philosophy of life⁵⁷³. On the other hand, education without interference from third parties doesn't mean education without control at all. The state ensures the quality education, therefore such alternatives as private educational institutions shall satisfy with the minimum educational standards defined by the governmental agents⁵⁷⁴. Summarizing the mentioned above, as to Coomans these three obligations are the very essence of the right to education as a human right violation of which results in the lost of the value of the entire right.

At the same time, the position of the Committee on Economic, Social and Cultural rights regarding the core minimum obligation of the state towards the right to education is wider than the core elements described by Coomans. In paragraph 57 of the General Comment 13⁵⁷⁵ two more obligations are included in the essential scope of the right to education. The first of two core elements implies the obligation of the state to adopt and implement the national strategy on education which is aimed at provision for fundamental, secondary and higher education. At this point, it is worth to discuss the controversial position of scholars with the idea of the Committee. Coomans believes that only basic or primary education constitutes the core minimum of the right to education, while secondary and upper levels of education imply the peripheral elements of the human right⁵⁷⁶. It is true that without the fundamental knowledge and skills individuals are deprived from the minimum background to lift from the poverty and to improve their standard of living. However, the literal interpretation of the General Comment demonstrates that the given core obligation implies a duty to develop the national educational policy, but not the achievement of the final objectives of the human rights treaty. Undoubtedly, the prompt provision for secondary or higher education in the country where primary education has recently not been available for all sounds unrealistic. However, to take steps in the form of a national strategy or action plan on education development doesn't require much resource and may occur in a short period of time. Moreover, bearing in mind the classification of state's obligations by the time of their implementation – progressive and immediate – the

⁵⁷² Article 26 (3).

⁵⁷³ *The right to education ...*, Background paper submitted by F. Coomans, para.13.

⁵⁷⁴ Article 13 (3) and (4) of the International Covenant on Economic, Social and Cultural Rights.

⁵⁷⁵ General Comment 13: The Right to Education.

⁵⁷⁶ *The right to education ...*, Background paper submitted by F. Coomans, para.12.

state's duty to "take steps towards the full realization of the right to education embodied in Article 13"⁵⁷⁷ of the International Covenant on Economic, Social and Cultural Rights has an immediate effect. In other words the international community gives the priority to the state's intention to make the right to education at all levels practically implemented. Hence, the obligation of the governmental agents to elaborate the national strategy on the development of education of all types and levels shall be fairly included in the core minimum obligation of the right to education.

The second obligation included in the core minimum of the right to education by the Committee on Economic, Social and Cultural Rights concerns the goals of education. The state shall ensure that education conforms to the objectives described in Article 13 (1) of the International Covenant on Economic, Social and Cultural Rights. The legal doctrine doesn't focus on the objectives of education when the minimum level of human rights implementation is being identified. To the researcher's opinion, such approach considers scanty. As it is mentioned above the core minimum of the human rights is a level pointing to the state that failure of its obligation fulfilment causes the lost of value of the human right. The essence of human rights, their nature is rooted from the idea of why they were created by the international society. The goals of the right to education compose the inherent part of the right along with the state's obligations. Although the goals of human rights are mainly described in the preamble of the international legal treaties, the mission of the right to education is sometimes fixed in the separate articles devoted to education. Such provisions on the goals of education are included in Article 26 (2) of the Universal Declaration of Human Rights, Article 13 (1) of the International Covenant on Economic, Social and Cultural Rights is also dedicated entirely to the objectives of education.

Moreover, if we compare the approaches to analyse education in the light of other social sciences it will be easy to notice a common view. Instead of giving the definition of the notion "education" and identifying its main characteristics the social science such as sociology, economics or pedagogy clarify to what education is to serve and what achievements of mankind and transformations in thoughts will be obtained by means of education. Thereby the goals of education stipulate the nature of human right and shall be mandatory included in the core minimum.

The human right law is constantly developing. Although the legal treaties were adopted a few decades ago their content is interpreted and clarified all time during the

⁵⁷⁷ General Comment 13: The Right to Education, para. 43.

application of the norms in practice. On the other hand the human rights doctrine is more static, it illustrates the ideas and classifications that don't always reflect the actual picture of life. For example, those civil and political rights that corresponded to state's obligations of typical negative nature under the influence of the changing conditions have obtained the state's duties with positive components. In practice the right to life is a positive and negative right at the same time, because the state has an obligation not to deprive from life of individuals and at the same time the national law prohibits the interference to the right by third parties (in case of abortion). In turn the rights that traditionally classified in the legal doctrine as the second-generation, or in other words positive rights, start gaining the elements of negative obligations. Hence, civil and political rights as well as economic, social and cultural rights entail a spectrum of state's obligations with different level of involvement of the governmental agents.

The state's obligations in relation to the right to education are of positive and negative nature. The mere classification either to positive or only negative duty is not perfect and causes gaps in the understanding of the content of the right to education. Indeed, the right to education imposes different duties of the stakeholders in order to be more effective at a given moment and in a certain situation. For the investigation of the content of the right to education the analysis of the state's obligations is applied. The right to education has a mixture of duties that can be better and fuller presented through the tripartite scheme of state's obligation – to respect, protect and fulfil. The scheme is applicable to all human rights, including in the realm of education. It's significant to admit that the state's obligations in relation to the right to education have different extent depending on the level and types of education. The time ranges of the implementation of measures facilitating to achieve the full realization of the right also vary. As a result, the right to education implies a bouquet of state's obligations.

The effective protection for human rights in the changing environment can be ensured *inter alia* in case when the nature of the human rights is saved through the realization of the minimum core obligations. The legal doctrine has developed the yardstick called "core content" or "minimum core obligations" to measure when the right to education is critically violated. The idea with the minimum level of state's obligations to be fulfilled found its confirmation not only in the doctrine, but in the sources of human rights law either. Thus, the core minimum of the right to education consists of the following elements:

1. Access to education on a non-discriminatory basis

2. Primary education is a compulsory level of education that is provided free of charge to all
3. To ensure free choice of education in its broad meaning
4. Education shall conform to the objectives of education defined by the international human rights law
5. The implementation of the national strategy on education is directed to the full realization of the right to education at all levels.

At the same time, the division of the core components on principal and peripheral may lead to a risk of undermining the content of the right to education as a whole. The most developed countries having achieved the core minimum might neglect the peripheral obligations as not significant. Moreover, the changing world order requires the review of the concept because the elements recognized peripheral a few decades ago are becoming the important ones in the contemporary situation, for example education of refugees.

Conclusion

Undoubtedly, education is a product of human activity and a supplement to human life. Education is something which exists in society and belongs only to people. Human beings represent both suppliers and consumers of education. The right to education is considered a significant right of individuals and is fundamental to the continuing growth of a person's intelligence and life in general. Those who can read, write and possess basic arithmetic skills can acquire different types of information and form their own opinions. Law regulates many spheres of human life and recognises the concept of education as a fundamental right through various international instruments. Legal provisions define how the right to education is understood and who has access to it. On the other hand, the legal norms entail obligations for educational providers and serve as guidelines and standards for the protection of the right to education. The obligations of the state constitute the principal part of the content of the human right; however, the legal aspect of the right to education remains soulless without its moral value and practical significance grounded in the objectives of education⁵⁷⁸.

Summing up the analysis of the international and regional vision on educational objectives, it is worth acknowledging that there is no single correct answer to what the main mission of education is. Different reasons stipulate the creation of a multifunctional

⁵⁷⁸ M'Bow, *Introduction*, in: *The child's right to education*. G. Mialaret (ed.), *op.cit.*, p.11.

vision of education. They are the historical experience of social living, the perception of education by scientists, practitioners, politicians and other stakeholders, national social and cultural traditions, global challenges and contemporary environment. Nevertheless, all aims of education presented in the legal doctrine have their rationale and consequences.

International human rights law education is presented within both the formal system of learning and non-formal educational activities, which target the achievement of a broad range of outcomes. Regardless of the type and level of education, the learning process embraces a broad spectrum of life experience, which enables human beings, individually and collectively, to develop their personalities, talents, abilities and enjoyment living in society to the full. Education has different faces and is seen both as a human right which has the features of social, cultural and economic rights and, on the other hand, an indispensable means of realising other human rights⁵⁷⁹. Nowadays, it is hard to imagine the economic progress of a country or political reforms without the image of an educated person.

The content of the right to education, as it is enshrined in the human rights instruments at the United Nations and European levels, also varies. Without the precise understanding of what the legal instruments call the right to education, states, as the principal duty-bearers, can hardly comply with their international obligations and this leads to rights violations. Starting from the world dimension of the right to education the analysis ends with the regional dimension. As it is admitted in the literature on the right to education⁵⁸⁰, the approaches elaborated at global and regional levels are not identical but similar. The implementation of the right at the national level of the researched countries may have particularities which do not always lead to a violation of the international principles.

The lack of a universal definition of education in international human rights law has its weak and strong sides. The variety of approaches applied to the meaning of education and challenges of harmonising them with different legal provisions are among the disadvantages. The application of legal provisions by analogy is hardly possible in the international law, but can be helpful in the discovery of the terminological content. Secondly, a lack of precise description of rights and freedoms in binding documents provides a gap in the legal regulation of the international order and thereby weakens the protection of human rights and fundamental freedoms. The Special Rapporteur admits that international dialogue with governments and other international organisations such as

⁵⁷⁹ General Comment 13: The Right to Education, para. 1.

⁵⁸⁰ See for example M. Verheyde, *op.cit.*, p.9-11 and M. Czuba-Wąsowska, K. Mańko, *op.cit.*, s. 29.

UNICEF, UNESCO, UNDP and the World Bank faces a considerable challenge due to increasing linguistic variety in the field of education, which gives rise to different views of what education should be.

On the other hand, lack of the universal definition of education is naturally healthy. Researchers interested in the social and human sciences define the concept “education” differently through its functions, goals and outcomes. Each science has its own subject of study, methodology and hypothesis; therefore, it is hard to develop a universal meaning of education from the perspective of different scientists. Each field of science may fill in gaps left by monodisciplinary research.

CHAPTER 4. THE PRINCIPLES OF THE HUMAN RIGHT TO EDUCATION

International human rights law highlights general characteristics of all human rights and fundamental freedoms that are recognized as their principles. At the same time some human rights may possess the additional qualities distinguishing them from other rights and making the essence of the concept more precise and deeper. According to the Vienna Declaration and Programme of Action⁵⁸¹ all human rights are universal, indivisible, interdependent and interrelated. The legal doctrine goes in line with the main human rights treaties, moreover it includes the content of the preparatory stage of law adoption and defines other characteristics of human rights. In the legal scholarship the group of the general principles of human rights consists of the universality, indivisibility and inalienability of all human rights. In addition, human rights are described interdependent and interrelated. The principles of non-discrimination and equality are also noted as human rights characteristics and belong to all human rights and freedoms. The right to education acquires both the general and specific characteristics that are described further in the work.

The principle of **universality** of human rights is a cornerstone of international law and rooted in the Article 1 of the Universal Declaration on Human Rights referring to all human beings in the world. Being an integral part of the system of human rights and freedoms the right to education belongs to everyone. The countries vary by cultural, geographical, jurisdictional and other characteristics, however the difference shall not be reflected in the diverse perception and understanding of human rights. Regardless of the country of the birth or residence, the colour of skin and religious or ethnic background, the language of communication and the sex of a person the right to education is a right of everyone in the same scope and context in the world. In general universality means that the human rights system applies to every woman, child and man in the world. The words “education for all”⁵⁸², “everyone”⁵⁸³, “no one can be denied”⁵⁸⁴ refers to the widespread recognition of the right to education.

⁵⁸¹ See para. 5. The Declaration was adopted by the World Conference on Human Rights in 1993 to reaffirm the promotion and protection of human rights as a matter of priority for the entire international community.

⁵⁸² Incheon Declaration. Education 2030: Towards inclusive and equitable quality education and lifelong learning for all, Incheon, Republic of Korea, 19-22 May 2015.

⁵⁸³ Everyone has the right to education. Article 26 (2) of the Universal Declaration of Human Rights.

The principle of universality is also reflected in large-scale signing of the Universal Declaration and the core human rights treaties. Every of 193 UN member states has ratified at least one principal human rights treaty, 80% of the countries have joined to four and more core treaties⁵⁸⁵. The Convention on the Rights of the Child where the wording of the right to education is very similar with the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights is the most rapidly and widely ratified human rights instrument in the history⁵⁸⁶. The right to education is included in the regional human rights instruments adopted on all continents, in the countries with different religious and beliefs. In the countries of the African continent the right to education is embodied in Article 17 of the African Charter on Human and Peoples' Rights⁵⁸⁷ and states that "every individual shall have the right to education". In the Islamic countries education is recognised as a means to acquire knowledge and skills necessary to live in the conformity with the principles and rules of Quran's teachings. The right to education is incorporated in the text of the Universal Islamic Declaration of Human Rights, Article XXI (a) declares "every person is entitled to receive education in accordance with his natural capabilities"⁵⁸⁸.

Prohibition of selection criteria that determine the possession of human rights results in the mirror obligation of the state to provide a non-discriminative access to the enjoyment of the right to education. The **non-discriminatory** principle is fixed in the mayor treaties and documents on human rights and freedoms. It is also put in the foundation of a few international conventions devoted to the struggle against discrimination in a specific area, such as the International Convention on the Elimination of All Forms of Racial Discrimination⁵⁸⁹ and the Convention against Discrimination in Education⁵⁹⁰. The rule on non-discrimination as a core feature of education is reflected in the principle of accessibility within the 4-A scheme.

⁵⁸⁴ No one can be denied the right to education. Article 2 of Protocol 1 to the European Convention on Human Rights.

⁵⁸⁵ A.F. Bayefsky, The UN human rights treaty system: universality at the crossroad. Report, 2001, p.i.

⁵⁸⁶ The Convention has been ratified by 196 states. The only country that has not ratified the treaty is the United States of America. The International Covenant has been ratified by 165 countries in the world, what constitutes 85% of the community. The data provided by the United Nations, *available at* <http://indicators.ohchr.org/> [accessed on 28 August 2017].

⁵⁸⁷ Adopted in 1981 and entered into force in 1986.

⁵⁸⁸ Adopted in 1981.

⁵⁸⁹ It was adopted by UN General Assembly in 1965 and came into effect in 1969.

⁵⁹⁰ It was adopted by UNESCO on 14 December 1960 and came into effect in 1962.

The principle of non-discrimination is supplemented by the principle of **equality** stated in the Article 1 of the Universal Declaration “all human beings are born [...] equal in dignity and rights”.

The preamble of the Universal Declaration on Human Rights proclaims the human rights **inalienable**, they accompany human beings during their whole life. These rights appear from the moment of birth of an individual and are not to be earned or granted. Inalienability results from the tight correlation of the fact of the human being existence on the earth with the possession of human rights and freedoms. By definition, inalienable rights can be forfeited or deprived neither by states nor by other individuals, a right holder cannot reject what he or she has. Human rights and freedoms exist by the virtue of the mere fact of birth and end with the human death.

The principle of **indivisibility** of human is a relatively recent in the interpretation of human rights. During the Cold War the tension between the Western countries and the socialistic block was based on the prioritisation of one group of rights to others. The nations perceived differently social, economic and cultural rights in comparison to civil and political rights. While the realization of economic and social rights was a main goal of the socialistic governments the countries like France or the United States put all efforts to ensure the provision of political and civil rights and freedoms to their citizens. However, the international law clearly stands for equal status of all human rights and fundamental freedoms. The human rights shall be treated in “a fair and equal manner, with the same emphasis and on the same footing”⁵⁹¹. They cannot be positioned in a hierarchical or other order. With the end of the Cold War the contradictions in the international community reduced and nowadays the unity and integrity of all human rights and freedoms is underlined. It is worth to repeat what has been already mentioned in other part of the research. According to the drafter’s idea the structure and wording of the International Covenant on Political and Civil Rights was intentionally similar to the International Covenant on Economic, Social and Cultural Rights⁵⁹². The signing of both documents happened simultaneously to underscore the equal status of all human rights. Secondly, the principle of indivisibility of human rights is reflected in the triple character of the state’s obligations where the positive and negative obligations are linked to ensure the full realization of the human right to education. These types of obligations are found as well in the realization of civil and political rights and freedoms.

⁵⁹¹ The Vienna Declaration and Programme of Action, para.5.

⁵⁹² K. Beiter, *op.cit.*, p.67.

The system of human rights is an alive and complex mechanism where the fulfilment of one right affects in a whole or partly the realization of others. This displays how human rights are **interdependent and interrelated**. The enhancement of a particular human right facilitates improvement of others. Likewise, the restriction of one right adversely affects the others. Not surprisingly, education is considered a powerful tool to eradicate the poverty in the world and to enhance the enlightenment of people. The access to education opens a door to a better life, i.e. by a means of knowledge and skills human beings raise the awareness of their rights and freedoms, get information of satisfactory medical and social assistance and improve the economical situation of family and society as a whole with a well-paid job. On the other hand, the fulfilment of the right to education can be hardly satisfied without guaranteeing the peace in the society, the right to development and, in certain circumstances, the right to information. The Convention on the Rights of the Child in Article 32 (1)⁵⁹³ defines the protective measures against child labour which might impede the realization of the right to education, in other words the legal norms on the right to work are interrelated to children's education.

The right to education is distinguished in the row of all human rights because it possesses both the general and specific characteristics. In the legal doctrine dedicated to the right to education the scheme called 4-A is met overly often to provide the thorough description of how education should look like. Paragraph 6 of the General Comment 13 states that “education in all its forms and at all levels shall exhibit the following interrelated and essential features: (a) availability, (b) accessibility, (c) acceptability and (d) adaptability”. These features of the right to education are considered essential and interrelated and shall be applied for the student's sake and in her or his best interests⁵⁹⁴.

Katarina Tomasevski, the United Nations Special Rapporteur on the right to education, applied this scheme to the right to education in her preliminary report to the Commission on Human Rights in 1999⁵⁹⁵. It was the first attempt of defining the analytical instrument to examine in depth the primary education. The significance of the scheme 4-A in the current conditions is high as it refers to all forms and levels of education and enables the

⁵⁹³ “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education...”

⁵⁹⁴ General Comment 13: The Right to Education, para. 7.

⁵⁹⁵ Preliminary report of the Special Rapporteur on the right to education, UN Doc. CN.4/1999/49, para. 50.

thorough analysis of the right to education in its broad meaning, not limiting to the primary education⁵⁹⁶.

Nowadays the 4-A scheme and other similar approaches of the analysis of human rights can be found in various documents elaborated by the Committee on Economic, Social and Cultural Rights as well as in the numerous reports and analytical works prepared by Special Rapporteurs. The specific principles similar to the 4-A scheme are formulated with reference to a few human rights. In the General Comment 4 the Committee on Economic, Social and Cultural Rights identifies the following elements which belong to the right to adequate housing: availability, affordability, accessibility and cultural adequacy⁵⁹⁷. The right to adequate food shall conform to the following specific principles: availability, acceptability and accessibility, these characteristics are set out in the General Comment 12⁵⁹⁸.

Referring to the analytical works and reports of the Special Rapporteur on the right to education and the findings of human rights law it is significant to learn four characteristics of the right to education. Bearing in the mind that the realization of human rights implies mainly obligations assigned to the state bodies, the 4-A concept is seen as another classification of state's duties typical for the realm of education only. By a means of this scheme the scope of the human right to education is being enriched and supplemented by the deeper understanding enabling the perception of the state's obligations less vague.

4.1. Availability

Availability implies the qualitative and quantitative factors in education. In a nutshell, available education refers to the state's obligation to ensure the sufficient amount of functioning schools, teachers and materials for studying. The adequate infrastructure required for the effective learning process shall be created and the sufficient amount of the adequately qualified teachers able to support in delivery of knowledge, skills and values to learners. The principle of availability in the realm of education is directed primarily to the sufficient number of schools and teachers, on the other hand education is considered available if it is provided in the conditions comfortable for learning and maintaining the human dignity.

⁵⁹⁶ General Comment 13 has carried out a quite brave idea. The conception of 4-A took her place in its broadest sense to the human right to education in general, not limiting to the primary education. *See* para.6

⁵⁹⁷ UN Committee on Economic, Social and Cultural Rights, General Comment 4: The right to adequate housing (Art. 11 (1) of the Covenant), UN Doc. E/1992/23, annex III at 114 (1991), para. 8.

⁵⁹⁸ General Comment 12: Right to adequate food, para. 12-13.

According to human rights law the right to education implies a complex of state's obligations determining either the active duties of governmental agents to realize the right in action or the state's abstention while the right holders exercise it in practice. Taking into account the human rights doctrine the principle availability embodies two types of obligations referring to education. On the one hand, the government is obliged to establish, fund totally or in a certain extent and operate the educational institutions; on the other hand, the right to education requires the government to permit other subjects the establishment of private institutions⁵⁹⁹.

By Beiter the term of available education encompasses the fulfilment of few conditions:

- the number of functioning schools is sufficient;
- the right to establish private education institutions is ensured;
- the funding of the public education is not neglected by the state;
- teachers and academic staff are properly qualified and available;
- academic freedom and autonomy of institutions is provided;
- labour and trade union rights of teaching staff are in action⁶⁰⁰.

The principle of availability of education is included in the provisions of the international human rights instruments, however it refers to different levels of education in a non-equal manner. The provision of the available primary and secondary education to all learners is required according to the clauses of the International Covenant on Economic, Social and Cultural Rights⁶⁰¹ and the Convention on the Rights of the Child⁶⁰². While regarding higher education the states shall seek to make it available as much as possible⁶⁰³.

The principle of educational availability is tightly linked with other human rights such as the right of the child to be registered after birth⁶⁰⁴. In many developing countries, mainly in the African continent and South Asia, the data on population is not well collected in particularly in rural areas due to various reasons. The UNICEF reports alarm that one of four children of the world population under age of 5 has never been registered⁶⁰⁵. Then, the

⁵⁹⁹ K. Tomasevski, *Human rights obligations: making education available, accessible, acceptable and adaptable*, Right to Education Primers No 3, Gothenburg, 2001, p.13.

⁶⁰⁰ K. Beiter, *op.cit.*, p.477.

⁶⁰¹ Article 13(2) (a) and (b).

⁶⁰² Article 28(1) (a) and (b).

⁶⁰³ K. Beiter, *op.cit.*, p.478.

⁶⁰⁴ The child shall be registered immediately after birth. Article 7 of the Convention on the Rights of the Child and Article 24(2) of the International Covenant on Civil and Political Rights.

⁶⁰⁵ United Nations Children's Fund, *Every Child's Birth Right: Inequities and trends in birth registration*, UNICEF, New York, 2013, p. 14.

states fail to estimate the expected number of students and to ensure them the sufficient number of educational institutions.

As it is already mentioned in the research one of the millennium development goals formulated in 2000 is aimed at the provision of universal primary education. By 2015 the achievement of compulsory primary education to all has not been completed although the progress of the world community towards the achievement of this goal was recognized sufficient. Nevertheless, the number of primary schools still leaves to be much desired. If the capacity of educational institutions to accept learners is less than a number of potential students an access to education remains a need or even a wish than a guaranteed right⁶⁰⁶.

The principle of availability shall not be merely limited to guarantee a particular number of educational institutions for learners. The quality of provided education and the infrastructure of the education institutions are also taken into account. The right to education is purely guaranteed when the access to education is ensured “really than nominally”⁶⁰⁷. The countries vary by the level of economic development and the financial resources that they can assign in the state budget for the realization of the right to education. The Special Rapporteur cites the UNESCO and UNICEF report on the conditions of primary schools in the least developed countries⁶⁰⁸ “[...] electricity or piped water in primary schools is an exception rather than a rule, [...] many children finish primary school without ever having seen a single textbook in their mother tongue”⁶⁰⁹. In this context the available education means that learning and teaching shall happen in conditions comfortable with the human dignity and the state strives to provide the minimum of these conditions to all learners. Such conditions may be seen rigid in contrast with the developed countries where the spending on education is relatively higher and the quality education is considered available if an education institution provides a library, technical equipment and adequate informational technologies⁶¹⁰.

By presenting the 4-A scheme Katarina Tomasevski applies the principle availability of education to both elements of the right – educational institutions and the academic staff⁶¹¹. Referring to the institutions the Special Rapporteur on the right to education expresses her concerns on the insufficient number of schools for all children over the

⁶⁰⁶ Preliminary report of the Special Rapporteur on the right to education, UN Doc. CN.4/1999/49, para.52.

⁶⁰⁷ Ibidem.

⁶⁰⁸ A. Schleicher and others, *The conditions of primary schools: a pilot study in the east developer countries*. A report to UNESCO and UNICEF, Paris, 1995.

⁶⁰⁹ Preliminary report of the Special Rapporteur on the right to education, UN Doc. CN.4/1999/49, para.52.

⁶¹⁰ General Comment 13: The Right to Education, para. 6.

⁶¹¹ K. Tomasevski, *op.cit.*, p.14.

world, at the same time the Special Rapporteur pays attention to the appearance of actual possibilities to establish private educational institutions in the countries. The system of private schools providing education of the different scope and content or applying non-traditional teaching methods serves as an alternative to the public schools, however it doesn't mean that these private institutions are out of the state's control. On the contrary, many countries possess the process of accreditation or licensing for private schooling in order to ensure the quality of education provided by those institutions conforms to the approved standards. The most controversial and often raised in the judicial procedure claim is a balance between the assurance of the quality education through the system of governmental monitoring of private education institutions and a limit of the government from abusing its power to grant and withdraw the permission or license to the private education institutions⁶¹². The right of the state to define the minimum required standards to education and then to monitor whether they are fulfilled by the education providers is included in various international human rights instruments. The clause is aimed at the provision of an educational programme by some subjects that will result in the receipt of papers equivalent to the officially recognized diploma by quality and learning outcomes. "Individuals or societies, without complying with the statutory requirements, establish educational or training institutions ill equipped to impart education and have students admitted. The ill-equipped and ill-housed institutions and substandard staff therein are counter-productive and detrimental to inculcating spirit of inquiry and excellence in the students"⁶¹³.

On the other hand, the government may abuse its power in granting the licence to the educational institutions. A university may be closed by the governmental bodies when the freedom of expression exercised by students and professors are in conflict with the ideology dominating in the country. This happened with the European Humanities University (EHU) in Belarus when in 2004 the Ministry of Education withheld the licence of the university justifying the decision by the unsatisfactory technical conditions of the building⁶¹⁴. The European Humanities University founded in Minsk in 1992 was a private, non-profit university aimed at liberal arts development that was not met with support by

⁶¹² Ibidem, p.18.

⁶¹³ Ibidem.

⁶¹⁴ In 2004 the Minister of education asked the rector of the university Anatoliy Mikhailov to resign at his own will but he refused. Although the EHU was an independent, privately funded university, Mikhailov was told the government had another candidate for the position of rector. The Ministry annulled the EHU's license on a technicality, claiming the premises were unsuitable for classes. See Lucy Ash, *Belarus's university in exile*, BBC news, Magazine available at <http://www.bbc.co.uk/news/magazine-22254545> [accessed on 11 November 2013].

the leading governmental bodies. In the years of its existence in Belarus, the higher education institution was an experimental background for the internationalization and liberalization of higher education. Since 2004 the university has been located in Vilnius, Lithuania where it is referred to as “the university in exile”⁶¹⁵ and continues its academic activity oriented to the facilitation and deepening of contribution that its students, graduates and professors can bring in their own lives and civil society. The university is said to be the only higher education entity in the history of the Belarusian higher education system which maintained scientific autonomy and followed the academic freedoms despite pressure from the authorities⁶¹⁶. Hence, education is admitted available when the safeguards against abuses of state’s power are provided and academic freedoms and the independence of educational institutions is ensured.

The quality of education and the conditions in which education is provided much depend on financing the system of education by the state. The human rights doctrine leaves to the state the right to choose the type of the system of education. The models of the system of education vary by the source of funding and the management agent. The governmental agents may establish, fund and operate the system of public schools or the state may provide the financial support to the privately-managed institutions and monitor them for the conformity of the minimum standards⁶¹⁷. Some countries have only public schools, while others have private only, but many countries have a mixture of both types. The meaning of private schools varies and may confuse. The private schools refer to formal and non-formal education, secular and religious enlightenment, they may provide teaching in a language different from the national language of the majority. In some countries private education institutions supplement the state-operated system of education, in others they imply an alternative way of obtaining education. In the UNESCO classification a private entity is understood a unit managed by the subject different from the state agent⁶¹⁸, in other words the criterion of management is applied. In contrast with the UNESCO approach the English courts divide schools into private and public by the source of funding of them⁶¹⁹. It means a school that is operated privately but funded from the state budget will fall in the group of state schools.

⁶¹⁵ L. Krasnitskaya, *Development of higher education in Belarus (from 1991 to nowadays)*, *Miscellanea Historico-Iuridica*, tom XIII, z.1, 2014, p.208-209.

⁶¹⁶ Немного из истории ЕГУ, <http://students.ehu.lt/docs/niemnoho-iz-istorii-ehu> (last visited Nov.11, 2013)

⁶¹⁷ K. Beiter, *op.cit.*, p.480.

⁶¹⁸ World Education Report 2000. The right to education: towards education for all throughout life, UNESCO publishing, 2000, p.126.

⁶¹⁹ K. Tomasevski, *op.cit.*, p.20.

In the international law there is not a single common approach what system of education is the best. The international community doesn't define how to allocate the budgetary expenditure on education and how much the contribution of state and other investors in it shall be. As it is underlined in the other part of the research devoted to the state's available resources the funding is important but not sufficient factor to realize the right to education. It is worth to remember that education is a realm which will result in benefits for the community in many years only. It is not surprisingly that economists often consider the governmental money for education as expenditure and education itself as commodity⁶²⁰, however since recently in the light of the human capital theory funding for education is seen as investment. Regardless of the source of funding of education, governmental obligation to make education available embodies in practice a safeguard to provide education.

Bearing in the mind Article 4 of the Covenant of the Rights of the Child and Article 2(1) of the International Covenant on Economic, Social and Cultural Rights the right to education is ensured within the available resources allocated in the country's budget and funding offered within the international cooperation and assistance. There is no legal obligation to enforce the state to make education available with the limit of resources. The Special Rapporteur on the right to education refers to the court decision in the United Kingdom that concluded the obedience of the statutory law by the local authority even with the low intake capacity of schools. 300 children within the compulsory school age were deprived of primary education due to a shortage of teachers. The local authority responsible for education failed to secure sufficient school places for all children within the available resources and they claimed that education is not available⁶²¹. Nevertheless, according to the human rights doctrine nobody can be legally obliged to do something beyond its power and education is considered available if the state justifies the deprivation in human rights because of insufficient resources.

It is not surprisingly that the review of the millennium development goals taken in 2015 resulted in a new version of the goal concerning education. On the list of 17 sustainable development goals one can find the goal 4 titled "quality education"⁶²². The international community expects that by 2030 quality primary and secondary education will be accessed free and completed on a non-discriminatory basis by all boys and girls. In

⁶²⁰ Preliminary report of the Special Rapporteur on the right to education, UN Doc. CN.4/1999/49, para.14.

⁶²¹ K. Tomasevski, *op.cit.*, p.19.

⁶²² Transforming our world: the 2030 agenda for sustainable development, UN Doc. A/RES/70/1, p.19.

addition to the sufficient number of schools, adequate infrastructure and learning environment appropriate to the human dignity of students the quality education means that the pedagogical staff is well trained and possesses knowledge and skills for teaching others. The remuneration of teachers is to be domestically competitive and motivates for the professional development and personal further growth⁶²³. This is the second aspect of the principle of availability studied by the Special Rapporteur on the right to education.

In the literature on the human right to education much attention is given to the rights of child, meanwhile there is little focus remained on the rights of teachers. In fact, if the rights of the academic personal are not protected and ensured in a sufficient extent, the right of the child to education is under the threat of violation either. First of all the available education embodies the state's duties to define the criteria for recruitment of teachers and conditions for their professional development. Teachers have to be well trained and qualified for performing teaching functions. Beyond the personal and professional skills and knowledge enabling the successful recruitment to the academic personnel the good command of the language in which teaching occurs is required. The case law of Australia didn't recognize a racial discrimination in the denial of hiring of two Indians for a position of a teacher. "There are types of employment where an ability to communicate in an effective and unrestricted manner in English or some other specific language is an essential aspect of adequate and effective performance of the requirements of the job. In such a case, discrimination on the basis of an inability effectively to communicate in English which may be related to knowledge of language or may be related to a very noticeable accent will not be characterised as making a distinction on the basis of race or ethnic or national origin even though there is a causal link between the person having grown up in a particular country or region and even though that is a common characteristic of people of those ethnic or racial origins"⁶²⁴. In such way the government takes care of the quality of education guaranteed by the national law. At the same time such approach doesn't exclude non-native speakers and non-citizens from the participation in teaching process if they are met professional requirements. For the justification it is worth to refer to the Constitutional Court decision in South Africa which found appropriate to recruit non-citizens to overcome a lack of teaching staff, although the government's aim

⁶²³ General Comment 13: The Right to Education, para. 6.

⁶²⁴ K. Beiter, *op.cit.*, p.483.

was to reduce unemployment among citizens⁶²⁵. Analyzing the cases the Special Rapporteur underlines the difference in the country priorities to ensure available education. While some countries control strictly the qualification and recruitment process of teachers ensuring the quality of education, others open an access to the teacher's career to untrained and ill-qualified educators⁶²⁶.

The next element of the available education is a guarantee of labour and trade union rights of teachers. The government shall protect and fulfil the realization of labour rights and trade union freedoms for the academic personnel because these rights are imply a part of the national legislation and/or embodied in the international human rights instruments ratified by the state. However teachers often have to struggle for the exercise of the labour standards due to the fact that the teacher's status as a civil servant, in particular in the primary education, is widely spread. The erroneous assertion that teaching is an essential service leads to the denial of the right to form trade unions, dismissals of striking teachers or other forms of their limitation such as exile or reduced salary⁶²⁷. According to the position of the international community the labour rights and trade union freedoms are equally applied to teacher's profession as well as to any other profession. Examining complaints submitted by the workers' organizations the Committee on Freedom of Association established by the International Labour Organization states that the right to strike can be restricted for the public sphere agents or the essential services only, clarifying that the essential service is seen as an activity whose interruption puts the life, safety or health of the population under the threat. The Committee reaffirms that teacher's career falls neither within the meaning of the essential services nor public servants in its strict sense⁶²⁸ and hence teachers shall be entitled to exercise their labour rights and trade union freedoms in the full extent. One of them is the right to strike enabling the expression of disagreement with the government policy. "While purely political strikes do not fall within the scope of the principles of freedom of association, they [teachers] should be able to have

⁶²⁵ Larbi-Odam and others v. The Member of the Executive Council for Education (North-West Province), Constitutional Court of South Africa, SA 745, ZACC 16, 1998 available at <http://www.saflii.org/za/cases/ZACC/1997/16.html> [accessed on 20 September 2017].

⁶²⁶ K. Tomasevski, *op.cit.*, p.24.

⁶²⁷ *Ibidem*.

⁶²⁸ Complaint against the Government of Peru submitted by the World Confederation of Organisations of the Teaching Profession, Freedom of Association Committee, Case No. 1503, Report 272, 1990, para. 117 and Complaint against the Government of Germany submitted by the German Confederation of Trade Unions and the Educational and Scientific Trade Union, Freedom of Association Committee, Case No. 1528, Report 277, 1991, para. 285.

recourse to protest strikes, in particular where aimed at criticising a government's economic and social policies"⁶²⁹.

The following element composing the principle of availability is remuneration of teacher's service. The salary of teachers shall be adequate in order to provide with a decent living for workers and their families what is required by the provisions of the human rights instruments⁶³⁰. Despite of the ratification of these important human rights documents by many countries the factual situation with the remuneration of the academic staff varies significantly by country to country. Moreover, the teacher's profession, in particular at the lowest level of the system of education, is not attractive for men due to various reasons, inter alia, low remuneration of teaching service in comparison with other professions⁶³¹. As a result, the Special Rapporteur on the right to education draws attention to the issue of gender imbalance among teachers⁶³².

Summarizing the mentioned above, a few qualitative and quantitative characteristics composing the meaning of availability of education can be defined. The sufficient number of educational institutions and teachers determines the recognition of available education as well as the well-equipped infrastructure of educational space along with adequate working conditions of academic personnel. The rules of professional responsibility of teachers are factors affecting the quality of education either.

4.2. Accessibility

The second characteristic of education in the light of human rights is accessibility of educational institutions and learning programmes what means that any obstacles for enrolment for any person shall be eliminated. The term has three overlapping dimensions:

- non-discrimination,
- physical accessibility,

⁶²⁹ Complaint against the Government of Guinea presented by the Trade Union of Workers of Guinea, Freedom of Association Committee (ILO), Case No. 1863, Report 304, 1996, para. 356.

⁶³⁰ See Article 23 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Economic, Social and Cultural Rights, the Equal Remuneration Convention, 1951.

⁶³¹ About 60 years ago on the request of the United Nations the report on discrimination in education gathered the reasons why the majority of primary school teachers are female. They are of social, economic and psychological nature. Teaching of young children is naturally better suitable for women, the access to other professions for women is closed or relatively much more difficult than for men, men look for better paid professions than teaching. C.D. Ammoun, *Study of discrimination in education*. Report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN Doc. E/CN.4/Sub.2/181/Rev.I, 1957, p.43.

⁶³² K. Tomasevski, *op.cit.*, p.25-26.

- economic accessibility⁶³³.

In terms of higher education the additional condition of accessibility must be fulfilled, this is the academic recognition of diploma, degrees and periods of study obtained in other countries.

Although the paragraph 6 of the General Comment 13 explicitly states that the features of 4-A scheme are exhibited at all levels and forms of education the literal interpretation of the human rights treaties shows that the term “accessibility” has different meanings for different levels of education. Analyzing the international treaties and discovering the content of the notion “accessibility” within the scheme 4-A Tomasevski examines the right to education at compulsory and post-compulsory levels⁶³⁴. Within the compulsory education it shall be free of charge, assure the attendance for all and guarantee free choice of education by parents. Within the post-compulsory education the discriminatory denials of access, including legal and administrative barriers, shall be identified and eliminated. Precise criteria for admission and a preferential access for certain target groups are ascribed to accessibility either. In the time of globalization and free movement of people it is quite popular to obtain degrees in different countries. Since science is not limited by geographical frontiers, even on the contrary, nowadays the international studies are encouraged and financially supported, the international recognition of diplomas is an essential element of accessibility of education.

Non-discrimination is the overriding principle of international human rights law and is applicable to all human rights regardless of their nature⁶³⁵. This principle cuts across civil and political rights as well as economic, social and cultural rights. It also can be found in the legal instruments concerning the rights of the child. The international law prioritizes the elimination of any form of discrimination in the implementation human rights in action. This issue is in the top list of the policies of various international organizations. Thus, elimination of discrimination shall be realized immediately and fully, but not progressively⁶³⁶. The same approach is affirmed towards the right to education. “The prohibition against discrimination in realm of education is subject to neither progressive

⁶³³ General Comment 13: The Right to Education, para. 6 (b).

⁶³⁴ K. Tomasevski, *op.cit.*, p.14.

⁶³⁵ K. Tomasevski, Preliminary report, CN.4/1999/49, para.57.

⁶³⁶ *See more* the part of the research dedicated to the progressive and immediate realization of the state’s obligation.

realization nor the availability of resources; it applies fully and immediately to all aspects of education”⁶³⁷.

The major documents in realm of education struggling with the phenomenon of discrimination are the Convention against Discrimination in Education and Recommendation against Discrimination in Education⁶³⁸. The Convention as a legally binding document is often described as “the core of an international educational code”⁶³⁹. It has gathered the provisions of different documents prepared and issued by UNESCO in realm of the right to education. The content of the Recommendation is nearly identical with the Convention, but the legal nature of the state’s obligations varies what follows from the differences of the legal power of the instruments. “The Recommendation was adopted to accommodate the concerns expressed by various federal states that they lacked the competence to ratify a convention which covered a matter within the competence of their constituent states or provinces”⁶⁴⁰. Switzerland has not ratified the Convention but follows the provisions of the Recommendation.

It is worth to remember that the Convention against Discrimination in Education is a comprehensive act concerning the phenomenon of unequal treatment while obtaining the access to education, enjoying the right to education and then recognizing the received qualification after graduation. The term of “accessible education” in the light of 4-A scheme is directly linked to the principle of non-discrimination. However the scope of non-discriminatory education covers also the aspects of adaptability (educational process) and acceptability (admission) of education. Within the concept of accessible education the opportunity to enter the educational institutions is researched, the adaptability of education is relevant to the possibility to enjoy the right. Therefore, in the current part of the research the Convention against Discrimination in Education and other legal documents concerning discrimination in education are examined accordingly to the particular element of 4-A scheme.

Non-discriminatory access to the right to education means that educational institutions are open factually and in virtue of law to all learners without any restriction on the prohibited grounds⁶⁴¹. The Convention against Discrimination in Education defines the

⁶³⁷ General Comment 13: The Right to Education, para. 31.

⁶³⁸ Both documents were adopted by the General Conference in 1960.

⁶³⁹ K.Beiter, *op.cit.*, p. 243.

⁶⁴⁰ *Ibidem*, p. 242.

⁶⁴¹ General Comment 13: The Right to Education, para. 6 (b).

exhaustive list of nine prohibited grounds of discrimination⁶⁴², in contrast with Article 2 of the Universal Declaration of Human Rights where “or other status” is mentioned. Although the list of the grounds defined in the Convention seems completed, the violation of the right to education may occur and occurred on other criteria. The discrimination on the ground of sexual orientation, age or disability, gender identity, etc. is prohibited by other human rights instruments that are applicable in realm of education either. Thus, Article 2 of the International Covenant on Economic, Social and Cultural Rights requires the state to ensure the exercise of the rights of the Covenant without discrimination. The list of possible grounds of unequal treatment encompassed in the Covenant is not limited and the right holders may refer to the notion “other status” while pointing out to the fact of discrimination against their right to education. The same wording is included in Article 14 of the European Convention on Human Rights. It states “the enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

In the light of the Convention against Discrimination in Education discrimination refers to “any distinction, exclusion, limitation or preference [...] with the purpose or effect of nullifying or impairing equality of treatment in education”. The European law of human rights defines two forms of discrimination that may become apparent for all human rights and also in the realm of education – direct and indirect⁶⁴³. In the legal literature discrimination towards the right to education is presented in active and static forms⁶⁴⁴, these terms were used for the first time by Ammoun in his report Study of Discrimination in Education⁶⁴⁵. The Convention against Discrimination in Education and Recommendations are targeted to eliminate and prevent all forms of inequality and different treatment in realm of education.

Although the international campaign aimed at the prohibition of any form of discrimination in education started over 50 years ago with the adoption of the mentioned above documents there are still facts of unequal access to educational institutions at all

⁶⁴² Article 1 mentions race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth.

⁶⁴³ See more about European non-discrimination law in Handbook on European non-discrimination law, Council of Europe, 2010, p.21.

⁶⁴⁴ Active discrimination refers to discrimination which results from government action taken in accordance to a national policy and clearly intended to keep inequality. Static discrimination is a product of economic, social, cultural and geographical factors in the society caused often by limitation of resources within the state or state’s inability to act.

⁶⁴⁵ K.Beiter, *op.cit.*, p. 244-245.

levels in many countries. Cultural, geographic and economic reasons of deprivation of the right to education shall be eliminated to ensure the access to education for all. In the poor countries many children are requested to perform child labour, thus they are excluded from attending school and obtaining education. Due to religious and cultural beliefs which recommend preparing girls for family life and domestic chores education is addressed mainly to male population. A geographical obstacle in obtaining education is found in the countries where the isolated populations live in remote areas and where it is difficult to establish the adequate educational infrastructure.

The international community and the Special Rapporteur on the right to education draw the attention to the access to education for vulnerable groups of the society – refugees and migrant children, children in streets, children in military areas, etc. Among them girls are particularly underlined. Due to early marriage, childbearing or social traditions in particular countries the percentage of girls without the complete compulsory education remains high in the United Nations statistics⁶⁴⁶. Million of pregnant girls across many African countries are being denied education because it is in conformity with the discriminatory policies adopted in the country. For example, in Tanzania the school officials are allowed to conduct pregnancy tests and expel pregnant students⁶⁴⁷. Other reason of girl's deprivation is a lack of parent's rationale to investment in daughter's education⁶⁴⁸. The Special Rapporteur on the right to education admits that the survival of poor families depends on the work of each member of the family, that is why the adaptation of the school schedule to the seasonal and daily rhythm of family life can be a good solution to ensure accessible education for girls or working children⁶⁴⁹.

The discriminatory actions in the realm of education may be caused by actions of third party as well as the state and its agents. During the former Taliban regime in Afghanistan girls faced the categorical denial of education and it was strongly condemned by the Commission on Human Rights⁶⁵⁰. In the European dimension the case *D.H. v. Czech Republic*⁶⁵¹ raised an important issue of the indirect discrimination in education when the

⁶⁴⁶ K. Tomasevski, *op.cit.*, p.28.

⁶⁴⁷ Forced out: mandatory pregnancy testing and the expulsion of pregnant students in Tanzanian schools, UNESCO, New York, 2013, p.4.

⁶⁴⁸ K.Beiter, *op.cit.*, p. 488, 489.

⁶⁴⁹ Preliminary report of the Special Rapporteur on the right to education, UN Doc. CN.4/1999/49, para.60.

⁶⁵⁰ Situation of human rights in Afghanistan, Resolution of the Commission on Human Rights, 1999/9, para. 5(b).

⁶⁵¹ According to the national law all children had to pass the test to being assigned to further schools based on their intellectual capacities. The practice went by the way that Roma children were systematically assigned to schools for children with learning difficulties based on their racial or ethnic identity rather than results of the test. *D.H. and others v. Czech Republic*, ECHR, App. No. 57325/00, Judgement, 13/11/2007.

neutral wording of the statutory provision disadvantaged a particular group of people without any discriminatory intent on the part of the governmental authorities.

The facts of discrimination in obtaining an access to education occur at all levels of education. Though the boundless access to compulsory primary education is the prior point of the monitoring of the right to education by the international community, the researchers, lawyers and human rights activists point to the fact of unequal treatment at post-compulsory levels either. The European Court of Human Rights in the case *Leyla Sahin v. Turkey* found that the religious freedom and, as a consequence, the right to higher education of the student wearing religious clothing had been restricted by the refusal of entrance into lectures in the headscarf and then by her suspend from the University. However the violation of the freedom of religion and the right to education under the European Convention on Human Rights had not been admitted because the restrictions were found proportionate to the aims of the public university and of the state in their efforts to protect the nation's secularism⁶⁵². Another law-case of the European Court of Human Rights is *Cyprus v. Turkey* where was claimed that children of Greek-Cypriot parents in northern Cyprus were deprived of the right to continue a secondary education in the Greek language. Although the local authorities offered them to study in a Turkish or English-language schools in the north, the court held the violation of the right to secondary education, as the studies in the north in other language schools were considered unrealistic in view of the fact that the claimant's children received the primary education in a Greek-Cypriot school in the same part of the country⁶⁵³.

In the reports of the international organisations the main attention is given to children as the principle target group of compulsory education. Obviously, the international community cares of the fully enrolment of children to primary education and obtaining by them the basic knowledge and skills which are necessary to lift out of the poverty and improve their living conditions. The World Declaration on Education for All and then the Incheon Declaration are a vivid example of the global policies towards the worldwide spread of the basic education. These declarations are addressed to children and adults without relevant and functional literacy and numeracy proficiency. Illiteracy is assumed to be a challenge of the developing and less economically stable countries what indeed is

⁶⁵² *Sahin v. Turkey*, ECHR, App. No. 44774/98, Judgement, 10/11/2005.

⁶⁵³ *Cyprus v. Turkey*, ECHR, App. No.25781/94, Judgment, 10/05/2001, para.277-278, 280.

almost true⁶⁵⁴. The high rate of population without basic learning skills in African and some Asian countries is one of the most important global problems discussed at the international arena. Nevertheless, illiteracy to some extent threatens to all countries over the world, including developed one⁶⁵⁵. People at different ages may face the challenge to obtain a certain level of education whether it is compulsory primary education or other type of education. In this context, it is worth to remember that accessibility is understood as an access to any level of education for everyone regardless of age, social status or other characteristics.

The European Convention on Human Rights through the legal practice defines that the holders of the right embodied in Article 2 of Protocol 1 to the Convention are not limited to children, but includes also adults and any person wishing to benefit from the right to education. The court considered the claim of a 26-years old man who was detained on remand for over 2 years on suspicion of unlawful possession of firearms. During the time of his detention, he made numerous requests to attend the school operating within the prison in order to complete the secondary education. All of these requests were however refused based on a variety of reasons, in particular that remand prisoners were not entitled to education in prison and that a recidivist prisoner, like the applicant, could not be mixed with prisoners without prior convictions. The court concluded to admit the discrimination against the right to education⁶⁵⁶.

The principles of antidiscrimination law prevail within the various policies of the international organisations and legislation at the regional and global dimension. In view of the fundamental importance of the prohibition of discrimination, the safeguard for everybody to be protected against discrimination is absolute. It is impossible *de jure* to waive the right to non-discrimination under any reason, because it would be counter to a significant public interest. This statement is justified by Article 9 of the Convention against Discrimination in Education that does not permit reservation. *De facto* the limitation of the right to education is permitted.

At this point it is important to underline that the right restriction and discrimination are not identical. On the contrary, they are polar opposites. Although they both imply the

⁶⁵⁴ Based on the UNESCO statistics on literacy in 2016 the rate of literal population at the age of 15-24 in the developing countries amounts to 90.06%, while the developed countries has 99,65% literacy of the population, available at <http://data.uis.unesco.org> [accessed on 23 September 2017].

⁶⁵⁵ M. Motakef, *The human right to education as a right to literacy in Germany*, Convergence, Vol. XL, №.3-4, p. 145. The author says that about 6.3 percent of the population living in Germany is illiterate. Unlike the UNESCO data, the cited amount is vague due to a lack of exact statistic data, different methods of investigation conducted by researchers and various meanings of illiteracy.

⁶⁵⁶ Velyo Velev v. Bulgaria, ECHR, App. No.16032/07, Judgement, 27/05/2014.

inequality in treatment, the justification of the restriction on the right shall be legitimate, i.e. to be supported by reasonable and objective criteria⁶⁵⁷. While discrimination is prohibited, the limitation of the right to education is allowed by law in the conformity of certain conditions. According to Article 4 of the International Covenant on Economic, Social and Cultural Rights “in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”. In a simplified version, the limitation of the right to education which doesn't meet the requirements such as reasonability, the legal background, maintenance of the essence of the right will be considered as discrimination.

In the European dimension the right to education is not seen absolute either. The restrictions on the right to education do exist even though no precise provisions can be found in Article 2 of Protocol 1. Such restrictions take place unless they destroy the essence of the human right and thus make it powerless and ineffective. “In spite of its importance, this right [to education] is not, however, absolute, but may be subject to limitations [...] the Court must satisfy itself that they [restrictions] are foreseeable for those concerned and pursue a legitimate aim, however, there is not an exhaustive list of “legitimate aims”. A limitation will only be compatible with the right to education if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved”⁶⁵⁸. In the mentioned above case *Sahin v. Turkey* the restriction on the right to education pursues a legitimate aim, i.e. to protect the principles of secularism and equality. It will be fair to admit that the matter of the right limitation is much more complicated and complex than it is described above. It is a subject of a separate research with the consideration of the already existing doctrine⁶⁵⁹ and law practice⁶⁶⁰.

Physical accessibility of education is the second element composing the feature of accessibility. It is understood that “education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a “distance learning” programme)”⁶⁶¹. The state's obligation to ensure accessible education is of positive nature and requires

⁶⁵⁷ M. Verheyde, *op.cit.*, p. 38.

⁶⁵⁸ *Sahin v. Turkey*, ECHR, para.154.

⁶⁵⁹ See K. Beiter, *op.cit.*, p.453-459, 518-519. M. Verheyde, *op.cit.*, p.36-47.

⁶⁶⁰ See Guide on Article 2 of Protocol No. 1, p.7-12.

⁶⁶¹ General Comment 13: The Right to Education, para. 6 (b).

administrative, financial or other measures. It can be the provision of transport to and from school, the construction of a building of school at the achievable distance. Such measures are essential for children living in the removed areas and walking daily for long distance to obtain knowledge and skills. However the solution to make education accessible is not always evident, in case of people maintaining the nomadic life the access to educational institutions would require the interdisciplinary strategy. The Committee on the Rights of the Child after the consideration of the regular report from the Polish government recommended “to ensure that rural areas are provided with additional funds to allow them to provide the same quality of education and level of extracurricular programmes as urban schools and to make sure that students from rural areas have access to scholarships that allow them to attend secondary education”⁶⁶².

The principle of accessibility overlaps with the term of inclusive education taking its roots from special education targeted to people with special needs, e.g. disabled, socially disadvantaged, asylum seekers. By inclusion UNESCO views “a dynamic approach of responding positively to pupil diversity and of seeing individual differences not as problems, but as opportunities for enriching learning”⁶⁶³. Inclusive education is something more than merely technical and organisational changes in educational process; it is a global movement, a philosophy of learning and teaching where the diversity of learners is taken into account. Inclusive education encompasses various aspects of education: the entrance to educational institutions and moving around, learning environment including materials and teaching methods, communication and interaction with peers and staff, etc. For the purposes of the current part of the research inclusive education is examined in a narrow context as a physical and administrative access to educational institutions. In the subsequent chapter devoted to the adaptability of education the focus is put on how the educational conditions fit the diversity of learners and their different needs. Thus, the physical accessibility of education consists of the usability of environments, amenities and resources by persons with disabilities. The administrative accessibility of education is understood as admission rules and legislative norms enabling vulnerable groups to become students.

Article 9 of the Convention on the Rights of Persons with Disabilities prescribes to create an accessible environment in all aspects of life, including schools, for people with

⁶⁶² Verheyde *op. cit.* at p. 41 referres to Concluding Observations: Poland, UN Doc. CRC/C/121, 2002, para. 538.

⁶⁶³ Guidelines for Inclusion: Ensuring Access to Education for All, UNESCO, 2005, p.9, 12.

disabilities, it enables them to live independently and participate fully in the life. UNICEF prepared a range of booklets to support its staff and partners in understanding the basic concepts of accessibility related to education. One of the booklets is focused primarily on accessible school buildings⁶⁶⁴, these UNICEF recommendations are aimed to support persons concerned in creation of learning environments friendly for all community with an emphasis on children with disabilities. At the national level there are technical standards for the buildings that will be served as schools or educational institutions. Inaccessible and faulty design of constructions causes the physical and architectural barriers for children with disabilities and their families. The adoption of the construction to the needs of handicapped children or people with low vision seems expensive from the governmental perspective. However, the World Health Organization notes that in a new building “full compliance with all the requirements of accessibility standards is generally feasible at 1% of the total cost”⁶⁶⁵. There are a few examples that make education accessible:

1. Pathways, hallways and doors are wide enough to accommodate wheelchairs;
2. No steps entry to buildings or ramps are provided;
3. Entrance doors are not heavy to open and possess a simple design of door handles;
4. Signs with tactile information and pictograms, e.g. in elevators⁶⁶⁶.

Educational institutions may provide for many accessible features such as ramps, wider doorways and accessible toilets, but if a learner with disability does not have an assistive device to participate in the learning process, he or she is denied the right to education. “Accessible buildings alone are not enough to provide access to education – assistive devices must also be available to support learning”⁶⁶⁷. Assistive devices help people with disabilities to lift an object, to open a book or to learn materials and, thus, to maintain their independence at school and in the society.

With the development of electronic technologies the access to education is not limited to the meaning of its physical or geographical accessibility. Distance learning, mobile applications and massive open online courses ensure the access to education for different target groups, including people with special learning needs. Indeed, digital technologies provide vast opportunities for new collaboration and wide expansion of education beyond

⁶⁶⁴ Access to School and the Learning Environment I – Physical, Information and Communication, Companion Technical Booklet, UNICEF, 2014.

⁶⁶⁵ World Report on Disability, World Health Organisation and the World Bank, 2011, p. 173.

⁶⁶⁶ Guidelines for Inclusion, p. 13-16.

⁶⁶⁷ Ibidem, p. 8.

geographical borders, as knowledge and information can be digitized and transmitted via electronic means of communication⁶⁶⁸. Online education courses, e-books, files and videos streamed by means of Internet play a vital role in making knowledge and new skills achievable and, as a result, in ensuring education accessible. On the other hand, the Special Rapporteur on the right to education expressed his concern regarding a few aspects of education appearing in the digital age. First of all, digital technologies should supplement, but not substitute face-to-face teaching and human interaction. Teachers design the learning materials sensitive to the local values and cultural tradition, while massive online courses are tailored by foreign professors, mainly the Anglo-American academic staff who may be less familiar with the national particularities in other countries⁶⁶⁹. Reading materials or passing online tests cannot replace the learning via personal communication with peers and teachers. As it is mentioned before in the research the government of Germany doesn't provide the right to home schooling in the national legislation, because interactions with peers and thus socialization of children is ensured in the society through the personal communication⁶⁷⁰. Secondly, making education accessible it is worth to remember that quality of such education shall be controlled by the state. For-profit education institutions and private providers of education enter the field and are directed to obtaining profit more than to providing education as a public good⁶⁷¹. Learners face frauds associated with the awarding of degrees that are not recognized or validated⁶⁷². The next, but not less important matter concerns the widening of inequality particularly in poor countries. "Children with disabilities face several barriers in accessing information, as they may need adaptive technologies to use computers, tablets and mobile telephones [...] Children in developing countries who do not attend schools rarely have access to computers."⁶⁷³ Instead of guaranteeing the expansion of the access to learning materials, new knowledge and skills education in the digital age causes challenges to obtain education for children from the less financially developed countries.

The accessibility of education for different levels of education is understood differently. The provisions of the human rights instruments regulating the access to primary, fundamental and secondary education contain the words "to all" and "every

⁶⁶⁸ K. Singh, *Issues and challenges to the right to education in the digital age*, Report of the Special Rapporteur on the right to education, UN Doc. A/HRC/32/37, para.26.

⁶⁶⁹ *Ibidem*, para.56, 59.

⁶⁷⁰ *Konrad and others v. Germany*, EHCR.

⁶⁷¹ K. Singh, *Protecting education*, *op.cit.*

⁶⁷² K. Singh, *Issues and challenges*, *op.cit.*, para. 53.

⁶⁷³ *Ibidem*, para. 42.

child”, “generally accessible”. At the same time the wording on the access to higher education differs. The institutions of higher education usually have only a limited number of available seats for all those who compete for admission. Indeed, the provision stating “higher education shall be made equally accessible to all, on the basis of capacity” implies the state’s obligation to create rather the conditions of equality in the access to higher education than granting the unlimited right to education⁶⁷⁴. This approach is illustrated in different human rights agreements. For example, the Convention on the Rights of Persons with Disabilities states that the right to education should be realized on the basis of equal opportunities, inclusive education is to be ensured at all levels⁶⁷⁵. Requiring from the states parties the assurance of inclusive compulsory primary education for disabled children, the norms of the Convention declare an equal with others access to tertiary education⁶⁷⁶.

On the one hand, the notion of “equally accessible” is seen as the universal principle of non-discrimination in education which can be found at all levels of education. On the other hand, the reference to “on the basis of capacity” causes a competitive access to learning opportunity with consideration of all relevant experience of potential students. In terms of the non-discriminatory access to higher education the international community underlines the importance of creation of equal opportunities for people striving to obtain higher education degree and monitors this issue in the state’s reports.

Taking steps towards the application of fair and equal opportunities in higher education in the European region the Recommendation on access to higher education⁶⁷⁷ and Recommendation on the access of minorities to higher education⁶⁷⁸ were adopted. The access to higher education is not limited to any particular accessibility, for instance economic, but includes a fair admission system and the learning environment that gives equal opportunities to all individuals and groups⁶⁷⁹.

The provisions on the non-discriminatory access to higher education are aligned to the full extent with the main principles of non-discrimination under the international law. Bearing in mind the state’s duty to protect, respect and fulfil the right to education the equal accessibility to higher education requires the affirmative action of the governmental bodies as well as abstention from deprivation of the right. For example, the reduction of

⁶⁷⁴ K. Beiter, *op.cit.*, p.405.

⁶⁷⁵ The Convention on the Rights of Persons with Disabilities, A/RES/61/106, art. 24.

⁶⁷⁶ *Ibidem*, art. 24 para. 5.

⁶⁷⁷ Recommendation No. R (98) 3 on access to higher education, adopted by the Committee of Ministers on 17 March 1998.

⁶⁷⁸ Recommendation on the access of minorities to higher education, adopted by the Parliamentary Assembly on 27 January 1998.

⁶⁷⁹ Recommendation on access to higher education, para. 2.3.

the number of available seats in the higher education institutions with the purpose of the control of the labour market only is not acceptable in the context of the international human rights treaties promoting the access to education on a broad scale⁶⁸⁰. In other circumstances, the state's restriction of the number of students admitted to the institutions of higher education is justifiably permissible with regards of the field of study⁶⁸¹. As a consequence, the restriction on the right to higher education leads to the limited access to the chosen profession and affects the life plan of individuals. Such limitation of the right to higher education may only occur with the fulfilment of two conditions⁶⁸². First of all, the state shall demonstrate that the intake capacity of the educational institutions, in other words human and material resources, is fully exhausted to maintain the same rate of student's admission in the future. Secondly, the main selection criterion of students remains their capacity, but not age, religion or other personal characteristics incompatible with the human rights law.

The states shall eliminate all forms of inequality such as administrative or legislative barriers in obtaining the higher education degree. The national policy shall be aimed at the promotion and expansion of the access to higher education institutions, as the state's obligations is based on the progressive realization of the right to education, including any form of tertiary education. The support for minorities and other vulnerable groups in access to higher education institutions may have the form of quota systems⁶⁸³ or a preparatory programme enhancing the capabilities of graduates to be admitted to the further level of education. To enable the monitoring and validation of the equal access to higher education the international community requires the countries preparing their periodic reports to indicate the number of students of higher education institutions by such criteria as gender, age, national and ethnic origin, social position⁶⁸⁴. This helps to monitor the access to higher education taking into account the prohibited grounds of discrimination. Since the society itself reflects the diversity of its members, the higher education community shall

⁶⁸⁰ The main admission criteria must be merits of entrants, but not the market demands. It is particularly important in the world of free movement when graduates are free to start their professional career abroad.

⁶⁸¹ *Numerus clauses* is a principle enabling the state to limit the number of students who may study in the higher education institutions. Beiter refers to the works of other authors who analyze the case law of the European Court of Human Rights and the exercise of the Article 2 of the Protocol 1. Beiter, *op.cit.*, p. 525.

⁶⁸² *Ibidem*. According to the European Court of Human Rights the limited access to higher education must be justified by necessary and sufficient conditions, i.e. the state intervention to the human rights is prescribed by law, social necessity and proportionality of law limitation are ensured. *See more* Tarantino and others v. Italy, EHRC, App. 25851/09, 29284/09 and 64090/09, Judgement, 02/04/2013.

⁶⁸³ The quota systems in higher education is a controversial topic. It has its supporters and opponents referring to the judicial cases over the world. *See more* Beiter, *op.cit.*, p. 409-412.

⁶⁸⁴ General Guidelines regarding the form and the contents of the periodic reports, para.107.

also illustrate the changes in the social structure welcoming students from different countries, of different nationalities and ethnical groups⁶⁸⁵. When higher education institutions give equal opportunities to academic staff to represent various social groups, it also ensures role models for students of different origin.

At the same time the access to higher education is limited. The enrolment of students to higher education institutions is determined by a kind of selection. The Universal Declaration of Human Rights in Article 26 refers to the “merit” of the student as a criterion of the selection. This characteristic is considered backward-looking and focuses on the results and success in the previous learning experience⁶⁸⁶. The educational institutions usually evaluate the learner’s merit on the basis of the submitted diplomas of the completed level of education and/or the entrance examinations⁶⁸⁷. At the same time the International Covenant on Economic, Social and Cultural Rights along with the Convention on the Rights of the Child refers to the word “capacity”. Capacity may be understood as the ability to understand the learning material and apply the gained skills in the life⁶⁸⁸. However, the Committee on Economic, Social and Cultural rights underlines the fact that “the capacity of individuals should be assessed by reference to all their relevant expertise and experience”⁶⁸⁹. In this regard the capacity encompasses their personal talents, work experience and leadership potential as well as the past achievements during the studies. The meaning of capacity doesn’t cover requirements identifying the state of health or trait of character⁶⁹⁰. Such approach reflects the understanding of capacity as student’s future potential and forward-looking characteristic⁶⁹¹. The latest adopted World Declaration on Higher Education summarizes the ideas of different human rights documents and stipulates that admission to higher education institutions takes place on the basis of “the merit, capacity, efforts, perseverance and devotion shown by those seeking access to it”⁶⁹². Furthermore, it should “take place in a lifelong scheme, at any time, with due recognition of previously acquired skills”. Then, the full scope of human talent and capacity should be taken into account during the admission process in higher education.

⁶⁸⁵ Recommendation on access to higher education, para. 2.2.

⁶⁸⁶ K. Beiter, *op.cit.*, p.97.

⁶⁸⁷ Kinds of capacity assessment can include the school-leaving exams, interview, term of probation or entrance examination.

⁶⁸⁸ P. Arajärvi, *Article 26*, in: G. Alfredsson, A. Eide (eds.), *The Universal Declaration of Human Rights: A Common Standard of Achievement*, Martinus Nijhoff Publishers, 1999, p. 555.

⁶⁸⁹ General Comment 13: The Right to Education, para. 19.

⁶⁹⁰ K. Beiter, *op.cit.*, p. 524.

⁶⁹¹ *Ibidem*, p.97.

⁶⁹² The World Declaration on Higher Education, art. 3.

On the other hand, there are found opponents of the capacity-based approach in provision of an access to higher education. Thus, Royal-Dawson refers to the Rawls's thoughts who argued the selection to the higher education institutions by merit or ability of entrants as the legitimization of inequality⁶⁹³. The discriminative disparities in accessibility of higher education can be found in the Concluding observations of treaty-based bodies. The Committee on the Elimination of Racial Discrimination expresses concern on "psychometric examinations used to test aptitudes, ability and personality, indirectly discriminate against Arabs in accessing higher education" in Israel⁶⁹⁴. The Committee on Economic, Social and Cultural Rights encourages the Moroccan government to ensure teaching of scientific subjects in higher education in Arabic, now it is provided in French only⁶⁹⁵. Pupils completing primary and secondary education public schools in Arabic face a challenge to enrol the higher education institutions. The Committee on the Rights of the Child points out to two facets of accessibility of higher education – excessive competition for access to higher education and eligibility criteria for graduates of foreign schools⁶⁹⁶. Children from poor families can't afford private tutoring to be competitive for entry into higher education, therefore the international community suggests reducing the competitiveness of the universities and maintaining the high quality of secondary education. Regarding the denial access for graduates from foreign schools the government should ensure the principle of equality and non-discrimination on any ground in enrolment.

The principle of accessibility of education encompasses also the financial aspect. The provision of quality education – one of the public services – requires resources that may go from the national budget, right holders and international sources. Some part of the financial burden can lie on the learner's side. Education is considered accessible if everyone can afford it⁶⁹⁷. The financial accessibility of education at different levels varies from free of charge to high fees.

The human rights instruments provides different wording of the accessible education, however the legal practice and legal doctrine clarify the approach and enrich the legal interpretation of the international treaties. The International Covenant on Economic, Social and Cultural Rights proclaims clearly and unconditionally primary education provided immediately free to all and progressively free at the second and higher levels. "Secondary

⁶⁹³ L. Royal-Dawson, *Reflection of a higher education as a human right*, in: C. Russo (ed.), *Handbook of comparative higher education law*, Rowman & Littlefield Publishers, 2013, p. 351.

⁶⁹⁴ Concluding observations: Israel, UN Doc. CERD/C/ISR/CO/13, 2007, para.27.

⁶⁹⁵ Concluding observations: Morocco, UN Doc. E/C.12/MAR/CO/3, 2006, para.30 and 57.

⁶⁹⁶ Concluding observations: Japan, UN Doc. CRC/C/15/Add.23126, 2004, para.49.

⁶⁹⁷ General Comment 13: The Right to Education, para. 6(b) (iii).

and higher education shall be made generally accessible to all by every appropriate means, and in particular by the progressive introduction of free education” is stated in Article 13. Article 4 of the Convention against Discrimination in Education recognizes that primary education should be free, but doesn’t apply the same approach to other levels of education. The similar, but not the same, idea is included in the Convention on the Rights of the Child, however in the legal doctrine it can found debates on the lack of the strong protection of the right to education under the Convention⁶⁹⁸. Like the International Covenant the Convention on the Rights of the Child emphasises the requirement of free to all primary education, at the same time the state parties can fulfil this obligation progressively, in contrast with the International Covenant’s provisions which require the immediate realization of the right⁶⁹⁹. At the level of secondary education the usage of word “to encourage development” in the Convention on the Rights of the Child reveals the uncertainty and in some extent weakness of the international community while requiring the fulfilment of the international state’s obligations. Moreover the phrase “such as” in comparison with “in particular” in the introduction of secondary education without costs is understood merely as one of the examples of how education could become accessible to all children⁷⁰⁰. The state may choose other way to ensure accessible education without the reduction of the financial burden on families and will be compliant with the international rules. The main difference of these two treaties is illustrated at the level of higher education. The Convention on the Rights of the Child is silent on either progressive implementation of free higher education or any other state’s duty regarding the cost of education. The differences in the implementation and exercise of these human rights instruments are eliminated by the statement enshrined in Article 41 of the Convention on the Rights of the Child. The clause sets that if other national or international law in force defines the higher standards than those in the Convention the more favourable provisions shall be applied. Thus, the realization of the right to education from the perspective of its financial accessibility is more conducive under the International Covenant on Economic, Social and Cultural Rights and these provisions are taken into account with the priority during the interpretation of the accessibility of education.

In the European dimension it is fair to take into consideration also the norms of the European Convention on Human Rights. Although Article 2 of the Protocol 1 doesn’t

⁶⁹⁸ M. Verheyde, *op.cit.*, p.10.

⁶⁹⁹ *Ibidem.*

⁷⁰⁰ *Ibidem.*

possess any clause regarding the financial aspect of education, the legal practice of the European Court of Human Rights demonstrates its position on this issue. In the case *Ponomaryovi v. Bulgaria*⁷⁰¹ the court re-affirmed a wide margin of appreciation of the European states in deciding on the general measures of social and economic strategy, including the regulation of the right to education within the country. The financial side of the access to education is regulated by the national authorities either, they may introduce fees or on the contrary reduce them for certain groups of population pursuing the legitimate reasons. “It is true that education is an activity that is complex to organise and expensive to run, whereas the resources that the authorities can devote to it are necessarily finite. It is also true that in deciding how to regulate access to education, and in particular whether or not to charge fees for it and to whom, a State must strike a balance between, on the one hand, the educational needs of those under its jurisdiction and, on the other, its limited capacity to accommodate them”⁷⁰². Bearing in mind the different levels of education and, what is more important, the aims of education being conceived at those levels the court concluded that the liberty of governmental agents determining the financial accessibility of education “increases with the level of education, in inverse proportion to the importance of that education for those concerned and for society at large”⁷⁰³. Hence, the high fees for the university education that is optional learning for the majority of population become customary nowadays and can be deemed fully justified. The primary and often secondary education is compulsory and free of charge to all persons living or residing in the European countries⁷⁰⁴, because these levels of education provide basic literacy and numeracy skills as well as support the integration into society.

Free of charge education doesn't mean that it is costless, the teacher's work shall be paid, schools are maintained and learning materials shall be provided anyway, however the burden of financial support of education shall not be borne by the child, parents or guardians only. In fact, certain public services such as health care and education are financed through the system of general taxation⁷⁰⁵, in other words all population responsible for paying taxes contributes to the maintenance and provision of education to those who may concern. Moreover, free education means that the right holders are exempted from “indirect costs, such as compulsory levies on parents (sometimes portrayed

⁷⁰¹ *Ponomaryovi v. Bulgaria*, ECHR, App. No. 5335/05, Judgment, 21/06/2011, para.52, 54-55.

⁷⁰² *Ibidem*, para.55.

⁷⁰³ *Ibidem*, para.56.

⁷⁰⁴ *Ibidem*, para.36.

⁷⁰⁵ K. Beiter, *op.cit.*, p. 490.

as being voluntary, when in fact they are not), or the obligation to wear a relatively expensive school uniform”⁷⁰⁶.

In order to guarantee free primary education and make steps towards progressively free education at higher levels the states shall allocate sufficient budget and distribute the enough recourses to the educational spending. By Beiter, the realization of economic, social and cultural rights at the national level requires that at least 30 per cent of gross domestic product is composed by the tax revenue, most countries impose and enforce taxation upon their population⁷⁰⁷. The second important condition is that the budgetary expenditures are appropriately allocated to various budgetary items. The Special Rapporteur on the right to education suggests allocating 5-7 per cent of the state budget to education⁷⁰⁸. However many countries contribute to education less⁷⁰⁹. Undoubtedly, the decision to increase the spending on public services needs mainly the political will and is not always met with the vision of the government. Though the change of allocation of budget spending would be a proper solution for combating some social problems. Thus, the policy-makers and educators in the USA point out to a discrepancy of costs of the maintenance of the prison system and education. “In California, they are spending more money on the prison system than on their universities. There are more young Black men in prison than there are on college, even though it costs more to keep them in prison for a year than it would be to send them to college for a year”⁷¹⁰. Another important issue is the distribution of funds within the budget item allocated to education. The spends on primary education are to be in a priority of all educational expenditures, however in many countries the part of budget expenditures assigned to higher education is larger than to other levels of education, in some cases it exceeds 1.000 times the cost of primary education⁷¹¹. Such allocation is explained as so university students are heard by the policy-makers while primary school children don’t take part in the political life of the country. That is why the spending on the latter are reduced in the budget.

As it is mentioned above the economic accessibility of the right to education stipulates the progressive fee exemption at all levels of education. In fact, what we can observe nowadays is an opposite tendency in the world, it is the retrogressive measures in the form

⁷⁰⁶ General Comment 11: Plans of action for primary education, para. 7.

⁷⁰⁷ K. Beiter, *op.cit.*, p. 491.

⁷⁰⁸ Preliminary report of the Special Rapporteur on the right to education, UN Doc. CN.4/1999/49, para.34.

⁷⁰⁹ Beiter, *op.cit.*, p. 491. *See also* Expenditures on education as % of GDP, UNESCO Institute for Statistics, available at <http://data.uis.unesco.org> [accessed on 27 December 2015].

⁷¹⁰ A. Nash, *Through the Lens of Social Justice: Using the Change Agent in Adult Education*, 2006, p.90.

⁷¹¹ Preliminary report of the Special Rapporteur on the right to education, UN Doc. CN.4/1999/49, para.37.

of the introduction or growth of study fees at the secondary or higher level of education. At the first glance it constitutes a violation of the right to education, particularly Article 13 (2) (b-c) of the International Covenant on Economic, Social and Cultural Rights where the clear and unequivocal provision requires “progressive introduction of free education”. Such kind of actions denies or limits the access to education for students from low-income families and thereby undermines the essence of the human right to education. However, in virtue of Article 4 of the International Covenant on Economic, Social and Cultural Rights the limitation of human rights and freedoms is permitted with satisfaction of certain conditions. Firstly, the states shall justify that the restriction on the right is not contradictory with the nature of rights and freedoms. In case of the right to education or any other economic, social and cultural rights at least the core minimum of the right must be preserved and maintained so far as it constitutes the essence of the rights. The next, the right limitation is based on the law only. And the last condition is the reasonability of the right restriction, in other words the state must justify the legitimate purpose of the introduction or increase of the study fees in a democratic society. The fee-based secondary or tertiary education is compliant with two first conditions, the third requirement is the subjective justification and shall be considered by the international community in a case-to-case manner. For example, states can legitimate the growth of the expenses on study and as a consequence the increase of fees by to the economic crisis or economy stagnation. Even by using the all available resources inside the country or outside the introduction of fees inevitable in order to maintain the quality of education on the same level⁷¹².

Despite of the financial situation in the country and other legitimate reasons the states must bear the duties spelled out in the human rights treaties which member parties they are. In pursuance of the International Covenant on Economic, Social and Cultural Rights and its clause on progressive realization of free higher education the countries where primary and secondary education is already provided for free are higher encouraged to do the same in higher education or reduce tuition fees⁷¹³.

At the same time, some authors consider the matter of study fees a controversial issue in the light of the human rights. Beiter expresses the opinion that the introduction of study fees is permissible only in the situation when they are emerged to improve the quality of provided education, but not the maintaining the whole system of education. That is

⁷¹² K. Beiter, *op.cit.*, p.387.

⁷¹³ Concluding observations: Germany, UN Doc. E/C.12/DEU/CO/5, 2011, para. 30. Concluding observations: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories, UN Doc. E/C.12/GBR/CO/5, 2009, para. 44.

possible in the case when fees are managed and collected directly by the education providers. On the other hand the liberty of educational institutions to introduce the fee for learning creates a background for the segregation of institutions for the elite who can afford the high fees and for students from families with low income who will have an access to institutions with education of lower quality⁷¹⁴. Gebert disagrees with the state's justification to relocate the financial burden on the learners' shoulders in the times of economic crisis. He refers to the International Covenant on Economic, Social and Cultural Rights as a principle document that is served to protect the human rights and to guarantee respect for achieved standards when the economy is unstable⁷¹⁵.

Regardless of the state's justification of the application of the retrogressive measures towards the right to education the international law requires to protect students from poor strata of population and learners in need⁷¹⁶. In the General Comment 3 the Committee on Economic, Social and Cultural Rights affirms that "even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes"⁷¹⁷. The safeguard of the right to education of learners in need can be in the form of a fee waiver, adequate fellowship or a student loan with favourable conditions. Moreover, the fellowship system is a means to enhance the equal access to education for disadvantage groups in any situation, not limiting to the case of the restriction of the right to education. This is one of the state's obligations within the scope of the human right to education⁷¹⁸.

The last but not least aspect of accessibility of education is the academic recognition of diploma, degrees and periods of study undertaken abroad. The right to education defines in the large extent the future of individuals. The functions of education have been already presented earlier in the research. They stretch from the formation of the social and spiritual culture to the economic development and political literacy of human beings. The value of the formal education is implied in the received diploma or obtained degree. Beyond the

⁷¹⁴ K. Beiter, *op.cit.*, p.388.

⁷¹⁵ *Ibidem*, p.388-389.

⁷¹⁶ Committee on the Rights of the Child raised the issue of the financial accessibility of higher education in a number of member states. Concluding observations: Japan, UN Doc. CRC/C/15/Add.23126, 2004, para.49. Concluding observations: Indonesia, UN Doc. CRC/C/IDN/CO/3-4, 2014, para.53. Concluding observations: Republic of Korea, UN Doc. E/C.12/KOR/CO/3, 2009, para. 33

⁷¹⁷ General Comment 3: The nature of States parties' obligations, para. 12.

⁷¹⁸ Article 13 (2) (e) of the International Covenant on Economic, Social and Cultural Rights, Article 28 (1) (b) of the Convention on the Rights of the Child. To the opinion of Hodgkin and Newell this supporting measure reveals a minimum obligation for States Parties to ensure equal access and opportunities in higher education. M. Verheyde, *op.cit.*, p. 23.

obtained professional knowledge and sharpened practical skills, higher education stipulates the future career path in the profession. The completion of the lowest level of education grants the possibility for further intellectual growth within sciences. Nowadays in the time of free movement of people the international development and cooperation within the realms of education is rather a requirement than a recommendation of the economic development of the country and the social transformation of the community towards diversity. Children may start the primary education in one country and continue the secondary or higher education in others, the graduates with the university diploma may like to migrate abroad for obtaining the professional experience in the country different from the country of study.

Recognition of foreign qualifications may be required for either academic purposes or employment reasons. Then, the process of recognition for different purposes is regulated by different legal treaties. The academic recognition of foreign diplomas with the goal to continue education in the country different from the state of the completed degree is mainly regulated by bilateral agreements or in virtue of the national legislation. Within the European region the discussions on the mutual recognition of qualifications and equivalence of diplomas and periods of study started in 1953 and still remain the important topic of international meetings of the policy makers.

The Council of Europe in cooperation with the UNESCO constantly works on the introduction of easily readable and comparable scientific degrees concerning higher education and resulted in the following international treaties:

- European Convention on the Equivalence of Diplomas leading to Admission to Universities (1953) and the Protocol to the Convention (1964),
- European Convention on the Equivalence of Periods of University Study (1956),
- European Convention on the Academic Recognition of University Qualifications (1959),
- European Agreement on continued Payment of Scholarships to students studying abroad (1969),
- European Convention on the General Equivalence of Periods of University Study (1990)⁷¹⁹.

⁷¹⁹ The international treaties are available in the database of the Council of Europe through the search by subject matter “higher education” at <http://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/results/subject/40> [accessed on 08 October 2017].

The general provisions on the mobility, recognition of foreign qualifications and international cooperation, not limited to higher education, can be found in the Treaty on European Union⁷²⁰. Article 149 creates an obligation for the states of the community to contribute to the enhancement of the quality education through encouraging the academic recognition of diplomas and periods of studies, promoting the cooperation and exchange of information concerning education between countries and educational establishments. The Convention on Technical and Vocational Education encourages the member states in “achieving the recognition of equivalencies of qualifications acquired through technical and vocational education”⁷²¹.

The latest achievement of the international community is the adoption of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region⁷²². It constitutes the legal framework in the matter of recognition of diploma, degrees and qualifications and replaces the international documents mentioned above. Although the Convention refers in the title to the European Region its ratification and application goes beyond the geographical territory of Europe. Thus, among the country-members one can find Australia, New Zealand and non-members of Council of Europe – Belarus, Kazakhstan, Tajikistan, Kyrgyz Republic⁷²³. The Convention aims at facilitating the academic and professional recognition of study, obtained degrees and other awards granted in one country by another countries. Hence, citizens can effectively apply their qualifications, competencies and skills throughout Europe. Such recognition improves transparency and flexibility of the higher education systems and fosters employability. As a result, graduates draw profit from education received and may care of personal development through lifelong learning.

The Convention is not considered as a document of the direct application in case of the recognition of qualifications, but serves as the guidelines on the main principles of assessment of foreign qualifications⁷²⁴. The international treaty creates the list of rules that make the recognition of qualifications regardless of the country where it happens transparent, just and reliable. Among the main points the Convention states the following:

⁷²⁰ Adopted in 1992.

⁷²¹ Article 6(c). The Convention was adopted in 1989 by UNESCO.

⁷²² It was developed by the Council of Europe and UNESCO and adopted in Lisbon on 8 - 11 April 1997, that is why it is often referred as the Lisbon Recognition Convention.

⁷²³ Chart of signatures and ratifications of the Convention, available at http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/165/signatures?p_auth=lakhVopc [on 08 October 2017].

⁷²⁴ H.Reczulska, *Uznawanie zagranicznych dyplomów i stopni*, Forum Akademickie, 2009, nr.10, s.35.

i) Graduates with certain diploma or degree obtained in one country shall have adequate access to the validation of these qualifications in another country⁷²⁵.

ii) Foreign qualifications corresponding to the similar qualifications in the system of country-assessor shall be recognised by this state. If the sufficient differences are found the burden of proof that the application does not meet the requirements lies with the body undertaking the assessment⁷²⁶.

iii) The member states have a duty to provide information on the institutions and programmes of higher education⁷²⁷. Moreover, the national informational centre where interested parties such as students, graduates and employers may be advised on the recognition of foreign qualifications shall be created.

iv) The national higher education institutions shall be encouraged to issue the Diploma Supplement which is considered an instrument enabling the easy understanding of foreign qualifications and the higher education system where it was issued.

For the support to implement the Convention in various countries a special intergovernmental committee was set up which is entitled to adopt recommendations and clarifications to the international treaty⁷²⁸. Among the soft law sources which were adopted by the Committee it is worth to mention Recommendation on International Access Qualifications⁷²⁹, Recommendation on Criteria and Procedures for the Assessment of Foreign Qualifications⁷³⁰ in the revised version, Code of Good Practice in the Provision of Trans-national Education⁷³¹, Recommendation on the Recognition of Joint Degrees and its Explanatory Memorandum⁷³².

The recognition of degrees, qualifications and periods of study would be impossible without the common approaches in provision of education in various countries. The background for the system of “easily readable and comparable” degrees and studies was founded in virtue of the international agreement of 29 European countries commonly known as the Bologna Declaration⁷³³. Although the Bologna Declaration doesn’t regulate

⁷²⁵ Section III of the Convention.

⁷²⁶ Section VI of the Convention.

⁷²⁷ Section VII-IXI of the Convention.

⁷²⁸ Article X.1 of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region.

⁷²⁹ Adopted in 1999.

⁷³⁰ Adopted in 2001, revised in 2010.

⁷³¹ Adopted in 2001.

⁷³² Adopted in 2004.

⁷³³ The Bologna Declaration was adopted by the ministers of education of the European countries in 1999. It stipulates the creation of the European Higher Education Area within which students and academic staff can move freely for study, research and other academic activity mutually acceptable between countries.

directly the recognition of the international qualifications it is considered a guiding document of the European dimension which laid down the principles of accessibility of education.

The common approaches in education leading to the mutual recognition of qualifications, degrees and periods of study don't mean identical systems of education provided according to the national legal regulations. On the contrary, UNESCO and the international community underline the respect for the diversity of national educational systems and dismiss the possibility of harmonisation of national particularities⁷³⁴. As a result, disputes concerning the recognition of studies occurred and the cases were brought to the European Court of Human Rights. The issue of recognition of school-leaving certificate of the secondary education is considered in the Belgian linguistic case⁷³⁵. The Turkish applicant, a medical doctor, sought to obtain the recognition of the length of a specialised medical training that she underwent in Bulgaria, but the Ministry of Health of Turkey refused her request because the required conditions defined by the national law were not satisfied. The court found no violation of the right to education⁷³⁶.

Bearing in mind that the aim of formal education is to provide learners with practical skills and knowledge to access a qualified job the recognition of foreign diploma and periods of study for employment purposes is considered essential to ensure the access to the labour market and, hence, living with dignity. Moreover, the European Court of Human Rights underlines that the right to education is effective if the beneficiary can draw profit from the education obtained, in other words the right to education includes the right to obtain any form of official recognition of the studies that have been completed in the country in conformity with the rules of the state⁷³⁷. Recognition of foreign qualifications to pursue a regulated profession in another country on the same conditions as its nationals is seen important in the time of free movement and globalization. It is regulated by other legal documents and for some professions such as dentist, doctor or lawyer is defined by separate acts. Within the European Union dimension the Directive of the European Parliament and of the Council clarifies the requirements on the recognition of professional qualifications⁷³⁸.

⁷³⁴ *The history of European cooperation in education and training. Europe in the making – an example.* European Commission, 2006, p.67.

⁷³⁵ Belgian linguistic case, ECHR, App. No. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64, Judgement (Merits), 23/07/1968.

⁷³⁶ *Kok v. Turkey*, ECHR, App. No. 1855/02, Legal summary, 19/10/2006.

⁷³⁷ Belgian linguistic case, para.4.

⁷³⁸ The Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications.

Summarizing the content of the accessibility of education it is worth to admit its versatile scope. The principle of accessibility implies the prohibition of discrimination on any ground, economic, physical and geographical accessibility, the recognition of foreign qualifications enabling the access to the labour market or further study. All aspects of the principle of accessibility shall be treated with the equal importance, because each of them ensures the access to education to a particular group of population, e.g. disabled children, migrants and refugees, learners from the rural areas or poor strata of population. Together all elements of the principle of accessibility make education reachable for everyone, thereby it meets the expectation of the international community defined in the Sustainable Development Goals.

Although the right to education belongs to the group of economic, social and cultural rights which are supposed to be realized progressively and within the availability of state's resources, the prohibition against discrimination enshrined in various international treaties, including the Convention against Discrimination in Education, applies fully and immediately to all levels of education. Only the effective struggle with the facts of discrimination may ensure the accessible education for all. In this context it is important to underline that state shall perform its obligations to respect, protect and fulfil of the human rights in a full extent. Over the world the deprivation of the right to education takes place due to the activity of parents and legal guardians, the decisions of managing agents of educational institutions and also by the state educational policy. That is why the performance of the triple obligations of the state in the realm of education is not a theoretical subject matter, but a safeguard of the realization of the right to education.

In the light of the international law the scope of accessibility of education varies at different levels of education. The international human rights instruments require the accessibility of primary and secondary education to all whereas higher education is accessible on the basis of capacity of learners. Half a century ago higher education used to be seen as a luxury and low percentage of population with the scientific interest enrolled higher education institutions. Nowadays higher education is considered more a necessity, than a benefit, however it still remains a luxury in many countries. Not surprisingly, the international community encourages the states to "establish, where appropriate, the legislative, political and financial framework for the reform and further development of higher education in keeping with the terms of the Universal Declaration of Human Rights,

which establishes that higher education shall be accessible to all on the basis of merit”⁷³⁹. In order to eliminate the obstacles to access higher education the states introduce fellowship programmes, provide a certain number of state-subsidized places, promote the distance learning and introduce other measures to ensure accessible higher education.

The last but not least, accessibility is understood in a broad sense as a possibility to enter the educational institutions, to enjoy its infrastructure and learning environment, but also to possess an access to information, i.e. books, printed and online materials, films, website resources etc. In the digital era education is provided in the various forms, i.e. online courses, mobile application etc. No detracting from the merit of face-to-face teaching, education via electronic means of communication shall be aimed to expand the access to professional knowledge and skills for broader sector of the society, including people with disabilities.

4.3. Acceptability

The third characteristic of education according to human rights law is acceptability. This refers to the form and substance of education, including curricula and teaching methods applied in educational activities⁷⁴⁰. First of all, the term of “acceptability” means that education, i.e. its content, is relevant and culturally appropriate to students and in some situations to children’s parents or guardians. Secondly, the good quality of education is ensured by the minimum educational standards approved by the state. Thirdly, the delivery of education which covers the language and method of instructions occurs in a way consonant with the human dignity of learners, their cultural diversity. The last but not least is that learning environment assures the active participation of learners in the educational process. They are allowed to express their opinion on the matters affecting them in education, including being active learners. Both the content of education and a way of its transfer to learners are to be compliant with the educational aims defined in the principal human rights instruments.

The content of education at all levels is laid down in the broad margin of appreciation of the state. The content of education covers curricula and the content of textbooks. Education is supposed to be good by its nature, however the history of mankind gives examples when by means of education stereotypes and prejudices were generated and

⁷³⁹ The Framework for Priority Action for Change and Development of Higher Education, adopted with the World Declaration on Higher Education for the Twenty-First Century on 9 October 1998, ED-98/CONF.202/4.

⁷⁴⁰ General Comment 13: The Right to Education, para. 6 (c).

spread in the society giving the roots for genocide⁷⁴¹. Although the substance of education at all levels is left at the discretion of the state, the human rights instruments create a kind of framework or guidelines in the form of educational aims to which education shall be directed.

The educational programme shall be drafted such to ensure the development of personality, dignity and social values of human beings. Respect for human rights and fundamental freedoms, promotion of peace, tolerance and understanding of diversity in the world shall be a key element of any education. The content of education shall be aimed at the maintenance of the national identity, discovery and respect for national values. Care and respect for environment where people live and further descendants will exist is also the aim of education. Educational objectives defined in the international treaties serve a safeguard to ensure that the content of education in some extent enhances and “honours basic human rights values”⁷⁴², on the other hand they maintain the balance between the state’s discretion, the rights of learners and the generally recognized values.

At the same time international law outlines the main learning outcomes of education at each level leaving the main task to compose the programme and fill in it with the content to the governmental bodies. Primary education shall provide learners with basic learning needs which consist of essential learning tools and the basic learning content. The World Declaration on Education for All clarifies how to perceive learning tools and content. Literacy, oral expression, problem solving and numeracy compose the essential tools whereas knowledge, skills, values and attitudes are part of the educational content⁷⁴³. During secondary education students are prepared to further levels of education – vocational and higher education – by consolidating the basis for lifelong learning and human development⁷⁴⁴. In the realm of higher education the content is the least regulated

⁷⁴¹ Beiter refers to the situation in Rwanda when education created and reinforced Hutu-Tutsi prejudices. The scientific data was used to demonstrate differences of ethnical groups by appearance and to prove the theory of the territory invasion. K .Beiter, *op.cit.*, p. 493. Another example of manipulation of the human mind through education happened in Nazi Germany. The content of textbooks and curricula were passed through strict centralised censure of the ruling party and Ministry of education. Children spent more time in school or in the youth camps, hence time with family who might affect the children outlook was restricted to the least. Г. Д. Фадеева, Л. А. Железняков, *О молодёжной политике в Германии в 1933–1945 гг.*, Молодой ученый, 2013, №10, с. 449-450.

⁷⁴² K.Beiter, *op.cit.*, p. 493.

⁷⁴³ World Declaration on Education for All, Framework for Action to Meet Basic Learning Needs, Jomtien, Thailand, 5-9 March 1990, art.1.

⁷⁴⁴ M. Verheyde, *op.cit.*, p. 29.

by the state in order to guarantee academic freedom and institutional autonomy of educational entities⁷⁴⁵.

The facet of acceptability refers to the content of education in a broad sense. It means that the content of textbooks used for learning shall be relevant and adequate to age, cultural background of students. In pursuance of the educational aims the content of textbooks shall develop the human dignity and personality, not hiding the diversity of learner's origin, their social class, religious ideas or nationality. The Special Rapporteur on the right to education admits that the fairness, neutrality and accuracy are to be the main characteristics of textbooks⁷⁴⁶, otherwise students won't be able to recognize manipulation and to protect themselves against the facts of bias, prejudice and even propaganda. The censorship of textbook by the government is often happened, the better solution is proposed to be textbook screening by independent experts⁷⁴⁷.

In the legal doctrine the state is called a regulator of the right to education⁷⁴⁸. The legal practise re-affirms this point in the Belgian linguistic case stating that "the right to education [...] by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals"⁷⁴⁹. Indeed, the governmental agents play the important role of a controller to ensure education of good quality and make it culturally appropriate for minorities and indigenous peoples. Thereby the state executes its duty to fulfil (facilitate) the right to education⁷⁵⁰. The human rights documents states that regulatory function is performed by setting up by the state the minimum educational standards⁷⁵¹. "Standards must be formulated to safeguard the safety and health of students in schools, to ensure that education is of good quality, that it satisfies essential learning needs and that it respects the cultural background of students"⁷⁵². The Committee on Economic, Social and Cultural Rights comments that such standards may also relate to curriculum, the rules of admission and the recognition of certificates⁷⁵³. Minimum standards may also regulate the teacher qualification, educational institution buildings and equipment. What is more important is

⁷⁴⁵ General Comment 13: The Right to Education, para. 38-40.

⁷⁴⁶ K.Beiter, *op.cit.*, p. 494.

⁷⁴⁷ *Ibidem*.

⁷⁴⁸ *Ibidem*, p. 492. K. Tomasevski, *op.cit.*, p.29.

⁷⁴⁹ Belgian linguistic case, para.5.

⁷⁵⁰ General Comment 13: The Right to Education, para. 50.

⁷⁵¹ Article 13 (3), (4) of the International Covenant on Economic, Social and Cultural Rights, Article 29 (2) of the Convention on the Rights of the Child, Article 2 of the Convention against Discrimination in Education.

⁷⁵² K. Beiter, *op.cit.*, p. 492.

⁷⁵³ General Comment 13: The Right to Education, para. 29.

that these educational standards must be in conformity with the educational aims defined in human rights treaties. The state's duty as a regulator doesn't complete at the moment when a private institution is open. The effective and transparent system of monitoring shall be created and functions throughout all period of educational process provided in private entities⁷⁵⁴.

The principle of the acceptability of education is often a subject of consideration by the European Court of Human Rights in the connection with the parent's liberty to choose the kind of education for their child according to their convictions. Almost all human rights treaties regulating the right to education affirm the state's obligation to respect for parental freedom to have their children educated in conformity with their religious, moral or philosophical convictions⁷⁵⁵. Nevertheless, this provision produces endless controversies clarified in the judicial procedure and by the decisions of the Human Rights Committee considering individual complains.

Human rights law acknowledges that education meets the criterion of acceptability if each of two conditions is available. The first one is resulted from the state's obligation to respect parental convictions within the public schools. The second requirement to admit education acceptable is to ensure the right of parents and other entities to choose schools different from the state-run ones. The latter one is complimented with the liberty of individuals and legal entities to establish and run private educational institutions.

The position of the international community is clear on the subject matter how the content and instructions of specific school subjects shall be consistent with the parental religious, moral and philosophical ideas. The subjects may relate to history of religions and ethics⁷⁵⁶ as well as sexual education⁷⁵⁷. The state must "take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that

⁷⁵⁴ Ibidem, para. 54.

⁷⁵⁵ Such provisions are found in Article 13 (3) of the International Covenant on Economic, Civil and Social Rights, Article 2 of Protocol No. 1 to the European Convention on Human Rights. The Convention on the Rights of the Child doesn't have the explicit reference to the parental freedom to select the type of education for their children, however it can be derived from the interpretation of Article 5 and 14 (2). M. Verheyde, *op.cit.*, p.47.

⁷⁵⁶ General Comment 13: The Right to Education, para. 28. Appel-Irrgang and Others v. Germany, ECHR, App. No. 45216/07, Judgement, 06/10/2009.

⁷⁵⁷ Jimenez Alonso and Jimenez Merino v. Spain, ECHR, App. No. 51188/99, Judgement, 25/05/2000. Dojan and Others v. Germany, ECHR, App. No. 319/08, 2455/08, 7908/10, 8152/10, 8155/10, Judgement, 13/09/2011.

must not be exceeded”⁷⁵⁸. The requirement of an objective and pluralistic curriculum is exhibited in the position of Human Rights Committee either⁷⁵⁹.

The content of education is mainly meant that all educational activities run within the school building. Nevertheless, some activities may occur outside of the territory of the educational institution if they are still directed towards educational objectives. The European Court considered a few cases and decided whether there was a violation of the right to education when children were obliged to parade on holidays outside the school territory on pain of suspension from school. The presence of military people during the parade was a subject of indignation of the parent whose philosophical and moral convictions support the peaceful existence. The Court’s decision was very precise and unequivocal. If such parades serve for pacific objectives and the satisfaction of public interest the obligation of children to participate in it won’t violate the parental freedom to bring up children in conformity with religious or philosophical convictions⁷⁶⁰.

As it has been mentioned earlier human rights are interrelated and interdependent. The right to education provided in line with religious, moral or philosophical convictions shall be considered in the context of other human rights, such as the right to privacy and the general principle of non-discrimination applicable to all human rights and freedoms without any exemption. Seeking to provide education that is consistent with the parental freedom of convictions the state may produce the education policy requiring to inform the school administration the faith and belief of the child. According to the Committee on the Rights of the Child⁷⁶¹ and the European Court of Human Rights⁷⁶² such policy may infringe human rights.

In this context it is important to pay attention to the increasing role of the concept recognizing a child as a holder of the human rights. In the legal theory the acceptability of education is seen from the perspective of interests of pupils and students. In the existing jurisprudence the wordings “parental liberty” and “the right of parents to ensure education...with their own convictions” create a background for the scientific polemics on

⁷⁵⁸ Kjeldsen, Busk Madsen and Pedersen v. Denmark, para.53.

⁷⁵⁹ Hartikainen v. Finland, Human Rights Committee, Communication No. 40/1978, 30/09/1978, para. 10.4.

⁷⁶⁰ Efstratiou v. Greece, ECHR, App. No. 24095/94, Judgement, 18/12/1996, para.32. Valsamis v. Greece, ECHR, App. No. 21787/93, Judgement, 18/12/1996, para.31.

⁷⁶¹ Concluding Observations: Norway, UN Doc. CRC/C/29, 1994, para. 162 and 176.

⁷⁶² Parents were obliged to inform the school authorities of their religious or philosophical convictions. The court admits this was an inappropriate means of ensuring respect for their freedom of conviction. Hasan and Eylem Zengin v. Turkey, ECHR, App. No. 1448/04, Judgement (Merits and Just Satisfaction), 09/10/2007, para. 75-76.

whether the right to education is parents' or children's right⁷⁶³. Indeed, parental influence in realm of education is displayed in different ways, e.g. parents can choose school for their children, they participate in the school life and activities, parents are granted a right to establish independent schools based on religious or philosophical beliefs, etc. On the other hand, it is a natural duty of parents towards children to be responsible for education and teaching of their dependent children⁷⁶⁴. Parents act as agents on behalf of and for benefit of their children until they can act independently. From the nature of human rights the right to education belongs to children itself.

Realizing the right to education parents must exercise it in the interests of their children. The right of parents or guardians in education shall be seen as balance against the state power⁷⁶⁵. This idea is confirmed by the concurring opinion to the decision on the case *Kjeldsen, Busk Madsen and Pedersen v. Denmark* „It is hardly conceivable that the drafters [of the Convention] would have intended to give parents something like dictatorial powers over the education of their children”⁷⁶⁶. The international community agrees that human rights law defends the children's right to education from the state abuse of power through parental activities. At the same time parents don't have a right to educate their children according to their [parental] interests only⁷⁶⁷. When the child is mature he or she may take a decision on its own. Thus, the Committee on the Rights of the Child expresses its concern when parental consent is required to ensure the student's attendance of ethics course instead of religious classes⁷⁶⁸. Hence, free choice of education in line with religious and moral convictions is not an exclusive prerogative of parents, the voice of the child must be also heard.

To establish and rule the private schools is the second component of the freedom aspect of the right to education. It demonstrates the comprehensive, but limited role of the state in realization of the right to education. The government shall not be seen a monopoly in education. In fact, international law grants to subjects different from the state two

⁷⁶³ T. Englund, A.Quennerstedt, N. Wahlstrom, *Education as a human and a citizenship right – parent' rights, children's rights, or...? The necessity of historical contextualization*, Journal of Human Rights, 8, 2009, p.133-138. V. Bueren, *Internationla law on the rights of the child*, Martinus Nijhoff Publishers, 1998, p.72-86, 232-245.

⁷⁶⁴ *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, para.52.

⁷⁶⁵ K.Beiter, *op.cit.*, p. 558-559.

⁷⁶⁶ *Ibidem*.

⁷⁶⁷ The violation of the right to education by parents has been explicitly recognized by the European Court of Human Rights as a breach of law. Though the situation when parents don't violate the right, but disagree with the child's decision concerning the right to education has not been clearly clarified. M. Verheyde, *op.cit.*, p.48.

⁷⁶⁸ Concluding Observations: Poland, UN Doc. CRC/C/15/Add.194, 2002, para. 33.

interrelated rights – the parental right to choose a private school⁷⁶⁹ and the right to establish and direct educational institutions⁷⁷⁰. The latter right belongs to all – persons with different family status and legal entities, while the right to choose education is parental in virtue of the natural duty of parents and guardians to care of children. These rights are interdependent, because the right to choose for children a private school is meaningless if the establishment of private educational institutions where the content of education and methods of teaching differ from those in the public school is prohibited⁷⁷¹.

Human rights law applies the wording “to respect the parental freedom” what itself supposes the negative obligation of the state, in other words the government shall refrain from undue intervention into realization of human rights. The negative obligations of the state, e.g. in case of political rights, are costless and can be realized immediately, whereas the positive duties are time-consuming and require the financial support in realization. The parental liberty to choose or establish educational institutions different from public ones is not perceived as the strict negative obligation. Beiter points out to Article 18 (4) of the International Covenant on Civil and Political Rights which repeats the right of parents to ensure education for their children in conformity with their convictions⁷⁷². It looks unusual that the same right is set up at the same time in two different treaties that gave origin to human rights different by their nature. It would be logically to agree with the position expressed by the European Court of Human Rights. The parental freedom to choose or establish school is the negative undertaking with some positive duties on the side of the state⁷⁷³. The state shall enable poor parents to send their disabled child to a private school for such children if there no appropriate public school. Or in the opposite situation the state shall support vulnerable parents to send their gifted child to a private school established for the development of gifted children⁷⁷⁴.

The third component of acceptable education reflects how education is delivered to learners. The Committee on the Rights of the Child clarifies that the enjoyment of the right to education is guaranteed by a complex of elements - the content of curriculum, the pedagogical methods and the environment within which education is provided⁷⁷⁵. The way of transfer knowledge, skills and values covers the language of instruction, teaching

⁷⁶⁹ International Covenant on Economic, Social and Cultural Rights, Article 13 (3).

⁷⁷⁰ International Covenant on Economic, Social and Cultural Rights, Article 13 (4). International Convention on the Rights of the Child, Article 29 (2).

⁷⁷¹ K. Beiter, *op.cit.*, p. 560

⁷⁷² *Ibidem*.

⁷⁷³ *Campbell and Cosans v. The United Kingdom*, para.37.

⁷⁷⁴ K. Beiter, *op.cit.*, p. 560.

⁷⁷⁵ General Comment 1: The aims of education, para.8.

methods and teacher's conduct towards students, the environment where learning process occurs.

The language of instruction is an essential element of learning and may become a huge obstacle in obtaining knowledge and skill for people who don't demonstrate the sufficient language proficiency. Within the 4-A scheme the language of instruction is a subject matter of both the accessibility and acceptability of education. Indeed, teaching in the language that is unknown for minorities or indigenous groups closes the access to education in general. The state education policy or the school rules may be composed in a way that discriminates a particular group of students on the ground of language. These are examples of the inaccessibility of education on the one hand and the cultural unacceptability on the other. For the consistency of the research and following the findings of the Special Rapporteur on the right to education the language of instruction is seen in the focus of the current part of the research.

The language issue is not a new question of discussion at the international level. Since the time of League of Nations the minorities are granted the right to establish their own schools and provide teaching in a minority language⁷⁷⁶. The state should respect this right and eliminate the obstacles of its realization. The first case happened in Poland where education in minority language in public schools was complemented with the right of minorities to establish and control private school⁷⁷⁷. The wars, military conflicts and other reasons caused the migration of people as within the Europe as over the world. In the second half of the XIX century the question of education in unilingual or sometimes mother tongue was raised regularly at the human rights meetings and in the practice of the judicial institutions. The rights of minorities in education are included in many separate human rights instruments. There are Article 5 of the Convention against Discrimination in Education, Article 4 (3) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities⁷⁷⁸, Article 14 of Declaration on the Rights of Indigenous Peoples⁷⁷⁹, Article 28 of the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries⁷⁸⁰, Article 8 of the European Charter for Regional or Minority Languages⁷⁸¹ and Article 14 of the Framework

⁷⁷⁶ K. Tomasevski, *op.cit.*, p.30.

⁷⁷⁷ Mały traktat wersalski, signed on 28 June 1919. It is cited in M. Hibel, *Wojna na mapy, wojna na słowa*, 2014, s.138.

⁷⁷⁸ Adopted the General Assembly on 18 December 1992.

⁷⁷⁹ Adopted by the General Assembly on 13 September 2007.

⁷⁸⁰ Adopted by the International Labour Organisation on 27 June 1989.

⁷⁸¹ Adopted by the Council of Europe on 5 November 1992.

Convention for the Protection of National Minorities⁷⁸². Although the Convention on the Rights of the Child doesn't explicitly provides with the right to education in a minority language, the Committee on the Rights of the Child numerously underlines the importance of multilingual education in its Concluding Observations in respond to the state reports⁷⁸³.

The international community acknowledges that the integration of minorities and indigenous children in the society is facilitated through *inter alia* education, the use of their language in learning enhances their identity and makes the learning process easier. However, the practical realization of multilingual education requires the sufficient financial resources and the states seek to legitimately justify the application of other, than teaching in one's mother tongue, measures to educate those children.

The European Convention on Human Rights doesn't specify the language in which education shall be provided in order to guarantee the right to education. However in the most famous language case, i.e. Belgian linguistic case, the European Court confirmed the right of the state to select for instruction in the public educational institutions any of or all official languages of the country. The learners thus can benefit from education. On the other hand, the law denies the possibility to study in a language of one's choice unless it is one of the official languages⁷⁸⁴.

The assimilation of Roma community on the territory of the European countries never passed and does not go smoothly. The right to education of students representing the Roma ethnicity was a subject matter a few hearings in the European Court of Human Rights. In the context of the language right in education it is worth to consider the case Orsus and Others v. Croatia and to pay attention to the dissenting opinion. Student of Roma origin were disproportionally separated to Roma-only classes as they were not fluent in Croatian language. The curriculum of those classes was reduced by up to 30 per cent. The Court concluded the violation of the right to education in the described situation. According to the non-discriminatory law unequal treatment will be recognized as a fact of discrimination unless "the state proves that measures taken are justified by a legitimate aim and that the means of achieving the aim are appropriate, necessary and proportionate"⁷⁸⁵. The Roma community is recognized among vulnerable and disadvantaged minority and requires special protection. From the point of view of the Croatian authority the separation of Roma

⁷⁸² Adopted by the Council of Europe on 1 February 1995.

⁷⁸³ Concluding Observations: Belarus, CRC, UN Doc. CRC/C/118, 2002, para.250. Concluding observations: Estonia, CRC, UN Doc. CRC/C/124, 2003, para. 65.

⁷⁸⁴ Belgian linguistic case, para.3.

⁷⁸⁵ Handbook on European non-discrimination law, Council of Europe, 2010, p.21-22.

students implied the legitimate aim of adapting the system of education to the specific needs of the Roma and the Court recognized it positively. “Temporary placement of children in a separate class on the ground that they lack an adequate command of the language is not automatically contrary to the Convention”⁷⁸⁶. However, the Court didn’t find the appropriate safeguards which demonstrate the justified proportionality between the means used and the legitimate aim pursued⁷⁸⁷.

In the dissenting opinion a few judges partly disagreed with the Court application of human rights law. Both the dissenting judges and the Court affirmed that different treatment of the applicants was not based on their ethnic origin or other prohibited grounds, but merely on their insufficient command of the Croatian language that was a language of instruction⁷⁸⁸. In such circumstances the Croatian authorities should possess a wide margin of appreciation on what method to apply in the system of education in order to meet the applicants’ learning needs⁷⁸⁹. This means that the choice of means to address Roma learning difficulties lay with the Croatian authorities.

In higher education the margin of appreciation of the state is much broader, nevertheless the violation of the right to education is also recognized. The students petitioned the head of the university to introduce optional courses in the Kurdish language. The administration reaction to the requests was temporary expulsion of the student as a disciplinary measure according to the internal regulation of the university what itself doesn’t violate the right to education. However, the Court expressed its concern whether such disciplinary regulations injure or are in conflict with other rights and freedoms enshrined in the international treaty. Indeed, the applicants were deprived of the right to education as a result of the exercise of their freedom of expression what was recognized the violation of the right to education⁷⁹⁰.

The state’s obligation to make education acceptable goes far beyond the language of instruction. School discipline and teachers’ conduct towards learners are elements of acceptable education in the light of human rights law. Academic staff is a role model for learners. Occupying the position of trust and confidence, they influence their students to a great extent. Therefore the educational aims such as the respect for human rights, the promotion of peace and tolerance to the diversity of ethnics, races and religions must be

⁷⁸⁶ Orsus and Others v. Croatia, ECHR, App. No.15766/03, Judgement, 16/03/2010, para.157.

⁷⁸⁷ Ibidem, para.181-182.

⁷⁸⁸ Ibidem, dissenting opinion, para 4.

⁷⁸⁹ Ibidem, para 5.

⁷⁹⁰ Irfan Temel and Others v. Turkey, ECHR, App. No. 36458/02, Judgement, 03/03/2009, para.45.

illustrated both in the content of education and academic teachers' conduct. Teachers disseminate not only their opinion, but the values of the whole educational system that shall be free from intolerance, prejudice and bias⁷⁹¹. No one will contest with the Special Rapporteur on the right to education that teachers' conduct must promote human rights and fundamental freedoms⁷⁹².

The other form of teachers' conduct is the discipline rules in education institutions. The Convention on the Rights of the Child explicitly defines in Article 28 that "school discipline is administered in a manner consistent with the child's human dignity and in conformity with the Convention". The International Covenant on Economic, Social and Cultural Rights doesn't contain a separate provision on the school discipline. Neither the European Convention on the Human Rights prohibits literally the inhumane school discipline. However such prohibition results from the fundamental guiding principle enshrined in all human rights instruments – the dignity of the human being⁷⁹³ – in line with the other human rights⁷⁹⁴. All aspects of discipline must be linked to the humane treatment of students and shall not breach other human rights – right to food, freedom of speech and freedom of torture. The state shall ensure that neither private nor public educational institutions permit the inconsistent with the human rights treaties forms of school discipline⁷⁹⁵.

The international community expresses its concern with the cases of suspension or expulsion from school as a disciplinary punishment for pregnancy, or in other words for amoral behaviour. First of all, such treatment of girls violates their right to education and is inconsistent with the meaning of accessible education. In terms of the principle of acceptability the public humiliation of a pregnant student or her re-routing to special classes hurts the human dignity and must be eliminated by the state.

Inhuman or degrading disciplinary system in schools or in the places where education occurs presented in the form of corporal punishment, verbal aggression and bullying is

⁷⁹¹ Beiter cited the decision of the Supreme Court of Canada concluded the case *Ross v. New Brunswick School District No. 15*. The court upheld the decision of the disciplinary commission to move a teacher, an author of the anti-Jewish text, to non-teaching position, although the publication was done by him in capacity as a private citizen. Beiter, *op.cit.*, p. 496.

⁷⁹² K. Tomasevski, *op.cit.*, p.13.

⁷⁹³ General Comment 13: The Right to Education, para. 41.

⁷⁹⁴ For example, Article 3 of the European Convention on Human Rights state that no one must be subjected to torture or to inhuman or degrading treatment or punishment, Article 8 defining the right to private life. Article 7 of the International Covenant on Civil and Political Rights on the prohibition of torture.

⁷⁹⁵ General Comment 13: The Right to Education, para. 41. There are a few case laws where the corporal punishment applied within the private schools was considered the violation of the rights of the child. *Y v. the United Kingdom*, ECHR, App. No. No. 14229/88, 08/10/1991. *Costello-Roberts v. the United Kingdom*, ECHR, App. No. 13134/87, Judgement, 08/06/1991.

strictly condemned by human rights law⁷⁹⁶. Physical and mental maltreatment perpetrated by parents, guardians or teachers is inconsistent with the notion of non-violence education. Moreover, the legal practice goes in the way that the existence of corporal punishment in the disciplinary rules of school implies the fact of violation of human rights even without its application⁷⁹⁷. The international community encourages the state not only to prohibit the disciplinary measures which infringe the children's rights, but to undertake preventative measures, such as "the setting up of awareness raising campaigns regarding the negative consequences of corporal punishment as well as the promotion of alternative measures"⁷⁹⁸.

Besides disciplinary measures there are many other elements that constitute the notion of "education" and are decisive upon whether education is conceived acceptable or not. They are pedagogic style and teaching methods, examination schedule and sport events, dressing code etc. The principles of humane treatment described above must be applicable to the disciplinary measures as well as to other educational elements. "Education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12 (1) [of the Convention on the Rights of the Child] and to participate in school life"⁷⁹⁹. As it has already been mentioned acceptable education means education is relevant to diversity of learners. No all diversities are obvious, not all demands of learners are said. Article 12 of the Convention on the Rights of the Child states that a child must have the opportunity to express his or her own opinion on the affecting his or her matters, including within educational process. Acceptability of education shall be seen through a child-participatory perspective. The perception of the child as a passive recipient of knowledge and skills is a false approach. The Special Rapporteur on the right to education affirms that the criterion of "acceptability" demands that a learner be recognised as the right holder in the educational process⁸⁰⁰. The application of teaching methods when students ask questions and receive answers, defend their view and disagree with others, learn by doing mistakes and test their capabilities are supported by the international community. The voices of students must be heard in a broader dimension either:

⁷⁹⁶ M. Verheyde, *op.cit.*, p.60.

⁷⁹⁷ Campbell and Cosans v. United Kingdom, para. 32.

⁷⁹⁸ Concluding observations: Belgium, UN Doc. CRC/C/15/Add.178, 2002, para. 24. Concluding observations: Tajikistan, UN Doc. CRC/C/100, 2000, para. 302.

⁷⁹⁹ General Comment 1: The aims of education, para. 8.

⁸⁰⁰ K. Beiter, *op.cit.*, p.503.

1. Students shall be represented in bodies composing school policy, including policy on discipline and decision-making⁸⁰¹;
2. Students must have freedom of expression⁸⁰².

The status of a student must not be seen as a reason to limit or deprive learners with their civil, political or cultural rights such as the freedom of expression and thoughts or freedom of associations. The enjoyment by the members of academia the globally recognized human rights and freedoms must be respected and ensured by the state. It constitutes the foundation of academic freedom and institutional autonomy described in details in further parts of the research.

Initially the acceptability of education was understood in the line with the quality education, i.e. the minimum standards of safety and health, professional requirements to teaching staff had to be defined and ensured by the governmental bodies. With the lapse of time the perception of acceptable education has broaden with the development of human rights law and the growing significance of learners as a subject of human rights. Students vary by their origin, languages, religions, cultural and philosophical convictions that must be taken into mind in providing education by the state. In particular situation the parental or guardian's convictions may play the leading role in selecting the type of education for children. The quality of education as well as the content of curriculum, teaching methods or learning environment consistent with the human dignity of learners is decisive in acknowledging education acceptable.

4.4. Adaptability

The last but certainly not least principle of the right to education is adaptability to the changing conditions, surroundings and communities. The Committee on Economic, Social and Cultural Rights states that education has to be “flexible so to respond to the needs of students within their diverse social and cultural settings”⁸⁰³. At the first glance, the adaptable education is similar with the scope of the feature “acceptable” that requires

⁸⁰¹ Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), UN Doc. A/RES/45/112, 14 December 1990, para.31.

⁸⁰² “Students inside or outside school are persons who possess fundamental human rights and freedoms. School administration is not entitled to the authoritarian control over learners in the state-funded educational institutions. During the academic debate or in a leisure time learners have the right to discuss and express their controversial opinions unless they don't jeopardize the rights of others”. Analyzing the freedom of expression of students Beiter cites the US Supreme Court decision dated 1969 which did not lose its actuality nowadays. Beiter, *op.cit.*, p. 505. The similar approach can be found in the decision of the European Court of Human Rights, e.g. Irfan Temel and Others v. Turkey, ECHR, para.45.

⁸⁰³ General Comment 13: The Right to Education, para. 6 (d).

making the substance and process of education relevant and culturally appropriate to learners. Additionally, both features of education – accessibility and adaptability – are overlapped in the context of inclusive education. While accessible education is understood as a non-discriminative, fair and transparent access to education for everyone, the feature of adaptability ensures that the conditions, in which education is provided, respond to the needs of students regardless of their diversity. For example, the ramp at the university entrance is required not only to enter the building and submit the admission documents⁸⁰⁴, but to enjoy the right to education in its fullness after the admission.

All features of the 4-A scheme covers different aspects of the right to education which are similar in their meaning with each other. It is not surprisingly because one of the major principles of human rights calls the fundamental rights and freedoms interrelated and interdependent. Hence, the essential features of the right to education can also be interrelated. Indeed, the international community affirms that the scope of these four elements may have the common points, nevertheless the main objective while applying the 4-A scheme shall be the best interest of the students⁸⁰⁵. The focus on the capacity and needs of learners is reflected to the most extent in the context of adaptable education.

The notion of adaptable education is the best presented in the speech of the United Nations Special Rapporteur on Disability “all children and young people of the world, with their individual strengths and weaknesses, with their hopes and expectations, have the right to education. It is not our education systems that have a right to certain types of children. Therefore, it is the school system of a country that must be adjusted to meet the needs of all children”⁸⁰⁶.

In the chapter dedicated to the accessibility one may find the overview of inclusive education in the light of international agreements. At this point it is important to precise and, to some extent, to split the understanding of inclusive education and adaptable education. For the purposes of the current research there is no need to illustrate the whole concept of inclusion, limiting to the identification of the target groups of inclusive education. The idea of inclusive education is understood in a broad and narrow meaning. In the narrow meaning the idea of inclusion is addressed primarily to people with any form of

⁸⁰⁴ In Belarus the admission to higher education insitutions requires the original hard copies submitted to the admission commission, while in many European countries the online application is enough.

⁸⁰⁵ General Comment 13: The Right to Education, para. 7.

⁸⁰⁶ Guidelines for Inclusion, p.13.

disability only, i.e. physical, social and/or emotional⁸⁰⁷. To be precisely correct, inclusion is targeted to the whole society and the system of education in general to adapt them for the joint learning and living of people with disabilities and non-disabled persons⁸⁰⁸. Inclusive education in a broad sense of meaning is close to the special needs education. In other words, it is an educational strategy responding to the diversity of needs of all children, youth and adults with the focus on social groups vulnerable to marginalisation or exclusion⁸⁰⁹. The Salamanca Statements and Framework for Action on Special Needs Education lists the target groups of such education: disabled and gifted children, street and working children, children from remote or nomadic populations, children from linguistic, ethnic or cultural minorities⁸¹⁰. To those groups it is fair to include girls and women, persons with HIV/AIDS, refugees, migrants or displaced children⁸¹¹. Considering the notion of adaptability the General Comment 13 refers to the social and cultural diversity of learners and the necessity to adapt education to their needs. The description of the learner's diversity illustrates many grounds that are much broader than the ground of disability. It is obvious that adaptable education in the light of international human rights law is similar with the inclusive education in its broad sense.

Furthermore, the adaptable education must be perceived broader than merely inclusiveness. The adaptability of higher education plays a particular role for the development of knowledge and the enhancement of scientific progress. The international community underlines numerously the significantly growing role of education for the individual development, peaceful living of nations and the growth of prosperity of countries. In fact, it is a mutual process. On the one hand, education is a factor stimulating the transformation of life of individuals. On the other hand, the surroundings affect the content and outcomes of education and stimulate the adjustment of learning to new challenges and needs of the society. A couple centuries ago women didn't study at the universities, nowadays one may easily mention the female names in the ranks of the prominent professors and scientists. The creation of comfortable research conditions at the university for the disabled S. Hawking led to the important scientific discoveries. The segregation of learners into educable and non-educable has been presented numerously in

⁸⁰⁷ J-S Gordon, *Is inclusive education a human right?* Journal of law, medicine and ethics, winter 2013, p.754-767.

⁸⁰⁸ Guidelines for Inclusion, p.13.

⁸⁰⁹ Policy guidelines on inclusion in education, UNESCO, 2009, p.8-9.

⁸¹⁰ Salamanca Statements and Framework For Action on Special Needs Education, adopted by the World conference on special needs education: access and quality, Salamanca, 7-10 June 1994, Para.3

⁸¹¹ Policy guidelines on inclusion in education, p. 5,7.

the historical heritage of education, the exclusion of non-white, foreigners or indigenous representatives of the society also happened. The contemporary human rights approach states that education adopts a flexible form to satisfy the needs of different learners.

Besides the correlation of education and individual settings of students the adaptability of education to the rapidly evolving and innovative world is a reality, if not say a prerequisite, of the contemporary life. It primarily concerns higher and vocational education which produces the high-level work force with adaptable skills. “If we teach today's students as we taught yesterday, we rob them of tomorrow” is an ever more actual quote of J. Dewey. Globalization and scientific development, free movement of people, goods and services and the elimination of formal borders between countries are ordinary elements of the contemporary life. Therefore, the feature of adaptability embraces the adjustment of education to the learner's particularities and the changing conditions inside and outside the country, takes into account the social processes and development of the labour market, demand and supply in economics and social life.

The clauses of the human rights treaties also underscore the dual standpoint to the right to education – individual and collective. First of all, the main beneficiary of education is an individual who by the means of education develops the human personality and improve the quality of its life. The second perspective of the right to education is collective enabling all persons to contribute to the development of a free society. In order to consider the whole population as a beneficiary of the right to education it is required to be effective and adaptable. “The philosophy underlying Article 13 of the International Covenant on Economic, Social and Cultural Rights is to establish a right to education so that everyone accordingly receives a suitable education consistent with the needs of the society in which it is provided”⁸¹².

The feature of adaptability stimulates the changes and modification of a particular element of the system of education, such as its content, approaches, structure, as well as reforms of the entire system of education, including educational policies and strategies. The comprehensive transformation of educational systems and learning environment is aimed to respond to the diversity of learners. It is not enough to change the content of education and remain the teaching methods the same when the group of students consists of disabled people, linguistic minority representatives and gifted children. Any changes should direct towards the comfortable cooperation of teachers and learners and enable the

⁸¹² Y. Daudet, K. Singh, *The right to education: the analysis of UNESCO's standard-setting instruments*, UNESCO, 2001, p. 21.

improvement of the learning environment, rather than the creation of difficulties. In the digital age the classical education with lecturing and face-to-face teaching looks a little archaic and not adequate to the necessities of the employers. They expect to hire the graduates equipped with the technological capabilities in the equal manner as with the professional knowledge and skills.

It is important to mention that not all changes in education have a rationale and can be implemented. The right to education is included in the group of economic, social and cultural rights which according to the international treaties can be realized in a progressive manner. Their realization is limited to the resources available in the possession of the state. For example, the provision of inclusive education in the educational system is restrained by financial, human, technical and organisational resources⁸¹³. As a consequence, the differential treatment of learners with special needs is permissible and must be justified by the state. In the case heard by the German Federal Constitutional Court⁸¹⁴ the educational authorities justified the assignment of a disabled child to a special school as an adequate and financially reasonable measure in comparison with the adaptation of the ordinary school that the applicant attended to her needs. “Application of measures of adaptability [of the ordinary school] places a special burden on financial and human resources”⁸¹⁵.

Taking the special pedagogic support measures to adapt the content and way of delivery of education to special needs of children is considered reasonable in the some circumstances or can be recognized inappropriate in others. Each case must be analysed with the consideration of all details. The scope of such measures varies and may include the creation of an integration class or making available the additional services of a pedagogical assistant.

In this context it is worth to consider the case of *D.H. v. Czech Republic*⁸¹⁶ where the fact of indirect discrimination towards ethnic minorities is researched. The European Court of Human Rights admitted discriminative the disproportionate assignment of Roma children to special schools with a simplified or a special Romany-language curriculum. The court decision was grounded *inter alia* on the report of the Commissioner for Human Rights of the Council of Europe noting that “[...] instead of segregation [of Roma children], significant emphasis had to be placed on measures such as pre-school and in-

⁸¹³ Beiter, *op.cit.*, p.509.

⁸¹⁴ The decision of the Court in German and was cited with the translation by Beiter. Beiter, *op.cit.*, p.508-509.

⁸¹⁵ Beiter, *op.cit.*, p.508.

⁸¹⁶ *D.H. and others v. Czech Republic*.

school educational and linguistic support as well as the provision of school assistants to work alongside teachers”⁸¹⁷. In the described case the national authority sought to adapt the national system of education to the needs of minorities, however the number of students with special needs and the systematic application of exclusion within the dimension of the whole country were an important subject matter to admit the fact of discrimination. Therefore it is important to select the measures of adaptability after the comprehensive analysis of situation that may affects the different number of students and the resource allocation in the budget.

The adaptability of education serves for the benefit of learners, their parents or guardians and the whole society, since they all are affected by the diversity and changes. The pressure of globalization and the growing tension of localization reinforce the need for adaptability so as to make education responsive to the immediate reality facing learners in their own community and to the rapidly changing global realities. The state bears the duty to adapt the entire system of education to the diversity. The dimension of state’s activity is not limited to the changes of teaching methods or the learning content. The Special Rapporteur on the right to education suggests the state to apply all possible measures for adaptability of education, i.e. legislative and administrative mechanism⁸¹⁸. Thus, the states are encouraged to eliminate the obstacles to enjoy the right to education through the prohibition of child marriage, the definition of the minimum age of child work in conformity with the international recommendations⁸¹⁹, the prevention of the children participation in the military conflict. Such legislative measures are crucial to ensure primary and secondary education. In terms of adaptable tertiary education the legislator has to create comfortable conditions to combine work and study, family life and education.

The adaptability aims to meet the best interests of the child. The global or international standards and the model of education shall be adapted to the local reality. What is good in one country, may not fit the conditions in others. The Western countries design the system of education in a way to promote lifelong learning and to prepare for the access to employment. The completion of primary school is followed by secondary education where students are trained and encouraged to continue their personal and professional growth. In poor countries lifelong learning and full-time education is rather a luxury than the

⁸¹⁷ Ibidem, para. 79.

⁸¹⁸ K. Tomasevski, *op.cit.*, p.12.

⁸¹⁹ The general minimum age for admission to employment or work at 15 years (13 for light work) and the minimum age for hazardous work at 18 (16 under certain strict conditions). There is a possibility to set up the general minimum age at 14 but work must not interfere with school education. Minimum Age Convention, No.138, adopted by ILO in 1973.

fundamental human rights⁸²⁰. Vulnerable families, including children, have to work to survive and the foreign models of education can be hardly implemented in such conditions. So, the formula “learn and earn” is an adaptation of the system of education to working people⁸²¹.

Human rights treaties underline many times that a learner and his or her rights are in the focus of the right to education. The educational policy of each country shall direct toward the close connection between students and educational institutions. There is a group of people in the society which intentionally and consciously is deprived of some rights and freedoms. They are prisoners. Although imprisonment limits the scope of their political and civil rights the right to education is a basic need of human beings that still must be satisfied. Since such people can seldom be taken to school, thus education has to be brought to the place where they are. Within the global and European scale the prison education is regulated by various documents⁸²² and takes a particular place in the discussions on the right to education. The adaptability of education to those learners is something more than merely the provision them with literacy skills and satisfying the basic learning needs. Education for imprisoned people is a tool for the social rehabilitation and a way to improve their employability after the release⁸²³.

To sum up the description of the 4-A scheme it is necessary to underline the following idea. Four essential features of education – availability, accessibility, acceptability and adaptability – proposed by the Special Rapporteur on the right to education is an analytical tool to discover the essence of the fundamental human right – right to education. Although these four criteria of education deepen the understanding of the human right to education in the light of international law, they are not definitive. Undoubtedly, these features are an extremely useful way of description of the right to education for the purposes of its realization in practice or for monitoring objectives. However, they are not necessarily the standard generated by international instruments and as such should not be seen as a legally binding guideline⁸²⁴ to what the right to education means under international law.

⁸²⁰ K. Tomasevski, *op.cit.*, p.34.

⁸²¹ Such formula was implemented in India allowing children under 14 to work up to 6 hours and at least 2 hours dedicate to education on the cost of employer. *Ibidem*.

⁸²² *See* Standard Minimum Rules for the Treatment of Prisoners, United Nations, 1955; Basic Principles for the Treatment of Prisoners, UN Doc. A/RES/45/111, 14 December 1990; European Prison Rules, revised in 2006; Recommendation on Education in Prison No. R (89) 12, adopted by the Council of Ministers of the Council of Europe on 13 October 1989.

⁸²³ Prison Education and Training in Europe: current state-of-play and challenges, A report for the European Commission, GHK Consulting, May 2013, p.9.

⁸²⁴ The 4-A scheme is enshrined in the General Comment of the Committee on Economic, Social and Cultural Rights, i.e. a soft law source. The content of each feature is in details described in numerous

Indeed, it shall not be considered the absolute truth, but a scientific approach to analyse the right to education through the prism of human rights law. The 4-A scheme doesn't aim to replace other scientific and/or empirical approaches in realm of education, e.g. the minimum core content approach, the research of the right through the state's obligations, the guide on the right to education based on its interpretation and application by the judicial institutions. On the contrary, the 4-A grid enriches and supports other theories to examine the problems and remedies faced at the domestic level. What is important in the 4-A scheme is that Katarina Tomasevski projected the concept of four elements of education to design the ideal portrayal of the right to education at the global level to promote it in every single country of the world⁸²⁵.

4.5. The application of the 4-A scheme to higher education

In 1948 with the proclamation of the Universal Declaration of Human Rights the right to education was affirmed as a fundamental human right in all its forms and types. Article 26 underlined that fundamental, primary, secondary and higher education is forms of education that is not only a human right, but a prerequisite for the development of society and the individual.

Higher education is articulated as a part of the human right to education and it possesses all characteristics that are described for other forms and levels of education unless otherwise stated. According to the Committee on the Economic, Social and Cultural Rights education in all its forms and levels exhibits the main four features known as the 4-A scheme⁸²⁶, moreover concerning the right to higher education these essential features are again repeated. "Higher education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms at all levels"⁸²⁷.

It is worth to admit that human rights treaties fail to define what higher education is. In order to outline what type of education higher education covers UNESCO refers to the

publications of the Special Rapporteur on the right to education and other authors and constitutes the legal doctrine. Depending on the legal system of the country the soft law sources and legal doctrine can be referred to for interpretation of law binding provisions.

⁸²⁵ Statement by the Special Rapporteur on the right to education, Item 10: Economic, social and cultural rights, 8 April 1999, p.6.

⁸²⁶ General Comment 13: The Right to Education, para. 6.

⁸²⁷ Ibidem, para. 17.

International Standards Classification of Education⁸²⁸. However the classification applies a broader term “tertiary education” that consists of level 5, 6, 7 and 8⁸²⁹. Level 5 includes short-term programmes for at least 2 years designed to prepare for employment. Level 6 and 7 are equivalent to bachelor’s and master’s degree programmes accordingly⁸³⁰. Finally, doctoral studies and its degree are granted within level 8⁸³¹. For the purposes of the research the term “higher legal education” embraces levels 6 and 7 only, as the most comprehensive types of education leading to the entrance to the legal profession. The doctoral level is conceived advanced study leading to research qualification and is rather a complement, but not a minimum requirement for those who seeking the access to legal work. Short-term programmes of level 5 are also excluded from the research work due to the limited dimension of its application within the legal education.

In the legal doctrine the higher education as a human right is in the focus of scientists to the least extent than pre-school and school education. Indeed, the international community, human rights defenders and civil society activists draw more attention to the realization of the right to education at the lower levels – primary and secondary education – meanwhile higher education is considered rather as a privilege, than a right⁸³². Higher education is expensive, requires lots of financial and human resources. Higher education has been seen and nowadays is sometimes understood as an education for the elite whereas primary education is something that every child on the globe has to obtain.

Globalisation, scientific progress and the tight correlation of economic development with the scientific achievements make the significance of higher education bigger in a variety of ways. Accessibility of higher education institutions, international mobility of students and academic staff, government funding of education, the quality of higher education and its results expressed in the rate of employability of graduates are all principal facets of interest that encourage seeing higher education through the prism of

⁸²⁸ The international standard classification of education is a classification for organizing educational programmes and qualifications by levels and fields adopted within UNESCO member states in 2011.

⁸²⁹ International Standards Classification of Education, ISCED 2011, para.200.

⁸³⁰ Ibidem, para.203.

⁸³¹ Ibidem, para.259.

⁸³² Although the growth of enrolment in higher education institutions is clear in the recent decades in Europe higher education is still considered an elite education due to the high fees and exclusiveness of the high top ranking universities and research institutions. There are many scientific discussions on massification of higher education as well as elite higher education. For example, A. Underdal, *Implication of the change from elite to mass or multi-purpose institutions*, 2010; M. Trow, *Reflections on the Transition from Elite to Mass to Universal Access: Forms and Phases of Higher Education in Modern Societies since WWII*, in: J.J.F. Forest, P.G. Altbach (eds), *International Handbook of Higher Education*, vol. 18, 2007, Springer, p.243-280; M. Kwiek, *Szkolnictwo wyższe w Polsce: od przywileju przez prawo do obowiązku*, w: *Uniwersytet w dobie przemian: Instytucje i kadra akademicka w warunkach rosnącej konkurencji*, 2015, s.108-123.

human rights. There are written few works devoted to the higher education as a human right or in relation to a particular aspect of human rights theory⁸³³.

The current work aims to enrich the existing findings concerning the formal education at its higher level considering it from the perspective of human rights law. It is applied the human rights-based approach, in particular the 4-A scheme, in order to examine the system of higher education that likely differs in the selected countries due to the political, legal, economic and social conditions. The perception of higher education in the light of human rights is universal and enables the analysis of educational systems in countries with different traditions.

It has been already mentioned in the current research that the 4-A scheme is applied and interpreted differently towards particular levels of education⁸³⁴. That is logical and caused by the nature, the aims of specific level of education and the wording of the human rights provisions. Despite of the likely imperfection of the scheme it serves an excellent framework to evaluate the state's commitments towards the provision of higher education as a human right. All four elements of the 4-A scheme must be in place to admit the human right realization. Thus, higher education shall be available, accessible, acceptable and adaptable and shall satisfy the criteria composing each of these essential features. The application of the 4-A scheme described in the previous part of the research to higher education is rational and enables monitoring the state's obligations in realm of the right to education at all levels. On the other hand, there are some components of higher education that are less relative to primary or secondary education and vice versa. They have been slightly touched or missed at all in the previous chapter. Here they are entirely described to complete the picture of the 4-A scheme applicable to the full extent to higher education.

The following components of the 4-A scheme are relevant to higher education:

- academic freedoms and autonomy of higher education institutions,
- status of higher education teachers
- recognition of qualifications.

⁸³³ See C.S. Collins, *Higher education as a human right (introduction)*, in: C.S. Collins, P. Buasuwan (eds.), *Higher education access in the Asia Pacific: privilege or human right*, Palgrave Macmillan, 2017; T. McCowan, *Education as a human right*. Bloomsbury, 2013; T. N. Basit, S. Tomlinson (Eds.), *Social inclusion and higher education*, Policy Press, 2014; К.М. Гусейнова, *Право человека на высшее образование по международному праву и проблемы его обеспечения в условиях глобализации*, Диссертация на соискание ученой степени кандидата юр. наук, Москва, 2015.

⁸³⁴ According to the International Covenant on Economic, Social and Cultural Rights primary education shall be available for all, secondary education shall be made generally available, whilst the provision on higher education is silent explicitly on the feature of availability.

Earlier in the research the availability of education has been presented in two facets – qualitative and quantitative. The qualitative characteristic of higher education remains inexplicit without the presentation of such components of availability as academic freedom and institutional autonomy. In the previous chapter of the research concerning the availability of education the aspect of the academic freedoms and autonomy of higher education institutions within the 4-A scheme have been touched slightly only. The in-depth analysis can highlight the distinguishing role of higher education institutions and higher education teaching personnel in the education process.

None of the human rights binding treaties contains the explicit clause on academic freedom and institutional autonomy. Academic freedom and autonomy of universities are not a human right, but a fundamental university right. These important elements of the right to higher education are rooted in other human rights, such as the right to freedom of thoughts, conscience and religion⁸³⁵, freedom of expression⁸³⁶, the right to freedom of association⁸³⁷ and others. Article 15 (3) of the International Covenant on Economic, Social and Cultural Rights prescribes the state “to respect the freedom indispensable for scientific research and creative activity”. Although Article 13 of the Covenant dedicated to the right to education doesn’t mention academic freedoms in its wording, the Committee in Economic, Social and Cultural Rights expresses its position on this matter through the General Comment 13. Paragraphs 38-40 explicitly describe the notion of academic freedom of staff and students and autonomy of higher education institutions.

Acknowledging the academic society a vulnerable group to any kind of state oppression the civil activists advocated the preparation and adoption of an international instrument on academic freedom and institutional autonomy. The various international meetings and debates took place over the world to draw attention to the problem of freedom and autonomy in education and resulted in the adoption of a few regional instruments on the basis of non-governmental declarations⁸³⁸. In 1992 under the aegis of UNESCO the Conference on Academic Freedom and University Autonomy was held in Sinaia, Romania and concluded with the Sinaia Statement on academic freedom and

⁸³⁵ The International Covenant on Civil and Political Rights, Article 18.

⁸³⁶ Ibidem, Article 19.

⁸³⁷ Ibidem, Article 22.

⁸³⁸ The most influential NGO declaration is considered the Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education, adopted by World University Service in 1988. In the European region it is worth to mention the Magna Charta Universitatum adopted by the Rectors of European Universities in 1988. There are also the Dar es Salaam Declaration on Academic Freedom and Social Responsibility of Academics of 1990 and the Kampala Declaration on Intellectual Freedom and Social Responsibility of 1990.

university autonomy. In the Statement the participants of the conference expressed their concern on the lack of an international instrument for the protection and promotion of academic freedom and university autonomy and urged UNESCO to fill in the gap. Further a Declaration on academic freedom was submitted at the UNESCO conference in Montreal in 1993, but it was not a success⁸³⁹. The latest document regulating academic freedom and autonomy of higher education institutions is Recommendation concerning the Status of Higher-Education Teaching Personnel⁸⁴⁰ that in Figure V to VII expresses the current international position on this topic⁸⁴¹. The document was passed without dissenting votes and serves as a pillar in the movement of consolidation of international efforts for promotion academic freedom in the world. It is also seen as a mark of evolution in the movement to defend the human right to education.

It is sufficient to acknowledge that academic freedom is address to academic staff as well as to students. It is highlighted on the position of the Committee on Economic, Social and Cultural Rights stating that “staff and students throughout the education sector are entitled to academic freedom”⁸⁴². It is also affirmed in the Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education “all students of higher education shall enjoy freedom of study, including the right to choose the field of study from available courses and the right to receive official recognition of the knowledge and experience required”⁸⁴³.

As none of the law-binding instruments defines the meaning of academic freedom and institutional autonomy it is worth to refer to the soft law. The authors of the Lima Declaration made a brave attempt to provide the definition of “academic freedom”. It implies the freedom of members of academia, individually or collectively, to pursue, develop and transmit knowledge in various ways not limited to research, discussion, creation, teaching, lecturing and writing⁸⁴⁴. It is important to underline that in the historical perspective academic freedom was never absolute and the perception of its content was changing greatly⁸⁴⁵. Although the contemporary doctrine embraces various findings on the

⁸³⁹ K. Beiter, *op.cit.*, p. 484.

⁸⁴⁰ Adopted by UNESCO in 1997.

⁸⁴¹ K. Beiter, *op.cit.*, p. 485.

⁸⁴² General Comment 13: The Right to Education, para. 38.

⁸⁴³ Para.9.

⁸⁴⁴ Para. 1(a) of the Lima Declaration and General Comment 13: The Right to Education, para.39.

⁸⁴⁵ In the medieval times academic teachers were controlled by the state and Roman Catholic Church. In the early XIX century professors in Germany exercised absolute freedom in teaching and learning within the classroom and laboratory, but the opinions on political or social matters were not protected by the idea of academic freedom. On the American continents the concept was expanded in the beginning of XX century protecting freedom of expression of members of academic inside and outside of universities. P.G. Altbach,

issue, there is no universally recognized understanding of academic freedom nowadays. For the benefit of the research academic freedom is perceived as it is defined in the UN documents. The Committee on Economic, Social and Cultural Rights supplies the scope of academic freedom by the following components:

- “the liberty of individuals to express freely opinions about the institution or system in which they work;
- the liberty of individuals to fulfil their functions without discrimination or fear of repression by the state or any other actor;
- the liberty of individuals to participate in professional or representative academic bodies;
- the liberty of individuals to enjoy all the internationally recognised human rights applicable to other individuals in the same jurisdiction;
- obligations, such as the duty to respect the academic freedom of others, to ensure the fair discussion of contrary views, and to treat all without discrimination on any of the prohibited grounds”⁸⁴⁶.

Thus, this broad definition of academic freedom is not limited to freedom of expression only, but includes freedom of associations, right to protest and obligations for individuals and the publish authorities to respect and protect academic freedom. Academic freedom is a constitutional right and a sacred value of American universities and research centres⁸⁴⁷. They are essential components of higher education, without which the essence of the right to education is fictional. In the European region academic freedom *de jure* is mentioned in the soft law sources and constitutes the non-binding rules. It is important to take into consideration the following documents: the Charter of Fundamental Rights of the European Union⁸⁴⁸; the Magna Charta Universitatum; Parliamentary Assembly Recommendation 1762(2006) on academic freedom and university autonomy; Recommendation CM/Rec(2007)6 of the Committee of Ministers on the public responsibility for higher education and research; Recommendation CM/Rec(2012)7 of the Committee of Ministers on the responsibility of public authorities for academic freedom

Academic freedom: international realities and challenges, Higher Education, Vol. 41, No. 1/2, 2001, p. 206-207.

⁸⁴⁶ General Comment 13: The Right to Education, para.39.

⁸⁴⁷ E. Haag, *Academic freedom in the United States*, Law and Contemporary Problems, vol.28, 1963, p. 515. Levinson presents the analysis of the sources of academic freedom in the American law. R. Levinson, *Academic Freedom and the First Amendment*, Presentation to the AAUP Summer Institute, 2007, available at <https://www.aaup.org/our-work/protecting-academic-freedom/academic-freedom-and-first-amendment-2007#b1> [accessed on 2 November 2017].

⁸⁴⁸ Article 13 explicitly safeguards academic freedom.

and institutional autonomy. *De facto* the state's duties in realm of education are strictly monitored and the rules on academic freedom and autonomy are applied in practice⁸⁴⁹. To Mehedi's point of view academic freedom and autonomy concern all levels of education not limited to higher education. Recognizing them as the important elements of the human right to education he suggests adding academic freedom and autonomy to the core content of the right⁸⁵⁰. It is fairly to agree with the point, in particular in terms of higher education. The conformity of academic freedom and university autonomy by the government should be included in the list of indicators⁸⁵¹ enabling the monitoring of the right to education under the international human rights law.

The unity of academic staff, service personnel and students comprises an image of a higher education institution. The internal regulation and policy, management and financial system are the essential elements of the institution that make it a living structure in the social relations. The independence of higher education institutions is limited to the frame of academic community and is labelled with the term "institutional autonomy". "Autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities" is a definition given by the Committee to institutional autonomy. The international provisions ensure a certain level of independence of academic institutions in the scientific area as well as in its system of governance, e.g. accountability⁸⁵² and management⁸⁵³.

In the European dimension institutional autonomy and academic freedom are the key values of the European Higher Education Area. Together with the academic mobility and student participation in higher education governance these values form the framework of the educational policy agreed at the European level, but implemented mostly in the

⁸⁴⁹ Para. 74 of Recommendation concerning the Status of Higher-Education Teaching Personnel urges the member countries to take all feasible steps to give effect to the provisions of the document. The Concluding Observations with suggestions to improve the situation in education prepared by the international community are an evidence that the soft law rules are applied in practice.

⁸⁵⁰ Report on the 19th session, Committee on Economic, Social and Cultural Rights, UN Doc. E/1999/22, para. 496.

⁸⁵¹ Based on the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel the scholar Taye Assefa defines five indicators whether the national law in African countries is compliant with the principle of academic freedom and institutional autonomy. The five indicators are following: institutional autonomy, individual freedoms, self-governance, tenure, the recognition of academic freedom in the constitution of the country. T. Assefa, (ed.), *Academic Freedom in Ethiopia Perspectives of Teaching Personnel*, Forum for Social Studies, 2008.

⁸⁵² Recommendation concerning the Status of Higher-Education Teaching Personnel, para.22.

⁸⁵³ *Ibidem*, para. 31-32.

national or institutional dimension⁸⁵⁴. In the legal doctrine the degree of institutional autonomy in tertiary education is measured by various factors split into four following groups: organizational autonomy, financial autonomy, human resources autonomy and, the last but not least, academic autonomy. The meeting of over 700 representatives of higher education institutions and partners of the European University Association resulted in the Lisbon Declaration of 2007 that put in the background of the document these four categories of autonomy⁸⁵⁵. These major elements of institutional autonomy and academic freedom are also applied by scholars in the empirical research to assess the level of institutional governance in Europe and America⁸⁵⁶.

Benefiting from the previous findings and the idea of the Lisbon Declaration the content of autonomy is being discovered⁸⁵⁷. By organizational autonomy is understood the place and functions of the governing board of a higher education institution and the methods of selection of the leading persons. Financial autonomy refers to the institutional capacity to have control over their resources and facilities in order to manage and use them efficiently. Having a financial liberty higher education institutions are able to adapt their internal policy to meet the changing demands of society, students and labour market. Regarding human resources autonomy this means that tertiary institutions possess the capacity and carry responsibility to recruit staff and set salaries. In terms of academic autonomy this refers to the degree of independence in defining its own education and research strategy. The legal entity shall have a liberty in making a decision on whether being specialized in research or focusing on training of particular professionals or various specialists. Academic autonomy also includes the ability of the institution to define its academic profile and to manage its admission policy including but not limited to qualifications and numbers of student enrolment. The enjoyment of academic autonomy is an integral part of institutional autonomy.

⁸⁵⁴ S. Bergan, *The European Higher Education Area between training and bildung*, in: A. Mikhailov, O. Breskaya (eds.), *Reforming social sciences, humanities and higher education in Eastern Europe and CIS after 1991*, Cambridge Scholars Publishing, 2014, p.10.

⁸⁵⁵ The European University Association Lisbon Declaration: Europe's Universities beyond 2010, para.26. It was formally adopted by the Council of EUA in 2007.

⁸⁵⁶ A. Fiszbein, D. Ringold, *Benchmarking the governance of tertiary education systems*, World Bank Group, 2012, p. 12-13, available at <http://documents.worldbank.org/curated/en/423481468272040065/Benchmarking-the-governance-of-tertiary-education-systems> [accessed on 17 February 2018].

⁸⁵⁷ The list of indicators assessing each of four groups of factors is described in the methodology of the research conducted by the European University Association in 2010 and 2016. These indicators help to discover the content of each element resulting in total in the complete meaning of institutional autonomy. Annex 2. List of indicators and restrictions, in: *University autonomy in Europe III, op.cit.*, p. 208-214.

Undue state interference in the matters of higher education institutions raises concerns of the international community expressed in the form of Concluding Observations of the Committee of Economic, Social and Cultural Rights. The Tunisian authorities have been paid attention to the presence of police on university campus that may violate the freedom of expression including on the matter of educational process⁸⁵⁸. In Iran the Committee noted that “restriction of freedom of debate and choice in the university institutions”⁸⁵⁹. In the case of Nigeria the Committee pointed out to a few infringements on the right to education due to the political unrest in the country. “The military authorities have found intellectuals, journalists, university professors and university students to be easy targets for repression or persecution on the pretext that they constitute the most vociferous and dangerous political opposition. One of the major university campuses has been put under military guardianship. Universities have suffered from the repeated and long periods of closure. There is also a brain drain in academia, as a result of political and academic instability as well as the extremely low salaries of university professors.”⁸⁶⁰ For the full realization of the economic, social and cultural rights in the society the international community calls upon the Nigerian government to restore urgently the respect for trade union and academic freedoms⁸⁶¹.

The following element of the right to higher education as a human right is a special status of teachers. There are much in common in status of teaching personnel at all levels of education⁸⁶². The status of academic staff of higher education institution is thoroughly described in the Recommendation concerning the Status of Higher-Education Teaching Personnel. The Recommendation is more than an international agreement regulating the profession of teaching in higher education. It is a compilation of international education law and international labour law. Paragraph 26 of the document states that engagement in teaching and research in higher education institutions is not an obstacle of personnel to enjoy the civil and political rights that are inherent to all citizens. It also describes the civil rights⁸⁶³ of higher-education personnel, on the other hand it spells out their duties in the field of teaching and research⁸⁶⁴. The treaty is aimed to improve the status of teaching

⁸⁵⁸ Concluding Observations: Tunisia, CESCR, UN Doc. E/2000/22, para. 170.

⁸⁵⁹ Concluding Observations: Islamic Republic of Iran, CESCR, UN Doc. E/1994/23, para. 126.

⁸⁶⁰ Concluding Observations: Nigeria, CESCR, UN Doc. E/1999/22, para. 127.

⁸⁶¹ *Ibidem*, para. 130.

⁸⁶² The teacher’s status engaged in education from pre-primary to obligatory secondary education is regulated by the separate document, i.e. Recommendation concerning the Status of Teacher, adopted in 1966. Both documents provide the provisions on salary, negotiation of term of employment, social security benefits.

⁸⁶³ Para.25-30.

⁸⁶⁴ Para.33-36.

personnel as well as to develop the quality of the higher education system as whole. Of particular significance are the clauses on collegiality and the right to self-governance of higher-education personnel. Self-governance and collegiality are rights enabling to take part in the governing bodies and to criticise the functioning of educational institution, to develop the consulting mechanism within the higher education institution and to obey the internal policy of participation in decision-making practice⁸⁶⁵. These provisions support the approach toward academic freedom in its broad meaning, i.e. when rights and obligations of academic teachers are not limited by the walls of the university, but expand also outside of them.

In the sub-chapter devoted to the accessibility of education it is presented a comprehensive analysis of the access to higher education, including the meaning of “capacity” as a criterion of entrant’s selection. There is no need to repeat all the findings, but it is useful to remind the applied approach. According to human rights law there are different interpretations of accessibility towards all levels of education. Every child must have an access to the free primary education and the state’s duty is to ensure non-discriminatory education for all. Secondary education shall be generally accessible. Regarding the access to higher education it is not to say that everyone who wants to access the higher education institutions shall be granted the place automatically. On contrary, the enrolment based on individual capability of entrants to study is legitimate. The principle of non-discrimination is spread out within all aspects of international human rights law and the international community pays particular attention for elimination of all forms of unequal treatment. The entrants of higher education institutions are subjected to discrimination as during the enrolment competition as during the studies. Therefore in the context of accessibility of higher education the states are highly requested to collect the biographical data of students and teaching staff to assess how effective the struggle against discrimination is in the country. The Albanian government doesn’t provide in its periodic report the comprehensive data on the rate of enrolment to higher education institutions with the split on the social groups that are under the threat of discriminative treatment: Roma women and girls, women and girls with disabilities⁸⁶⁶. Moreover, the Committee on the Elimination of Discrimination against Women calls on Albania “to enhance temporary special measures currently in place in the form of quotas, in order to ensure the representation of women in high-level positions in universities and other educational

⁸⁶⁵ Para. 31 and 32.

⁸⁶⁶ Concluding observations: Albania, UN Doc. CEDAW/C/ALB/CO/3, 2010, para.31.

institutions”⁸⁶⁷. The government in Cameroon is requested to provide the data on students of higher education with the statistic numbers by sex, age and fields of study⁸⁶⁸. Such statistical data is a supportive tool for evaluation of effectiveness of struggle against any form of discrimination.

In terms of the acceptability of education the rules described earlier in the research are fully applicable to higher education. The language of instructions of one’s choice in public institutions is not prescribed by human rights law and the practice of the European Court of Human Rights. In the light of linguistic barriers to higher education the case of Macedonia looks interesting. The Committee on the Elimination of Racial Discrimination paid attention to the limited access to higher education in Macedonia for the members of minorities on the language ground. Albanian, Turkish and Roma minorities constitute 25, 4 and 2.2% of population accordingly⁸⁶⁹, meanwhile the language of instruction as well as the entrance examinations to higher education institutions is Macedonian. The international community recommended the Macedonian authority to improve the access to higher education for minorities by ensuring them the access to Macedonian language classes⁸⁷⁰. By the international pressure and the conflicts within the country the Macedonian government adopted the national law enabling teaching in higher education institutions in mother tongue of minority that constitute 23% of the population in the country⁸⁷¹. As a result, at least the entrants from the prevailing Albanian minority were equalized in chances to study in higher education institutions.

The last fourth component of the 4-A scheme – adaptability – is also applicable to higher education. Adaptability of higher education is displayed in the big variety of the offered educational courses and the types of higher education institutions. The design of interdisciplinary or in-depth and practice-oriented subjects meets the wider spectrum of needs and demands of students and economic inquiries. Corporate universities that arose in the recent decades are an example how business structures promote the strategic initiatives of the corporation through learning and training⁸⁷².

⁸⁶⁷ Ibidem, para. 32.

⁸⁶⁸ Concluding observations: Cameroon, UN Doc. CEDAW/C/CMR/CO/3, 2009, para.35.

⁸⁶⁹ The acceptability of higher education in Macedonia on the criterion of language is described in the article H. Hajrullai, B. Saliu, *The Application of 4-A Scheme in the Context of Higher Education in Macedonia*, *Procedia - Social and Behavioral Sciences*, vol. 232, 2016, p. 70-74.

⁸⁷⁰ Concluding observations: The former Yugoslav Republic of Macedonia, UN Doc. CERD/C/MKD/CO/7, 2007, para. 17.

⁸⁷¹ H. Hajrullai, B. Saliu, *op.cit.*, p. 74.

⁸⁷² C. Prince, G. Beaver, *The Rise and Rise of the Corporate University: the emerging corporate learning agenda*, *The International Journal of Management Education*, 2001, Vol.1, No.2, p.7-26.

The perception of higher education as a human right designs the image of the system of education open to the diversity of student's profiles, adequate to demands and interests of community and the environment. Higher education is conceived as the fundamental right, but not a luxury or a privilege. The most efforts of the international community are targeted at the protection of the right to education at primary and secondary levels. This is displayed in the national reports on the performance of global programmes such as the Education for All and the Sustainable Development Goals. At the same time some attention is required to develop the availability and quality, relevance and responsiveness of higher education as well as the equal and non-discriminatory access to it. Higher education is a part of the complex system of human rights, the right to higher education is the right of same value and nature as any other human right and fundamental freedom. "The human rights conceptualisation frames higher education not as a benefit bestowed upon those who can afford it or have the right parentage, not as a charitable act that can be taken away, but as an individual claim that everybody of the appropriate age and capacity can legitimately make"⁸⁷³.

The human rights framework in the form of the 4-A scheme is an appropriate basis to evaluate the undue treatment by the state or other duty bearers in terms of the realization the right to higher education. The essential four features define the scope of the right and clarify the state's duties in realm of education, they outline the frontiers between the justified and excessive actions of the governmental agents. What is more important is that the human rights-based approach aims to protect the excluded and vulnerable groups of society against the violation of the fundamental human right to education. The monitoring of the right to education consists of three principal steps:

1. To clarify the content of the right to education based on the global and regional provisions adopted by the selected countries.
2. To define indicators that help to check whether education in the country conforms with the main principles and content of the right to education.
3. Finally, to match the indicators with the national regulations and the existing practice.

Concerning the indicators a researcher may face the challenge what indicators appropriately fit the scientific purposes. Within decades the international community produced various human rights treaties prescribing many duties and obligations of

⁸⁷³ L. Royal-Dawson, *Reflection of a higher education as a human right*, in: C. Russo (ed.), *Handbook of comparative higher education law*, Rowman & Littlefield Publishers, 2013, p. 358.

stakeholders. One of the recommendations of the World Conference on Human Rights in Vienna states about the use and analysis of indicators to measure progress in human rights⁸⁷⁴. The monitoring of the implementation of the provisions of human rights instruments requires tools which have been prepared by the Office of the United Nations High Commissioner for Human Rights after several years of consultation and research. A conceptual and methodological framework for human rights implementation, including the right to education, was developed a few times⁸⁷⁵, published as a guide in 2012⁸⁷⁶ and “aims to assist in developing quantitative and qualitative indicators to measure progress in the implementation of international human rights norms and principles”⁸⁷⁷. These indicators are universal for all human rights and don’t take into account the specifics of the right to education.

Making the first steps in the position of the UN Special Rapporteur on the right to education Katarina Tomasevski admitted the linguistic variety in the field of education and a lack of standardisation in the statistics on education as a great challenge what in fact makes the application of any kind of indicators much difficult, if not say impossible⁸⁷⁸. In a new role she put a lot of efforts to develop a set of indicators appropriate to the right to education. She initiated the “Right to Education Project”⁸⁷⁹. Within the project over 200 indicators, based on international human rights law, were developed to evaluate state’s progress towards the full realization of the right to education and to identify the violations of the right. There were also made attempts to outline the framework for monitoring of the right to education in the works of Chapman⁸⁸⁰, the collaborative group of Kalantry, Getgen and Koh⁸⁸¹. The Office of the Columbian Ombudsman monitors the realization of the right

⁸⁷⁴ The Vienna Declaration and Programme of Action, para 98.

⁸⁷⁵ D. Turk, The realization of economic, social and cultural rights. Progress Report, E/CN.4/Sub.2/1990/19, para. 1-105; D. Turk, The realization of economic, social and cultural rights. Progress Report, E/CN.4/Sub.2/1991/17, para. 6-48.

⁸⁷⁶ The publication is titled *Human Rights Indicators: A Guide to Measurement and Implementation*, United Nations, 2012.

⁸⁷⁷ *Ibidem*, p.III.

⁸⁷⁸ Preliminary report of the Special Rapporteur on the right to education, UN Doc. CN.4/1999/49, para.12

⁸⁷⁹ The Right to Education Initiative is a global human rights organisation focusing on the right to education. Established in 2000 it was re-launched in 2008 as the Right to Education Project, an initiative of different organisations such as Amnesty International, Global Campaign for Education, Save the Children and others. The list of indicators is available at <http://www.right-to-education.org/resource/measuring-education-human-right-list-indicators> [accessed on 29 October 2017].

⁸⁸⁰ A. Chapman, *Development of indicators for economic, social and cultural rights: the rights to education, participation in cultural life and access to the benefits of science*, in: Y. Donders, V. Volodin (eds.), *Human Rights in Education, Science, and Culture: Legal Developments and Challenges*, UNESCO, 2007, p.111-152.

⁸⁸¹ S. Kalantry, J. Getgen, S. Koh, *Measuring State Compliance with the Right to Education Using Indicators: a Case Study of Colombia’s Obligations Under the ICESCR*, Cornell Law Faculty Working Papers, 2009.

to education by means of indicators developed on the basis of the 4-A scheme⁸⁸². The Concluding observations composed by the results of the assessment of the state's obligations also serve as an indicator of violations of the right to education according to a particular human rights treaty, e.g. the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and others.

Considering the findings of other authors the UNESCO prepared a set of indicators⁸⁸³ to identify differences, legal gaps, disparities and remaining challenges in the system of education in different countries. It is important to underline that these indicators are not a mandatory tool and can be applied selectively based on the country specific context and availability of the data to be analysed. The results of the indicators application can encourage the state to modify the priorities and the national policy in order to conform to the international standards in human rights.

The mentioned above indicators are applicable universally, i.e. they are elaborated on the basis of widely adopted human rights instruments and can be used in any country of the world. There are also regional indicators of human rights, those indicators are defined for particular purposes and are addressed to a number of countries. One of the examples is the indicators "Education at a Glance"⁸⁸⁴ of the Organisation for Economic Co-operation and Development. The annual edition displays the data of participants of the educational process, economic findings and the achieved results. OECD informs about a wide range of outcomes starting from student's performance in key fields of study and ending with the impact of education on earnings and possibilities of employment after the graduation. The member states are 35 countries located in the different continents and regions, e.g. Mexico, Chile, Turkey, European countries, at the same time the partner countries contribute to the annual publication on a regular basis⁸⁸⁵. Education at a Glance enables the comparison of education in a comprehensive dimension in the countries with different economic, political and social status.

In the situation when little literature is dedicated to the right to education, different from education of children, the analysis of the right to higher education is expected. In the

⁸⁸² G. de Beco, *Right to education indicators based on the 4-A Framework*. Concept Paper, 2009, p.6, available at http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_RTE_indicators_Concept_Paper_De%20Beco_2010.pdf [accessed on 13 May 2018].

⁸⁸³ The list of indicators implies Annex 1 to the publication *The Right to Education: law and policy review guidelines*, UNESCO, 2014, p. 25-49.

⁸⁸⁴ The online publication in different languages is available from 1998 to 2017 (the latest version) at http://www.oecd-ilibrary.org/education/education-at-a-glance_19991487 [accessed on 17 January 2017].

⁸⁸⁵ Poland is a member state of the organisation. The list of all member states is available at <http://www.oecd.org/about/membersandpartners/> [accessed on 04 November 2017].

mentioned above sources higher education is presented, but it is examined as a part of the right to education in general. A comprehensive analysis of tertiary education is presented in the OECD project titled Thematic Review of Tertiary Education⁸⁸⁶. The review examines how the organisation, management and delivery of tertiary education direct to the achievement of the national social and economic objectives. Although the project does not imply a universal analysis, as it covers the national policy of 24 member states only, it contributes to the comparative studies on education and enables countries to learn the innovative and progressive ideas in the realm of higher education, science and research.

So far, the systematic monitoring of the implementation of the international treaties' obligations towards the right to higher education has not been undertaken⁸⁸⁷. Obviously the scope and dimension of such systematic analysis is too wide, the task is considered time-consuming and complicated to undertake it in the framework of the current research. Then, the scholar benefits from the outcomes and findings of international organisations and has selected those indicators that reflect the characteristics of the 4-A scheme. In other words, there are selected the indicators that enable to assess the state's obligations towards the full realization of the right to higher education. Moreover, the data availability and accessibility are taken into account while creating the list of the indicators for the verification of the research question.

Availability of higher education

1. The number of higher education institutions is sufficient.
2. The right to establish private institutions is ensured.
3. Funding of the public education is not neglected by the state.
4. Academic freedom and autonomy of institutions are provided.

Accessibility

5. Admission to higher education institutions is fair and transparent, non-discriminative access is ensured.
6. Tuition fees are affordable for entrants.
 - a. The system of fellowship and other financial support for vulnerable people is created.
7. The recognition of diploma, degrees and periods of study undertaken abroad is possible.

⁸⁸⁶ The project objectives and methodology, country reviews and the final publication *Tertiary education for the knowledge society* are available at www.oecd.org/edu/tertiary/review [accessed on 12 November 2017].

⁸⁸⁷ L. Royal-Dawson, *op.cit.*, p. 346.

Acceptability

8. Quality of higher education is guaranteed.
 - a. Quality assurance policy is adopted.
 - b. Adequate infrastructure and learning environment are provided.
 - c. Teaching staff of higher education institution is properly qualified and available.
9. Curriculum and teaching methods aim at the human development.
10. Disciplinary rules are consistent with the human dignity.
11. Students are active right holders and have the freedom of expression.

Adaptability

12. The content of education and teaching methods are student-centred and appropriate to the diversity of students.
13. Higher education environment is inclusive.
14. Curricula and learning outcomes are correlative with the demands of the society and labour market.

In addition to the features of the 4-A scheme it is sufficient to examine higher education in the context of the core obligations of the state towards the right to education, because they shape the nature of the right. The core content of higher education, or minimum state's obligations, contains the non-discriminatory access, free choice of education, the conformity to the objectives of education defined by international law and, finally, the implementation of the national strategy on education directing to the full realization of the right. Some of these elements are already included in the 4-A scheme, e.g. non-discriminative access to education, but others require a separate examination. Thus, the researcher pays attention to the national strategy and educational policy adopted in the countries and investigates how higher education in Poland and Belarus conforms to the educational objectives enshrined in the international human rights instruments.

Conclusion

The right to education is one of over 20 human rights that are constant throughout people's lives. Education is something that starts from the birth and accompanies people in all their activities. The right to education is not a declarative notion, it is a fundamental human right that has its mechanism of enforcement. Within human rights law, the right to education is enshrined in the numerous international legal treaties regulating either all human rights or particular aspects of the right to education. However, they do not define

precisely the meaning of the right to education. There is no single definition of the right to education within international law. The understanding of the right to education is clarified through interpretation of the complex range of legal provisions and the legal practice of judicial and quasi-judicial institutions. International treaties refer to education as the formal process of learning provided, supported or monitored by the state. At the same time, education can be understood in a broad sense as the whole process whereby older generations seek to transmit their beliefs, culture and other values to the young. In the text of legal treaties one can find the regulation of primary, secondary and higher education (formal system of education). At the same time, the world community expresses its concern and endeavours to provide basic education (outside of the formal educational process) to all. Thus, lack of a precise definition of the right to education and, as a consequence, the unclear framework of the realisation of this right makes its monitoring ineffective and useless. The approach applied in human rights theory for monitoring human rights is based on the vertical effect, i.e. provisions describing the scope of human rights imply the obligations of the state towards the realisation of those rights.

Moreover, in light of international law, each human right is illustrated in the form of the obligations of the state classified in groups by different criteria. The right to education is not an exception to the rule and is mainly seen as a complex range of duties of governmental bodies. Some duties are for immediate realisation, others require sufficient resources and may be realised progressively over time. The right to education as a human right occupies a particular place in the series of other human rights. It is considered a right and a means of realisation of other human rights. It used to be perceived as a social right; however, it is currently seen as a collection of features from social, economic, political and civil rights. In order to assess how effectively the state fulfils its obligations towards the right to education under international treaties it is important to define the scope and content of the right. Within the field of social and economic rights, the content of the right to education is described through the core content or, in other words, through the main elements of the right, without which the nature and essence of human rights are lost. The core content of the right to education outlines only the minimum obligations of the state towards the rights, it does not describe the fullest characteristics of the notion and requirements of governmental agents to address the proper realisation of the right to education. For this purpose, the 4-A scheme offered by the Special Rapporteur on the right to education is considered a good tool to discover the fullest content of the right to education. Moreover, the 4-A scheme is enshrined in legal provisions, though they

constitute soft law sources, and provides universal tools for the comparison of education in countries with differences in law, policies and membership of international organisations. Analysis of the 4 major features of the right to education – availability, accessibility, acceptability and adaptability – is based on the case studies of various countries of implementation of human rights law, legal theory and practice, and the ideas of experts on the right to education. The applied scheme describes to the full extent the content of the right to education in the light of international human rights law.

The international community recalls that human rights and freedoms are not merely a theoretical notion fixed in international agreements, but ideas that must be put into practice and become a part of the everyday life of human beings all over the world. Therefore, monitoring is required to encourage states to develop their national strategy and legislation in line with international standards.

CHAPTER 5. HIGHER LEGAL EDUCATION IN POLAND AND BELARUS *DE JURE* AND *DE FACTO*

The 4-A scheme applicable to the right to education and examined thoroughly in the previous chapters is something more than merely a theoretical idea. It serves as an instrument to assess the realization of the right to education in the regular life of the state. It enables the identification of weak sides of the governmental education policy and supports the development of the system of education in the country to conform to the international regulations on human rights and fundamental freedoms. On the other hand the 4-A scheme is not only a world-wide spread mechanism to assess the right to education, but also a universal tool of comparison of provision of the right to education from the perspective of human rights values. It is fair to agree with the respectable scientist on comparative education R. Nowakowska-Siuta who states that there are many factors which make the comparison of the systems of education in different countries difficult, sometimes impossible, and as a consequence impede the smoothly development of the sub-discipline “comparative education”. She mentions a low level of comparativeness of the data caused by the historical, cultural, social or political difference of the states, a foreign language proficiency of a researcher and a proper understanding of the terminology, a comparativeness of statistic data gathered based on different indicators⁸⁸⁸. The selection of the case studies of Belarus and Poland for the current research seems rational based on the following reasons. Firstly, the systems of education, in particular higher education, have the similar structure, the history of its creation and development what itself makes the comparison easier. Secondly, the author of the current work is fluent in both the Polish and Russian/Belarusian languages to benefit from the findings of scientists, original sources of the doctrine and the official texts of legislation in the selected countries. Thirdly, the scholar graduated from the Belarusian education institution and continues the study in the Polish higher education institution, the personal experience enables to carry out the empirical research and make conclusions adaptable to the reality.

The assessment of the system of higher legal education in Poland and Belarus on the subject of conformity to the main principles and features of the right to education enshrined in the international human rights law in the form of 4-A scheme some comments are required. In Belarus legal studies are provided within both vocational and higher

⁸⁸⁸ R. Nowakowska-Siuta, *op.cit.*,s.15-16.

education. The completion of vocational legal education entitles to work as an administrative staff in the bodies of judicial and executive power, such as a clerk of court, a position at the record-keeping office, an assistant in the personnel department of the Ministry or the regional executive committee⁸⁸⁹. To be able to occupy the position of a prosecutor or to represent a party of the conflict before court or in negotiations the higher legal degree is required. According to the Polish law regulating higher education legal studies imply the 5-year uniform master's degree course⁸⁹⁰. Currently there is no division to bachelor's and master's degrees in law, as though it is assumed in other specialisations according to the idea of the Bologna Process⁸⁹¹. Then, the subject of the research in the field of law education is limited to the common for both countries level of education, i.e. higher legal education.

Undoubtedly, the image of an effective and responsible lawyer is shaped throughout the career under the influence of different factors, such as professional experience, legal education and self-education, reflection and collaboration with colleagues⁸⁹². Legal provisions are not stable and develop with changes and modifications of the society, social traditions and rules of living. Legal profession is one of professions that require the continuum of learning within the life of a specialist. However, higher legal education lays the principal and fundamental elements of the future career of a lawyer. The legal profession exists with and within the society and its people, the respect for the rule of law is determined by the activity and reputation of lawyers, the social justice is ensured by the efforts of the members of legal community. The fundamentals spread by law professors and imbibed by students during legal education determine whether social justice is achievable, the rights and freedoms of vulnerable strata of population are protected, the terms such as “discrimination”, “henocide”, “human dignity”, “hate” are objects of social, political and legal reforms. Higher legal education is a training of specialists with the

⁸⁸⁹ Постановление Министерства образования Республики Беларусь от 02 июня 2009 №36 “Об утверждении и введении в действие Общегосударственного классификатора Республики Беларусь ОКРБ 011-2009 “Специальности и квалификации””, таблица 7, НРПА, 2012, № 8/25964.

⁸⁹⁰ Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie warunków prowadzenia studiu z dnia 26 września 2016, Dz. U. 2016, poz. 1596, para. 17 pkt.1

⁸⁹¹ It is worth to add that in 2012 it was made an attempt to divide the legal studies into two degrees – bachelor and master. The higher education institutions enrolled students, however the graduates faced many challenges in employment with such diploma. The end of the enrolment was given in 2015. In virtue of the Regulation by the Ministry of Science and Higher Education on the conditions of study provision adopted in 2016 the bachelor or short-term master law degree can be awarded by the institution if only the studies started before 1 October 2015. See Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie warunków prowadzenia studiów, ust.22 pkt. 1.

⁸⁹² R. Stuckey and others, Best practices for legal education: a vision and a road map, Clinical Legal Education Association, 2007, p.11.

excellent analytical and speaking skills, the deep awareness of national and international legislation and the empathy to issues of social inequality. Consideration of higher legal education within a field of particular discipline limits its perception to either a pedagogical approach or a source of labour power or, on the contrary, high level of unemployment in the economy of the country. Since the main scholar's interest lies in the realm of human rights law the assessment of higher legal education on the subject of compliance with the features of availability, accessibility, acceptability and adaptability is seen rational from the perspective of international law. Human rights-based approach ensures a comprehensive and multidisciplinary view on legal education and the system of higher education provided by the government.

5.1. The legal framework of the right to higher education

5.1.1. International regulations

The human right to education is enshrined in various legal documents concerning human rights in general or particular aspects of the right to education. According to the rules of international law the provisions of international instruments are binding for the state if the government expresses its agreement with them in the form of signing and/or ratification of an international treaty. If the member states intent to create binding obligations for the parties of the agreement the document is usually called a convention. In case when the parties don't endeavour to create binding obligations in the treaty but merely declare certain aspirations the term "declaration" or "recommendation" is given to the document⁸⁹³. Taking in mind that legal provisions of international law refer to all levels and forms of education under the single term "education", for the purposes of the research the reference is given to the international legal instruments concerning higher education, unless otherwise stated.

It is important to underline that Poland and Belarus are members of the United Nations⁸⁹⁴ and UNESCO⁸⁹⁵, however the membership of Belarus and Poland in the regional unions differs. Expressing the motivation and orientation to the democratic

⁸⁹³ There are examples of declarations with binding force, although the primary idea of legislators was to create a soft law document with common rules of behaviour for countries with cultural differences and traditions. The treaties have gained binding character because the content of the international instrument may reflect customary international law or may become customary law at a later stage. That happened with the Universal Declaration of Human Rights.

⁸⁹⁴ Both countries were admitted on 24 October 1945.

⁸⁹⁵ Poland is a member state since 1946 and Belarus joined in 1954. The list of the members is available at the official web-page of the UNESCO <http://en.unesco.org/countries> [accessed on 16 April 2017].

transformation in the country Poland joined the Council of Europe in 1991⁸⁹⁶. Since 2004⁸⁹⁷ the country becomes a member of the European Union thereby affirming that it can guarantee democracy, legality, respect for and protection of human rights and freedoms. Belarus is a hole on the map of the Council of Europe and doesn't live up to firm standards and values of the widely recognized in Europe system of human rights and freedoms. Neglecting the basic values of the European mechanism of the human rights and freedoms Belarus doesn't have an access to the EU membership either. From the legal standpoint it means that the major human rights instruments of the European organisations are not applicable in Belarus. At the same time it is important to underline that the treaties and other documents issued within the Council of Europe and the European Union framework are included in the research, as they have been ratified by Poland and become a part of its legislation. Bearing in the mind that one day Belarus may join the European community, the principal European treaties promoting the human rights and freedoms will be legally binding in Belarus.

The major law-binding UN and UNESCO human rights documents, including those that focus on the right to education, have been ratified by both countries. The status of ratification is presented in the table 3.

Table 3. The status of ratification of the principal UN and UNESCO treaties concerning the right to education

| Title of the international treaty | Date of ratification by Belarus⁸⁹⁸ | Date of ratification by Poland |
|---|--|---------------------------------------|
| UNESCO Convention against Discrimination in Education | 1963 | 1964 |
| International Covenant on Economic, Social and Cultural Rights ⁸⁹⁹ | 1973 | 1977 |
| International Covenant on Civil and | 1973 | 1977 |

⁸⁹⁶ According to the article 4 of the Council of Europe Status any European country must accept the principles of rules of law and of enjoyment of the jurisdiction of human rights and freedoms in order to become a member of the Council of Europe. Poland did it on 26 November 1991. *See more* <http://www.coe.int/en/web/portal/poland> [accessed on 13 April 2017].

⁸⁹⁷ Treaty of accession of 16 April 2003.

⁸⁹⁸ The status of the ratification of various human rights treaties is presented on the interactive dashboard available at <http://indicators.ohchr.org/> [accessed on 17 April 2017].

⁸⁹⁹ However, the both countries didn't take any action to accept the Optional protocol to the International Covenant on Economic, Social and Cultural Rights. It means they don't recognizes the competence of the appropriate Committee to receive and consider communications submitted by individuals or groups of people claiming the violation of any of the economic, social and cultural rights provided in the International Covenant.

| Political Rights ⁹⁰⁰ | | |
|---|-----------|-----------|
| Convention on the Rights of the Child | 1990 | 1991 |
| Convention on the Elimination of All Forms of Discrimination against Women | 1981 | 1980 |
| Convention on the Rights of Persons with Disabilities | 2016 | 2012 |
| International Convention on the Elimination of All Forms of Racial Discrimination | 1969 | 1968 |
| International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families | No action | No action |
| Convention relating to the Status of Refugees | 2001 | 1991 |

Source: Data from the UN interactive dashboard, <http://indicators.ohchr.org>.

In addition to the universal legal documents the right to education in Poland and Belarus is in the focus of regional human rights instruments. Poland is a member of the regional organisations such as the Council of Europe and the European Union, therefore the regional legislation of both binding and non-binding nature shall be included in its legal framework, if the government expressed the agreement with their provisions. The Polish official bodies acceded to the European Convention on Human Rights in 1993, then the state ratified the several protocols⁹⁰¹ enabling to lodge an application with the European Court of Human Rights in Strasbourg. The Convention is a safeguard mainly against the violation of civil and political rights, though the right to education is also included in its content in Protocol 1, Article 2. The European Social Charter and the Revised European Social Charter which is gradually replacing the origin Charter are a complement to the European Convention on Human Rights guaranteeing the equality of social rights with civil and political rights enshrined in the Convention. Poland ratified the Social Charter in 1997 accepting 58 of 72 paragraphs, among them there is the provision on the right to education. The Revised Charter with Article 17 regulating the access to education has been signed in 2005 but not yet ratified⁹⁰². The European Charter for Regional or Minority

⁹⁰⁰ Although the Covenant doesn't contain the provision on the right to education it regulates the academic freedoms to a some extent what is included in the content of the human right to education.

⁹⁰¹ Poland didn't express its consent to the protocol No.12 (for a general prohibition of discrimination) and 16 (recognition of the European Court of Human Rights advisory opinion by the request of the higher national judicial institutions), the rest protocols have been signed. The data is available at <http://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/chartSignature/3> [accessed on 14 April 2017].

⁹⁰² Factsheets – Poland, Department of the European Social Charter, July 2016, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b7961> [accessed on 14 April 2017].

Languages was ratified by Poland in 2009⁹⁰³, the Framework Convention for the Protection of National Minorities entered into force for Poland in 2000⁹⁰⁴.

The right to education is defined in Article 14 of the Charter of Fundamental Rights of the European Union. The document is addressed to the national authorities when they are implementing the law of the European Union. At the first glance, the document is seen law-binding for the Polish government. However, the application of the Charter in Poland has an unclear interpretation due to the execution of Protocol No. 30⁹⁰⁵.

Legally non-binding sources are also essential supplements for the proper interpretation and implementation of hard law. They enrich the meaning of the right to higher education and encourage the member states to develop the national regulations in conformity with the international suggestions. These documents are mentioned earlier in the research and are cited accordingly further in the research.

Unlike Belarus Poland is a member of the Organisation for Economic Co-operation and Development that publishes the statistic report titled “Education at a Glance”. The organisation doesn’t produce the legal instruments affecting the national system of education directly, but it affects the national policy on education through its cross-national statistic reports and indicators. The OECD’s goal is to support countries in sharing innovative and successful initiatives in education and to identify points in education policy to enhance the benefit in the national economic and social reforms on the basis of achievements of education. The practice displays that the OECD possesses a big potential to be considered an important international expert in the realm of social and economic processes⁹⁰⁶. The annual report enables the member countries to compare their position and results in the field of education against the position of other countries. The report composed with the application of the multiple indicators and numbers serves a reliable tool of analysis at the international level. They demonstrate how much the government contributes to the system of education and how the system operates, on the other hand the outcomes of educational services are also presented in the form of the employment rate of graduates, the amount of incomes depending on the educational degree achieved, etc. Besides the statistic reports the OECD carries out thematic reviews, comparative analysis

⁹⁰³ The data is available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/148/signatures> [accessed on 14 April 2017].

⁹⁰⁴ The data is available at <https://www.coe.int/en/web/minorities/etats-partie> [accessed on 14 April 2017].

⁹⁰⁵ Ł.Bojarski, D. Schindlauer i inn., *op.cit.*, s. 124-126.

⁹⁰⁶ A. Amaral, G. Neave, *The OECD and its Influence in Higher Education: A Critical Revision*, in: R. M. Basset and A. Maldonado-Maldonado (eds.), *International Organizations and Higher Education Policy. Thinking Globally, Acting Locally?*, New York, 2009. p. 84.

and analytical research. Thus, “Tertiary Education for the Knowledge Society”⁹⁰⁷ is the most comprehensive analytical work on the tertiary education policy at the international level. Although the scope of the work is limited to the education policy of the member states, the report provides an overview on such matters as governance, quality, equity of higher education, analyzes the fields of research and innovation, the development of careers in academia. The authors of the report put in the focus the place of internationalization in education policy, what in fact constitutes the main interest of the organisation. The Polish tertiary education policy is presented in the report either.

The right to education is a very complex notion even narrowing it to the formal higher education. There are a lot of legal documents of obligatory or facultative nature adopted within the European Higher Education Area, i.e. the formerly known Bologna process. The documents concern various aspects of cooperation of higher education institutions and unification of approaches in terms of diploma, studies or teachings staff. Among them one may find the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers⁹⁰⁸, the Standards and Guidelines for Quality Assurance in the European Higher Education Area⁹⁰⁹, European Qualifications Framework⁹¹⁰ and others. This is not a purpose of the research to mention all these documents, however in the respective part of the research the reference to them has been done.

5.1.2. National regulations

The implementation of the right to education in the state is reflected in the form of national acts which constitute the subject of interests of administrative and constitutional law⁹¹¹. In some countries they constitute a separate field of law called education law. In Poland and Belarus there are plenty of national legal acts regulating different aspects of higher education, e.g. licensing of private educational institutions by the governmental agents, non-discriminative policy in education, the rules of remuneration and employment of academic staff, ownership in the system of education etc. They are examined to the extent necessary to assess the higher legal education on the subject of compliance to the 4-A scheme and international human rights standards.

⁹⁰⁷ P. Santiago, K. Tremblay, E. Basri, E. Arnal, *Tertiary Education for the Knowledge Society*, OECD, 2008.

⁹⁰⁸ Commission Recommendation of 11 March 2005 on the European Charter for Researchers and on a Code of Conduct for the Recruitment of Researchers, 2005/251/EC.

⁹⁰⁹ *Standards and Guidelines for Quality Assurance in the European Higher Education Area*, 2015, Belgium.

⁹¹⁰ Recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning, 2008/C 111/01.

⁹¹¹ See more on the debate of what field of science studies the legislation on education in subchapter 1.3.

Nevertheless, the particular attention shall be given to the constitutional norms on the right to education as they form the basis for the national education law. The right to education is reflected in the main national law of the both selected countries, i.e. in the Constitution. The Constitution of the Republic of Belarus states “everyone shall have the right to education. Accessible and free general, secondary and vocational and technical education shall be guaranteed. Secondary specialized and higher education shall be accessible to all in accordance with the capabilities of each individual. Everyone may, on a competitive basis, obtain the appropriate education at state educational establishments free of charge”⁹¹². Beside the principal clause on education the main law of the state possesses the provision on the freedom to choose the language of education and teaching⁹¹³ and ensures the equality in receiving education by both men and women⁹¹⁴.

The Polish Constitution sets up the more comprehensive wording of the right to education which in many points overlaps with the provisions of the international human rights instruments. Thus, Article 70 of the Constitution states:

1. „Everyone shall have the right to education. Education to 18 years of age shall be compulsory. The manner of fulfilment of schooling obligations shall be specified by statute.
2. Education in public schools shall be without payment. Statutes may allow for payments for certain services provided by public institutions of higher education.
3. Parents shall have the right to choose schools other than public for their children. Citizens and institutions shall have the right to establish primary and secondary schools and institutions of higher education and educational development institutions. The conditions for establishing and operating non-public schools, the participation of public authorities in their financing, as well as the principles of educational supervision of such schools and educational development institutions, shall be specified by statute.
4. Public authorities shall ensure universal and equal access to education for citizens. To this end, they shall establish and support systems for individual financial and

⁹¹² Статья 49 Конституции Республики Беларусь от 1994 года (с изменениями и дополнениями, принятыми на республиканских референдумах 24 ноября 1996 г. и 17 октября 2004 г.), НРПА, 1999, № 1, 1/0. Here and thereafter the translation of extracts of the legal acts of the Belarusian legislation is provided by the author of the research. The official languages of legislation in Belarus are Belarusian and Russian, unofficial translation of some acts is provided by individuals or non-governmental organisations.

⁹¹³ Ibidem, art.50.

⁹¹⁴ Ibidem, art.32.

organizational assistance to pupils and students. The conditions for providing of such assistance shall be specified by statute.

5. The autonomy of the institutions of higher education shall be ensured in accordance with principles specified by statute⁹¹⁵.

In addition to Article 70 the right of national and ethnic minorities to establish their own educational institutions is preserved⁹¹⁶, the freedom of teaching is protected⁹¹⁷. There is also a clause enabling parents to bring and educate their children in conformity with their moral and religious convictions⁹¹⁸. It is obvious that the provisions on education enshrined in the Constitution of Poland imply the extract of the international human rights treaties.

Taking into account that the Constitution merely serves a safeguard and a foundation of the right the detailed regulations of the realization of the right in practice are developed and issued by the appropriate governmental bodies. The major and the most comprehensive legal document on education in Belarus is the Code on education consisting of two parts – general and special ones. The general part describes the system of formal education in the country, education law legislation, relationships in the sphere of education, subjects and objects of educational relationships, management and international cooperation in the realm of education. The last but not least sub-chapter of the general part of the Code is devoted to financing of education. The second – special – part of the Code defines the various levels of education starting from pre-school education and ending with the tertiary education. Moreover, it contains the provisions on social assistance and education of children from socially vulnerable families and in difficult situations. The Code defines the principles and rules of the additional education (musical, art, technical, ecological and other) of youth and adults either. The different aspects of higher education are regulated by the chapters 37-41 of the document. The Code on education consists of 63 chapters and 295 Articles. Its adoption by the parliament in 2011 was a brave and successful legislative attempt to harmonize and to gather in a single legal document all clauses concerning the regulation of formal education⁹¹⁹.

⁹¹⁵ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz. U. Nr 78, poz. 483 z późn. zm. The English version of the text is available at the web-page of the Sejm, a lower chamber of the Parliament of Poland <http://www.sejm.gov.pl/prawo/konst/polski/kon1.htm> [accessed on 17 November 2017].

⁹¹⁶ Ibidem, art.35.

⁹¹⁷ Ibidem, art.73.

⁹¹⁸ Ibidem, art.53 para.3.

⁹¹⁹ During the previous three decades in Belarus over 50 legal acts regulating the relationships in the system of education were prepared and adopted by the government and the President. Nevertheless, there were gaps in regulation of additional and pre-school education, post-graduate education and the status of learners. Then,

The legislation on education in Belarus is not limited to the Constitution and the Code on education. According to Article 6 of the Code on education “the legislation on education consists of the Constitution, the Code and other legal acts” issued by the proper governmental bodies within their jurisdiction. It is worth to take into account the following regulations on higher education adopted by the Council of Ministers or the Ministry of Education of the Republic of Belarus: the rules of assessment of students of higher education⁹²⁰, the recommendations and instructions on preparation and adoption of educational documentation (curriculum, syllabus, internship description, etc.)⁹²¹, the rules of the graduate assignment to their first working place⁹²², the instruction on transfer, expulsion and restoration of students of higher education⁹²³ and many other aspects. Although the Code on education is a rather comprehensive document it contains only the fundamentals and principal provisions on higher education, the detailed clauses on the status of students, remuneration of academic staff and learning process are elaborated by other appropriate governmental agents and higher education institutions.

The similar approach to the regulation of higher education is displayed in Poland. The principles of the right to higher education are set up to the major extent by the Law on higher education and science. The institutional aspects of higher education and science are defined in laws establishing such legal entities as the National Center of Research and Development⁹²⁴, the National Center of Science⁹²⁵, the National Agency of Academic Mobility⁹²⁶. In the nearest past the maintenance of the system of higher education was

the Code implies a comprehensive legal act reducing the number of legal documents on education and of complex implementation. О.В.Азарко, Н.В.Жданович, *Регулирование образовательных отношений в Республике Беларусь: нормативно-правовой аспект*, in: *Образовательное протранство детства: исторически опыт, проблемы, перспективы: сборник научных статей и материалов III научно-практической конференции*, Коломна: ГСГУ, 2016, с. 27.

⁹²⁰ Постановление Министерства образования Республики Беларусь от 29 мая 2012 №53 „Об утверждении Правил проведения аттестации студентов, курсантов, слушателей при освоении содержания образовательных программ высшего образования”, НРПА, 2013, 8/27440.

⁹²¹ Приказ Министра образования Республики Беларусь 27 мая 2013 № 405 „Об утверждении Порядка разработки и утверждения учебных программ и программ практики для реализации содержания образовательных программ высшего образования I степени”.

⁹²² Постановление Совета Министров Республики Беларусь от 22 июня 2011 г. № 821 „О некоторых вопросах распределения, перераспределения, направления на работу, последующего направления на работу выпускников, возмещения затраченных государством средств на их подготовку и целевой подготовки специалистов, рабочих, служащих”, НРПА, 2011, № 76, 5/34029.

⁹²³ Постановление Совета Министров Республики Беларусь от 15 июня 2011 г. № 780 „Об утверждении Положения о порядке перевода, восстановления и отчисления студентов”, НРПА, 2011 г., № 70, 5/33981.

⁹²⁴ Ustawa o Narodowym Centrum Badań i Rozwoju z dnia 30 kwietnia 2010 r., Dz. U. z 2017 r. poz. 1447, ze zm.

⁹²⁵ Ustawa o Narodowym Centrum Nauki z dnia 30 kwietnia 2010 r., Dz. U. z 2016 r. poz. 1071, ze zm.

⁹²⁶ Ustawa o Narodowej Agencji Wymiany Akademickiej z dnia 7 lipca 2017 r., Dz. U. poz. 1530.

regulated by about 80 executive acts issued by appropriate governmental bodies⁹²⁷. The variety of legal regulations on education was highly criticized. The detailed national provisions regulating the administrative and managerial issues in higher education institutions result in the prosperity of bureaucracy in education. They are seen as one of the reasons of slow development of the Polish science and its low innovative capacity in the global scientific dimension. In addition, the adoption of numerous regulations results in collision of clauses and a lack of precise interpretation of laws what itself doesn't support the development of science and higher education. The adoption of the new version of the Law of higher education and science in July 2018 resulted in the expiration of four main acts on higher education – the Law on student loans and credits, the Law on scientific titles and degrees, the Law on higher education and the Law on the rules of science funding⁹²⁸. The new version of law embraces the regulations that earlier were incorporated in different documents.

Although the Law on higher education and science is not a codified act it is perceived a core legal instrument in the realm of higher education and science in Poland. It is also known as the Constitution for Science, or Law 2.0. The document contains the principal ideas and provisions on the regulation of the system of higher education and educational institutions, the rights and duties of students and the status of academic staff, internationalization of education, quality of education and research, funding rules and the monitoring of educational processes. The legal document consists of fifteen parts divided into 470 articles what is twice more than in the previous version of the act. The current Law on higher education and science is a result of a few years work on the idea of modernisation of the system of higher education in Poland. During last years different teams of scientists, civil servants and politicians prepared the concept of changes of the Law according to the criteria of the governmental order. Then since 2016 three selected by the Ministry of Science and Higher Education teams prepared a draft of a new law that was

⁹²⁷ See for example rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie sposobu podziału dotacji z budżetu państwa dla uczelni publicznych i niepublicznych oraz jednostek naukowych na pomoc materialną dla studentów i doktorantów z dnia 27 marca 2015 r., Dz. U. z 2015 r. poz. 463; rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie warunków prowadzenia studiów; rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie podejmowania i odbywania przez cudzoziemców studiów i szkoleń oraz ich uczestniczenia w badaniach naukowych i pracach rozwojowych z dnia 12 października 2006 r., Dz. U. z 2006, nr 190, poz. 1406, ze zm.; rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie warunków, jakie muszą być spełnione, aby zajęcia dydaktyczne na studiach mogły być prowadzone z wykorzystaniem metod i technik kształcenia na odległość z dnia 25 września 2007 r., Dz. U. z 2007, nr. 188, poz. 1347, ze zm.

⁹²⁸ Ustawa Przepisy wprowadzające ustawę – Prawo o szkolnictwie wyższym i nauce z dnia 3 lipca 2018, Dz. U. z 2018 poz. 1669, art. 169.

discussed publicly and its content was developed. The final version of the draft of the Law was adopted by the Parliament and took in force on October 1, 2018⁹²⁹.

In Belarus the reform of legislation on education, including higher education and science, is highly expected during the last decades. However, the aim of the expected changes is not merely a matter of harmonisation of the broadly developed national legislation, but the reorganisation of the system of education in order to satisfy the needs of the society, the national economy and international processes. The deeper analysis of the challenges of the contemporary system of higher education with the focus on legal studies is presented further in the work. Nevertheless, it is worth to admit the overloaded legal regulations concerning higher education in Belarus. In 1998 the Council of Ministers announced the beginning of reforms in higher education that had to be completed by 2010⁹³⁰. The preparation phase passed during 1999-2000 with the creation of the legislative background for the structural changes. However, in 2008 (the phase of monitoring and summary of the reform) over 15 new resolutions concerning the realm of higher education were adopted by the Council of Ministers in addition to few amendments to the current legislation⁹³¹. Then, the reform of higher education seemed to finish with the adoption of the Code on education in 2011 unifying the variety of legal documents. Though nowadays the government and the President of the country continue their legislative activity in the sphere of education in virtue of the Constitution and the Code on education. There are over 70 resolutions, instructions and decrees adopted by them and clarifying the clauses of the Code⁹³². Undoubtedly the detailed regulation of the right to education at the national level implies the proof of the state's international obligations to protect and fulfil the human right to education. On the other hand, the state must respect the human right to education and refrain from interfering too much in their activity unless the violation of the right is alarmed by the right-holders and other parties.

⁹²⁹ *Ibidem*, art. 1.

⁹³⁰ Постановление Совета министров № 1637 от 27 октября 1998 г. „Об утверждении Концепции развития высшего образования в Республике Беларусь”, НРПА, 2001, 5/6913.

⁹³¹ О.В. Петровская, Н.А. Петровский, *Система высшего образования в Республике Беларусь: специфика, проблемы, перспективы*, Право и образование, 2009, № 9, с.5.

⁹³² The text of the legal documents regulating higher education are displayed on the official page of the Ministry of education, available at <http://edu.gov.by/sistema-obrazovaniya/vysshee-obrazovanie/norm-akty/> [accessed on 25 December 2017].

5.2. Higher legal education overview

Although the chosen for the research countries belong to the civil-law group with the similar system of education and law there are country-specific features in the provision of legal education in each of them.

Secondary education ends up with the maturity examination in Poland and the centralized testing in Belarus. In Poland “matura” examination is the final assessment of secondary school students required for their graduation. The maturity certificate contains the results of certain oral and written tests taken during the examination and implies a document allowing the holder to apply for admission to higher education institutions. Entrants send the certificate to the law faculties of their choice. The centralized testing in Belarus is a single form of candidate’s assessment for admission to higher education institutions. The main difference from the maturity examination is that the centralized testing doesn’t replace the graduation examination of secondary education. The higher the scores of the examination or testing, the better the chances for enrolment a well-ranked law school in both countries.

It is important to clarify that there are different types of higher education by various criteria. By fees, legal education can be provided free of charge or students shall pay. The fees depend on the duration of studies, type of education and the status of the higher education institution. By schedule, education is divided into full-time and part-time, at the same time the full-time education can be provided either at the daytime or in the evenings. Part-time education is based mainly on the self-organized learning activity of a student with the limited number of lessons held in the higher education institution.

Legal education is provided by public-funded institutions and private schools. Public schools are financed from the state budget. The size of the public contribution depends on various factors: the number of students and academic staff, expenditures on the institution maintenance and the like. Budget-financed entities have additional sources of funding in the form of fees from part-time students, postgraduate programmes, scientific grants and non-academic commercial activity. Legal studies in Poland are based on a five-year uniform programme and result in the master’s degree in law⁹³³. Legal studies are not split into the bachelor and master’s degrees like the majority of studies within the tertiary education. The controversial debates are held in the legal doctrine and at the meetings of

⁹³³ Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie warunków prowadzenia studiów z dnia 26 września 2016, Dz. U. 2016, poz. 1596, para.8 ust.1 pkt.7.

members of the academia to discuss the uniform legal programme vs. the split law studies. After the graduation with the master's degree students can continue at the doctoral level.

The legal profession in Belarus is taught within the first and second level of higher education which results accordingly in the specialist and master's degrees in law. The first level lasts 4 years of the full-time tuition and 5 years of the part-time tuition. It would be incorrect to compare the first level of studies with the bachelor degree as the learning outcomes of the specialist programme correspond to knowledge and skills of a lawyer with the full professional competence. The master's degree in law is an interim level either to the scientific career or to the specialisation in profession. Unlike the master courses in law at the European universities the legal studies of the second level in Belarus has two aims, therefore there are two models of the master's degree in law – the practice-oriented and academic. The first model is aimed to deepen the knowledge of students in legal disciplines and to introduce them with the challenging issues of law in action. By the content it is comparable with the postgraduation courses offered in Poland. The other model of the studies at the second level is aimed to develop the research and analytical skills of law graduates and to prepare them for an independent scientific research and academic career at the doctoral level.

At the law faculties in Belarus and Poland there are different specialisations that somehow learn the legal system and legal provisions, however they don't always grant to graduates an access to the legal industry to the fullest extent. Administration, criminology, national security are taught along with law in Poland. Higher legal education in Belarus has a few specialisations – jurisprudence, political science, business law, international law – which are sometimes taught at different faculties, e.g. the international law specialization is provided by the faculty of international relations of the Belarusian State University⁹³⁴.

5.2.1. Higher legal education in Belarus in numbers

Reflecting on the availability of higher legal education it is important to refer to the statistic data. The main source of the statistics in the state is the official governmental departments responsible for collecting and analysing of all kind of data. In Belarus this function belongs to the National Statistical Committee, in Poland the Central Statistical Office provides the reports on various fields of the life in the society. For the purposes of the current work the detailed numbers in the realm of legal education are required,

⁹³⁴ The list of specialisations is presented at the page of the faculty of international relations, *available at* <http://bsu.by/ru/main.aspx?guid=4771> [accessed on 18 February 2017].

however they are not always available in the reports of the governmental bodies. Therefore, the reference to other sources of information shall be done, for example for the data on the Polish higher education it is worth to refer to the reports and findings of the Ministry of Family, Labour and Social Policy, the central system of information on higher education POL-on⁹³⁵, the reports of the international organizations such as “Education at Glance” and others. Concerning the higher legal education in Belarus the researcher has applied to the statistics included in the development concept of legal education in Belarus during 2018-2025⁹³⁶, the data and reports provided by the general informational and analytical center of the Ministry of Education⁹³⁷ and the UNESCO reports. All the data are actual on the date of January, 2018.

In Belarus there are 20 higher education institutions where entrants can study law, 15 of them are budget-funded entities and 5 private one. The legal studies imply two-tier system of education: specialist and master’s degree. The first level lasts 4 years (full-time tuition) or 5 years (part-time tuition) and results in the specialist’s degree in law. In the academic year 2016/2017 there were 28,7 thousand law students in the higher education institutions of all forms of ownership what forms 9,1% of all students⁹³⁸. As for the gender breakdown, there is a higher share of women among law students (70%)⁹³⁹.

The law faculties annually accept about 6,5 thousand entrants. In the academic year 2016/2017 the student cards were given to 6 657 first-year law students of which 4 500 people became students of the state-funded educational institutions and 2 157 students study in the private higher education institutions⁹⁴⁰.

Since the part-time higher legal education assumes self-education to a great extent the duration of this type of studies is fairly longer than the full-time tuition. At the same time law education may be provided in a precarious situation affecting the quality of education. In the previous years the numbers of part-time law students has being grown impressively

⁹³⁵ The integrated system of data on higher education in Poland required for the effective decision process by the Ministry of Science and Higher Education. The public access to some data is open at <https://polon.nauka.gov.pl/>, the rest is available only for the civil servants.

⁹³⁶ In January 2019 the content of the document has not finalized yet, the draft of the act was presented and discussed during the conference organized at the Belarusian State University on 28 December 2017 “Reform of legal education in Belarus and the UK: the exchange of experience and vision for the future”. The chapter 3 of the concept describes the current situation in the vocational and higher legal education in Belarus.

⁹³⁷ The general information and analytical center is a governmental institution established to enhance the informational and technological development in the realm of education. The center is also responsible for gathering and analyzing the statistics, the statistics reports on education are available at <http://www.giac.unibel.by/>.

⁹³⁸ Концепция развития юридического образования в Беларуси до 2025 г., проект, Минск, 2017, с. 7.

⁹³⁹ Образование в Республике Беларусь, Статистический сборник, Минск, 2017, с. 142.

⁹⁴⁰ Концепция развития юридического образования в Беларуси до 2025 г., *op.cit.*, с. 7.

faster than the full-time students. Nowadays above 55% of all law students select the part-time form of education. In a few higher education entities the number of part-time law students is twice more dominating (about 70%) than the number of students attending a law school daily and having a regular contact with law teachers⁹⁴¹.

Looking a glance at the academic staff of the law faculties it is difficult to imagine the full picture due to the lack of the necessary data. The National Statistical Committee in the statistics manual on education provides the information about the academic staff of higher education institutions in two tables only - academic teaching staff in higher education by rank and academic teaching staff in higher education by regions and the city of Minsk⁹⁴². The same data is provided by the general informational and analytical center of the Ministry of Education. The documents are silent on the academic staff by the fields of science or teaching disciplines and can't display the realistic picture in legal education. The concept of the development of higher legal education displays the number of law teachers with the academic degrees and ranks equal or higher to the Ph.D degree (Kandidat Nauk). At the same time it is worth to remember that the legislation enables to occupy the teaching position by people with the master's degree in law and the Belarusian higher education institutions use this possibility to a great extent. In the budget-funded and private law schools there are 369 persons possessing the doctoral degree (Kandidat Nauk) and 36 teachers with the habilitated doctoral degree (Doktor Nauk). By the academic rank only 9 of 20 law schools have associate professors (Docent) or full professors among their teaching staff⁹⁴³.

Due to the lack of information of the number of all law teachers in the republic it is difficult to define the average number of students taught by a law professor. Basing on the information provided on the official web-pages of a few law faculties it can be stated that a law professor teaches about 30 students in the law faculty of the Vitebsk State University⁹⁴⁴ and 26 students in the law faculty of the Brest State University⁹⁴⁵.

By the age the academic teaching personnel can be called senescent (Figure 6). The figure demonstrates the main challenge of the Belarusian science, including higher legal education. The young people face various obstacles in the access to the academic career.

⁹⁴¹ Ibidem, с. 8.

⁹⁴² Образование в Республике Беларуси, *op.cit.*, с. 156, 159.

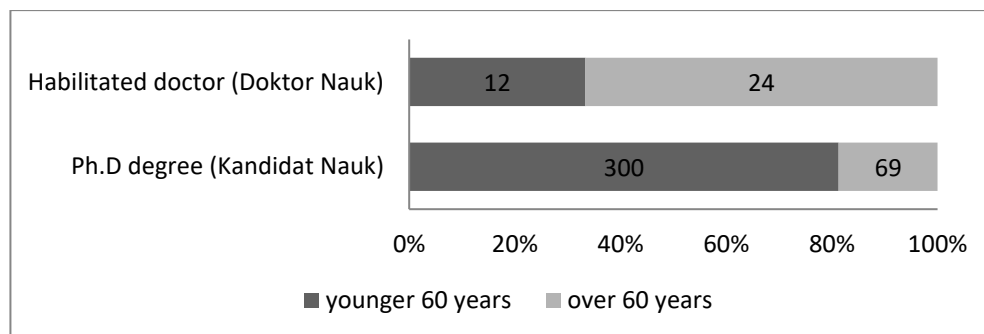
⁹⁴³ Концепция развития юридического образования в Беларуси до 2025 г., *op.cit.*, с. 9.

⁹⁴⁴ About 1500 full-time and part-time students are taught by 51 law teachers in the academic year 2017-2018, the data is available at <https://vsu.by/universitet/fakultety/yuridicheskij.html> [accessed on 27 January 2018].

⁹⁴⁵ 38 law teachers educate over 1000 students, the data is available at <http://www.brsu.by/div/yuridicheskii-fakultet> [accessed on 27 January 2018].

Due to the Soviet legacy still maintained in tertiary education the doctoral studies in Belarus are more complicated than, for example in Poland, and the defence of thesis is often extended. Due to the stereotype in the academic community that junior researchers are less capable of the scientific and pedagogical work, the strict formalization, rigid hierarchy and a lack of autonomy in the system of education cause the slow influx of young teaching staff⁹⁴⁶. Few graduates continue their scientific path at the doctoral level, even fewer doctoral students defend their thesis and continue their work in the academia⁹⁴⁷. As a result, the scientists with the academic rank work for more than one employer, their personal development, scientific investigation and the social life may be infringed what correspondingly affects the quality of education.

Figure 6. Academic teaching staff by the age group, Belarus



Source: Концепция развития юридического образования в Беларуси до 2025 г., с. 10.

During the Soviet Union period higher education was known as fundamental and of high quality. Higher education institutions located over the country enrolled entrants from as the republics of the Soviet Union as well from abroad. After the dissolution of the Soviet Union the member-states received the system of higher education as it was with its rudiments and advantages. The governments of some countries carried out reforms to adapt education to the contemporary challenges; the states became members of the international covenants and followed the conditions of the Bologna process. Unfortunately, the Belarusian government blindly believed in the effectiveness of the old system of higher education in new conditions and didn't consider carrying out any reforms. This resulted in the brain drain and low attractiveness of the educational services in Belarus for foreigners.

⁹⁴⁶ А.М. Погорельская, *Трудности современной системы высшего образования в Республике Беларусь*, Вестник Томского государственного университета, 2016, № 411, с. 117.

⁹⁴⁷ About 6,5 thousand students graduated in 2016 with master's degree in law, only 116 persons were accepted to the doctoral studies. According to the data in the previous years half of the doctoral students is expected to graduate. In 2016 the academic degree of kandidat nauk in law was granted to 9 people.

Although sometimes ago the important international agreements were signed and ratified by Belarus the enrolment rate of foreign students still doesn't exceed 5%⁹⁴⁸. The foreign students arrive to Belarus mainly from Turkmenistan (about 8000 people), Russian Federation (1600), China (1300), and Iran (800), Nigeria (500) and Azerbaijan (500). There are also representatives from other post-Soviet states, but they constitute small groups of 100-200 people.

In terms of internationalization of legal education there are no data available on the admission number of foreign students. Analysing the attractiveness of higher education in general for foreign students it is worth to take into consideration the specific of legal studies. Law is a country-specific subject of knowledge. Although there are subjects with the international content in the legal study programme, legal education is more often gained in the country where graduates are going to undertake a job afterwards. Therefore the number of foreign students studying law in Belarus is probably little in comparison with the enrolment rate at other faculties ensuring universal professions, like doctors, economists or IT engineers. Since legal education in Belarus is taught in the Russian language only, the study at the law faculty is often chosen by entrants from post-Soviet countries where the Russian language is still spoken in the society along with the official language of the state.

Analysing the data on number of students it is worth to have a look at the inclusive higher education on the case of disabled people. The right to education belongs to everyone regardless of physical and mental health and the Constitution of the Republic of Belarus ensures the accessibility of higher education for all entrants⁹⁴⁹. However the statistic data and the international reports⁹⁵⁰ demonstrate that the accessibility of higher education for this category of people could be enhanced. In higher education institutions over 1100 students with disability make attempt to obtain a degree, the data according to the fields of studies are not available. They constitute 0,3% of all students of higher education institution. Only 2% of all disabled people have higher education degree⁹⁵¹. Obviously, the access to higher education depends on various individual factors of an entrant and the type of disability may be an obstacle even to study in the secondary school.

⁹⁴⁸ In 2015/2016 the rate of foreign students of all students in Belarus was 4,4%, in 2016/2017 – 4,9%. *Образование в Республике Беларусь, op.cit.*, с. 156, 155.

⁹⁴⁹ Article 49 of the Constitution.

⁹⁵⁰ Отчет „Обследование положения инвалидов в Республике Беларусь”, проект ПРООН и Правительства Республики Беларусь “Содействие Республике Беларусь в присоединении к Конвенции о правах инвалидов и ее осуществлению”, Минск, 2010 г.

⁹⁵¹ О. Трипутень, *Право людей с инвалидностью на высшее образование в Республике Беларусь*, Минск, 2013, с.3.

Nevertheless, the testimony of people with disability⁹⁵² maintains the concerns about an open and fair access to higher education for people with limited possibilities.

The funding of higher education is an issue of numerous discussions at the national level within the system of management of education. Until the adoption of the Code on education in 2011 the law on education stated that all levels of education should be funded from the governmental sources in total no less than 10% of GDP⁹⁵³. In fact, the provision has never been fulfilled by the government, in 2007-2015 the funding varied within 4,5-5,2% of GDP reflecting the constant reduction of the government expenditure on education, in 2015 it was equal to 4,95%⁹⁵⁴. The percentage of expenditure on tertiary education in 2016 was equal to 11% of governmental spendings on the entire system of education⁹⁵⁵, whereas in 2009 the national budget provided 20,1% to higher education in the education breakdown⁹⁵⁶. For the ease of comparison with government expenditure on higher education in other countries scientists apply the proportion to GDP size. The public expenditures on higher education in Belarus are equal to 0,54% of GDP.

5.2.2. Higher legal education in Poland in numbers

In 2017 there are 52 higher education institutions providing legal studies in Poland, including 25 private institutions⁹⁵⁷. In academic year 2015/2016 there was 53,2 thousand students studying law, about 40 thousand studied in the public higher education institutions (75%) and 13,5 thousand selected the private legal education (25%). The pro rata of law students among all students amounts to 3,9%. As for the gender breakdown, there is a slightly higher share of women among law students (60,3%)⁹⁵⁸.

Over 10 thousand entrants annually start higher legal education in Poland. In the academic year 2015/2016 the law faculties accepted 11 896 students, among them 8 995

⁹⁵² Поверх барьеров. Доступно ли сегодня высшее образование для инвалидов? Советская Белоруссия, Беларусь сегодня, 17.11.2016, available at <https://www.sb.by/articles/poverkh-barerov-invalidi-obrazovanie.html> [accessed on 28 January 2018].

⁹⁵³ Закон об образовании от 29 октября 1991 г. № 1202-XII, Ведомости Верховного Совета Республики Беларусь, 1991 г., № 33, ст.598, с изм. и доп., ст. 53.

⁹⁵⁴ Belarus: Education expenditures, UNESCO institute for statistics, available at <http://uis.unesco.org/en/country/BY> [accessed on 26 January 2018].

⁹⁵⁵ Образование в Республике Беларуси, *op.cit.*, с. 20.

⁹⁵⁶ А. Лаврухин, *Система высшего образования Беларуси: состояние, проблемы и направления реформирования*, 2014, Минск, с. 29.

⁹⁵⁷ The data are gathered from the information system about the science and higher education POL-on created to support the work of the Ministry of Science and Higher Education. The list of higher education institutions is available at <https://polon.nauka.gov.pl/opi/aa/kierunki/studia?execution=e4s1> [accessed on 12 January 2018].

⁹⁵⁸ Higher education institutions and their finances in 2016. Central statistical office, Warsaw, 2017, p. 60-61.

persons became students of public educational institutions and 2 901 students study in the private higher education institutions⁹⁵⁹.

Like in Belarus higher education in Poland is provided in two forms – full-time and part-time tuition. The significant difference of education in the chosen countries is that full-time and part-time programmes in Belarus are offered free of charge as well as at the paid basis in the public entities, whereas in Poland part-time tuition is always paid. According to the main law of Poland education in the public educational institutions is free of charge, however by law some educational services provided by higher education institutions can be subject to payment⁹⁶⁰. Although the part-time tuition is based on self-education of students the duration of part-time programmes is equal to the duration of full-time tuition what might result in the low quality of higher education. The number of classes for part-time students is twice fewer than defined in the full-time programme and taught mainly from Friday to Sunday. It is mistakenly expected that part-time students devote more time to the home-based learning and it will result in the achievement of the same learning outcomes as the full-time students attending regular classes during the whole week. In fact, part-time programmes are addressed in the first to those who would like to enhance or gain the professional knowledge in addition to the experience being acquired at the workplace.

Nowadays above 60% of all law students choose full-time programmes. In the budget-funded educational institutions this proportion is the same, i.e. two third of students study free of charge within the full-time programmes. In the non-public law schools the tendency is contrary, the percentage of full-time programme students doesn't exceed 40%, while the others 60% prefer to combine legal education with other activities⁹⁶¹. According to the Law on higher education and science, the number of part-time students in the public entity cannot exceed the number of full-time students⁹⁶².

Regarding the number of the academic teaching staff neither the central statistical office nor the POL-on database present the number of academic teachers by the field of science. Since it is hard to estimate the exact number of the law academic teachers in the governmental statistics the total number of the academic teaching staff in Poland shall be presented. There are 105 801 academic teachers and scientific employees in higher education institutions in Poland, where 20,7% are academic teachers with the master's

⁹⁵⁹ Ibidem.

⁹⁶⁰ Article 70 of the Constitution of the Republic of Poland.

⁹⁶¹ Higher education institutions and their finances in 2016, *op.cit.*, p. 61.

⁹⁶² Prawo Ustawa o szkolnictwie wyższym i nauce, art. 63 ust.3.

degree, the doctoral degree is awarded to 49,4% persons and 29,8% teachers possess the habilitated doctoral degree. The academic title of professor belongs to 11 392 people (10,7%) in addition to either the doctoral or habilitated doctoral degree⁹⁶³.

Internationalization of higher education is one of issues that shall be developed during the current reform of the system of higher education. Nowadays Poland occupies the lowest place in the lists of the European countries by international mobility of students⁹⁶⁴. In the other hand, students of the Polish higher education are the third biggest group in Europe of outgoing participants within the international mobility programme Erasmus⁹⁶⁵. Considering the root cause of the low incoming mobility to Poland the experts on higher education point to a lack of educational services in foreign languages that may attract more foreign students to the country. There are 2% and 3% of specialisations in the public and non-public higher education institutions accordingly are taught in foreign languages⁹⁶⁶. Foreign students constitute 4,9% of all students of tertiary education, the majority of them is from Belarus and Ukraine. In the breakdown by the field of science 1 120 of 65 793 foreign students choose law, in other words 1,7% of law students are non-Polish⁹⁶⁷.

Higher education in general and legal studies particularly are proclaimed to be open to people with disabilities. This is proved by the legal provisions and the governmental statistics. About 6 thousand disabled students study business, administration and law and it constitutes 23% of all disabled students in Poland⁹⁶⁸. The pro rata of students with disabilities among all students forms about 1,9%. The inclusiveness is one of the principal rules of higher education in Poland.

The government expenditure on education in Poland in the last 10 years neither decreased nor increased sufficiently. The percentage of GDP input varies from 4,86 in 2007 to 5,05 in 2010, the latest rate of expenditure on education amounts to 4,89% in 2014⁹⁶⁹. At the same time the contribution to the maintenance and development of higher

⁹⁶³The list of academic teachers and scientific employees in Poland <https://polon.nauka.gov.pl/opi/aa/pracnauk?execution=e1s17> [accessed on 27 January 2018].

⁹⁶⁴In 2015 Poland showed 2,6% of internationalization among students, whereas the average pro rata in the EU countries was equal to 8,4%. Education at a Glance 2017: OECD Indicators, Table C4.1. International student mobility and foreign students in tertiary education (2015), Paris, available at <http://dx.doi.org/10.1787/eag-2017-table155-en> [accessed on 28 January 2018].

⁹⁶⁵J. Woźnicki (red.), *Opis prac nad Programem rozwoju szkolnictwa wyższego do 2020 r. i jego najważniejsze elementy. Program rozwoju szkolnictwa wyższego do 2020 r.* Część I, FRP, KRASP, Warszaw, 2015, s. 22.

⁹⁶⁶Ibidem, s. 26.

⁹⁶⁷Higher education institutions and their finances in 2016, *op.cit.*, p. 129.

⁹⁶⁸Ibidem, p. 155.

⁹⁶⁹Poland: Education expenditures, UNESCO institute for statistics, available at <http://uis.unesco.org/en/country/PL> [accessed on 26 January 2018].

education from the public sources in 2005-2016 decreased from 0,99% to 0,70% of GDP⁹⁷⁰.

5.3. The aims of higher legal education

Analyzing earlier in the doctoral thesis the aims of education according to the human rights instruments it has been admitted that the mission of education changes with the pace of time and in the context of different international treaties. Indeed, the right to education is a multi-facet phenomenon serving for a diversity of aims. Discussing the mission of higher education one may notice that opinions of scientists, educators, politicians and stakeholders on the aims of higher education vary accordingly. While ones see the global vision of higher education in the creation of non-violent and non-exploitative mankind, others believe that higher education aims at the preparation of highly qualified graduates and responsible citizens that are able to meet the needs of all sectors of human activity. Both groups are right and can provide the rational justification of their position. Over time the image of higher education has been affected by changes. The first European universities were established as a place of free thinking and liberty of the direct control of church, they ensured the generation of new ideas and the protection of those who spread them. In the period of Renaissance the mission of a university professor was to prepare the educated elite of society, mainly theologians, lawyers and doctors leading to emancipate and cultivate a human⁹⁷¹. The recent years are characterized as the transformation of higher education from the elite to mass education. Undoubtedly the second half of XX century is known in the history of higher education as the period of its most spectacular expansion: the worldwide number of students increased by six times from 13 million in 1960 to 82 million in 1995⁹⁷². The broad access to universities made them an important source of new skills, knowledge and ideals. At the same time under the influence of financial crisis and the youth unemployment the focus of the international community and national policy-makers has recently shifted to practical training as the main aim of higher education. Nevertheless other aims of education should still be preserved, reinforced and further enhanced.

⁹⁷⁰ J. Woźnicki (red.), *op.cit.*, s. 26 and Higher education institutions and their finances in 2016, *op.cit.*, p. 176.

⁹⁷¹ I. Pirohova, *Quo vadis university teacher?* *Pedagogika Szkoły Wyższej*, 2014/1, s.27.

⁹⁷² World Declaration on Higher Education for the Twenty-first Century: Vision and Action, preamble. By UNESCO data the enrolment in tertiary education in the world exceeds 200 million students in 2016. Enrolment by level of education, UNESCO Institute for Statistics, available at <http://data.uis.unesco.org> [accessed on 24 March 2018].

Taking into consideration that the core content of the human right to education includes the aim of education it is seems important to determine the aims of higher education in general and the objectives of legal education in particular for the verification of the hypothesis of the research. The description of the aims in the national legislation serves as a guideline for higher education institutions and teaching staff in the realization of the right in practice. The reference to the results of the empirical research demonstrates the practical implementation of the aims of education.

The UNESCO World Declaration on Higher Education for the Twenty-First Century seems an important document containing the main principles and ideas of the human right to education. Additionally, this agreement is the most recently adopted instrument of international law composed on the basis of other fundamental human rights, it therefore reflects the contemporary vision of higher education in the world. Recalling the aims of higher education included in the World Declaration on Higher Education they can be split for convenience in three groups by the scale of their spreading: individual, societal and global dimension. At the individual level higher education aims at the development of intellectual abilities and aptitudes of learners and provides them with the opportunities for self-education and self-fulfilment throughout their lives. Taking into account the societal interests higher education addresses the needs of society and equips the labour market with qualified specialists necessary for the prosperity of the state. Higher education trains citizens to fulfil the specialised social functions and to enter the obtained occupations. At the global level higher education shall also educate responsible citizens with critical reflection, independent thinking and the teamwork ability in the multicultural community. The formation of societal values such as solidarity, human rights and peace enhances cultural pluralism and preserves the diversity in the world.

In Poland the Law on higher education and science declares the mission of the system of higher education – to provide high-quality education and research, to shape civic attitudes of learners, their participation in social and economic development⁹⁷³. The law defines the principal tasks of higher education institutions that can be considered the aims of higher education in Poland:

1. Providing higher education, postgraduation learning and other forms of education.
2. Training and promotion of academic and administrative staff.
3. Ensuring the access to higher education and research for people with disabilities.

⁹⁷³ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 2.

4. Educating responsible citizens with the respect for the national traditions, the principles of democracy and human rights.

5. Creating the conditions for physical training of students.

6. Dissemination of the scientific results and cultural achievements.

7. Acting for the benefit of regional and local communities⁹⁷⁴.

The national regulation sets out a few aims of higher education, but they entirely correspond to the ideas embraced in the human rights instruments. The clauses of the national law don't restrain the understanding of higher education to professional training of graduates and scientific research only. In line with the world recommendations the national provisions include also the objectives aimed at the development and enhancement of societal values.

In Belarus the Code on education declares the general aim of education. Education is directed to provide learners with knowledge, skills and aptitudes and to develop intellectual, moral, art and physical capacity of individuals⁹⁷⁵. This vague and broad statement does not clarify the mission of particular levels of education, including higher education. The current system of education in Belarus is based on the legacy of the Soviet period, hence the aims of higher education are reflected in the context of the governmental policy on the development of the system of education. Among the main principles of the provision of education one may find the following. The management of the system of education is organized on the basis of:

- respect for human rights and the humanist character of education,
- the balance of national traditions and world trends,
- the influence of social-economic situation in the state,
- the orientation of education on the environmental rights⁹⁷⁶.

Although these principles refer to the important ideas of the international concerns they look like rather ideological slogans than the actual background of the governmental policy in realms of higher education. This finding can be confirmed by the governmental programme "Education and youth policy during 2016-2020" where no reference to the societal values or democracy has been done. The policy defines three main objectives in the field of higher education:

⁹⁷⁴ Ibidem, art. 11 ust. 1.

⁹⁷⁵ Кодекс об образовании, ст. 11 п.2.

⁹⁷⁶ Ibidem, ст. 2 п.1.

1. Higher education institutions shall improve the quality of education provided and organize the practice-oriented training of students in cooperation with labour market and potential employers.
2. Governmental bodies shall improve the competitiveness of higher education institutions in the international rankings.
3. Improvement of educational programmes and the optimization of student enrolment according to the needs of economy⁹⁷⁷.

As a result, the aims of higher education in Poland and Belarus defined by the national law differently correspond to the educational objectives described in the international treaties. While the Polish legislature follows the provisions of human rights law and describes the role of higher education in the development of various aspects of human life, the national regulations of higher education in Belarus consider the right to higher education in its one-facet meaning as a way to train professionals for the state economy, missing its other significance. Such narrow meaning of higher education is relevant for economy of education only and illustrates the perception of higher education in the light of the Soviet ideology when higher education served for two aims: ideological education and preparation of specialists for economy⁹⁷⁸. If the main documents on education understand higher education in its narrow meaning it is hard to expect the description of higher education in the context of human rights in the internal documents of higher education institutions, i.e. the statute of a university or the educational standards of legal disciplines.

Moving from general to particular the scientific interest in this point is focused on the aims of legal education to be actually achieved by higher education institutions in Belarus and Poland. Legal practitioners and law academics over the world hold a debate on what profile of graduates law schools should release. What legal professional is to be taught during legal studies? Advocates, judges, mediators, prosecutors or legal scholars? Does legal education train scholars? Where is a line between vocational and academic aspiration of higher legal education? These are questions that cannot be answered definitely by the stakeholders. For the sake of justice it is worth to assert that scientists over the world don't have a consensus as to the mission of legal education. The reform of legal studies is a

⁹⁷⁷ Государственная программа „Образование и молодежная политика на 2016-2020 годы”, гл.3, утв. постановлением Совета Министров Республики Беларусь от 28 марта 2016 № 250, НРПА, 2016, 5/42890.

⁹⁷⁸ А.М. Погорельская, *op.cit.*, с. 117.

subject of ongoing hot debates on all continents⁹⁷⁹. At the meetings of representatives of the legal industry one may hear totally opposite opinions as to the aims of legal education and, as the consequences, the expected outcomes of legal education in the country. “Meanwhile one representative of legal profession [in Poland] has stated that a law student must obtain practical knowledge and skills enabling him to solve legal problems and stand before court after the graduation, at the same time other legal practitioner has insisted that law students should learn Roman law, history and legal philosophy within their legal study at the university, because the rest of knowledge and practice they will learn during the professional apprenticeship”⁹⁸⁰. In line with the practitioners law academics express different ideas on the mission of legal education⁹⁸¹. Many academics feel strongly that a university is not a proper place to prepare students for practice and legal disciplines are the mere academic subjects which can be studied in isolation from any practical components. Others assert that theory and practice are indivisible and law cannot be properly perceived without an understanding of how it is applied and practised in the real world. Both positions have their merits and point to the weak arguments of the opposite side. However looking at higher education in a narrow context each group restricts to benefit from strong outcomes of alternative views. The merger of both approaches in teaching – academic rigour with practical context of law – results in a comprehensive understanding of legal subjects in all its forms, both theoretical and applied.

There are also voices informing about a failure of contemporary humanitarian education, including legal studies. Does legal study educate a human? Will law graduates be able to interfere and deal with psychological inner conflicts? It is very often heard that law graduates are guided in their career by profit or professional and personal ambitions. They unable to identify tension of human relations rooted in the difference of values and beliefs or to express empathy to struggle with injustice. Legal education produces specialists and experts in legal issues who can solve effectively legal cases, however they are not good at interpersonal conflict resolving or the diversity of individual values. The aims of education defined in the human rights treaties emphasize the direction of education to full development of human personality and the sense of dignity. Legal education shall

⁹⁷⁹ The author presents the experience of integration of legal theory and practice in Japan, Germany and the USA. J. R. Maxeiner, *Integrating practical training and Professional legal education*, in: J. Klabbers, M. Sellers (eds.), *The internationalization of law and legal education*, 2008, p. 37-48. The scholar discusses on the mission of Canadian law schools nowadays and in a future perspective. H.V. Arthurs, *The future of law school: Three visions and a prediction*, Alberta law review, 2014, 51:4, p. 705-716.

⁹⁸⁰ P. Machnikowski, *Szkoły bezrobotnych prawników?* Na wokandzie, Nr 4 (18), 2013, s. 48.

⁹⁸¹ *Юридическое образование: традиции и инновации*, Сборник статей, Гродненский университет им. Я. Купалы, 2011.

not be limited merely to sharpen the professional knowledge, skills and values of excellent legal specialists, but “to maintain, even deepen their inner world of humanity and develop a complete and responsible human being living in the world of conflicts, intolerance and fight”⁹⁸².

The aims of legal education in Poland and Belarus are reflected in the achievement of the expected learning outcomes defined by the educational standard or programme of legal education. Either a standard or curriculum describes a pattern of a graduate that the society expects to see in its posture after the completion of legal studies. Looking deeply in the content of these documents we can identify what knowledge, skills and aptitudes are provided to students in higher legal education and how they match with the aims of education in the light of human rights.

The Polish system of higher education is characterized by the broad autonomy of higher education institutions. Then, the mission of higher legal education is not universally standardized. At the same time in regards of the academic and vocational orientation of legal education the legislator ensures two profiles of educational programmes – practical and academic⁹⁸³. Under the practical profile of education is understood an educational programme where more than half of the programme estimated in ECTS implies the vocational training. The academic profile of legal education means that the majority of subjects taught are aimed at gaining on-depth academic knowledge. The Law determines the conditions that higher education institutions must meet to provide education of a particular profile⁹⁸⁴. Each law faculty makes a decision on the profile of legal education to be offered on the basis of the available resources. The majority of higher education institutions in Poland offer the academic profile of legal education⁹⁸⁵. The vocational legal education is provided mainly by private law schools or at the interdisciplinary faculties, such as the faculty of finance and administration or the faculty of law and social communication.

⁹⁸² H.V. Arthurs, *op.cit.*, p. 710.

⁹⁸³ Ustawa Prawo o szkolnictwie wyższym z dnia 20 lipca 2005, art. 2 ust. 1 pkt. 18e, Dz. U. 2005 nr 164 poz. 1365. The current Law on higher education and science defines two types of higher education institutions – academic and professional. These provisions will take into force on October 1, 2021. Ustawa Prawo o szkolnictwie wyższym i nauce, art. 14-15.

⁹⁸⁴ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 53.

⁹⁸⁵ There are over 30 academic legal studies and about 20 vocational profiles of legal education among 52 institutions offering higher legal education in the country. The results are based on the data of POL-on system as of March 2018.

Following the National Qualifications Framework and according to Article 7 part 3 of the Law on the integrated qualifications system⁹⁸⁶ the Ministry of Higher Education and Science has developed the template learning outcomes elaborated for social sciences⁹⁸⁷. The template outlines knowledge, skills and social values in such a broad manner in order to fit different social sciences, e.g. economy, psychology and pedagogy. Law faculties compose their own programmes of legal studies and define the precise learning outcomes. Nevertheless it is obvious that the legislator strives to encourage higher education institutions to achieve various aims, not limiting to the professional training of good specialists in a particular area of science. For example, the outcome P7S_WG (recognition of a human being as a culture creator and an integrated part of the society) points to the development of societal values of learners. The learning outcome P7S_WK (knowledge and principles of individual entrepreneurship) ensures the development of employability of graduates. The expected learning skill P7S_UO (being able to guide a team) enables the teamwork capacity of people and enhances the cooperation, the skill P7S_UU (to plan lifelong learning and to encourage others to it) promotes the personal development and active position in democratic processes. The goal of education is not only the acquisition of knowledge, but also the formation of spiritual qualities such as empathy, justice and respect for all. The social values defined in the template are strongly valuable because they refer to sensitivity of graduates to critical thinking (P7S_KK), professional ethics (P7S_KR) and public interest activity (P7S_KO).

The verification of particular legal programmes adopted by higher education institutions in Poland lies beyond the framework of the research and would require significant resources. Nevertheless it is worth to have a glance at the randomly selected programmes of legal studies and verify whether their aims are consistent with the aims of higher education embodied in the human rights instruments. The programme of legal education of academic profile is presented by the law faculty of the Nicolaus Copernicus University in Torun⁹⁸⁸, the legal programme of practical profile is delivered to students of

⁹⁸⁶ Ustawa o Zintegrowanym Systemie Kwalifikacji z dnia 22 grudnia 2015, Dz. U. 2016 poz.64.

⁹⁸⁷ Higher legal education is assigned to the group of social sciences, the learning outcomes of uniform master's degree education are described at the seventh level. The ministerial instruction includes two patterns – learning outcomes for academic profile of higher education and expected outcomes of practical profile of learning. Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego z dnia 26 września 2016 r. w sprawie charakterystyk drugiego stopnia Polskiej Ramy Kwalifikacji typowych dla kwalifikacji uzyskiwanych w ramach szkolnictwa wyższego po uzyskaniu kwalifikacji pełnej na poziomie 4 – poziomy 6–8, Dz. U. 2016 poz.1594.

⁹⁸⁸ The programme of uniform master course is available at <https://www.law.umk.pl/student/prawo-2/prawo/> [accessed on 31 March 2018].

the University of Social Sciences and Humanities⁹⁸⁹. The both programmes are mainly aimed at the comprehensive training of students to the professional activity in legal industry and public administration. The majority of subjects taught result in gaining in-depth legal knowledge and developing practical skills required for the performance of legal tasks. At the same time analysing the learning outcomes one may find the subjects enhancing the individual reflection on social issues (ethical social attitudes are developed during theory of law, human rights law, basic sociology), encouraging self-assessment and self-education including within interdisciplinary sciences (constitutional law, history of law, basic economy, political sciences). According to the description of learning outcomes in the mentioned above programmes of education teaching strictly legal disciplines has in itself different aims. The first and most obvious aim is to transfer professional knowledge to law students. Secondly, depending on teaching methods applied legal education results in developing self-confidence, readiness to try, fail and again try, formal legal education motivates to maintain continuous learning during the professional career. The more cases and challenges students face and solve during their studies the easier they will deal with legal cases in practice. Legal education also develops interpersonal skills and attitudes. For example, the completion of the course on criminal or labour law in the University in Torun ensures that graduates possess leadership skill enabling the management of people, occupation of leading positions and effective communication. The inclusion in the programme of the mandatory legal practice enables graduates to train entrepreneur skill, to interact with non-lawyers on legal issues and to make decision independently.

In Belarus the main aim of higher education consists in preparation of specialists for all fields of the national economy. In terms of legal education the approach is the same, i.e. to prepare the qualified lawyers. There are no debates on the mission of legal education – academic learning or vocational training – in the literature on legal didactics. The legal provision is clear on it. Law graduates must be trained to apply the gained competences in practical activity. This is embodied in the educational standards for the first and second levels of legal education approved by the Minister of education. How and whether this mission is realized by higher education institutions is a matter of separate investigation.

The standard of education states that the main goal of the first level of tertiary education is to develop the professional, practice-based competences enabling to law

⁹⁸⁹ The programme of master course in law provided by the branch in Warsaw is *available at* <http://www.swps.pl/oferta/warszawa/studia-jednolite-magisterskie/prawo> [accessed on 31 March 2018].

graduates the performance of their professional tasks⁹⁹⁰. The standard of legal education at the second level is silent on the aim of legal education at all. The analysis of the learning outcomes expected by the end of the programme can provide an overview on the social mission of legal education. It is important to underline that the wording of the expected learning knowledge and skills undoubtedly leads to the entrance to the legal industry, while the social competences may point to the aims of higher education.

At the first level of law degree besides the acquiring of in-depth knowledge of law and practical skills necessary for legal activities law graduates must develop personal and social aptitudes, such as a teamwork skill (СЛК-6) and ability to provide and accept the feedback (СЛК-5), law-abiding behaviour in the professional and personal life (СЛК-7), communicative skill (СЛК-2)⁹⁹¹. Unfortunately, the learning outcomes don't contain any reference to the societal values, human dignity and ecological safety. However, it is expected that law graduate possesses the civil consciousness as a personal competence (СЛК-1). Taking into account the strong influence of the Soviet legacy on higher education in Belarus it would be easy to agree that the interpretation of social aptitudes refers to the idea of patriotism and implies the awareness of rights and duties of human being towards the state, but not within human rights-based approach⁹⁹². The educational standard of legal education at the second level is composed in a similar manner and defines almost the same learning outcomes concerning the social and personal development of law students. The personal competence of civil consciousness is replaced with the duty of unquestioning obedience to legal acts (СЛК-1)⁹⁹³. Expressing concerns on the lack of the educational aims oriented to the fight with contemporary global issues it is worth to underline the orientation of law students to lifelong learning (АК-9) and the obedience of ethical and moral rules (СЛК-8)⁹⁹⁴.

⁹⁹⁰ Образовательный стандарт высшего образования, первая ступень, специальность 1-24 01 02 правоведение, квалификация юрист, утв. постановлением Министерства образования Республики Беларусь от 30 августа 2013 г. № 88 с изм., НРПА 2013, 8/28044, п. 4.3.

⁹⁹¹ Ibidem, п. 6.3.

⁹⁹² This conclusion is confirmed by the findings of the research conducted in 2016. The respondents associate their civil rights and obligations rather with the fact of citizenship than the idea of human rights. *Гражданственность в Беларуси, Молдове и Украине*, отчет для Программы развития ООН в Украине (ПРООН) подготовлен Киевским международным институтом социологии, 2016, available at http://www.pactworld.org/sites/default/files/Civic_Literacy_BY-MD-UA_2017_ru.pdf [accessed on 1 April 2018].

⁹⁹³ Образовательный стандарт высшего образования, вторая ступень (магистратура), специальность 1-24 80 01 юриспруденция, степень магистра юридических наук, утв. постановлением Министерства образования Республики Беларусь от 24 августа 2012 г. № 108 с изм., НРПА 2013, 8/26920, п. 6.3.

⁹⁹⁴ Образовательный стандарт высшего образования, первая ступень, специальность 1-24 01 02 правоведение, п. 6.3.

The national provisions on higher education, including the educational standards for particular fields of study, are the principle documents for academic staff in their academic and pedagogic activity. Teaching personnel is one of the key actors enabling the realization of norms and standards on education and supporting students in achieving the learning outcomes defined as a pattern. Although the academic teachers are faced with the dilemma what profile of a graduate is expected – a qualified lawyer with the deep knowledge of legal issues or a human being of high moral conduct obeying the professional ethics of lawyers – this question is occasionally discussed in the doctrine. As a result, it leads to the low respect for societal and professional values by law students. By E. Łojko, for the benefit of profession and society the balance of two profiles of graduates should be achieved in higher legal education. However, nowadays in the law teaching the priority is given to the formation of qualified specialist in law, the moral education of lawyers is underestimated. She defines a few reasons of the decrease of moral-ethical component in the higher legal education. These are a challenging task to bring up a mature person, the moral education has ended in higher school, a negative recall of moral education during the Soviet period⁹⁹⁵. At this point it deems important to analyze the opinions of academia on the aims of higher education and the role of academic teachers in it. Additionally, the social competences of average law students obtained during the studies are overlooked.

The absolute majority of respondents in Belarus (18 of 20 answers) as well in Poland (15 of 20 answers) see the main role of the university education in producing qualified graduates who will occupy their place at the labour market regardless it will be a law teacher, a judge or a prosecutor. Thereby, the survey findings confirm the dominating in the contemporary society vision on higher education through the prism of economy of education. Higher education produces the manpower of the society. The respondents in both countries describe various ways to achieve this objective and mention their role in formation of specialists. The teaching personnel transfers knowledge of legal subjects and shares its professional legal experience with students, if the law teachers work as practising advocates or judges. Law professors also inspire students for learning the particular legal subject or law in general. They create a supportive learning environment *to encourage for studies even those who don't want it in the beginning* (Alesia, Belarus). Many law teachers underline that they consider important to teach the principles and fundamentals of law and thus prepare law graduates to deal with interdisciplinary cases in future irrespectively of

⁹⁹⁵ E. Łojko, *Etyka akademicka a etyka prawnicza*, w: H. Izdebski, P. Skuczyński (red.), *Etyka zawodów prawniczych. Etyka prawnicza*, Warszawa, 2006, s. 245-246.

what legal occupation they will perform. *When I started my doctoral study in the field of theory of law I had heard a lot of opinions that this legal discipline is devoted to nothing concrete. Indeed, it is not so obvious what legal norm means and how the principle is applied in practice. However without theoretical fundamental background the practice doesn't exist and it is what I teach my students* (Ekaterina, Belarus).

There are given a few country-determined answers rooted in the polemics of the academic and professional communities of the mission of higher education and its outcomes. *I see my role in the provision of fundamentals to law graduates in order to make them ready to pass the examinations to legal apprenticeship* (Agnieszka, Poland). *Although some criticism arises in the doctrine, the university education is to be theoretical or better to say academic, whereas legal apprenticeship is aimed to train law graduates for the practical application of knowledge and skills obtained during legal study* (Hanna, Poland). *The aim of higher education, in particular the oldest and most prestigious universities, is to produce the elite of the society or in other words those who possess the academic knowledge of supreme quality* (Krzysztof 2, Poland). These opinions are in line with the current division of academic learning in higher education institutions and practical training of lawyers during the apprenticeship.

The Belarusian colleagues express their opinions criticizing the burden of communist legacy in the system of higher education. They call for the structural reforms in higher education and explain what aims the legal education should achieve. *I see my role at the university is to support the formation of a generation of critically thinking lawyers who will not only unquestionably obey the law or the party ordinance, but analyse and criticize it, if necessary. The contemporary society needs critically thinking lawyers who know how to learn in new conditions* (Ruslan, Belarus). *My personal opinion on the aim of education is to teach student to think and analyse globally. I am opponent of the transfer of knowledge from a professor to students. I strongly believe any student is capable to find the answer to different questions, but no every one can analyse and ponder on facts, situations and opinions* (Marina, Belarus).

Obviously, the social or cultural component of higher education is missing in the vision of academic teachers. The perception of higher education as a way to develop the societal values or the personality of law students is occasionally mentioned by few respondents. *Higher education teaches students to be independent after the graduation and show confidence in what they already know and can do. It refers not only the professional activity, but their lives in general* (Rafał, Poland). *My task as a professor of the university*

is to show the direction and inform of possible challenges on the life path, but students independently step on the road and carry the burden of consequences for all their decisions (Igor, Belarus).

In the mind of few teachers, the aim of education consists in the personal responsibility towards others and humanity as a whole. If higher education along with primary education and family upbringing would foster the attitudes and skills necessary for cooperation, material well-being and moral prosperity of humanity will be ensured. My role as a teacher of higher education institution is not limited to the transfer of professional knowledge and practical skills to law students. We educate them in a broad meaning of the word “education”. We sometimes have to bring them up, although it is assumed in the family or primary school, we teach them how to live in the society full of the diversity of values and thoughts and how to remain human (Małgorzata, Poland). My role as an academic teacher can be measured in three dimensions: knowledge, skills and social attitudes provided to law students. During my regular lectures and classes I strive to provide the learners with legal knowledge and skills related to my subject, however social attitudes – the respect for human rights, awareness of gender discrimination and pro bono mission of lawyers – are taught mainly within the legal clinic workshops (Barbara, Poland).

The results of the empirical research display that the development of social aptitudes within higher legal education is assumed in both countries, however due to different factors it occupies the secondary place in the legal curriculum and learning outcomes. Answering the question about the social competences of law graduates some respondents have met difficulties with the meaning of the notion “social competences”. 5 of 40 respondents have asked for clarification and examples of such qualifications, 3 respondents have made difficulties to answer the question at all. Additionally, it is fair to allege a certain mismatch of the declared and factually developed values and social skills, in particular in Belarus. It concerns teamwork skill, civic consciousness, and respect for human rights. I think that teamwork or group work destroy the individualism. I don't force my students to work together, but this ability to cooperate with others is valuable in the community (Agnieszka, Poland). Some students work and learn better individually and I appreciate it. I don't see any necessity to force them to develop teamwork skill (Alesia, Belarus).

In our country the environment of higher education is not supportive to form social values of students and discuss the morality of legal profession. Graduating from the university law students have neither the clear understanding of their place in the

profession nor the mission of lawyers in the society. It is not due to the fault of the academia (Liudmila 2, Belarus).

When I graduated from the university I had respect for law and the Constitution. Facing the reality during my work in the prosecutor office I realized that the rule of law exists in theory, but not always in real life (Evgeni, Belarus). Being idealists students enter the law school to change the world in a better way, however by the end of legal studies they realise how law works in practice and lose their ambitions. Nevertheless, law graduates express legal and moral nihilism to much less extent than graduates of other faculties (Svetlana, Belarus).

It seems to me that we, as the whole society, think of our duties or responsibilities a little focusing more on our rights. Civic and societal responsibilities are less mentioned in the public speech than “our rights”. It may cause the wrong perception of law by the society and result in the imbalance in the functionality of the community (Marta, Poland). To my great regret, an average current student looks at law as a tool of restrictive and oppressive functions instead of an instrument by the means of which the well-being and peace of the entire society and particular individuals can be assured. The perception of law and the mission of lawyers is erroneous in the mind of the current law students (Igor, Belarus).

Summing up, we can state that the aims of higher education embodied in the international human rights agreements are almost entirely repeated in the national regulations on higher education in Poland. The template learning outcomes for social sciences defined at the national level and the programme of legal studies of certain universities conform to the ideas and principles of human rights law regulating higher education. Legal education is not limited to mere learning how to identify and select legal facts and acquiring of various skills, such as legal writing and case analysis. Law teachers do their best to train graduates for future profession and additionally develop their intellectual capacity and their moral aptitude. The content of the educational programme assures that law graduates are prepared to face the variety of social issues and can stand on defence of universally accepted values, including peace, justice, freedom, equality and solidarity.

In Belarus neither the Code on education, nor the standards of legal education describe the full mission of higher education as it is illustrated in the human rights treaties. Higher education in general and legal studies in particular is seen as the training of manpower leading the country to the material prosperity. The development of intellectual capacity

beyond the selected occupation and the respect for human rights values are presented to a very limited extent among the learning outcomes. The outcomes of higher legal education must not only lead to the production of robots with comprehensive knowledge of clauses. Law graduates should be capable of critical thinking and reflection on the content of legal norms and consequences of their application. Therefore the learning outcomes of educational standards require an adjustment in accordance with the worldwide recognized values, the national policy of the higher education development should add the aims of education directed to intellectual and social development of learners.

Taking into account that legal education in Belarus and Poland is delivered by academic teachers in person, it is significant them to understand and realise their role in its fullness. Nevertheless, the findings of the empirical research point to the incomplete perception by law professors of their mission in higher education. They focus more on the training of excellent legal specialists or scholars leaving aside the moral development of professionals. Higher education shall complement and enhance the best in human beings what has been developed by family, primary school or society. Higher legal education must include the elements of intercultural education, human rights law, democracy and civic consciousness in the didactic of various legal disciplines. To achieve these objectives teaching personnel must be qualified appropriately.

5.4. Availability of law schools and teaching staff

The availability of higher legal education can be verified based on the both qualitative and quantitative data. The statistics gathered by the governmental bodies in the chosen for the research countries illustrate that legal education is provided in public and private higher education institutions. The right to establish a private higher education institution is ensured by the main law of the country – the Constitution of the Republic of Poland⁹⁹⁶. The procedure of establishment of public and non-public schools is prescribed by the Law on higher education and science⁹⁹⁷. To establish a private higher education institution is not a complicated task in Poland. It is not surprisingly that higher education is considered the fastest developing areas of social life. “During the last twenty years, it was subject to dramatic quantitative and institutional transformations. The establishment of non-public higher education institutions became possible and non-public forms of education were

⁹⁹⁶ Art. 70 para 3.

⁹⁹⁷ Article 35-40.

introduced, causing a nearly fivefold increase in the number of students⁹⁹⁸. The prompt growth in quantitative terms of the access to higher education was positively evaluated in many international reports. Nowadays the number of non-public higher education institutions is dropping due to the demographic causes.

While the liberalisation of the field of education occurred in Poland, the Belarusian authority demonstrates quite the opposite position towards the establishment of private educational institutions. The provisions of the Code on education ensure the right to create educational institutions different from the state-funded ones⁹⁹⁹. However the facts show the unwillingness of the Ministry of Education to renew the license for the private higher education institutions or to permit the establishment of a new one. In 2001/2002 there were 44 public and 14 private institutions, which offered higher education in the country; in 2016/2017 the numbers changed accordingly to 42 and 9 entities¹⁰⁰⁰. The mentioned earlier in the research example of the European Humanities University – the current university in exile – demonstrates the prejudication of the state power to the private higher education. The Ministry of Education numerously criticized the commercial strategy of non-public institutions. For example, private institutions offer more part-time studies instead of full-time what results in the low quality of higher education. Moreover, social and humanistic studies are the most popular specialisations in the private schools, the preparation of these specialists leads to the surplus at the labour market (e.g. lawyers and economists)¹⁰⁰¹. However, the data on higher legal education in Belarus presented above reflect the same tendency in the realm of state-funded institutions. The number of annually admitted students by the law faculties at the public law schools is kept the same during last few years (table 4). Taking into account that the limit of seats available in the educational institutions is defined by the Ministry of Education, it means that budget expenditures on the preparation of lawyers are justified, while the existence of law studies in the private schools is criticized. Such approach to the private higher education is considered apparently discriminative in the light of human rights.

⁹⁹⁸ Uzasadnienie do projektu ustawy – Prawo o szkolnictwie wyższym i nauce z dnia 16 września 2017, s.1, the text is available at <https://legislacja.rcl.gov.pl/projekt/12303102/katalog/12458849> [accessed on 24 December 2017].

⁹⁹⁹ Кодекс об образовании, ст. 19.

¹⁰⁰⁰ The data of the National statistical committee, available at http://www.belstat.gov.by/ofitsialnaya-statistika/solialnaya-sfera/obrazovanie/godovye-dannye_5/osnovnye-pokazateli-obrazovaniya/ [accessed on 3 February 2018].

¹⁰⁰¹ Е. Спасюк, *Минобразования недовольно частными вузами. А их представители считают, что претензии необоснованны...* Белорусские новости Naviny.by, 28.05.2013, available at http://naviny.by/rubrics/society/2013/05/28/ic_articles_116_181890 [accessed on 3 February 2018].

Table 4. The number of law graduates of higher education institutions in 2013-2016, Belarus

| | 2013 | 2014 | 2015 | 2016 |
|--|-------------|-------------|-------------|-------------|
| The number of graduates of higher education institutions | 82 700 | 81 100 | 78 000 | 74 600 |
| The number of law graduates | 6 457 | 5 907 | 6 450 | 6 657 |

Source: Statistical book: education in the Republic of Belarus, Minsk, 2017, p.147; Концепция развития юридического образования в Беларуси до 2025 г., проект, Минск, 2017, с. 7.

The availability of higher education is measured also by student-teacher ratio. Analysing the root cause of the low international ranking of higher education institutions, the quality of education and taking into consideration the demographic crisis in Poland the legislators regularly update the legal provisions on student-teacher ratio. Nowadays there is no limit of student-teacher ratio as it has been applied for the recent years. In the nearest past the law specified that the proportion of the academic teaching staff to the number of law students shall not be less than one law teacher per 60 students¹⁰⁰². Before the adopted amendment the ratio was equal to 1:120¹⁰⁰³. Instead of learners-staff ratio the law determines the number of minimum workload of academic teachers. The realization of studies requires the active engagement of academic staff in teaching. Minimum 75% of the academic profile of studies and 50% of the vocational profile of studies must be taught by the academic staff that is hired in the higher education institution as their primary workplace¹⁰⁰⁴. So called minimum academic staff complement requirement that prescribed to hire certain number of teachers with the doctoral degree and the habilitated degree has been expired.

The adopted legislative changes have provoked controversial discussions in the academic circles even earlier during the public consultations of the legal draft. The supporters of the changes highlight that such regulations provide a chance to junior teachers to be hired with the stable contract. Civil contracts of employment neither guarantee the feeling of sustainability nor motivate academic teachers to the professional development. Moreover, the new regulation increases the flexibility of interdisciplinary

¹⁰⁰² The proportion of teaching staff to students varies depending on the fields of science. Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego z dnia 26 września 2016 w sprawie warunków prowadzenia studiów, art. 14.

¹⁰⁰³ Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego z dnia 03 października 2014 w sprawie warunków prowadzenia studiów na określonym kierunku i poziomie kształcenia, Dz. U. 2014 poz. 1370, art. 16 ust.1.

¹⁰⁰⁴ Ustawa Prawo o szkolnictwie wyższym i nauce.

studies and research. Some legal subjects can be taught by academic teachers from other disciplines, e.g. IT, medicine, economy or sociology. On the other hand, minimum staff complement used to be an instrument to ensure the quality higher education. A teacher with the habilitated degree in legal sciences has already proved his or her scientific achievements that are worth to be shared with the learners. A lack of the well trained scientists who are able to prepare didactic materials and transfer their experience to students often happens in the private higher education institutions operating with the aim to “sell” a diploma than to prepare specialists for the national economy.

In Belarus the Code on education defines the maximum student-teacher ratio for all fields of studies. That unified index is applicable to the full-time form of education and shall not exceed 10 students to an academic teacher, unless the Ministry of Education states otherwise¹⁰⁰⁵. The law is silent on the student-teacher proportion for part-time form of education. That gap in law allows the law faculties to enrol significant number of part-time students who furthermore pay fees for their education. As a result, the average ratio in the Belarusian law faculties amounts to 25-30 students per a law teacher¹⁰⁰⁶. Recalling the requirements to the number of academic teaching staff in Poland the factual indicator of law students and teachers in Belarus looks obviously very good. On the other hand, the unequal conditions in obtaining higher legal education for students of different form of education contradict the principle of non-discrimination in education. By its essence part-time education assumes the limited contact of students with law teachers, the number of didactical classes in auditorium is almost half reduced. The well-organized self-education skills are highly demanded from part-time students. Then it is rational to meet student’s expectations on the availability of academic teaching staff in the form and frequency that syllabus states. However, it is a challenging task, taking into consideration the double or sometimes triple number of students per a teacher than a student-teacher ratio in the full-time form of education. The facts and statistic data demonstrate the prevailing majority of part-time law students in Belarus what affects the quality of legal education overall. During the discussion on the directions of development of higher legal education in Belarus the

¹⁰⁰⁵ Art. 203 par. 3 of the Code on education. The Ministry of education sets up 6:1 student-teacher ratio for the specialisations of nuclear safety, the construction of nuclear heating plant, management of nuclear power. Постановление Министерства образования Республики Беларусь от 14 июля 2014 №103 „Об установлении соотношения численности студентов и профессорско-преподавательского состава в учреждениях высшего образования для отдельных специальностей (специализаций) и признании утратившим силу постановления Министерства образования от 24 июня 2009 № 39”, НРПА 2014 8/29199.

¹⁰⁰⁶ The index is based on the case of the Brest State University and the Vitebsk State University cited earlier in the work.

Minister of education announced the possible changes to be implemented during the enrolment procedure in 2017/2018. One of them is the reduction of part-time law students¹⁰⁰⁷.

Indeed, the concept of development of legal education until 2025 contains a few requirements which the law faculty is to comply to provide legal education of the high quality. Some of them are similar with the minimum staff complement existing in Poland. Here they are:

- The number of part-time students shall not exceed 80% of the number of full-time students;
- The proportion of students (all forms of education) to a law teacher with the doctoral degree (Kandidat Nauk) shall not be bigger than 125 to 1.
- The proportion of students (all forms of education) to a law teacher with the habilitated doctoral degree (Doktor Nauk) shall not be bigger than 250 to 1.
- The teaching staff with the doctoral degree and/or the habilitated doctoral degree shall imply no less than 40% of all number of teachers of the law faculty;
- The teaching staff with the academic titles (docent or professor) shall imply no less than 30% of all number of teachers of the law faculty¹⁰⁰⁸.

The legislative proposals are aimed to improve the quality of legal education and make teaching staff closer to students. The less the workload of a law teacher, the more possibility that he or she can devote to the professional development, scientific research and communication with learners. It is worth to assess positively the form of the proposed ideas, they are described as a normative document and will be probably adopted by the Ministry of Education. It means that the provisions contained in it have an obligatory power for all higher education institutions. On the other hand, it is worth to remember that the administrative leverage is not always an effective instrument. The introduction of minimum staff complement without any changes in other fields of tertiary education, e.g. the simplification of defence procedure of doctoral thesis or the increase of financial support of doctoral and further research, will hardly attract the law graduates to continue the academic career in Belarus.

The referred above standards and ratio are uniform for law faculties of all higher education institutions unless otherwise stated. Each higher education institution develops

¹⁰⁰⁷ Т. Кузнеченкова, *Игорь Карпенко: В Беларуси завершается разработка концепции развития юридического образования*, Гродненская правда, 29 августа 2017 available at <http://grodnonews.by/category/vlast/news35861.html> [accessed on 17 September 2017].

¹⁰⁰⁸ Концепция развития юридического образования в Беларуси до 2025 г., *op.cit.*, с. 15.

its internal regulations on the standard workload of the academic teaching staff where the recommended number of students for lectures and seminars is defined. For example, the Belarusian State University approves the following rules for its academic teaching staff within the academic year 2017-2018. Lecturing occurs during an academic hour for all students of the same academic year unless their number doesn't exceed 100 people. Otherwise the students are split up into a few groups. Practical classes, workshops, seminars organized with the application of interactive teaching methods or e-learning are conducted in a small group of 20-30 students or can be divided in smaller sub-groups of 10-15 persons¹⁰⁰⁹. Cardinal Stefan Wyszyński University in Warsaw states that the dean of the faculty or the head of the department is responsible for the formation of student groups for different types of learning activity based on the learning aim of the activity, human and financial resources of the department. Lecturing is organized for all students, conversation and workshops – for up to 25 students, seminars – in a group of 6-15 people¹⁰¹⁰.

Analyzing the feature of availability of higher legal education in Belarus and Poland it is important to consider the teacher's opinion on the question "How does the number of students in the group affect your pedagogical choice?". Obviously, lecturing is organized in big groups of 100, sometimes 150 people and it limits the possibility of an academic teacher to discuss with each student or listen to their individual opinion. Practical classes, workshops and trainings are held in a smaller group. Only three respondents state that the number of students is not a crucial factor for them and they can give a class in any conditions. Other respondents express their interest to work with a smaller group of 30-40 people, a few teachers prefer giving workshops for 15-20 students.

If a group is up to 20 people I can do different exercises to assess the contribution of each student (Nadezhda, Belarus). I don't like working in a group where over 100 students are sitting, I just conduct lecturing there without receiving the feedback from learners (Dzianis, Belarus). Nowadays students are active and are not shy to speak out in the class. Therefore working with 30-40 people I won't be able to provide each of them with the possibility to participate in the discussion and apply the written evaluation. My ideal group

¹⁰⁰⁹ Приказ Ректора Белорусского государственного университета от 20 февраля 2017 г. №70-ОД „Об утверждении норм времени для расчета объема учебной работы и основных видов учебно-методической, научно-исследовательской и других видов, выполняемых профессорско-преподавательским составом БГУ”, с. 3, 15, available at <https://www.bsu.by/Cache/pdf/803133.pdf> [accessed on 4 February 2018].

¹⁰¹⁰ Uchwała Senatu Uniwersytetu Kardynała Stefana Wyszyńskiego w Warszawie z dn. 27 kwietnia 2017 Nr33/2017 w sprawie pensum dydaktycznego nauczycieli akademickich i zasad jego rozliczania, art. 13, available at http://www.ksztalcenie.uksw.edu.pl/sites/default/files/33-2017-u_ws_pensum.pdf [accessed 4 February 2018].

consists of 15 students (Barbara, Poland). Sometimes I give lecturing to 300 students and notice that students even don't feel confident to ask questions to me in the auditorium, not to say about answering to my questions and participating in the discussion (Piotr, Poland).

Every third respondent admits that the size of the student groups is stable and can't be changed by them. The administration of the law faculty split students up into groups for lectures, practical classes and workshops. Taking this into consideration it is worth to underscore the clause of the internal regulation of higher education institutions concerning the work load of academic staff. The size of student groups is defined annually by the faculty administration depending on the human and financial resources of the entity and the expected learning outcomes of educational activity. Such approach is considered flexible and adaptable to the demographic situation in the country, the budget of the higher education institution and the needs of academic staff and students in the creation of comfortable learning environment.

The availability of higher legal education is understood as a complex of various interrelated factors. The increase of the number of higher education institutions inversely affects the amount of financial support received by the state-funded schools, on the other hand more schools require more qualified teachers, learning materials and well-developed infrastructure for students. The Polish experts on education admit that “the huge success in quantitative terms [the growth of number of higher education institutions], which has been emphasised in many international reports, has not been accompanied so far by a policy oriented towards a significant improvement in quality. The most conspicuous consequence of this neglect is the absence of Polish higher education institutions in the group of institutions that are recognised worldwide for their excellence in research and teaching”¹⁰¹¹. Therefore the increase of the number of law faculties shall not be seen an end in itself.

5.4.1. Funding of higher education

Funding is a crucial element of availability of education. According to the legal regulations in Belarus and Poland public institutions are funded mainly from the state budget, whereas private higher education institutions are founded and financed by private entities. Moreover, the law enables higher education institutions to run the commercial activity and to gain the financial support from external sources¹⁰¹². It is hard to evaluate the

¹⁰¹¹ Uzasadnienie do projektu ustawy – Prawo o szkolnictwie wyższym i nauce z dnia 16 września 2017, s. 3.

¹⁰¹² Ustawa Prawo o szkolnictwie wyższym i nauce, art. 12, 425 and Кодекс об образовании ст.137.

funding of solely higher legal education because the rules of distribution of the state funding are equal for all fields of studies. The assessment of financing of legal education means the assessment of the entire system of funding of tertiary education. The second, but not less important, reason to pass over this topic in the research is a lack of the data enabling the effective research process. “Despite the large emphasis on the knowledge economy and society, there are actors that produce and diffuse knowledge that are invisible in official statistics – namely universities. Irrespective of their size and importance, universities still suffer from a severe data constraint”¹⁰¹³. Nevertheless, it would be useful to discuss a few issues of funding of higher education that to some extent concern the availability and accessibility of higher education.

First of all it is worth to pay attention to the constitutional right to free education provided by public educational institutions. In line with the international standards on education Belarus as well as Poland ensures that free higher education is accessible for everyone by means of competition¹⁰¹⁴. The governments of both countries don't neglect the funding of education in general and higher education in particular. However, the state contribution to the development of tertiary education forms a small percentage of the national GDP. It is 0,54% and 0.7% accordingly in Belarus and Poland what is less than the average expenditure on tertiary education in the European states of OECD¹⁰¹⁵.

The funding system of higher education institutions in Poland defines three main types of funds available from the budget – the general subsidy, the statutory subsidy and purpose subsidy¹⁰¹⁶. Higher education institutions may also run the commercial activity according to their statute goals. Nevertheless, the main source bringing about 70% of funding is the state budget¹⁰¹⁷. The Polish law is strict regarding the fees paid by part-time students, the fees shall not be considered the income source of a higher education institution, but the

¹⁰¹³ A. Bonaccorsi, *Introduction*, in: A. Bonaccorsi (eds.), *Knowledge, diversity and performance in European higher education a changing landscape*, Edward Elgar Publishing, 2014, p.2.

¹⁰¹⁴ A few European countries guarantee the free higher education in their Constitutions. These are Bulgaria, Romania, Lithuania, Slovakia. The main law of Greece and France provides free education regardless of the its level. The majority of the states limits free learning to primary and/or secondary level of education only. M. Szewczyk, *Problem odpłatności za studia stacjonarne w świetle konstytucyjnego prawa do nauki*, w: J. Pakuła (red.) *Prawo o szkolnictwie wyższym. Nowe prawo – aktualne problemy*, Toruń, 2012, p.42.

¹⁰¹⁵ Education at a Glance 2017: OECD Indicators, Table B4.1. Total public spending (2014), Paris, available at <http://dx.doi.org/10.1787/eag-2017-19-en> [accessed on 28 January 2018].

¹⁰¹⁶ Ustawa Prawo o szkolnictwie wyższym i nauce.

¹⁰¹⁷ J. Wilkin, *Główne uwarunkowania rozwoju szkolnictwa wyższego w Polsce*, w: J. Wilkin (red.). *Finansowanie szkół wyższych ze środków publicznych. Program rozwoju szkolnictwa wyższego do 2020 r. Część IV*, FRP, KRASP, Warszawa, 2015, s.14.

cost covering the expenses for organisation of part-time education¹⁰¹⁸. Higher education institutions can earn an income by means of postgraduate courses, Open University courses and various trainings and workshops.

The proponents of the reform in the field of higher education in Poland paid attention to two issues:

- a lack of correlation of quality of education and the size of funding;
- the limitation of financial independence of higher education institutions.

Indeed, the previous algorithm of allocation of state expenditure among public and non-public institutions was based mainly on the number of students and academic teachers. It was a quantitative benchmark in higher education. The qualitative features of tertiary education were measured by the number of research, scientific projects carried by academic staff and the number of permissions held by the departments to grant academic titles and degrees¹⁰¹⁹. Such approach was financially beneficial for higher education institutions during years of the demographic boom and the high attractiveness of educational degree¹⁰²⁰. However, the quantitative reduction of students, a low flow of incoming international students caused the financial instability of higher education institutions. Moreover, the international ranking demonstrated the scientific inability of the Polish higher education institutions to compete with schools of the European countries with the same level of state expenditure on higher education. The adopted Law on higher education and science tries to overcome the mentioned above challenges. The size of the state funding directly depends on the qualitative characteristics of higher education¹⁰²¹.

Thus, in the academic year 2017/2018 higher education institutions have made the first attempts to reduce the enrolment rate in order to receive the state subsidy in the amount not less than in the previous years. The legal provisions stated that the size of the state subsidy depends on the student-staff ratio, however it shall not exceed 13:1 for the entire higher

¹⁰¹⁸ K. Łukaszewska, *Skąd się biorą pieniądze na uczelni? Cz.1 – dotacja algorytmiczna*, Pismo uczelni, UW, Nr 1(71) luty 2015, s. 8.

¹⁰¹⁹ The algorithm of allocation of public expenditure was defined in details by the legal act that expired after the adoption of the new Law on higher education and science. Rozporządzenia Ministra Nauki i Szkolnictwa Wyższego z 8 lutego 2012 r. w sprawie sposobu podziału dotacji z budżetu państwa dla uczelni publicznych i niepublicznych, Dz. U. 2014, poz. 789 ze zmian.

¹⁰²⁰ W. Jurek, *Koszty i jakość kształcenia w podziale funduszy publicznych przeznaczonych na finansowanie szkolnictwa wyższego*, w: J. Wilkin (red.), *Finansowanie szkół wyższych ze środków publicznych. Program rozwoju szkolnictwa wyższego do 2020 r. Część IV*, FRP, KRASP, Warszawa, 2015, s.89-90.

¹⁰²¹ The additional budget funding is distributed by means of competition and directed to strengthen the scientific and research capacity of higher education institution. For example, “excellence initiative – research university” and “regional excellence initiative” are grant competitions regulated by the Law on higher education and science, art. 387 and 396.

education institution. Otherwise the subsidy could be reduced maximum to 5%¹⁰²² what constitutes the significant cut in the annual budget of the entity. What is important is that full-time and part-time students are counted together resulting in the final student-staff ratio.

Although human rights law promotes the expansion of the access to higher education, higher education institutions reduce the number of students is one of the solutions to ensure the high quality education. The reduction of enrolment was noted in the higher education institutions with the massive education, e.g. economics, or smaller and less scientifically developed institutions¹⁰²³. Other possible solution to receive the state subsidy without changes is to hire more academic staff, for example doctoral students with the master's degree or graduates with the Ph.D degree. However it is not recognised as an effective solution due to the additional expenses on the staff salary. Moreover, junior teachers can bring the innovative ideas to teaching and science, but they shall be properly trained to provide the quality education.

In the list of the European countries the state funding on higher education in Poland looks not significant and different groups working on the amendments of the law on higher education have offered various solutions to increase the percentage of GDP dedicated to education. One of the proposals is to enable the donation of 1% of the corporate income tax to the field of education¹⁰²⁴. Another proposal concerns the formal increase of GDP part on higher education up to 1% by the will of the government¹⁰²⁵. The current legal regulations prescribe the annual increase of the allocated to higher education and science funding, in 2019 the indexation equal to 1,25 shall be applied¹⁰²⁶.

Unfortunately, the financial sustainability of the Belarusian higher education institutions leaves to be desired and requires the immediate and fundamental changes. First of all, there is a legal and factual discrepancy in the state funding of higher education in Belarus. As it has been already mentioned, until 2011 the law on higher education in Belarus stated that the public expenditure on education constituted minimum 10% of GDP. In fact, this rate has never been reached and the legislator with the adoption of the Code on

¹⁰²² Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego z 7 grudnia 2016 r. zmieniające rozporządzenie w sprawie sposobu podziału dotacji z budżetu państwa dla uczelni publicznych i niepublicznych, Dz. U. 2016, poz. 2016.

¹⁰²³ A. Zimny, *Nowy algorytm podziału dotacji dla uczelni. Szanse i zagrożenia dla publicznych uczelni zawodowych*, Ekonomiczne problem usług, 2017, Nr 127, s. 376.

¹⁰²⁴ J. Górniak (red.), *Diagnoza szkolnictwa wyższego. Program rozwoju szkolnictwa wyższego do 2020 r. Część III*, FRP, KRASP, Warszawa, 2015, s.47.

¹⁰²⁵ J. Wilkin, *op.cit.*, s.17.

¹⁰²⁶ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 383.

education deleted that provision instead of considering reforms in the system of education and educational policy. The government expenses on tertiary education are too low in comparison with other UNESCO post-Soviet states and all the more European rate. Belarus spends annually 2 800 USD for a student of tertiary education, Ukraine - 3 200 USD, Poland – 6 500 USD¹⁰²⁷. In the OECD states the annual spending on tertiary education (excluding research and development) per student amounts to 10 000 USD¹⁰²⁸. The government recognizes this persistent problem, but in the conditions of the shortage of the financial resources in the state budget it follows the tendency of shifting of the financial burden on the learner's shoulders. The main source of funding of higher education in Belarus is fees paid by students, expenditure from the republican budget is on the second place by the size of funding¹⁰²⁹. Indeed, since higher education institutions were granted the right to define the number of paid seats the double-ply growth of students paying for their education was noted. 58,3% of all students pay for their higher education in the academic year 2016/2017¹⁰³⁰. It means that 2 of 3 students have to compensate the expenses for higher education. For the comparison in Poland only 1 of 3 students receive the fee education¹⁰³¹.

In addition to the fact that the main source of funding of higher education in Belarus is learner's fees, the governmental policy on education doesn't encourage scholars and scientific centers to participate in the international grant competitions within Erasmus+, Horizont 2020 and the like. Moreover, the legislation in force creates challenges for those who won the grant and would like to realise the project plan with the support of international sponsors. According to the core legal framework there are two types of international support – international technical assistance¹⁰³² and humanitarian aid¹⁰³³. In this place it is worth to clarify that the regulations equally concern international grants received by individuals, a group of people or a legal entity. The legislation regulates the

¹⁰²⁷ UNESCO Institute for statistics, Education expenditures by countries (2014), available at <http://uis.unesco.org/en/country> [accessed on 10 February 2018].

¹⁰²⁸ Education at a Glance 2017: OECD Indicators, Table B1.1. Annual expenditure per student by educational institutions for all services (2014), Paris, available at <http://dx.doi.org/10.1787/eag-2017-16-en> [accessed on 10 February 2018].

¹⁰²⁹ А.М. Погорельская, *op.cit.*, с. 118.

¹⁰³⁰ 51,2% of them study in the public institutions, 7,1% receive the paid higher education in the non-public entities. Образование в Республике Беларуси, Статистический сборник, Минск, 2017, с. 139.

¹⁰³¹ 66,4% of students study free of charge, 33,6% of students receive the paid higher education. The same proportion is displayed in the legal field of studies. Higher education institutions and their finances in 2016. Central statistical office, Warsaw, 2017, p. 57, 60.

¹⁰³² Указ Президента Республики Беларусь от 22 октября 2003 № 460 „О международной технической помощи, предоставляемой Республике Беларусь”, НРПА 2003, 1/5020.

¹⁰³³ Декрет Президента Республики Беларусь от 31 августа 2015 № 5 „Об иностранной безвозмездной помощи”, НРПА 2015, 1/15998.

process of receipt, registration and usage of both types of support. In the field of higher education the educational entities are recipients of the international financial aid to organize internal and external conferences, training courses, exchange programmes and educational trips. Higher education institutions can be supported in purchasing learning materials and equipments, constructing of laboratories and repairing the building of the university. As a rule the action plan is described in details by a grant applicant and assessed by the evaluation commission or the sponsoring organisation. The high competitive procedure of grant selection requires lots of efforts and the thorough preparation of necessary documents by the applicant. Once the positive decision of the evaluation commission is announced the grant applicant can start the realization of the action plan. Thus happens in the majority of the states in Europe. However, the applicants from Belarus have to postpone any actions until the official registration of the international assistance agreement by the relevant governmental bodies. The Ministry of Economy, Ministry of Taxes and Duties, National Security Committee and other governmental departments are asked for their opinion on the relevance of the project realization to the society. The registration may last over 12 months, during that term the received support irrespective of its form (money, goods or equipment) cannot be used¹⁰³⁴. Taking into account the complicated grant procedure, the detailed application form and challenges of setting the cooperation with international partners, the additional obstacles in the form of the national regulations eliminate the motivation and willing of Belarusian researchers to participate in the international grant competitions. From the perspective of state's obligations to respect, protect and fulfil the human right to education it is an evident discrepancy between the state's obligation to avoid unjustified interference to the realization of the right and the referred above legal provisions.

Summarizing up the discussion on the financial aspect of higher education it is worth to admit that the feature of availability is *de jure* and *de facto* ensured by the governments of Poland and Belarus. The states assign a part of GDP as the contribution to the financial sustainability of higher education. Although there are no universal standards of how much funding of higher education must estimate, each government must do its best to allocate enough funds for providing qualitative education. Expecting innovations and conducting

¹⁰³⁴ The registration of the international technical assistance agreement approved by the EU Commission in September 2013 lasted until June 2014. One party of the agreement was the law faculty of the Belarusian State University. The description and challenges of the registration procedure was presented by the law teacher Vadim Samarin, a coordinator of the international cooperation project, at the conference "The reform of legal education in Belarus and the UK: exchange of experience and perspectives of development" organized on 28 December 2017 in Minsk, Belarus.

the modernisation of economy it is necessary to invest in human resources through education. The high level of literacy of population or the index of people with the diploma may be a notable result in the international statistic database, but permanent insufficient funding of higher education and research will not result in the prompt economic growth or the high position of educational institutions in the international rankings. From the human rights-based perspective the transfer of financial burden from the state budget to learners, that occurs in Belarus, is considered non-compliant to the idea of the right to education. The reduction of budget-funded seats in higher education institutions and the growing tuition fees contradict the clause on progressive introduction of free higher education defined by human rights law.

The Polish government hears the voices of academic staff and managers of the educational institutions. The recommendations of the international organisations on education and the factual position of the country in the international rankings are taken into consideration when the governmental agents make decisions. The changes of the system of higher education have been carried in Poland seems promising. The new regulations are aimed to enhance the financial sustainability of higher education institutions, to support the financial autonomy of schools and to enhance the quality of research and higher education. The financial development and sustainability of higher education in Belarus unfortunately remains weak, but the improvements may come with the influence of the best practices of the neighbouring countries.

5.4.2. Institutional autonomy and academic freedom

“Higher education institutions play powerful roles in all our societies producing the leaders in all our fields of professional and scientific endeavor. Society has further given higher education institutions the mandate to manage knowledge on its behalf. This second role as knowledge producer and knowledge disseminator has taken on more and more importance as knowledge itself has increasingly been seen as a key of contemporary economic development.”¹⁰³⁵ It is difficult to disagree with the cited author. Indeed, higher education institutions are intellectual centers of education and research, knowledge produced by them is an engine of economic development, social progress and a crucial factor of scientific revolutions nowadays. On the other hand, government must ensure a certain degree of liberty to higher education institutions to enable the achievement of

¹⁰³⁵ B.Hall, *Knowledge democracy, higher education and engagement*, in: M. Kariwo, T. Gounko, M. Nungu, *A comparative analysis of higher education systems*, Rotterdam, 2014, p.141.

learning outcomes awaited by stakeholders. The autonomy of tertiary education institutions is measured in four dimensions: organizational, financial, staffing and academic autonomy.

The European University Association created a toolkit and measured the level of autonomy of higher education institutions in Europe. The findings are presented in the form of the summary report available for the public use¹⁰³⁶. Gathering the data on autonomy of universities in 29 European higher education systems the report enables to overview the strong and weak sides of each educational system in comparison with other jurisdictions and to provide governments and international community with the background for further improvements. Unfortunately, Belarus was not included in the report as a target country, however V. Dunaev, member of the non-state initiative group “Civil Bologna Committee”, conducted the expertise on autonomy of higher education in Belarus following the algorithm of the EUA toolkit¹⁰³⁷. These serve a starting point of the analysis of institutional autonomy and academic freedom in Belarus and Poland.

Before considering the findings of the analysis in the chosen states it is worth to refer to the comments of the experts preparing the reports. “A reliable comparison of university autonomy across borders is highly challenging. Autonomy is a concept that is understood very differently across Europe; associated perceptions and terminology tend to vary quite significantly. This is due not only to differing legal frameworks but also to the historical and cultural settings that define institutional autonomy in each country.”¹⁰³⁸ Moreover, the measurement of institutional autonomy is based on monitoring of the national legal frameworks that are not permanent and changing under the influence of internal or external factors. For example, in 2015 Belarus formally joined the Bologna process and the European Higher Education Area that are based on the pillars of academic freedom and institutional autonomy. Consequently, the updates of legislation on higher education are being carried to meet the international requirements. In the recent years Poland is also in the process of reformation of higher education and science. In 2018 the crucial changes have been implemented in the legal provisions concerning tertiary education. Therefore, some findings about Poland presented below are supplemented with the reference to the actual legislation.

¹⁰³⁶ *University autonomy in Europe III, op.cit.*

¹⁰³⁷ O. Breskaya, O. Bresky, *From autonomous teachers to autonomous universities: where university autonomy gets its birth*, in: A. Mikhailov, O. Breskaya (eds.) *Reforming social sciences, humanities and higher education in Eastern Europe and CIS after 1991*, Cambridge Scholars Publishing, 2014, p.17-18.

¹⁰³⁸ *University autonomy in Europe III, op.cit.*, p. 10.

The findings of the measurement is presented in the form of scores where a score of 100% is equal to full institutional autonomy, while a score of 0% indicates that an issue is entirely regulated by an external authority.

Table 5. University autonomy in Belarus and Poland

| Autonomy dimension | Belarus | Poland |
|---------------------------|----------------|---------------|
| Organizational autonomy | 24% | 67% |
| Financial autonomy | 26,5% | 54% |
| Staffing autonomy | 25% | 84% |
| Academic autonomy | Less than 10% | 68% |

Source: *University autonomy in Europe III. Country profiles*, European University Association, 2017, p. 144-150; *Белая книга. Реформирование высшей школы Беларуси в соответствии с целями, ценностями и основными направлениями политики Европейского пространства высшего образования*, Минск, 2013, с.43-44.

Due to the comprehensive content and complex dimension the topic of university autonomy could be a subject of a separate doctoral research. Therefore the current sub-chapter illustrates the general overview of institutional autonomy and academic freedom with the focus on the weaknesses that should be improved by the public authorities and the strong features that could be mutually implemented in the selected for the research countries.

First of all, it is worth to assess positively the inclusion in the text of the Polish Constitution of the clause on autonomy of higher education institutions¹⁰³⁹. The principles of institutional autonomy are also incorporated in provisions of the Law on higher education and science¹⁰⁴⁰. Unlike Poland the notion “autonomy” and “academic freedom” are not found in the entire legislation of Belarus at all. Although the international community remarked numerously on the lack of ideas on university autonomy, academic freedom and student participation in higher education governance in the Belarusian legislation the adoption of the Code on education didn’t change the situation. The unified law is silent on the basic academic values. In fact, the absence of respect for the fundamental academic values and principles of higher education and science was one the main reasons to reject the Belarusian application to join the Bologna community and European Higher Education Area in 2012. The Belarusian government reacted to it with sarcasm. The Ministry of Education S. Maskievich stated the following: “Belarusian higher

¹⁰³⁹ Art. 70 ust.5.

¹⁰⁴⁰ Art. 3 ust.1 and art. 9.

education institutions have a high degree of autonomy, they don't ask for more autonomy"¹⁰⁴¹. The scores illustrated in the table 5 reflect the regrettable image of the Belarusian higher education through the prism of institutional autonomy and academic freedom¹⁰⁴².

Organisational autonomy covers the issues of selection procedure and dismissal for the executive head and governing bodies, the capacity to decide on the structure of the institution and possibility to create legal entities. The Belarusian legislation concerning the management in higher education creates an image of a higher education institution as a governmental body. Indeed, the executive head of the public institution – a rector – is not selected by the internal academic body of the entity, but the President of the state¹⁰⁴³. The head of the private institution is appointed by the Ministry of Education¹⁰⁴⁴. The law doesn't determine the duration of the head appointment or the criteria of the candidate, it totally depends on the will of the President and prevents any influence from the side of the institution. The organisational autonomy is reflected to some extent in the capacity of higher education institutions to decide on its academic structure. The higher education institution is entitled to establish additional bodies and entities with the consent of the founder, i.e. the state¹⁰⁴⁵. The legal provisions enable the inclusion of external members in the governing body of the higher education institution, however the clauses are not precise and equivocal and require the clarification on the procedure of selection and the possible quota of appointment¹⁰⁴⁶.

The Polish legislation on higher education is very clear on the governance of higher education institutions. Public higher education institutions establish three bodies: a rector, the senate and the institution council, private entities create two governmental bodies: rector and senate. The statute can regulate the establishment of other organs¹⁰⁴⁷. The requirements to the candidate for the position of a rector, the selection and dismissal procedure, the term of appointment are thoroughly defined by law¹⁰⁴⁸. The selection of the

¹⁰⁴¹ O. Breskaya, O. Bresky, *op.cit.*, p.17.

¹⁰⁴² The methodology provides neither the average score for all four dimensions nor the uniform ranking of the European countries. Nevertheless in almost all categories the Belarusian scores are the lowest.

¹⁰⁴³ Кодекс об образовании, ст. 208 ч. 2.

¹⁰⁴⁴ Кодекс об образовании, ст. 208 ч. 3.

¹⁰⁴⁵ *Белая книга. Реформирование высшей школы Беларуси в соответствии с целями, ценностями и основными направлениями политики Европейского пространства высшего образования*, Минск, 2013, с.46.

¹⁰⁴⁶ Постановление Министерства образования Республики Беларусь от 18 июля 2011 г. № 84 „Об утверждении Положения о совете учреждения образования”, НРПА 2011, 8/24039.

¹⁰⁴⁷ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 17.

¹⁰⁴⁸ Ibidem, art. 23-27.

rector and the creation of other governing bodies happen without the external approval and thereby demonstrate the high level of institutional autonomy. The rector of the private institution is selected by the senate or assigned by the founder¹⁰⁴⁹, no external influence is permitted. The management of educational institutions in Poland is given to the internal bodies of the entity which duties and responsibilities are outlined by the statute. People outside of the academia and student community cannot be selected as members of the senate¹⁰⁵⁰, meanwhile the institution council – advisory and monitoring body – includes at least 50% of members that are non-academia representatives¹⁰⁵¹. The initial draft of the Law on higher education prescribed the strong management role of the council which should consist of external people in its majority. However this idea was widely criticized by the academic community as an evident attempt to eliminate the institutional autonomy of higher education institutions and was not adopted. Higher education institutions can decide on their academic structures without constraints.

Financial autonomy means the capacity to borrow money and keep surplus, the right to charge national and international students with fees, capability to manage public funding. Some aspects of funding of public higher education institutions were discussed in the previous sub-chapter. The obstacles of public funding in higher education rose earlier in the research and the suggested recommendations are applicable in the framework of financial autonomy of institutions. Belarus is one of a few countries in Europe¹⁰⁵² where public funding is provided in the form of consolidated annual budget with the definition of expense items. Unspent by the end of a calendar year funds shall be returned to the budget. Higher education institutions must prepare the monthly account statement and submit it for the control to the Ministry of Finance¹⁰⁵³. Obviously, no flexibility in public funding spending is demonstrated. According to the civil law public schools are entitled to apply for a bank loan, however the factual situation proves that this right is not often executed¹⁰⁵⁴. Regarding the tuition fees there are different approaches to the calculation of cost of higher education for national and international students. As it has been mentioned

¹⁰⁴⁹ Ibidem, art. 24 ust. 2 pkt. 2.

¹⁰⁵⁰ Ibidem, art. 29.

¹⁰⁵¹ Ibidem, art. 19 ust.2.

¹⁰⁵² According to the information valid in 2013 the similar approach is maintained in Turkey, Cyprus and Greece. *Белая книга, op.cit., с.47.*

¹⁰⁵³ Постановление Министерства финансов Республики Беларусь от 10 марта 2010 № 22 „Об утверждении Инструкции о порядке составления и представления бухгалтерской отчетности по средствам бюджетов и средствам от приносящей доходы деятельности бюджетных организаций”, НРПА 2010, 8/22094.

¹⁰⁵⁴ *Белая книга, op.cit., с.48.*

above, public higher education institutions offer free of charge education for both full-time and part-time students. On the other hand, the number of state-funded seats is limited and depends on the government subsidy. Universities are free to accept students beyond the budget-funded limits at the paid basis and to define the tuition fees according to the legislation¹⁰⁵⁵. It ensures financial autonomy of institutions at the middle level. The fees for foreign students are estimated by universities independently on the basis of the signed international agreements and economic situation in the market of educational services¹⁰⁵⁶. In other words there are no formal limits for tuition fees for foreign students. Such circumstances create a ground to consider tuition fees as the major source of funding that could cover expenditures on education for budget-funded students¹⁰⁵⁷.

Financial autonomy of higher education institutions in Poland used to be subject to certain restrictions before the adoption in 2018 of the new version of the Law on higher education and science. The legal provisions will be supplemented with the ministerial instruction that has a form of draft at the current moment¹⁰⁵⁸. The changes in law resulted in merging the different streams of funding from the budget to the single scientific-didactic subsidy¹⁰⁵⁹ what gives the effect of synergy in the management of higher education. Higher education institutions have the ensured autonomy in deciding how to spend the budget funding – either on the reconstruction of the student residence or the innovative research or the training for academic staff. The second important amendment aimed to enhance the institutional autonomy of educational entities is based on the change of nature of financial support received by the institutions. A new form of subsidy is called in Polish *subwencja* what means free and non-returnable funds. The received, but not spent during the calendar year, funds from the state can remain in the legal entity disposition without any time limit.

¹⁰⁵⁵ Постановление Министерства образования Республики Беларусь от 29 июля 2011 г. № 210 „Об утверждении Инструкции о порядке определения стоимости обучения при реализации образовательных программ высшего и среднего специального образования на платной основе в государственных учреждениях образования”, НРПА 2012, 8/25073.

¹⁰⁵⁶ Ibidem, п.13.

¹⁰⁵⁷ In 2007 the vice prime-minister defined the goal in the field of higher education to increase the number of foreign students in 10 times and thereby to compensate the state expenses on higher education for national students. *В Беларуси на одного преподавателя вуза будет приходиться не более 10 студентов*, Белорусские новости Naviny.by, 15.06.2007, available at http://naviny.by/rubrics/society/2007/06/15/ic_news_116_272351 [accessed on 27 December 2017]. As we can judge so far the number of foreign students has been increased triply only.

¹⁰⁵⁸ Projekt rozporządzenia Ministra Nauki i Szkolnictwa Wyższego w sprawie sposobu podziału środków finansowych na utrzymanie i rozwój potencjału dydaktycznego oraz potencjału badawczego znajdujących się w dyspozycji ministra właściwego do spraw szkolnictwa wyższego i nauki oraz na zadania związane z utrzymaniem powietrznych statków szkolnych i specjalistycznych ośrodków szkoleniowych kadr powietrznych z dnia 17 września 2018, available at <https://legislacja.rcl.gov.pl/projekt/12316003> [accessed on 25 December 2018].

¹⁰⁵⁹ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 366 ust.2.

This supposes to change the situation when higher education institutions organize the fast, but not always necessary, expenses at the end of a calendar year to avoid the return back of the remain funding. The law also sets some limits to the scope of possessing and transferring of real estate property of higher education institutions. Since the property of public universities was mainly provided by the state and local authorities the decision to sell it shall be approved by them¹⁰⁶⁰. According to the Constitution the full-time studies are free of charge regardless the nationality of students. From the perspective of accessibility of education it is a positive side. In the light of financial autonomy this is a strong restriction of higher education institutions capacity. Universities are allowed to charge part-time students, including international ones, and to set up payment for other educational services, however the fees must not exceed the actual costs¹⁰⁶¹. Taking into consideration the mentioned above amendments, the score of financial autonomy in Poland should be higher than it was assessed by the European University Association.

The third element of institutional autonomy is staffing autonomy. It means the ability of higher education institutions to decide on recruitment, promotion and dismissal of academic staff and administrative personnel. Staffing autonomy also includes the flexibility of institutions to define and change salaries of employees.

The procedure of appointment, dismissal and promotion of academic staff in Belarus is much in common with the procedures established in the European higher education institutions. However the realization of these rights within the academia has its particularities, therefore staffing autonomy of Belarusian universities is estimated with the low degree in comparison with the results in other countries. The appointment of academic staff in Belarus occurs by announcing a vacancy and selecting the candidate among others whose characteristics and qualifications fit the best to the position and teaching process. The law defines the personal characteristics and qualification required for the appointment to the position¹⁰⁶². Besides the academic degree and titles the candidates to some scientific-didactic positions shall possess certain teaching experience and scientific achievements¹⁰⁶³. The exceptions from the rules are provided by the regulations, e.g. people without the

¹⁰⁶⁰ *University autonomy in Europe III. Country profiles, op.cit.*, p. 146.

¹⁰⁶¹ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 79.

¹⁰⁶² Пастанова Савета Міністраў Рэспублікі Беларусь 21 чэрвеня 2011 г. № 806 „Аб зацвярджэнні Палажэння аб парадку правядзення конкурсу пры замяшчэнні пасад педагагічных работнікаў з ліку прафесарска-выкладчыцкага складу ва ўстановах вышэйшай адукацыі Рэспублікі Беларусь”, НРПА 2011 г., №72, 5/34007; постановление Министерства Труда Республики Беларусь от 28 апреля 2001 г. № 53 „Об утверждении квалификационного справочника должностей служащих”, Выпуск 28 - должности служащих, занятых в образовании, НРПА 2012, 8/25813.

¹⁰⁶³ *Ibidem*, п. 14-17.

academic rank or pedagogical experience can be hired by the rector for a 1-year contract¹⁰⁶⁴. In such circumstances when the law thoroughly regulates the recruitment the access to the pedagogical workplace for junior scholars without or with limited academic experience is challenging. The dismissal of academic staff is regulated by the referred act and the clauses of the Labour Code¹⁰⁶⁵. Additionally the agreement between the Ministry of Education and the Belarusian trade union of employees in the field of science and education for 2016-2019 has been signed and regulates the procedure of appointment, promotion and dismissal of employees *inter alia* of higher education institutions¹⁰⁶⁶. By the methodology of European University Association the adoption of interinstitutional agreements affecting the rights of academic and administrative staff is deemed the restriction of staffing autonomy¹⁰⁶⁷. Administrative personnel of higher education institutions are appointed by the head of the institution and no restrictions are defined¹⁰⁶⁸. On the other hand it is important to take into account that the rector of the university is appointed by the President of the country and depends institutionally from his will, then the selection and dismissal of administrative personnel can't be seen an absolutely autonomous decision of the higher education institution. Regarding the capability of higher education to decide on the salary of employees it is strictly and entirely regulated by the governmental bodies by means of a range of legal acts. The calculation of salary is determined by formulas where the basic factors and coefficient are set at the national level¹⁰⁶⁹. Higher education institutions must follow the same regulations deciding on spending of the budget funding as well as the resources earned from other activities. Such approach limits the institutional autonomy to its largest extent.

Polish institutions are free to recruit, promote or dismiss academic and administrative staff with some little restrictions defined by law. Academic staff is not considered civil servants, therefore certain means of sustainable employment are defined by the Law on higher education and science. First of all, the academic and non-academic staff for whom

¹⁰⁶⁴ Ibidem, п. 9, 13. The maximum term of a labour contract for academic staff is equal to 5 years.

¹⁰⁶⁵ Трудовой кодекс Республики Беларусь от 26 июля 1999 г. № 296-3, НРПА 2/70.

¹⁰⁶⁶ Соглашение между Министерством образования Республики Беларусь и Белорусским профессиональным союзом работников образования и науки на 2016-2019 годы, зарегистрировано Министерством труда и социальной защиты 16 марта 2016 №189.

¹⁰⁶⁷ *Белая книга, op.cit.*, с.52.

¹⁰⁶⁸ Постановление Министерства образования Республики Беларусь от 1 августа 2012 г. № 93 “Об утверждении Положения об учреждении высшего образования”, НРПА 2012, 8/26498.

¹⁰⁶⁹ Постановление Министерства труда Республики Беларусь от 21 января 2000 г. № 6 “О мерах по совершенствованию условий оплаты труда работников бюджетных организаций и иных организаций, получающих субсидии, работники которых приравнены по оплате труда к работникам бюджетных организаций”, НРПА 2000, 8/2761.

the higher education institution is the primary workplace are employed with a labour contract¹⁰⁷⁰. The Law also defines the terms of their dismissal¹⁰⁷¹. The appointment of academic positions requires qualifications, in some cases the academic rank is essential. Although the national law imposes the particular rules of the staff employment and dismissal, higher education institutions possess significant freedom in recruitment procedure. The statute of higher education institutions may provide the additional positions and characteristics expected from employees at these positions or define other requirements in addition to the mentioned in the Law¹⁰⁷². At the national level the Polish law defines the minimum limit of salary regardless of the sector of employment. In terms of the salary of academic staff the lower limits are ensured by the Law on higher education and science and the linked ministerial act, there is no higher limit of the salary¹⁰⁷³. Higher education institutions can rather freely allocate the funds of the budget subsidy and from other resources within expense items. It is fair to admit that higher education institutions in Poland possess the significant degree of staffing autonomy.

The last element of autonomy of higher education institutions is measured by academic independence. This notion integrates the essence of academic freedom and institutional autonomy. It consists of the following elements: capacity to define the student profile and control the enrolment numbers, ability to launch and to close degree programmes, the ability to decide on the language of instruction and the content of curricula.

In the previous sub-chapter it has been mentioned that the estimation of enrolment numbers in Belarus *de jure* is made by higher education institutions in the agreement with the Ministry of Education. The approved by the governmental bodies numbers can't be changed. *De facto* universities in Belarus are informed annually of the size of the state subsidy to be received. The size of the funding affects the overall numbers of accepted students. If the higher education institution considers that the allocated funding is not sufficient for the governance of the entity in the upcoming year it may increase the number of the paid seats within the limits of the license. Since 2010 the enrolment rate at the non-public higher education institutions must be also approved by the governmental agents¹⁰⁷⁴.

¹⁰⁷⁰ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 120.

¹⁰⁷¹ Ibidem, art. 123-124.

¹⁰⁷² Ibidem, art.116 ust. 4.

¹⁰⁷³ Ibidem, art.137; rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie wysokości minimalnego miesięcznego wynagrodzenia zasadniczego dla profesora w uczelni publicznej z dnia 25 września 2018, Dz. U. 2018 poz.1838.

¹⁰⁷⁴ *Белая книга, op.cit., c.55.*

As a result, the capacity to decide on overall student numbers is partly controlled by universities and mainly by the authorities. In terms of the admission criteria higher education institutions are not entitled to define them as it is totally regulated by the national law¹⁰⁷⁵. The institutions can only identify the minimum scores of the centralized testing that are required for the admission to the selected programme of studies. For example, in 2008-2015 for admission to the specialization of law, journalism or governance there was an additional requirement besides the centralized testing. Entrants had to pass a psychological interview for assessment of their individual and professional capabilities and their motivation for further studies at the selected faculties. That requirement was introduced by the President's decree¹⁰⁷⁶ and was described in the resolution of the Ministry of Education¹⁰⁷⁷. This illustrates the centralized governance function in the hands of authorities and a lack of autonomy of higher education institutions.

The decision to open a new degree programme in Belarus is entirely in the control of the governmental agent, i.e. the Ministry of Education. There is a list of occupations and qualifications in all fields of economy approved by the Ministry of Education¹⁰⁷⁸. The document implies a legal act describing occupations and the minimum required qualifications to perform a job at those positions. Vocational and higher education institutions are tightly linked with the list of occupations. A new programme can't be launched by the university until a new specialisation or occupation will be included in the list adopted by the Ministry of Education¹⁰⁷⁹. In addition to the amendment of the list the accreditation of the programme is mandatory by the law¹⁰⁸⁰.

Higher education institutions in Belarus are deprived of autonomy to design the content of degree programmes to a large extent. Firstly, at the national level the model degree plans are designed by the appropriate governmental body responsible for the

¹⁰⁷⁵ Кодекс об образовании, ст. 213, Указ Президента Республики Беларусь от 7 февраля 2006 г. № 80 „О правилах приема лиц для получения высшего образования I ступени и среднего специального образования”, НРПА 2006 г. 1/7253, постановление Министерства образования Республики Беларусь от 2 апреля 2001 г. № 23 „О централизованном тестировании”, НРПА 2001, 8/5486 и др.

¹⁰⁷⁶ Указ Президента о правилах приема.

¹⁰⁷⁷ Постановление Министерства образования Республики Беларусь от 26 февраля 2008 г. № 17 “Об утверждении Инструкции о порядке проведения профессионально-психологического собеседования и тестирования в высших учебных заведениях”, НРПА 2008, 8/18313.

¹⁰⁷⁸ According to Article 109 of the Code on education it is a duty of the Ministry of education to compose, maintain it actual and amend the list of occupations and qualifications. The list of occupations and qualifications was adopted by the Ministry of education in 2009 and so far numerously was amended. Постановление Министерства образования Республики Беларусь от 02 июня 2009 №36 “Об утверждении и введении в действие Общегосударственного классификатора Республики Беларусь ОКРБ 011-2009 “Специальности и квалификации””, НРПА 2012, 8/25964.

¹⁰⁷⁹ Постановление Министерства образования Республики об утверждении и введении в действие Общегосударственного классификатора, п. 18.

¹⁰⁸⁰ Кодекс об образовании, ст. 29.

science and methodology of higher education and then approved by the Ministry of Education¹⁰⁸¹. A model plan defines the duration of studies, its content, academic schedule and serves as a mandatory template for all types of higher education institutions regardless of its form of ownership, status and affiliation. The model plans are valid, as a rule, during 5 years, after that they are revised if required¹⁰⁸². Beside the model plan the governmental agents design a model syllabus for each discipline¹⁰⁸³. It is a description of how must be taught a certain course during an academic year. The model syllabus includes the general course information, expected learning outcomes, learning topics and the estimation of academic hours dedicated to each topic, bibliography, recommended forms of student assessment¹⁰⁸⁴. Higher education institutions design their own plans and syllabi of the offered to learners courses based on the templates approved by the Ministry of Education. It is worth to admit that higher education institutions may, at their discretion, change only one third of the content of the model documentation. The same restriction applies to the model syllabus as well as to the model plan. An academic teacher may change no more than 30% of the content of the model syllabus designing his or her learning course on the basis of the model syllabus¹⁰⁸⁵. In such bureaucratic conditions it is difficult to imagine the timely introduction of an innovative course dedicated to, for example, venture operations in the programme of legal studies.

Another example of the strict restriction of academic autonomy of non-public institutions is defined in Article 211 of the Code on education. If a non-public higher education would like to launch a new programme the conclusion of the leading public university where such programme has been implemented is required to evaluate the reasonability of launch the programme in a new institution. Although the conclusion is a subjective opinion of the public school the Ministry of Education takes it into consideration while making a decision¹⁰⁸⁶.

One more component of academic autonomy is ability to choose the language of instruction. According to the law there are two languages of instruction in Belarus – Russian and Belarusian, i.e. the official languages of the state. The founder of a higher

¹⁰⁸¹ Ibidem, ст. 217 п.3.

¹⁰⁸² Приказ Министерства образования Республики Беларусь от 6 апреля 2015 „О порядке разработки и утверждения учебных программ и программ практики для реализации содержания образовательных программ высшего образования”, п. 1.10.

¹⁰⁸³ Кодекс об образовании, ст. 217 п.8.

¹⁰⁸⁴ Ibidem, ст. 217 п.8.

¹⁰⁸⁵ Приказ Министерства образования о порядке разработки и утверждения учебных программ, п. 4.12.

¹⁰⁸⁶ Кодекс об образовании, ст. 211 п.4.

education institution decides on the language of instruction based on the will of learners¹⁰⁸⁷. The foreign language can be a language of instruction with the approval of the Ministry of Education¹⁰⁸⁸. Obviously higher education institutions don't have freedom to choose the language of education voluntarily.

The European University Association admits the improvements resulted from the reforms of the system of higher education in Poland in 2010-2011, in particularly in the academic autonomy matters. The scores of academic freedom increased from 63% to 68% displaying the changes in the accreditation and teaching which have a positive effect on academic autonomy¹⁰⁸⁹. Polish higher education institutions set admission criteria at all levels without external approvals. According to Article 70 of the Law on higher education and science the senate of the university defines the term, procedure and criteria of student admission. The formal criteria for enrolment are the scores in the maturity certificate¹⁰⁹⁰. The better the scores are, the more chances exist to be accepted in the high-ranked institution. In some circumstances higher education institutions have the right to organize an additional examination assessing other skills and knowledge than those being evaluated within the maturity examination¹⁰⁹¹. Higher education institutions can also decide freely on numbers of student enrolment with the exception of a few specializations, such as medical, dentist studies and national security¹⁰⁹². Before October 2018 the legal norms entitled institutions to increase the number of full-time students by up to 2% compared to the number of student in the previous academic year without any external approval, otherwise the approval of the governmental bodies, e.g. the Ministry of Education, was mandatory¹⁰⁹³. The limit on increase is set for full-time students irrespective to the fields of study. The number of part-time seats is out of scope of the restrictive measures.

The new version of the Law on higher education adopted in Poland in 2018 keeps the procedure of launching of new studies almost without changes. As a rule, in order to launch studies in the particular field of science higher education institutions must receive the consent of the Ministry of Education¹⁰⁹⁴. However, the educational and scientific

¹⁰⁸⁷ Ibidem, ct. 90 p.1.

¹⁰⁸⁸ Ibidem, ct. 90 p.7.

¹⁰⁸⁹ *University autonomy in Europe III. Country profiles, op.cit.*, p. 149.

¹⁰⁹⁰ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 70 ust.3.

¹⁰⁹¹ Ibidem, art. 70 ust.4 and 4a.

¹⁰⁹² Ibidem, art. 444.

¹⁰⁹³ Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego z dnia 12 stycznia 2017 r. zmieniające rozporządzenie w sprawie podejmowania decyzji dotyczącej zwiększenia ogólnej liczby osób, które uczelnia publiczna może przyjąć na studia stacjonarne na dany rok akademicki, powyżej 2% liczby studentów przyjętych na studia stacjonarne na poprzedni rok akademicki, Dz. U. 2017 r. poz. 77.

¹⁰⁹⁴ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 53 ust.3.

capacity of institutions in each field of studies is marked with particular scientific categories, i.e. A+, A, B+ and etc., defined by the Polish Accreditation Committee. If the higher education institution possesses the high capacity in the selected field of science the programme of study in this field can be launched without the ministerial consent¹⁰⁹⁵. The previous requirements concerning the number of academic staff with the scientific titles or degrees and student-teacher ratio in the faculty¹⁰⁹⁶ are not obligatory according to the new version of the Law on higher education and science. The content of degree programmes can be designed by higher education institution without significant restrictions. The National Qualifications Framework ensures academic autonomy in creation of the content of programmes. There are very general rules on learning outcomes in different fields of studies, but the essence of learning subjects can differ greatly ensuring to learners the diversity. The language of instruction is defined in the study regulations adopted by the senate¹⁰⁹⁷, in other words universities can freely decide on the language.

The second element which assures that higher education fully serves open democratic societies and encourages their development is academic freedom. Academic freedom and the already mentioned academic autonomy are overlapping but not similar ideas. While academic autonomy is considered an institutional right and refers to capability of higher education institutions to define the content and methods of education, academic freedom belongs to individuals of the academic community.

The public authorities in Poland seek to comply with the international obligations encompassed in the Lima Declaration, the Magna Charta of European Universities and UNESCO and the Council of Europe Recommendations concerning academic freedom and institutional autonomy. Like institutional autonomy the notion of academic freedom is reflected in the Constitution. Article 73 ensures to everyone “the freedom of artistic creation and scientific research as well as dissemination of the fruits thereof, the freedom to teach and to enjoy the products of culture”. The Law on higher education and science follows the principle of academic freedom embodied in the Constitution¹⁰⁹⁸.

In the monitoring of academic freedom in the legislation of the European countries Poland is included in the minority of the states that are recognized fully compliant with the requirements of the UNESCO Recommendation concerning the Status of Higher-

¹⁰⁹⁵ Ibidem, art. 53 ust.7.

¹⁰⁹⁶ Ibidem, art. 9 ust. 3 pkt. 1,2.

¹⁰⁹⁷ Ibidem, art. 28 ust. 1 pkt.2.

¹⁰⁹⁸ Article 3 underlines the principle of freedom of education and research.

Education Teaching Personnel aimed to protect academic freedom¹⁰⁹⁹. The system of higher education in Poland has a vulnerable history. At the time of Nazi occupation of the state academic freedom was basically destroyed. Then the Communism period started and the oldest universities in Europe were considered arms of the authorities. “Ideological loyalty was expected, and the sanctions for violating political or academic orthodoxy were often severe, including removal from their posts and prosecution”¹¹⁰⁰. The cardinal reforms occurred after the collapse of the Soviet regime in the region. Academic freedom was brought back as a fundamental value of higher education by means of the newly adopted Constitution and legislation on higher education. Undoubtedly, having been under the totalitarian control the Polish nation better appreciates the benefits of academic freedom to the sector of education and the entire society.

Without questions the contemporary Poland belongs to the group of countries where there is a considerable degree of academic freedom. Nowadays teaching and research are free from ideological and political games. Most academics do not fear direct sanctions for conducting any research opposed to the ideology of the public authority unless their methods of teaching or ideas are seen by the competent body contrary to professional ethics. Moreover, students as well as academic teachers can publicly express their opinions on the matters them concern in the social, civil or political spheres without a threat of punishment. The participation in the protests, e.g. Black Friday against the law on abortion, or public speaking didn't lead to firings or forced resignation or expulsion of the members of academia.

It is important to mention the weaknesses in the mechanism of protection of academic freedom in Poland which leads to scientific misconduct. A few decades ago scholars were assessed by the evaluation committee not by their merits, but other criteria, including personal ones. The scientific patronage by an “improper” professor could be a crucial obstacle during the defence process for doctoral students¹¹⁰¹. Nowadays it is a rare event. At the same time a scientific lie and plagiarism may occur in the contemporary science and strictly controlled by the university authorities and scientific community. The respected scientist and journalist M. Wroński monitors and informs the society about scientific misconduct cases in Poland since 1997. His over 150 investigation materials are published

¹⁰⁹⁹ T. Karran, *Academic freedom in Europe: Reviewing UNESCO's Recommendation*, British journal on educational studies, 2009, Vol. 57, №2, p. 205.

¹¹⁰⁰ P.G. Altbach, *Academic freedom: international realities and challenges*, Higher Education, Vol. 41, No. 1/2, 2001, p. 214.

¹¹⁰¹ Z. Walczyk, *Wolności akademickie – aspekty prawne i historyczne*, Studia Elbląskie 8, 2007, s. 177.

monthly in the journal “Forum Akademickie” under the label “From the archives of scientific misconduct” (*Z archiwum nieuczciwości naukowej*)¹¹⁰². The results of his investigation make the society aware of imperfection of the existing mechanism and force the stakeholders to develop it. The publicity of scientific misconduct also serves a tool of the moral education.

As it has been mentioned above the Belarusian legislation is silent on the ideas of academic freedom and institutional autonomy. It results in the low awareness of members of academia of their rights and mechanisms of their protection. It would be incorrect to state that academic freedom doesn't exist in Belarus. A certain degree of academic freedom is presented in many scientific fields unless they are linked with the political debates or oppose the leading ideology. Significant limitations of human rights and freedom of students and academic personnel take place in the system of higher education and outside in particular moments. The restrictions often occur in times of political or other crisis and create an unhealthy climate of general unease for the society. For example, during presidential or parliament elections governmental repression is dramatically increased. The author of the research experienced the undue intervention of the university authorities during the parliament election in 2004. Students living in the university dormitory had a meeting with the vice-dean of the faculty who insistently recommended to vote before the election day under the threat to lost the right to reside in the dormitory in the future. In 2017 during the preparation to the local authority election the university administration encouraged students to take part in the election campaign of approved candidates for the financial compensation or the provision of free from academic obligations days¹¹⁰³. These cases infringe the fundamental principle stating that universities are to be morally and intellectually independent of all political or religious influence and economic power.

Restrictions on academic freedom are an integral element of university life, especially in the social, political sciences and law that are seemed politically or ideologically sensitive. Participation in international scientific conferences and educational events in most disciplines is permitted. However, the field of human rights and democracy is of particular concern. The books in the sensitive areas of science are not published in

¹¹⁰² I. Glendinning, *Plagiarism policies in Poland. Impact of Policies for Plagiarism in Higher Education Across Europe*. Full report, 2015, p. 8.

¹¹⁰³ *State of students' rights in Belarus in 2017*, Analytical overview, Students' Council, available at <http://studrada.org/the-state-of-students-rights-in-belarus-in-2017/> [accessed on 3 June 2018].

Belarus¹¹⁰⁴. Participation in the summer schools for students on human rights is considered acceptable if the organisers are “approved” by higher education institutions¹¹⁰⁵. The area of scientific expertise can be selected freely by a scholar, however the dissertations on human rights are modestly presented among other sciences. In the period 1996-2016 law scholars defended 9 doctoral dissertations dedicated to human rights, while over 80 doctoral researches were conducted and defended in other areas of constitutional and international law¹¹⁰⁶.

As academic freedom is understood in its broad meaning, it is worth to pay attention to restrictions in realization of other human rights and freedoms due to the status of a student or an academic teacher. The independent student organisations monitor the situation with academic freedom in Belarus and inform the community of the undue intervention by the public authorities¹¹⁰⁷. Students are expelled from the Belarusian universities for their social activity and political views. The participation in the mass protests, e.g. the defence of Kurapaty or the disagreement with the adoption of law on social dependants, the cooperation with the political parties in opposition, the participation in human rights monitoring can be a background for their exclusion¹¹⁰⁸. The official reason for dismissal in most cases is absence during classes and failure to complete student’s obligations. To ensure the completion of higher education the Polish government initiated K.Kalinowski scholarship programme¹¹⁰⁹ for the Belarusian students expelled from higher education

¹¹⁰⁴ The politologist V. Silitski died working on the text of the book „The Long Road from the Tyranny: Post-Communist Authoritarianism and Struggle for Democracy in Serbia and Belarus”. By his colleagues the monograph was submitted for publication in the typography in Belarus. By the order of the Ministry of Information all copies were destroyed. *Atak na prawa studentów i wolności akademickie na Białorusi*, *Wschodnia gazeta codzienna-Kresy24.pl*, 20 listopada 2015.

¹¹⁰⁵ Belarusian human rights organisations, such as Viasna 96, Legal Transformations Center or Belarusian Helsinki Committee, with the financial support of foreign donors often organise trainings and summer schools on human rights for students. The events are carried out abroad during academic vacations. Nevertheless, after the return to Belarus student-participants are invited to the ideological departments of universities for giving explanations. If those kinds of training are conducted within the project between Belarusian university and a foreign scientific institution, doubts on the side of the administration don’t emerge. For example, the grant project between the Belarusian State University and Raoul Wallenberg Institute in Sweden includes summer schools for students and conferences on human rights and gender equality. See more at <http://rwi.lu.se/where-we-work/regions/europe/europe-office/> [accessed on 3 June 2018].

¹¹⁰⁶ Л. Морозов, *Перечень и сравнительный обзор диссертационных исследований в области конституционного и международного права*, Отчет в рамках программы Белорусского дома прав человека имени Бориса Звозскова „Международное право для защиты общественных интересов в Беларуси”, Вильнюс, 2017, с. 35, 43.

¹¹⁰⁷ In the library of the Students’ Council one may find two overviews of restrictions of academic freedom in Belarus in 2014 and 2017, available at <http://studrada.org/biblijateka/> [accessed on 1 June 2018].

¹¹⁰⁸ *State of students’ rights in Belarus in 2017*, Analytical overview, Students’ Council, p. 15-16, available at <http://studrada.org/the-state-of-students-rights-in-belarus-in-2017/> [accessed on 3 June 2018].

¹¹⁰⁹ More about the programme is presented on the web-page of its administrator – Studium Europy Wschodniej, available at <http://studium.uw.edu.pl/program-im-kalinowskiego/> [accessed on 16 June 2018].

institutions for their political views and social activity. Besides the expulsion from higher education institutions the young activists are threatened with possible expulsion without the right to rehabilitation and the restricted status to travel abroad. Some of them are affected by psychological pressure that their parents will be fired from the state-funded workplaces. There is a wide know case in Grodno when 13 learners were forced to sign a paper of non-participation in any public actions disrupting public order¹¹¹⁰. There is a common practice to assign students and teachers to pick up vegetables and fruits during harvest time in the little populated agricultural districts of the country or to conduct public works such as cleaning of streets and parks or the newly reconstructed stadium before the sport competitions¹¹¹¹.

The scientific development is impossible with the restriction of academic mobility. Science doesn't know frontiers and international cooperation of scholars is an engine of academic progress. At the time when the European community strives for the expansion of educational mobility and increases the financial support for international cooperation within formal and non-formal education announcing the renewal of Erasmus+ programme, the Belarusian authorities create obstacles for the international mobility of students and teachers. The national law against human trafficking states that the studies or participation in the sport, cultural, educational and other mass events organized overseas during the academic year are allowed with the written consent of the head of the institutions where the learners receive education¹¹¹². It means that any student can participate in the scientific conference organized by the foreign university or in the study visit aimed to enhance intercultural empathy and tolerance with the rector's permission only. However, there are no other documents (internal instruction or decree) regulating the process of permission receipt. The rejection or approval criteria are neither officially provided. The monitoring of academic mobility enables to define the following decisive criteria: a student profile, the topic of the event, the country of the event. Non-conflict students with high scores, without the social or political background and academic failures going to Russia or Ukraine will have more chance to receive the rector's permission than students interested in the democratic values and human rights in the European countries¹¹¹³.

¹¹¹⁰ *State of students' rights in Belarus in 2017, op.cit.*, p. 17.

¹¹¹¹ Отчет по результатам мониторинга нарушений академических свобод студентов в учреждениях высшего образования Беларуси за период сентябрь–октябрь 2014 г., Минск, 2014, с. 19-21, *available at* <http://studrada.org/biblijateka/> [accessed on 16 June 2018].

¹¹¹² Закон Республики Беларусь от 7 января 2012 г. №350-З „О противодействии торговле людьми”, НРПА 2012, №10, 2/1902, ст. 17, ч. 2.

¹¹¹³ Отчет по результатам мониторинга нарушений, *op.cit.*, с. 8.

In addition to the limitation of academic mobility and psychological and other types of pressure on the members of the academia the system of higher education in Belarus demonstrates the examples of scientific misconduct. The theft of intellectual property or decrease of scientific contribution of co-authors takes place in the Belarusian science along with the restriction of freedom of research. The theft of student intellectual property occurs when tutors publish the student's scholarship without the reference. Senior faculty members often appear as co-authors of the articles written by students or junior scholars. The reason of such misconduct is prosaic. The number of the published papers is taken into account during the periodic assessment of the academic staff. However, the workload of teachers is too heavy to combine effectively pedagogical and research activities. Additionally, some students confess that the controversial topic and sometimes the content of their research are modified by the tutors what contradicts the idea of academic freedom¹¹¹⁴.

Making conclusions on the academic freedom and institutional autonomy in Belarus and Poland we can admit that the national regulations concerning the system of higher education contain somehow the ideas of academic freedom and institutional autonomy. On the other hand, there is still room for improvement in both countries. Vulnerable academic history, the system of higher education dependent on governmental funding with limited legitimacy and long severe repression in the governance of education have made it difficult to form a perception of strong institutional autonomy and academic freedom quickly. Nevertheless, Poland as a country with long academic traditions, stable democratic ruling, healthy economy and closer ties to the Western values quickly restored the legislation based on academic freedom and autonomy for institutions. The overview of the legal provisions concerning institutional autonomy of higher education institutions confirms the findings presented by the European University Association and the national experts. Indeed, the level of institutional autonomy of the Polish universities is rather high and demonstrates the centralization of governance functions mainly in the scope of higher education institutions. The senate, institution council, rector and other internal structural entities possess the authority to decide on matters of organisational, staffing, financial and academic autonomy. The national law outlines the general rules of governance enabling higher education institutions adapt their educational services to the needs of students, labour market and build up the timely strategy of development based on the internal

¹¹¹⁴ Ibidem, c. 22.

resources and changing environment. The institutional autonomy of the Belarusian higher education institutions is limited to a great extent by the will of the national authorities. The governance functions are gathered in the scope of the governmental bodies which control not only organizational and financial matters of higher education, but also academic components of education. It is not surprisingly that overall institutional autonomy is estimated at the low level compared to the European traditions. Taking into consideration the values of the European Higher Education Area higher education in Belarus requires the systematic changes, including the legislation, in order to comply with the international standards and ideas of institutional autonomy and academic freedom. Autonomy of higher education institutions is not an end in itself. It is an essential element of the right to education in the dimension of human rights that affects the quality and economy of education. Academic freedom as defined in the international treaties constitutes a fundamental element of scientific progress and democracy. The norms of the Utrecht Declaration on Academic Freedom¹¹¹⁵ fairly prove the statement. The exercise of the national policies that “restrain and even foreclose academic freedom, in the name of security, public order, counter-terrorism, counter-crime or counter-extremism, through a variety of measures, including disciplinary actions, dismissals, criminal prosecutions, physical violence, travel restrictions and widespread intimidation of numerous scholars, teachers, students and academic institutions violates their individual freedoms of expression and opinion as well as their right and freedom of education. Such practices generate a climate of fear in which any form of creative and critical thinking is being suffocated, at great cost for current and future generations and for society as a whole”.

5.5. Accessibility of higher education

The accessibility of higher education is ensured by means of a fair admission system based on the merit of entrants and the inclusiveness of higher education for different groups of population as nationals as well foreign citizens and people without citizenship. Non-discriminatory admission rules are important in the beginning of the educational process as well as the comfortable environment for learning for the diversity of students in the further phase of education.

¹¹¹⁵ The declaration was adopted by the Association of Human Rights Institutes and a global network of human rights academic institutions in Utrecht, The Netherlands, on 1-3 September 2016.

In the literature the admission criteria to higher education institutions are divided into two groups¹¹¹⁶. The first one consists of the mandatory for everyone conditions prescribed merely by the legislation. It may concern the completed level of education. The second group contains the procedural criteria such as the time frame for paper submission, the registration method, the entrance interview or examination. Under the law on higher education in Poland the mandatory criterion to higher legal education implies the certificate of secondary education or maturity certificate¹¹¹⁷. In terms of the second group of criteria higher education institutions have the right to determine admission requirements and the number of student seats¹¹¹⁸. Such capacity of universities is rooted in the content of institutional autonomy and fully implemented in the practice in Poland.

The competition of applicants to legal education is based, as a rule, on the results of maturity examinations. Higher education institutions have the right to organize an additional testing in order to verify learner's capabilities that have not been assessed during the maturity examinations¹¹¹⁹. For example, creative skills and knowledge or physical power can be a subject of such assessment for art studies or military specializations. It is important to add that the scope of institutional autonomy regarding recruitment is minimized to a large extent for procedural requirements. Institutions are not allowed to define any formal criteria which restrict or mild the student selection¹¹²⁰. The experience of law schools in the UK requiring to pass the national admissions test for law sounds interesting and won't cause the discrimination in student admission if Polish law schools implement the similar test¹¹²¹. The test helps to verify analytical, reasoning and argumentation abilities of candidates for law courses. It consists of two parts: multiple choice questions based on text understanding and an essay. The test doesn't check knowledge on law or any subjects, but enables higher education institutions to select students who will be able to succeed in legal education¹¹²².

Legal education in Poland is provided as 5-year uniform master's degree studies. Hence, the entrants don't face a discriminative requirement that is reported in bachelor and

¹¹¹⁶ P. Dańczak, *Decyzja administracyjna w indywidualnych sprawach studentów i doktorantów*, LEX, 2015, s. 10.

¹¹¹⁷ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 70 ust.3.

¹¹¹⁸ Ibidem, art. 70.

¹¹¹⁹ Ibidem, art. 70 ust.4.

¹¹²⁰ I. Miedzińska, *Kryteria rekrutacji: dopuszczalne, dyskusyjne, dyskryminujące?* O dyskryminacji podczas rekrutacji, Watchdog #4, Warszawa, 2016, available at <http://rekrutacje.polska.edu.pl/> [accessed on 11 March 2018].

¹¹²¹ W. Dajczak, *op.cit.*, s. 11-12.

¹¹²² More information and templates of the test are available at <http://www.lnat.ac.uk/> [accessed on 11 March 2018].

master programmes of other fields of study. In the admission rules of some institutions there is a clause stating that graduates of the certain university have a priority right to be accepted at the master programme¹¹²³. This condition limits the access to higher education for people graduating from other institutions and contradicts the idea of accessibility and non-discriminatory right to education. Bearing in mind the value and goals of the Bologna Process promoting the student mobility in its broad understanding any kind of obstacles preventing changes of place of study should be removed.

In order to recognize higher education accessible in the light of human rights law the national law must eliminate any forms of discrimination and unequal treatment of different groups of population. Based on the findings of the Watchdog research team¹¹²⁴ the attention is focused on the recruitment rules of a few groups: disabled entrants, foreigners and people from removal areas or small towns of Poland.

As maturity examinations are adapted to the needs of disabled students¹¹²⁵, the Law on higher education and science requires also the adaption of recruitment procedure to higher education institutions to their needs. If additional to the maturity examination testing is organized by universities, it must be conducted in a way enabling people with particular needs to take part in them¹¹²⁶. As a rule, the recruitment instructions adopted by the senate of higher education institutions repeat the wording of the law without providing any clarification or description of the assessment methods¹¹²⁷. It is assumed that higher education institutions make a decision in every particular case. Such examples as the extended duration of an examination, participation of a sign language translator at the oral testing or use of Braille alphabet for a blind student could be sufficient description of entrance examination conditions to evaluate the accessibility of higher education recruitment procedure. On the other hand, the provision for disabled entrants of too many preferences puts others in vulnerable position and may cause a discrimination of the majority by the disabled minority. In order to maintain the equality of chances for everyone the university authority can grant people with disabilities such preferences which

¹¹²³ I. Miedzińska, *op.cit.*

¹¹²⁴ The team of researchers has conducted the fourth monitoring of recruitment rules and procedures in higher education institutions in Poland for bachelor, master (including uniform) and doctoral programmes. The monitoring occurred in 2014-2016. The description and results of the research are available at <http://rekrutacje.polska.edu.pl/> [accessed on 11 March 2018].

¹¹²⁵ Ustawa o systemie oświaty, art. 44z.zr.

¹¹²⁶ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 11 ust.1 pkt. 6a.

¹¹²⁷ P. Słowicki, *Nieprawidłowości w procesie rekrutacji na studia drugiego i trzeciego stopnia, O dyskryminacji podczas rekrutacji, Watchdog #4, Warszawa, 2016, available at <http://rekrutacje.polska.edu.pl/>* [accessed on 11 March 2018].

complement them their deficits and make their chances equal in competition with non-disabled people. A properly selected form of examination is one of the ways to balance the conditions¹¹²⁸. The provision of preferences in the form of additional admission scores or reduction of the scores required for recruitment is broadly criticized and assumed to be an example of positive discrimination of majority by minority groups¹¹²⁹.

Another group of entrants that may face challenges in accessing higher education is foreigners. The Law on higher education and science in details describes conditions of study in Poland for non-citizens¹¹³⁰. There are different groups of foreigners in the society, e.g. EU citizens and non-EU citizens, refugees and foreigners with the permanent or temporal residence permission, Polish card holders and others. Their legal statuses vary, therefore the access to higher education for them is different. There are foreigners studying according to the terms of international agreements, by the decision of the Minister of Higher Education and Science, the head of the university or the director of the Polish National Agency for Academic Exchange¹¹³¹. As a rule, foreigners pay for receiving educational service in the system of higher education in Poland, however the Law ensures a tuition waiver for a big group of learners and thereby ensures the broader access to higher education¹¹³². In the previous version of the Law on higher education the provisions on the rights of foreigners in higher education were comprehensive and long¹¹³³. The Watchdog research team has recognized that higher education institutions in Poland respected in their internal regulations the rights of foreign entrants, however the references to the Law on higher education were vague or in some cases inaccurate and could violate the foreign student's rights¹¹³⁴. We expect that the new, more clear and simple, version of the legal regulations will eliminate this obstacle in the context of the access to higher education for non-Polish entrants during the recruitment in 2019.

Another example of the discriminatory approach to foreigners is the provision of different number of seats for citizens of Poland and other nationalities who will study together after the admission¹¹³⁵. Unequal treatment is based on the fact that the access to

¹¹²⁸ Wyrok WSA w Warszawie z 4 czerwca 2009 r., I SA/Wa 1513/08, LEX nr 563382.

¹¹²⁹ P. Jędral, *Nieoczywiste formy dyskryminacji w postępowaniu rekrutacyjnym*, O dyskryminacji podczas rekrutacji, Watchdog #4, Warszawa, 2016, available at <http://rekrutacje.polska.edu.pl/> [accessed on 14 March 2018].

¹¹³⁰ Ustawa Prawo o szkolnictwie wyższym i nauce, art.323-328.

¹¹³¹ Ibidem, art. 323 ust.1.

¹¹³² Ibidem, art. 324 ust.2.

¹¹³³ Ustawa Prawo o szkolnictwie wyższym, art. 43.

¹¹³⁴ In some internal regulations the clauses on the right of foreigners to higher education were missing or contained 2 of 5 groups mentioned in the law on higher education. P. Słowicki, *op.cit.*

¹¹³⁵ P. Jędral, *op.cit.*

the educational programme, curricula and teaching methods for Polish entrants is broader than for non-Polish entrants who will obtain the same educational services. In order to exclude the discrimination unequal treatment of learners must be sufficiently justified. For instance, different forms of education or different languages of instructions for Polish and other students could give explanation for the unequal access to higher education.

The accessibility of higher education is measured not only by the form of examinations, but includes also the method of submission of papers. How entrants register to take part in the competition is defined by higher education institutions internally. The majority of Polish institutions require only the electronic registration of entrants. The scanned version of personal documents such as the identification card or the maturity certificate can be attached to the online application. At the same time some institutions gather a hard copy of student's documents before the examinations. During the Watchdog monitoring other requirements restricting the access to higher education has been noted. These are a personal visit to higher education institutions to show the original documents, the certification of copy of the documents in a particular place or by a particular person, prohibition to send documents by regular mail¹¹³⁶. Such requirements result in financial expenses for travelling and accommodation for those who live in other cities or even countries, for example foreigners, and are seen as discriminatory.

Living in distant areas is a geographical obstacle to higher education that can be easily overcome in such developed country like Poland. On the other hand, the youth from rural areas often has fewer financial and educational opportunities to enrol the prestigious and high-ranked universities at the full-time of studies. In the country report one can see the statistic data that about half of young people live in rural areas, but only every third of them become students of higher education institutions¹¹³⁷. Students from villages and small towns more frequently study at part-time form of education in the regional institutions, as they have less opportunity to study in full time public higher education institutions. These numbers reflect the accessibility of higher education in general and are applicable to legal studies in Poland. The research conducted at the law faculty of the Wroclaw University confirms the findings mentioned above¹¹³⁸.

¹¹³⁶ P. Słowicki, *op.cit.*

¹¹³⁷ Z. Marciniak (ed.), *Self-certification report of the national qualifications framework for higher education*, Educational Research Institute, Warsaw, 2014, p. 7.

¹¹³⁸ About 40% of law students are from villages or towns of up to 20 thousands inhabitants. A. Czarnota, M. Paździora, M. Stambulski, *op.cit.*, s. 41.

The admission rules in Belarus are regulated by two documents – the presidential degree¹¹³⁹ and the governmental resolution¹¹⁴⁰. The former act defines the admission rules at the first level of higher education, the latter regulates the enrolment conditions to master studies. These two documents thoroughly regulate the recruitment procedure including the terms, necessary documents, preferences for some categories of entrants. Higher education institutions elaborate their own rules that merely describe the forms and types of education and specialisations provided in it. What subjects are taken into consideration for the admission at a particular faculty and specialisation lies in the scope of the Ministry of Education¹¹⁴¹, institutions only repeat them in their admission rules.

After joining the European Higher Education Area the current system of higher education in Belarus is in the process of transformation from the 5-year uniform to two-level education. Master studies are the second level of education directing to the advanced scientific career at the doctoral studies or in-depth learning of practical aspects of law application. In the contemporary conditions master programmes in Belarus are seen rather like a preliminary step to the academic career than an access to legal profession. Analysing the accessibility of higher education the focus is given to the admission procedure at the first level of education only. It ensures the consistent approach of the research in both countries.

In general, the admission procedure and criteria of the Belarusian universities look very similar with what has been illustrated in the system of higher education in Poland. Entrants are evaluated on the basis of the scores received during the centralized testing (in Poland – the maturity examinations). The centralized testing doesn't replace the graduation examinations in schools, but serves an independent uniform method of knowledge verification organized by the Ministry of Education. Nevertheless, the analysis of the legal regulations on recruitment causes worries whether higher education in Belarus can be considered accessible.

First of all, the law says that an entrant must submit to the admission commission of the selected institution the original version of the personal documents and an application form¹¹⁴². The personal submission of a hard copy of the required documents is a significant obstacle for entrants from small towns or removed areas. It is important to underline that

¹¹³⁹ Указ Президента о правилах приема.

¹¹⁴⁰ Постановление Совета Министров от 2 февраля 2012 года №110 „Об утверждении Правил приема лиц для получения высшего образования II ступени”, НРПА 2012, 5/35218.

¹¹⁴¹ Указ Президента о правилах приема, п. 17.

¹¹⁴² Ibidem, п. 11.

clear majority of higher education institutions is located in either the regional center-cities or in the capital of Belarus¹¹⁴³. The law clarifies that in situations when the entrant can't stand before the commission to submit the papers it can be done by his or her representative with the documented reason of entrant's inability to do that. The admission commission has the right to refuse the acceptance of the documents in case of an unreasonable excuse of the absence¹¹⁴⁴. Neither the notary certified copies nor the delivery by regular mail is allowed. Obviously such regulations create for entrants and their families an additional financial burden for travel and accommodation expenses to participate in the selection.

Secondly, the requirement to submit the original documents limits the access to higher education at the chosen specialisation. Entrants can't submit the papers in different institutions at the same time and wait for a positive decision from any of them like it occurs in the European universities. The terms of admission are defined centrally for all institutions at the same time and from the beginning entrants should decide what occupation they would like to obtain and in what institution. The only solution that the law provides is to select the higher education institution and specialisation, then in the application form the entrant identifies what form of education is preferable – full-time, part-time, a budget-funded or paying seat. Entrants with higher scores of the centralized testing have more chances to enrol at full-time budget-funded seats.

The accessibility of higher education in Belarus would be ensured to a broader extent if entrance examinations to similar specialisations were the same. As it has been admitted above the Ministry of Education decides what knowledge to be assessed for different specialisations. The list of specialisations and two necessary subjects are composed and adopted at the national level¹¹⁴⁵. For example, in order to study jurisprudence, commercial law or administration at the first level of higher education entrants must pass the examinations on social science and foreign language, for study of political science the examinations on social science and history of the country are required. To obtain the occupation of a customs officer the examination on mathematics is necessary whereas

¹¹⁴³ 21 of 43 public universities and 7 of 8 private institutions are located in Minsk, the capital of the country. *Образование в Республике Беларуси, op.cit.*, с. 142.

¹¹⁴⁴ Указ Президента о правилах приема, п. 11.

¹¹⁴⁵ Постановление Министерства образования Республики Беларусь от 30 июня 2015 г. № 72 о вступительных испытаниях при поступлении на I ступень высшего образования, НРПА 2015, 8/30079.

international lawyers pass social science. All these occupations may be taught at the faculty of law¹¹⁴⁶.

Considering the access to higher education for foreigners it is easy to be lost in the diversity of rules. Indeed, different nationalities and legal status of foreigners in the state affect the conditions of their admission to higher education institutions. Foreigners may select the form and type of education in any public and private higher education institution. Moreover, the law defines situations when citizens of foreign states, refugees and people without citizenship have the right to obtain higher education in Belarus free of charge¹¹⁴⁷. The accessibility of higher education to non-Belarusians is confirmed also by the statistic data. Although the government and its official persons express high interest to attract more foreigners to the country the factual conditions of their admission and study are not as attractive as could be. The admission procedure and required documents for foreign entrants are not much different than for Belarusians. The personal submission of documents to the admission commission is one of the obstacles to a broad access to higher education. The admission procedure requires a medical certificate issued by the medical center in Belarus confirming a lack of contraindications to undertake studies¹¹⁴⁸. It means that entrants have to arrive in Belarus and spend some time in the country before being aware of the results of admission. For those who don't know the language of the country the medical examination can become an additional challenge to overcome. The law on admission to higher education at the first level requires from non-Belarusian citizens a document that is not mandatory for citizens of the country. It is a medical certificate confirming a negative HIV status of the entrant issued by the country of residence¹¹⁴⁹. Such restrictions are included in the legislation of many countries in the world and result in the rejection of entry, stay and residence¹¹⁵⁰.

In certain cases defined by the legislation foreigners are allowed to participate in the competition for budget-funded seats along with citizens of Belarus. In order to do this they have to pass the centralized testing organized by the Ministry of Education. As a result, the personal presence of entrants in the country is required a few times: during the centralized

¹¹⁴⁶ See the admission rules at the Yanka Kupala State University of Grodno for 2017/2018 academic year, p. 7, available at <http://abit.grsu.by/> [accessed on 16 March 2018].

¹¹⁴⁷ Указ Президента о правилах приема, п. 3, 6.

¹¹⁴⁸ Ibidem, п. 12.

¹¹⁴⁹ Ibidem.

¹¹⁵⁰ HIV-related restrictions on entry, stay and residence, UNAIDS Human Rights and Law Team, 2011, available at <http://www.unaids.org/en/strategygoalsby2015/hiv-relatedtravelrestrictions/> [accessed on 16 March 2018].

testing, medical examination and for submission of the documents to the admission commission.

In addition to the admission conditions the language of instructions may become a barrier for non-Russian speakers. As the dominating language of instructions is Russian foreign entrants either attend the preliminary language course before the admission or pass an interview where they are assessed on the language proficiency enabling the achievement of learning outcomes¹¹⁵¹. The provision of higher education in English in the Belarusian universities is organized in a very modest manner¹¹⁵². Although the national law grants the right to higher education for non-citizens, the realization of this right may become challenging owing to different reasons.

The national legislation of the selected countries guarantees the creation of special conditions to access all levels of education for people with disabilities. Indeed, the Code on education prescribes to higher education institutions to create special conditions of technical, pedagogical, medical or social support enabling the learning by disabled students¹¹⁵³. Furthermore, Belarus was a pioneer among the post-Soviet countries to adopt the law on special needs education¹¹⁵⁴. The Law on higher education and science in Poland underlines the objective of higher education institutions to create proper conditions for people with disabilities to fully participate in education and research¹¹⁵⁵.

The practical realization of the right to higher education for disabled people in Belarus requires some development. The first obstacle in the access to higher education is met by disabled people during the admission procedure. The list of the documents necessary for the admission of all entrants includes the medical certificate stating overall level of health. In virtue of the law the admission committee requires from every single disabled entrant a decision of the medical commission confirming a lack of contraindications to undertake studies of the chosen specialisation. In this point, the medical opinion can be crucial for further professional development of a person. The team of medical experts makes a decision taking into consideration the act of the Ministry of Health containing the list of

¹¹⁵¹ Указ Президента о правилах приема, п. 6, 23.

¹¹⁵² In the academic year 2015/2016 only 18 of 51 higher education institutions offered a few programmes in English at the first and second levels of higher education. English programmes for 2015/2016 provided by the office of Erasmus+ in Belarus, available at <http://erasmus-plus.belarus.unibel.by/ru/main.aspx?guid=2081> [accessed on 16 March 2018].

¹¹⁵³ Кодекс об образовании, ст. 15 п. 2.

¹¹⁵⁴ Закон Республики Беларусь об образовании лиц с особенностями психофизического развития (специальном образовании) от 18 мая 2004 г. № 285-З, НРПА от 03.06.2004 г., № 87, 2/1034.

¹¹⁵⁵ Prawo o szkolnictwie wyższym i nauce, art. 11 ust. 1 pkt. 6.

contraindications to undertake studies in higher education institutions¹¹⁵⁶. All specialisations taught in higher education institutions correspond to the list of occupations for all fields of economy and contain physical and mental limitations disabling studies. Although the act is of voluntary nature and the experts must approach individually to each disabled entrant, there are cases when the commission rejected to approve the selected field of study for people with disability who are already engaged in the similar activity as a hobby. For example, a laureate of the wheelchair dance competition was not allowed to study at the art academy¹¹⁵⁷. Sometimes disabled students from Belarus select higher education institutions abroad (Poland, Lithuania) because their admission procedure doesn't require the medical certification for people with disability.

The accessibility of buildings for disabled people is as important as an open admission procedure. The buildings of higher education institutions in Belarus were constructed 50-60 years ago when the rights of people with disabilities were not the priority social task¹¹⁵⁸. Hence, nowadays these buildings are not accessible for people in wheelchairs or blind students. Public higher education institutions are tight in their own finance to conduct repairs and modernisation of the constructions. The funding of higher education from the state budget is not sufficient and is allocated to public schools only. Private institutions don't receive any financial support from the state to adapt learning environment to the needs of people with disability. Nevertheless, ramps, elevators and toilets equipped to the needs of disabled people emerge in the universities and student dormitories in Belarus.

The Polish legislation on higher education and science can be considered friendly in terms of the rights of people with disabilities. The financial support for creation of the learning environment relevant to the needs of vulnerable people is assigned from the state budget in the form of institutional subsidy and can't be spent on other purposes¹¹⁵⁹. Moreover, non-public institutions in Poland have the right to receive such subsidy to be allocated for social fellowship and the financial support to create accessible conditions of

¹¹⁵⁶ Письмо Министерства здравоохранения Республики Беларусь от 07 мая 2004 № 51-0504 „Медицинские противопоказания к приему абитуриентов в учреждения, обеспечивающие получение высшего образования”.

¹¹⁵⁷ *Поверх барьеров. Доступно ли сегодня высшее образование для инвалидов?* Советская Белоруссия, Беларусь сегодня, 17.11.2016, available at <https://www.sb.by/articles/poverkh-barerov-invalidi-obrazovanie.html> [accessed on 28 January 2018].

¹¹⁵⁸ The monitoring of buildings of pre-school, primary and secondary education in Belarus reveals a lack of inclusive environment for children with disabilities. Only 3,3% of these buildings guarantee constructional inclusiveness. В. Жураковский, К. Мирецка, И. Стычыньска, *Обзор о положении детей-инвалидов и молодых инвалидов в Беларуси*, Аналитический отчет, Минск, 2017, с. 6.

¹¹⁵⁹ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 371 ust.2, 365 pkt.6 and 415.

learning for disabled students¹¹⁶⁰. In the beginning of the XXI century the adaptability of the engineering characteristics of buildings to the needs of disabled students was realized in many entities with the financial support of European funds. The complex national and international investments enable the provision of a broader access to higher education for people with special needs what is proved by the growing statistic data¹¹⁶¹. Although the government and higher education institutions do their best to fulfil their obligations towards people with special needs there are still obstacles in the system of higher education that have to be overcome, e.g. a lack of precise instructions and good practices for what universities may spend the budget subsidy, the assignment of financial support to students without a medical certificate, the provision of transport for disabled outside of the campus and others¹¹⁶².

As it has already been mentioned the features of accessibility and adaptability of education are overlapped and interrelated. There is no a clear frontier between their meaning. The conditions ensured to provide an open access to higher education are often necessary to enjoy the right to education after the admission. The provision of measures of adaptability doesn't make sense without the guaranteed transparent and non-discriminative access to education. Therefore, the analysis made below illustrates the implementation of accessibility and adaptability of higher education.

The Ministry of Education points to the distance learning as a method to obtain the diploma of higher education for everybody, including people with disabilities or foreigners. Indeed, online courses and distance learning is one of possible solutions to gain professional qualifications in the time of technology. However, the realization of distance learning in Belarus looks like rather part-time education than entire learning online. In the national legislation the distance learning is almost not regulated. The Code on education merely provides the definition of what distance learning means¹¹⁶³. It could be an opportunity for higher education institutions to develop this form of education internally and create its own regulations, however it only seems easy. In the conditions of the centralized management of the system of education and the limited institutional autonomy making higher education truly accessible is a hard task. Only a few universities in the state have introduced the distance learning for the entire programme of study or separate

¹¹⁶⁰ Ibidem, art. 413.

¹¹⁶¹ *Dostępność edukacji akademickiej dla osób z niepełnosprawnościami: analiza i zalecenia*, Zasada równego traktowania – prawo i praktyka, nr 16, Biuletyn Rzecznika Praw Obywatelskich 2015, nr 5, Warszawa, 2015, s. 6-7, 32-34.

¹¹⁶² Ibidem, s. 35-45.

¹¹⁶³ Кодекс об образовании, ст. 17 п. 3.

learning subjects. During the 10th International conference organized in Belarus and dedicated to the distance learning the following suggestions for the improvement of the national legislation have been expressed:

1. To enable the distance intermediate and final assessment of students. Nowadays students have to arrive in Belarus to take the final examinations before teaching staff.
2. To enable flexibility in the academic calendar of students. Currently the date of examinations, vacations and academic study are fixed in the educational standards and model programmes at the national level.
3. To apply to a broader extent the electronic signature and digital form of document exchange in higher education. According to the contemporary rules students have to submit the hard copy of the diploma work or project. The contract for provision of education between a learner and university is to be signed in a hard copy.
4. To simplify the financial transactions between learners and higher education institutions. The bank service fees for international wires estimate about 50 USD¹¹⁶⁴.

All these improvements require the structural changes, including the amendments of the legislation on higher education. The distance learning opens the access to higher education for disabled people and other vulnerable groups of population. It is also interesting to learn the results of the social pilot project “Education opens the door” realized in Belarus in 2015-2017¹¹⁶⁵. The Department of sentence execution and the Innovative university of Minsk with the financial support of the EU and DVV International conducted a pilot project aimed to create opportunities for people in prisons to obtain higher education by distance learning. The innovative education center equipped with the computers was created in the female prevention center in Gomel and 23 women could start or continue higher education in the fields of psychology, economy and management of the commercial entities, accounting. By the end of the first year of the project all students successfully completed the academic year, by the end of the second year one of the students completed the entire programme of education and received the diploma¹¹⁶⁶. Based

¹¹⁶⁴ Н. Нікалаева, *Адукацыя на адлегласці, ці Падводныя камяні анлайн-навучання*, Звязда, 04.01.2018, с. 6.

¹¹⁶⁵ The description and results of the project are illustrated in the final report. Отчет о результатах реализации проекта «Образование открывает двери» и изменении отношения осужденных и специалистов к проблематике обучения на протяжении всей жизни, 2016, available at http://www.dvv-international.org.ua/fileadmin/files/eastern-neighbors/Belarus/Publications/Final_report_full_version_EOD.pdf [accessed on 17 March 2018].

¹¹⁶⁶ The first diploma of higher education was given to the graduate on 13 October 2017, the international day of education in prisons.

on the experience of the pilot project the distance higher education was provided for 100 prisoners in other places of detention.

The financial accessibility of higher education can be fairly acknowledged owing to the constitutional clause on free higher education provided in the public institutions in both countries. At the same time in Belarus the number of state-funded seats is significantly fewer than number of seats financed by students themselves (table 6).

Table 6. The enrolment number of the budget-funded and paid seats in higher legal education in the selected institutions during 2016-2018, Belarus

| Higher education institutions, law faculties, speciality – law | The enrolment rate in 2016/2017 | | The enrolment rate in 2017/2018 | |
|---|------------------------------------|------|------------------------------------|------|
| | Budget | paid | budget | paid |
| Baranovichi state university | 0 | 150 | 0 | 112 |
| Belarusian state university | 184 | 413 | 172 | 320 |
| Brest state university | 0 | 220 | 0 | 180 |
| Grodno state university | 54 | 316 | 49 | 321 |
| Vitebsk state university | 15 | 193 | 20 | 161 |

Source: Entrant manuals of the selected universities in 2016/2017 and 2017/2018, enrolment rates, www.abiturient.by.

Table 7. The limit of the budget-funded and paid seats in higher legal education in the selected institutions during 2018-2019, Poland.

| Higher education institutions, law faculties, speciality – law (uniform legal studies) | The limit of seats in 2018/2019 | |
|---|------------------------------------|------|
| | Budget | paid |
| Adam Mickiewicz University in Poznan | 330 | 400 |
| Jagiellonian University | 450 | 174 |
| Maria Curie Sklodowska University in Lublin | 300 | 80 |
| University of Gdansk | 220 | 270 |
| University of Lodz | 250 | 400 |

Source: Own elaboration based on the statistic data of the recruitment pages of the universities [accessed on 05 August 2018].

Looking at the limited number of state-funded seats and taking into account the high interest to legal studies in the society entrants must consider the fee-based legal studies as a possibility to become a lawyer. At this point it would be important to learn the financial accessibility of legal education in the context of its affordability. Depending of the educational institution a full-time student in Belarus shall pay 2 300 – 2 851 BYN what is equivalent to 1100-1500 USD for the first year of legal studies¹¹⁶⁷. What is surprising is that in some European countries law schools charge the similar fees, however the standard of living in those countries is higher than in Belarus. For comparison, in Poland the annual fees for legal studies vary from 3 400 PLN to 7 000 PLN (1 000 – 2 000 USD) depending on the higher education institution¹¹⁶⁸. In order to maintain self-repayment of higher education the Belarusian institutions organize the annual review of the cost of education and students pay the higher fees. In Poland the cost of legal studies is kept without the significant changes during last years, while the average salary is growing. Taking into account the inflation rate of the national Belarusian currency, the permanent demographic and economic crisis it is assumed that higher education won't become cheaper for learners in the nearest future. In the light of human rights recommendations the accessibility of higher education in Belarus is under consideration.

Reflecting on the access to higher education from the perspective of its financial affordability it is useful to consider a right to financial support in the form of fellowship, a loan and lend provided for students in Belarus and Poland. The Constitution of Poland ensures the equal and universal access to education, including in the terms of financial accessibility. The government is to create the system of individual financial support for students¹¹⁶⁹. The law on higher education in Poland provides a few types of financial support for students – social fellowship, fellowships for disabled people, rector's fellowship for the best students, ministerial fellowship and others¹¹⁷⁰. The resources for fellowships are assigned from the state budget and maintained by higher education

¹¹⁶⁷ The fees for the academic year 2017/2018 at the Belarusian State University, *available at* http://abiturient.bsu.by/docs/pay_d.pdf [accessed on 11 February 2018]. At the regional universities the fees are lower, for example at the Vitebsk State University the first-year fees for legal studies amount to 2 308 BYN, i.e. 1150 USD, *available at* <https://vsu.by/studentam/stoimost-obucheniya/756-stoimost-obucheniya-2017-2018.html> [accessed on 11 February 2018].

¹¹⁶⁸ The law faculty of the University of Rzeszów, University of Białystok and Warsaw University were chosen for the comparison. The fees in the academic year 2017/2018 are available at the official pages of the law faculties, *available at* <http://www.ur.edu.pl>, <http://www.prawo.uwb.edu.pl>, <http://www.wpia.uw.edu.pl> [accessed on 11 February 2018].

¹¹⁶⁹ Konstytucja Rzeczypospolitej Polskiej, art. 70 ust. 4.

¹¹⁷⁰ Ustawa prawo o szkolnictwie wyższym, art. 173. The Law on higher education and science in terms of fellowships will be effective as of October 1, 2019.

institutions in the form of funds. It means that resources addressed to support disabled learners or students with the significant sport achievements can't be relocated to the remuneration of academic staff or a purchase of equipment for education¹¹⁷¹. Among the strong sides of the legal regulation of the financial support in Poland it is worth to recognize the targeted character of the fellowships. Full-time as well as part-times students, studying daily or in the evenings, are equally entitled to submit the prescribed documents and be awarded to a fellowship. There is no discrimination on the ground of sex, religion, age, language or type of studies in making decision on the fellowship allocation. Students of the certain profile defined by the Law on higher education and internal regulations of the higher education institution, e.g. disabled or financially vulnerable, have equally the right to the financial support¹¹⁷². Another strong side of the allocation procedure is its competitive character. For example, in the case of the rector's fellowship for the best students the size of the fund is limited and depends on the number of students of a higher education institution¹¹⁷³. The fellowship is assigned to students with high scientific, sport, artistic and other achievements. It motivates learners to enhance their knowledge, skills and being engaged in the educational process with the full depth in order to compete for the award. In Belarus the assignment rules are different.

The Code on education in Belarus also ensures the right to different types of fellowship – scientific, social, for doctoral students, presidential, personalized and the like¹¹⁷⁴. By the notion “fellowship” the legislator understands a means of financial support of full-time students of budget-funded education institutions that shall stimulate the learners to complete the educational programme and to obtain the expected learning outcomes¹¹⁷⁵. At the same time the legal provisions regulating the distribution, calculation and payment of fellowships cause some questions on the factual nature of fellowship. Firstly, it is important to consider the target group entitled to the financial support from the state budget. Different kinds of fellowship are addressed to various groups of students, on the other hand there are two common characteristics for all kinds. According to the Code on education and the governmental resolution on distribution and payment of fellowships

¹¹⁷¹ For example, article 103 of the law on higher education defines the expenditures eligible to be covered from the fund of financial support of students.

¹¹⁷² Ustawa prawo o szkolnictwie wyższym, art. 186.

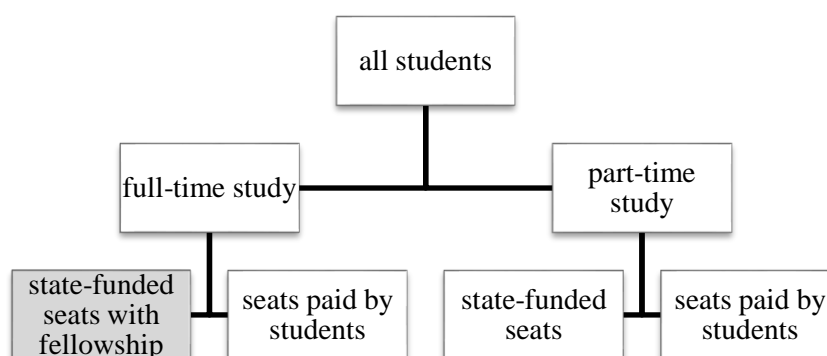
¹¹⁷³ Ibidem, art. 174 ust.4.

¹¹⁷⁴ Кодекс об образовании, ст. 42 п.2.

¹¹⁷⁵ Ibidem, ст. 42 п.1.

and other financial expenditures¹¹⁷⁶ the right to any type of fellowship belongs to full-time students occupying the state-funded seats only¹¹⁷⁷ (picture 1). Taking into account that all students can study either free of charge or at the paid basis irrespective of the fact they are enrolled at the full-time or part-time tuition there is no a single approach to all state-funded seats or all full-time students. There is neither a rational justification in the legislation of why part-time students studying free of charge are not entitled to fellowships. Moreover, socially vulnerable people such as disabled students, pregnant women or orphans have the right to social fellowship under the condition they study free of charge and in the full-time form of education¹¹⁷⁸. The same criteria are applied to the students facing difficulties for money and asking for support from the higher education institution. The Code precisely states that the part-time students and those who pay for education are excluded from the target group for the social fellowship¹¹⁷⁹.

Picture 1. The scheme of assignment of fellowship in Belarus



Source: own elaboration

Secondly, the analysis of law justifies the statement that a fellowship implies rather a kind of social benefit than the appreciation of the scientific or personal achievements. Those who are qualified to receive a few fellowships, e.g. scientific and personalized one, are allowed to receive the highest fellowship only, two fellowships are not allowed¹¹⁸⁰. The social benefit for pregnant students and mothers with young children replaces the right to

¹¹⁷⁶ Постановление Министерства образования Республики Беларусь и Министерства финансов Республики Беларусь 22 сентября 2011 г. № 261/96 „О некоторых вопросах стипендиального обеспечения и осуществления других денежных выплат обучающимся инструкция об условиях, порядке назначения и выплаты стипендий и других денежных выплат обучающимся”, НРПА 2011, 8/24478.

¹¹⁷⁷ Ibidem, п.2.

¹¹⁷⁸ Кодекс об образовании, ст. 42 п.5.

¹¹⁷⁹ Ibidem, ст. 42 п.12.

¹¹⁸⁰ Постановление Министерства образования о некоторых вопросах стипендиального обеспечения, п. 4.

any fellowship¹¹⁸¹. The fellowship is paid during the whole calendar year, including summer time¹¹⁸².

Thirdly, the competitive nature of fellowship is mitigated. In case of the scientific fellowship all students qualified for financial support will receive it. There is neither a requirement to submit a request for the fellowship nor the limit of the fellowship fund. The single benchmark is the number of full-time students studying free of charge. For the personalized or presidential fellowship the additional criteria are defined by law, these criteria assess the student's contribution to the development of science, culture and sport¹¹⁸³. The size of the fellowships is defined by the President's act and depends on the type of educational institution, the average score of a student and the selected specialization. As a result, in Belarus the fellowship is understood a financial benefit because of the status of being a student than the means of motivation for the scientific and personal development. The distribution of fellowships and other financial support to the narrowly defined target group (full-time learners studying without fees) may deprive the right those who are considered vulnerable and don't meet the formal criteria.

The right to a student loan is an additional to fellowship safeguard for students who pay the fees to continue their studies and complete the certain level of education. The legal act precisely regulates the application, receipt and repayment terms of the financial support¹¹⁸⁴. Although each state is free to prescribe its own rules it is worth to focus on the strong and weak sides of the regulations in the selected countries.

In Belarus the right to a student loan belongs to full-time students studying in the public higher education institution for the first time irrespective of the age of the student¹¹⁸⁵. According to the Law in Poland only those who have not achieved the 31th birthday are entitled to a student loan¹¹⁸⁶. The legislator took into account the ideas of lifelong learning and uplifted the upper age limit of applicants from 26 to 31 in the Law on

¹¹⁸¹ Ibidem, п. 33.

¹¹⁸² Ibidem, п. 30.

¹¹⁸³ Кодекс об образовании, ст. 42 п. 6, 8.

¹¹⁸⁴ In Belarus it is regulated by President's decree. Указ Президента Республики Беларусь от 17 декабря 2002 г. № 616 "О предоставлении гражданам Республики Беларусь кредита на льготных условиях для оплаты первого высшего образования, получаемого в государственных учреждениях высшего образования, учреждениях высшего образования потребительской кооперации и учреждениях высшего образования Федерации профсоюзов Беларуси на платной основе", НРПА 2002, 1/4235. In Poland the regulation is regulated by the Law on higher education and science.

¹¹⁸⁵ Указ Президента о предоставлении кредита на льготных условиях, п. 1.1.

¹¹⁸⁶ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 98.

higher education and science effective from October 2018¹¹⁸⁷. Moreover, the right to the student loan will also be provided for doctoral students up to 35 years¹¹⁸⁸.

Nowadays the Polish legislator provides a 2-year gap between the graduation and the first transfer of repayment of the loan¹¹⁸⁹. This is justified by the fact that the search of a job place takes time. Unfortunately the Belarusian legislation is not friendly in this term to graduates and is often criticized by experts on educational policy. The first transfer to the bank must be done in the month following the month of graduation from the higher education institution¹¹⁹⁰.

The last requirement of a student loan in Belarus is of discriminatory nature. The right to the financial support in the form of a loan is given to the full-time students studying in public higher education institutions only. Neither part-time students nor students of non-public institutions are entitled to the financial help. This is obviously an unequal approach without the rational justification in the system of higher education.

The financial accessibility of higher education in Belarus and Poland is ensured also by possibilities of students paying for education to get discount or to change the type of education from the paid to free of charge¹¹⁹¹. Such preferences are granted to excellent students achieving significant scientific and/or sport results as well as vulnerable groups of population demonstrating good learning scores. These measures make higher education accessible for everyone and motivate learners to put efforts to achieve learning outcomes.

Within the 4-A scheme the financial accessibility of higher education means its affordability for learners. The provision on free of charge higher education fulfils the international requirements. In case of the seats paid by students the accessibility means a kind of support for socially excluded strata of population through the fellowship

¹¹⁸⁷ Ustawa o pożyczkach i kredytach studenckich z dnia 17 lipca 1998, art. 6, Dz. U. 1998 Nr 108, poz. 685 ze zm.

¹¹⁸⁸ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 210. The law will go into force as of October 1, 2019.

¹¹⁸⁹ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 101 ust.1.

¹¹⁹⁰ Указ Президента о предоставлении кредита на льготных условиях, п. 1.6.

¹¹⁹¹ In both countries these decisions lie in the scope of the head of higher education institution or its department based on the internal regulations. In Belarus the issue to grant a discount to a student or to change the type of education is regulated by the group of acts at the national level. Постановление Совета Министров Республики Беларусь от 26 мая 2006 № 665 “Об утверждении Положения о порядке предоставления скидок со сформированной стоимости обучения студентам и учащимся, получающим среднее специальное образование, в государственных учреждениях образования и размерах этих скидок”, НРПА 2006, 5/22363; Указ Президента Республики Беларусь от 28 февраля 2006 г. № 126 “О некоторых вопросах получения высшего и среднего специального образования на платной основе”, НРПА 2006, 1/7308; Постановление Совета Министров Республики Беларусь от 13 мая 2006 г. № 609 “Об утверждении Положения о порядке перевода студентов и учащихся, получающих среднее специальное образование, в государственных учреждениях образования с платного обучения на обучение за счет средств республиканского и (или) местных бюджетов”, НРПА 2006, 5/22300.

programmes and student loans. *De jure* the legislation of both countries ensures the accessible higher education by the provision of free education in public institutions. For financially vulnerable students who pay tuition fees the law assures different types of support. The terms of the student loan provision in both countries differ. In Belarus the legal regulations guarantee the financial support to very limited number of applicants and demonstrate the discriminative approach to learners who pay for their studies. Additionally, the terms of the loan agreement are not attractive for students to apply for such financial support. The law amendment concerning the student loans in Poland has improved the terms of application, receipt and repayment and thereby complies better with the international standards than it was before the law update.

The last element affecting the accessibility of higher education is the recognition of diploma, degrees and period of study. The recognition of foreign qualifications is one of pillars of the European Higher Education Area implemented in the countries ratified the Lisbon Recognition Convention. Although both countries ratified the convention the approaches to recognition in the related states differ. The member-states have to unify 5 essential elements of tertiary education: level (bachelor/master), quality (quality assurances mechanism), workload (ECTS), profile and learning outcomes (National Qualifications Framework). The Lisbon Recognition Convention follows the logic that degrees and periods of study undertaken abroad are assumed equivalent unless a substantial difference can be demonstrated within five elements.

The system of higher education in Poland is entirely consistent with the international rules and recommendations. The diploma issued by the accredited higher education institutions of the country of the EU, OECD or EFTA are recognized in Poland and enables an entrant to continue study in the Polish universities¹¹⁹². If studies are undertaken in the county outside of the mentioned above communities the recognition of diploma is carried in virtue of the international agreement signed between Poland and other state¹¹⁹³. The Polish government has signed over 20 agreements¹¹⁹⁴ for cooperation in the field of education with the countries that are not members of the European communities. In other cases the recognition of foreign qualifications occurs by means of nostrification.

¹¹⁹² Ustawa Prawo o szkolnictwie wyższym i nauce, art. 326.

¹¹⁹³ Ibidem, art. 327 ust. 1.

¹¹⁹⁴ The list of countries and the agreements are available at the web-page of the Ministry of Higher Education and Science, <http://www.nauka.gov.pl/uznawanie-wykształcenia/akty-prawne.html> [accessed on 18 March 2018].

Students of Polish higher education institutions actively participate in the Erasmus+ programme and other education exchanges and benefit from the recognition of periods of study undertaken abroad. The rules of recognition of periods of study within higher education level are defined internally by institutions. Tertiary education in Poland is organized on the basis of the universal principles, therefore foreign students are interested in choosing higher education institutions in Poland for studies. The Law on higher education and science prescribes that a learning programme of a certain specialisation contains the expected learning outcomes described in consistence with the National Qualifications Framework, the description of process of education, forms of assessment and ECTS¹¹⁹⁵.

In Belarus the recognition of diploma or periods of study conducted in a foreign state is carried out by the Ministry of education according to the national instruction on recognition¹¹⁹⁶. The governmental body assesses on a case-to-case basis the documents on education issued by foreign institutions, neither national qualifications framework nor ECTS are taken into account. The qualifications obtained abroad are compared with the job description and duties contained in the list of occupations for all fields of economy, the programme of study undertaken in other countries are compared with the educational standards adopted in Belarus¹¹⁹⁷. Due to different approaches to learning outcomes and workload students participating in exchanges aboard face obstacles in the recognition their studies. Coming back to Belarus they have to take examinations and pass intermediate assessment in their alma mater on the subjects taught in their absence, even if they are similar with the courses studied abroad¹¹⁹⁸.

Although the Lisbon Recognition Convention is a legally binding act, the Belarusian authorities don't make use of good practices elaborated within the European area. Nowadays the system of higher education in Belarus is in process of modification after joining the European Higher Education Area. According to the Belarus roadmap the

¹¹⁹⁵ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 67 oraz rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie studiów.

¹¹⁹⁶ Кодекс об образовании, ст. 102, 122, постановление Совета Министров Республики Беларусь 21 июля 2011 г. № 981 „Об утверждении Положения о порядке признания документов об образовании, выданных в иностранных государствах, и установления их эквивалентности (соответствия) документам об образовании Республики Беларусь, признания и установления соответствия периодов обучения, курсов высшего образования в организациях иностранных государств”, НРПА 2011, 5/34198.

¹¹⁹⁷ Постановление Совета Министров о порядке признания документов об образовании, п. 10.

¹¹⁹⁸ Bologna Follow-Up Group Meeting 58, Advisory Group 2 Support for the Belarus roadmap - Draft final report, February 2018, Sofia, p.5, available at <http://www.ehea.info/cid122121/bfug-meeting-58.html> [accessed on 11 March 2018].

system of higher education will introduce National Qualifications Framework based on learning outcomes, three-cycle system replacing specialist's degree and will measure student workload with ECTS. It will enhance the international cooperation of Belarus with other countries in realms of higher education and simplify the recognition of qualifications, degrees and periods of study undertaken abroad.

Accessibility of higher education includes also the accessible learning documentation to students and, in particular, to entrants, i.e. curriculum, plan of study, description of expected learning outcomes and other essential elements. The selection of the field of study is made by entrants taking into account the programme of education and its outcomes, the schedule and other educational opportunities. Considering these documents entrants are able to choose those studies that fit their interests the most. So, to make curricula and the plan of study accessible they should be put on the web-site of higher education institutions and be presented on the request of entrants during the enrolment process. Higher education institutions in Belarus must compose and approve curricula in the Ministry of Education no later than 3 months before the beginning of the academic year¹¹⁹⁹. Syllabi are developed and approved 1 month prior to the semester when the course is to be taught¹²⁰⁰. As a rule, curricula, plans of study and syllabi are accessible online as they are uploaded on the web-site of certain faculties. Syllabi may have a limited access to the academic staff and students only, as they are subject to intellectual property law, while curricula and plan of study must be accessible for everyone. Moreover, the National institute of higher education carries the registration of the approved model curricula, plans and syllabi of all educational entities¹²⁰¹. In Poland higher education institutions perform their objectives following the principle of institutional autonomy and academic freedom, hence the term of the preparation of learning documentation is regulated by the internal rules of institutions. It varies depending on the level of education and institution, however generally curriculum and the plan of study for the next academic

¹¹⁹⁹ Приказ Министерства образования Республики Беларусь от 6 апреля 2015 „О порядке разработки и утверждения учебных планов для реализации содержания образовательных программ высшего образования I ступени”, п. 2.10.

¹²⁰⁰ Приказ Министерства образования Республики Беларусь от 6 апреля 2015 „О порядке разработки и утверждения учебных программ и программ практики для реализации содержания образовательных программ высшего образования”, п. 1.9.

¹²⁰¹ Ibidem, п. 2.4. The list of the approved documents along with the drafts of newly developed files are available at <http://www.edustandard.by/> [accessed on 25 August 2018].

year is defined and approved before the end of the previous year, in other words at least 3-4 months prior to a new year unless otherwise stated¹²⁰².

5.6. Quality assurance in higher education

The matter of qualitative education doesn't have a single monolithic approach due to the diversity of views on the notion "quality". One may agree that the understanding of quality education by academia differs from the idea of quality education in the opinion of the governmental bodies responsible for the system of education in the state. Students may recognise higher education of high quality if the gained knowledge and skills ensure them employability after the graduation. The academic and scientific community recognizes the quality education based on the innovations and publications in international journals. The governmental vision of quality may be confirmed by the high position of higher education institutions in the world rankings. In this context quality higher education is illustrated through the images of different factors and must comply with the requirements of various stakeholders. Ones see quality assurance in a process, others recognise it in the content of education. Both perceptions are correct in theory. How quality assurance is realized in practice is a topic of numerous discussions at the national and international levels.

It is fair to agree that the perception of quality education is not permanent, it changes due to the influence of social, political and international processes. Each country elaborates the quality system rooted in the historical background, national traditions and contemporary international requirements. In the historical perspective the matter of the quality higher education was raised in different times in all continents¹²⁰³. Taking into account the multiple perception of quality it is rational to evaluate higher education through the interdisciplinary perspective of performance of its goals defined in a certain country at certain time frame. In other words higher education is seen qualitative if it fulfils the needs and expectations of the society during particular period of its development.

¹²⁰² For example, the study regulations of the University in Poznan state that curriculum and the plan of study is presented on the faculty web-site at least 4 months prior to the academic year. *Regulamin studiów UAM uchwała Senatu UAM nr 207/2014/2015 z dnia 27 kwietnia 2015 r., para. 11 ust. 5, available at <https://rekrutacja.amu.edu.pl/Strona/Matrix/dodatkowe-informacje/regulamin-studiow#1>* [accessed on 25 August 2018].

¹²⁰³ In the 50-60s in the USA a lack of practical experience of graduates forced the changes in the programme of studies. In the post-war years the Soviet Union economy required a shorter path of training specialists and higher education introduced the part-time, evening types of education and the higher education degree obtained on the basis of vocational training. Chinese universities resigned the Soviet and traditional models of higher education and inherited the modified American university model. The European universities strived to create the system of recognition of academic titles and degrees and it resulted in the Lisbon Recognition Convention. *Белая книга*, с.59.

Nowadays in the European dimension higher education performs multiple purposes, including preparation of students for sustainable employment and active citizenship in the democratic society, supporting their personal development and creating a broad advanced knowledge base through teaching, learning and research¹²⁰⁴. Different benchmarks of quality correspond to various educational goals. For example, the fruitful training of students for their future careers is measured by the level of obtained knowledge and skills on one hand and the timely adaptability of educational offers to the needs of economy on the other hand.

Analyzing the matter of quality in the light of human rights law one may find that each feature of education within the 4-A scheme is interwoven with the idea of quality higher education. The meaning of availability of education is reflected in the adequate infrastructure and learning environment that guarantee effective learning process. The proper training of teaching staff and encouragement for teacher's professional development ensure qualitative available education. Adaptability of the content and teaching methods to the diversity of students results in their better learning outcomes what may also imply a benchmark of quality of higher education. Quality assurance is not merely a motto of the national strategy, but a safeguard of attractiveness of higher education for international students. Higher education is seen as an internationally distributed commodity if it satisfies the needs of foreign learners and researchers.

The quality higher education is ensured by means of various mechanisms defined at the national level. It may vary by country and includes the external accreditation or licensing of higher education institutions, standardisation of degree programmes and curricula, the definition of certain requirements to academic staff and the like. At the same time it is necessary to underscore that quality assurance is not limited to quality control only, but includes also quality enhancement activities. In the current sub-chapters of the research the matter of quality higher education is discovered in the context the following facets: the institutional quality assurance mechanism, the qualifications of academic teaching staff and their career development, the quality assurance of degree programmes. These elements cover quality assurance in its completeness – as a process and as content. Although teaching methods compose an important part of quality assurance policy they will not be analysed in the current sub-chapter, but will be researched further. At the same time for justice' sake, it is worth to admit that these three elements can overlap and replace

¹²⁰⁴ Recommendation CM/Rec (2007)6 of the Council of Europe's Committee of Ministers to member states on the public responsibility for higher education and research, cl. 5.

each other in the quality assurance arrangements of the chosen for the research countries. Bearing in mind that the quality assurance system is one and indivisible for the entire field of higher education of the country, legal education in Poland and Belarus can be evaluated by means of general standards and rules unless the scope of institutional autonomy and academic freedom prevail in the matter.

Starting with the analysis of national quality standards it would be useful to refer to the international documents firstly. In order to improve the quality of teaching and learning in higher education at the European level the European Standards and Guidelines for Quality Assurance were produced¹²⁰⁵. The document is a result of joint efforts of international community¹²⁰⁶ containing recommendations for higher education providers and national agencies responsible for quality of education. “Standards and Guidelines are not standards for quality, nor do they prescribe how the quality assurance processes are implemented, but they provide guidance, covering the areas which are vital for successful quality provision and learning environments in higher education”¹²⁰⁷. Thus, it is guidelines for internal and external quality assurance in higher education. By internal assurance one may understand the mechanism of provision and control of quality within a higher education institution. External quality assurance activities are implemented by other stakeholders at the national and international levels, including but not limited to independent quality assurance agencies. The Standards and Guidelines is a reference document used by higher education institutions and quality assurance agencies across the European Higher Education Area.

5.6.1. Institutional quality assurance mechanism

The national mechanism of quality assurance is guaranteed by the activity of respective agents. One of them is the Ministry of Higher Education and Science that elaborates and adopts legal provisions regulating quality assurance. The contemporary system of quality assurance in higher education in Poland results from the international

¹²⁰⁵ The initial document was produced in 2005, then under the influence of progress in the quality assurance policy a revised version was elaborated and adopted by the Ministers responsible for higher education in the European Higher Education Area in May 2015.

¹²⁰⁶ In the works on the document different organisations and ministries took part: European Association for Quality Assurance in Higher Education, European Students' Union, European University Association, European Association of Institutions in Higher Education in cooperation with Education International, BUSINESSEUROPE, European Quality Assurance Register for Higher Education. *Standards and Guidelines for Quality Assurance in the European Higher Education Area*, 2015, Belgium, p. 5.

¹²⁰⁷ *Standards and Guidelines for Quality Assurance*, *op.cit.*, p. 6.

recommendations. In conformity with the European Standards and Guidelines¹²⁰⁸ the evaluation of quality higher education is carried out by an independent agency – the Polish Accreditation Committee¹²⁰⁹. The independence and impartiality of the Committee is guaranteed by the method of selection of its members delegated by different entities of the system of higher education¹²¹⁰. Unlike a few European countries higher education institutions in Poland cannot select the quality assurance agency, because the Polish Accreditation Committee is the sole body responsible for mandatory accreditation at the national level. In addition to the mandatory state-owned accreditation there is an “environmental” or private assessment carried out by the academic communities who are willing to accredit certain groups of programmes or fields of study¹²¹¹. Among them one may find the Association of Management Education “Forum” monitoring the quality of higher education in the fields of economy and management¹²¹², the Foundation for Promotion and Accreditation of Economic Education¹²¹³. The University Accreditation Committee founded by the Conference of Rectors of Polish Universities conducted the programme accreditations in the fields of sociology, chemistry, philosophy, pedagogy and others until its termination in 2017¹²¹⁴. As pilot projects there were the Accreditation Committee for Agricultural Universities, the Accreditation Committee for Pedagogical Universities, the Accreditation Committee for Universities of Fine Arts and others performing their activity until the Polish Accreditation Committee replaced them¹²¹⁵. The main difference between the state-owned and environmental accreditation is in its nature. The former one is mandatory for higher education institutions and their departments enabling their existence, whereas the latter is voluntary and serves mainly for a prestige in the academic circles, among students and employees.

The Polish Accreditation Committee performs two main functions:

- to conduct the programme accreditation;
- to give its opinion on the establishment of private higher education institutions, the launch of studies and in other matters requested by the Minister of Higher Education and

¹²⁰⁸ Ibidem, p. 22.

¹²⁰⁹ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 241 ust.1 and art.258.

¹²¹⁰ Ibidem, art. 251.

¹²¹¹ E. Chmielecka, M. Dąbrowski, *Accreditation and evaluation in Poland: concepts, development and trends*, in: S. Schwarz, D.Westerheijden (eds.), *Accreditation and evaluation in the European Higher Education Area*, Springer, 2007, p.347.

¹²¹² See more at <http://www.semforum.org.pl> [accessed on 2 March 2018].

¹²¹³ See more at <http://fundacja.edu.pl/> [accessed on 2 March 2018].

¹²¹⁴ Uchwała Konferencji Rektorów Uniwersytetów Polskich z dn. 10 march 2017 o zakończeniu działalności Uniwersyteckiej Komisji Akredytacyjnej.

¹²¹⁵ E. Chmielecka, M. Dąbrowski, *op.cit.*, p.378.

Science¹²¹⁶. Since 2020 it will conduct the complex evaluation of educational service provided by higher education institutions¹²¹⁷.

It also organizes trainings and seminars on the matters concerning the scope of its duties, disseminates the best practices of quality education and gives comments on the drafts of legal acts regulating the quality of higher education and science.

Regarding the institutional quality assurance mechanism the Committee is entitled to give its opinions how higher education institutions satisfy the requirements embraced in the Law on higher education and science and other related acts, it also verifies how the future studies are in line with the strategy of the institution. The Minister of Science and Higher Education clarifies the formal requirements that must be fulfilled any higher education institution¹²¹⁸. They embrace the rules of the study programme, the student card template, paper work in the entity, the recruitment fee and other issues¹²¹⁹. The Committee's opinion directly affects whether a private higher education institution will be included in the list of educational entities¹²²⁰ or whether a foreign higher education institution is allowed to establish a branch department in Poland¹²²¹. The Committee influences on the possibility to launch a degree programme by higher education institutions¹²²². Based on the opinion of the Polish Accreditation Committee the Minister makes the decision to include the entity in the list of higher education institutions or to renew this permission, to permit the establishment of a foreign branch department¹²²³.

The national quality assurance instruments in Belarus are created per the Soviet sample of accreditation, they are far from the internationally recognised standards. The Code on education contains two general clauses concerning the quality assurance in education – the first one stating that the President of the country defines the governmental bodies responsible for quality assurance¹²²⁴ and the second focusing on the self-control of quality by an educational institution¹²²⁵. At the same time one may pay attention to article concerning the governmental accreditation of institutions. According to Article 29 of the Code on education all institutions and organisations providing formal education are subject

¹²¹⁶ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 258.

¹²¹⁷ Ibidem, art. 243. The provision will take into force as of October 1, 2020.

¹²¹⁸ Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie studiów.

¹²¹⁹ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 81.

¹²²⁰ Ibidem, art. 40 ust.1 pkt. 7.

¹²²¹ Ibidem, art. 47 pkt.1.

¹²²² Ibidem, art. 54 ust. 3.

¹²²³ Ibidem, art. 39 ust.1 and art. 54 ust.2 pkt. 1.

¹²²⁴ Кодекс об образовании, art. 124.

¹²²⁵ Ibidem, art. 125.

to the state-owned accreditation procedure. After the positive decision on accreditation institutions are entitled to provide learners with the official certificate of education. In the field of education irrespective of its level the single agency making decisions in accreditation process is the Department for Quality Assurance in Education. It is a legal entity of the Ministry of Education authorized to maintain and enhance the quality assurance arrangements, to control the quality education provided by institutions, to adopt legal acts in the realm of quality assurance at the national level¹²²⁶. Obviously, being a part of the governmental body the Department is not considered an independent agency as it is recommended by the international standards and guidelines. Moreover, the national quality assurance mechanism in general seems irrational taking into consideration the limited institutional autonomy and a lack of academic freedom of the Belarusian higher education institutions. All major decisions in education are made by the Ministry of Education and other governmental bodies, hence the Department for Quality Assurance in Education monitors their activities and their decisions to a bigger extent than the provision of quality higher education by universities.

The Department conducts two types of accreditation in Belarus – institutional and programme. As the Belarusian experts admit, the institutional accreditation is merely an illusion of quality assurance which is based on the control of the proper paperwork carried by higher education institutions and the compliance with the general requirements of legislation on education¹²²⁷. Indeed, the Department for Quality Assurance in Education makes a decision that higher education institution has passed successfully the institutional accreditation, if the following conditions are fulfilled:

1. the institution in its activities is compliant with the requirements of legislation on education,
2. the institution or its departments doesn't have a serious violation of the rules on licensing of educational services,
3. other criteria prescribed by law are satisfied by a higher education institution¹²²⁸.

¹²²⁶ Постановление Совета Министров Республики Беларусь от 31 июля 2006 № 976 „Об утверждении Положения о Департаменте контроля качества образования Министерства образования Республики Беларусь”, НРПА 2006, 5/22700, п. 5.

¹²²⁷ *Белая книга, op.cit.*, с.69.

¹²²⁸ Постановление Совета Министров Республики Беларусь от 22 июня 2011 № 820 „Об утверждении Положения о порядке проведения государственной аккредитации учреждений образования, иных организаций, которым в соответствии с законодательством предоставлено право осуществлять образовательную деятельность, и подтверждения государственной аккредитации”, НРПА 2011, 5/34028, п. 16.2.

As one may see the conditions of the institutional accreditation are very vague. For example, the wording “legislation on education” may include a broad range of clauses regulating the learning process, environment, the content of education or learning outcomes. What exactly is assessed during the institutional accreditation is clarified by the means of the guidelines of the Department¹²²⁹. According to these guidelines higher education institutions have to possess the internal legal documents on structure and management required by legislation on higher education and their content should be consistent with the law. What other criteria are meant in paragraph 3 the guidelines leave without clarification. Such wording grants the governmental agents the liberty to abuse their authority towards universities with ideas different from the dominating in the state.

The national quality assurance mechanism in Belarus is not limited to the accreditation procedure, but includes also the licensing of educational services. It means besides the institutional accreditation higher education institutions must obtain the license from the Ministry of Education for provision of higher education. In fact, the legal requirements of licensing are very comprehensive and would fairly replace the institutional accreditation. Higher education institution may be granted the license if the applicant proves the fulfilment of the following requirements and conditions:

- the academic personnel is completed by 70% of all number of vacancies in the institution,
- the number of academic and administrative staff with the scientific degrees and titles is compliant with the requirements for higher education institutions,
- programmes are created for each specialisation to be taught,
- learning materials, textbooks and monographs are provided in the library in the sufficient amount to be available for every fifth full-time student,
- methodological guidelines, learner’s guides and assessment criteria are developed for each subject,
- learning environment, including premises, laboratories, workshops and sport hall are safe and satisfy technical and healthy standards¹²³⁰.

Higher education institutions are allowed to enrol the particular number of students that doesn’t exceed the limit defined by the license. In addition, the license specifies the

¹²²⁹ Приказ Департамента контроля качества образования Министерства образования Республики Беларусь от 23 октября 2008 № 7 „Методические рекомендации по проведению государственной аккредитации учреждений образования Республики Беларусь”, п. 42.

¹²³⁰ Указ Президента Республики Беларусь от 1 сентября 2010 г. № 450 „О лицензировании отдельных видов деятельности”, НРПА 2010, 1/11914, п. 333.

list of specialisations and programmes, types and form of education to be provided by the applicant¹²³¹. The Ministry of Education makes a decision on whether to grant or decline the license based on the applicant's documents such as the list of programmes to be taught, the expected number of student enrolment and academic staff, the approvals of other institutions concerning the compliance to the healthy and technical standards and other documents¹²³². The law prescribes the governmental agents to organize in particular cases a study visit aimed to verify the data contained in the application for license. As one can judge, the institutional accreditation as well as the licensing procedure implies a formal verification of the internal documentation of higher education institutions. Undoubtedly, some criteria like student-staff ratio or the written instructions for students constitute the pillar of quality assurance mechanism. However, the governmental body responsible for quality assurance pays more attention to the availability of the necessary documents than their content. It is not considered as a disadvantage or weak side of quality assurance policy, but it reflects that the multiple meaning of quality should be evaluated by means of various procedures. The institutional accreditation and licensing verify the formal rules of legal nature, the availability of learning resources and environment. Other tools of assurance mechanism are useful for monitoring of quality of learning process and its content.

5.6.2. Programme accreditation/evaluation

The programme accreditation is an element of quality assurance policy monitoring the quality of education provided by higher education institutions. The programme accreditation in Belarus and Poland is based on different approaches and deserves separate consideration.

In a nutshell, the Belarusian model of higher education follows a range of standards approved by the respective governmental body, i.e. the Ministry of Education. Higher education institutions have the right to develop their own programmes and syllabi taking into account the applicable standards, templates and models. Later on, during the programme accreditation the quality of the documentation as well as the educational process is evaluated again. The system of higher education in Poland has mainly resigned from the standards of education in the recent years¹²³³. Currently there are a few fields of

¹²³¹ Ibidem, п. 335.

¹²³² Ibidem, п. 336.

¹²³³ In 2007 the Minister of Higher Education and Science approved 118 standards of higher education for all fields of science and types of education. The standards formed a core minimum of the programme to be

study where the standards are adopted and must be fulfilled by institutions – pharmacy, architecture, dentistry and some others¹²³⁴. In other fields of studies, including law, the accredited Polish higher education institutions possess the entire freedom to design the programme of study and syllabi of learning subjects based on the qualifications approach. Their quality is verified during the programme evaluation carried out by the Polish Accreditation Committee.

The Law on higher education and science¹²³⁵, the instruction of the Ministry of Science and Higher Education¹²³⁶ and the statute of the Polish Accreditation Committee¹²³⁷ regulate the evaluation procedure, evaluation team, criteria of making a decision by the Committee. The detailed criteria of the programme evaluation have been elaborated by the Committee in line with the national regulations and the Standards and Guidelines for Quality Assurance in the European Higher Education Area¹²³⁸. They are displayed in the form of two annexes to the statute of the Committee, the first is for evaluation of a programme of general academic profile, the second one is for practical profile. The both instructions are pretty much similar.

Looking at the structure of the annexes one may find much in common with the standards elaborated by the international community. The detailed criteria of evaluation embrace the content of the educational programme (plans and curriculum, learning outcomes, strategy and mission of higher education institution), the environment (infrastructure, learning resources, student support, conditions for internationalisation), the delivery of education to students (number of teaching staff, their scientific and didactical qualifications, development of professionalism). In addition, the Polish Accreditation Committee analyses the internal mechanism of quality assurance introduced within the institution. As a result, the programme evaluation is not limited to the mere verification of

provided by institutions. Based on them higher education institutions were entitled to design own methodological documents and organize education. On the one side the unified approach to the content of education ensured the quality education across the state, on the other hand it was a subject of criticism due the limitation of the institutional autonomy of universities. Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego z dnia 12 lipca 2007 r. w sprawie standardów kształcenia dla poszczególnych kierunków oraz poziomów kształcenia, a także trybu tworzenia i warunków, jakie musi spełniać uczelnia, by prowadzić studia międzykierunkowe oraz makrokierunki, Dz. U. 2007 nr 164 poz.1166. With the adoption of the National Qualifications Framework the approach has been changed.

¹²³⁴ Ustawa prawo o szkolnictwie wyższym i nauce, art. 68 ust.1.

¹²³⁵ Ibidem, art. 241-250.

¹²³⁶ Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie kryteriów oceny programowej z dnia 12 września 2018 r., Dz. U. z 2018 r. poz. 1787.

¹²³⁷ Statut Polskiej Komisji Akredytacyjnej, załącznik do uchwały Polskiej Komisji Akredytacyjnej Nr 3/2016 z dnia 29 listopada 2016 r.

¹²³⁸ Ibidem, para. 4 ust. 9, załącznik do uchwały Polskiej Komisji Akredytacyjnej Nr 3/2016 z dnia 29 listopada 2016 r.

the list of taught subjects, but implies a comprehensive assessment of the quality of provided education from its different sides. The satisfactory result of the programme evaluation is valid for 6 years, the conditional score will cause the additional evaluation, as a rule, in a year¹²³⁹.

The Belarusian model of the programme accreditation differs from the European template by the following characteristics:

1. The double control of the quality in higher education by means of standards and templates on one side and the programme accreditation on the other.
2. The learning outcomes are outlined by a mixture of professional qualifications and a job description.

According to the Code on education the educational standards are defined for each level of education¹²⁴⁰ and for various specialisations within higher education¹²⁴¹. The standard of education is a document defining the minimum learning conditions that higher education institution shall satisfy in order to guarantee education of good quality. The document contains the description of the learning process, including but not limited to the template of the programme and the learning outcomes which student shall achieve by the end of the study, the schedule of the academic year, the duration of studies and spheres of economy where graduates will be able to find a workplace with the gained qualifications. In other words educational standards imply guidelines for educational institutions to launch a new programme of education. The standards are approved by the Ministry of Education and are mandatory for all education institutions in the state.

There are three initial documents that create the foundation for the programme of legal studies. These are the educational standards for social science and humanities at the first level¹²⁴², the educational standards for law specialization at the first level¹²⁴³ and the educational standards for law specialization at the second level of education¹²⁴⁴. At this point a small clarification is required. Unlike the Polish model of the uniform 5-year legal

¹²³⁹ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 242 ust.5; Statut Polskiej Komisji Akredytacyjnej, para. 20 ust. 4 pkt.2.

¹²⁴⁰ Standards are designed separately for specialist and master study. Кодекс об образовании, ст. 92.

¹²⁴¹ There are separate standards for jurisprudence, political sciences, economic law, international law and other specialisations within the legal science. Кодекс об образовании, ст. 205.

¹²⁴² Образовательный стандарт высшего образования, первая ступень, цикл социально-гуманитарных дисциплин, утв. Министром образования Республики Беларусь от 15 июля 2014 г., <https://www.bsu.by/ru/main.aspx?guid=14411> [accessed on 9 March 2018].

¹²⁴³ Образовательный стандарт высшего образования, первая ступень, специальность 1-24 01 02 правоведение.

¹²⁴⁴ Образовательный стандарт высшего образования, вторая ступень (магистратура), специальность 1-24 80 01 юриспруденция.

study the legal profession in Belarus is taught within the first and second level of higher education. It is not called a bachelor and master's degree. Graduates in Poland obtain the master's degree in law, whereas Belarusian students receive the specialist degree after the first cycle of learning and master's degrees in law at the second level. Another particularity of the Belarusian higher education is that education at the second level in Belarus has two aims, therefore there are two models of the master's degree in law – the practice-oriented and academic. The first model is aimed to deepen the knowledge of students in legal disciplines and to introduce them with the challenging issues of law in action. These studies are similar by content with postgraduate courses in Poland. The second model of the studies at the second level is aimed to develop the research and analytical skills of law graduates and to prepare them for an independent scientific research and academic career. This model is an intermediate step before the doctoral studies.

Educational standards are not the only model documents for higher education institutions. There are a model plan of education for each specialisation and a model syllabus for each discipline. The model plan for legal studies¹²⁴⁵ and the model syllabi for all legal subjects are approved by the Minister of education and mandatory for all higher education institutions providing legal education¹²⁴⁶. Higher education institutions must design their own documents based on all these standards and templates. About 60-70% of all subjects of the plan are obligatory and already defined by the Ministry of Education, meanwhile the remained subjects are offered and designed by the educational entity on its own. The Ministry of Education recommends to higher education institutions to ensure the right of students to select about 50% of the learning subjects among those created by the university¹²⁴⁷. The governmental bodies recommend universities to organise consultations with labour market when the own programme of specialisation is prepared. In terms of the own syllabi universities are entitled to introduce changes within no more than 30% of the content of the model syllabus¹²⁴⁸. It means that the subjects of civil law or criminal proceeding are taught almost in the same volume in different universities of Belarus and

¹²⁴⁵ Типовой учебный план по специальности высшего образования первой степени, 1-24 01 02 правоведение, утв. приказом Министра образования Республики Беларусь 28 июня 2013 №Е-24-1-002/тип; Типовой учебный план по специальности высшего образования второй степени (магистратуры), 1-24 80 01 юриспруденция, магистр юридических наук, утв. приказом Министра образования Республики Беларусь 30 мая 2012 №Е-24-2-001/тип.

¹²⁴⁶ Кодекс об образовании, ст. 217.

¹²⁴⁷ Образовательный стандарт высшего образования, первая ступень, специальность 1-24 01 02 правоведение, п. 7.4.3.

¹²⁴⁸ Приказ Министерства образования о порядке разработки и утверждения учебных программ и программ практики, п. 4.12.

law students are evaluated in a similar manner across the country. The diversity of learning programmes and teaching methods in higher education is not supported by the existing model of quality assurance.

The second stage of the quality monitoring occurs during the programme accreditation. The Department for quality assurance in education holds the programme accreditation of higher education institution by checking various documents and processes. The programme accreditation is a procedure enabling the evaluation of the educational content and process, the conditions in which education is provided, it gives the possibility to monitor the conformity of the legislation on higher education by the legal entity. The evaluation criteria can be divided into 4 dimensions: institutional, organisational, didactical and ideological¹²⁴⁹. The accreditation is conducted with the observance of the methodological guidelines adopted by the Ministry of Education.

Within the institutional dimension the Department verifies the availability of the required by the law documents – the license for educational service, educational standards, the model and own designed plans, the model and own programmes for each discipline. At the organisational level it is checked the number of teaching staff and their scientific ranks, the workload of teachers and journaling their work, the availability of premises and laboratories required for the educational process, the sufficient number of learning materials. The educational and ideological work in higher education is measured by the content of the reports and the plan of work prepared by the respective department or people for this sector. The accreditation commission may conduct an anonymous survey among students and academic staff in order to analyse the psychological atmosphere of the learning process. While the monitoring within the mentioned above dimensions is merely based on the analysis of the documents, the assessment of the didactical components requires other methods. Thus, the Department for quality assurance is entitled to organize study visits and an examination of students on four disciplines of the specialisation¹²⁵⁰. If no more than 15% of students fail the examination the didactical criteria will be considered satisfied. During the study visit the accreditation team observes teachers in actions, the applied teaching methods, the content of transferred to learners information. The

¹²⁴⁹ Приказ Департамента контроля качества образования Министерства образования Республики Беларусь от 23 октября 2008 № 7 „Методические рекомендации по проведению государственной аккредитации учреждений образования Республики Беларусь”, п. 43.

¹²⁵⁰ Постановление Совета Министров Республики Беларусь от 22 июня 2011 № 820 „Об утверждении Положения о порядке проведения государственной аккредитации учреждений образования, иных организаций, которым в соответствии с законодательством предоставлено право осуществлять образовательную деятельность, и подтверждения государственной аккредитации”, НРПА 2011, 5/34028, п. 8.1.

publication of textbooks and monographs and the revision of syllabi are also taken into consideration during the accreditation.

Comparing the evaluation criteria of the programme accreditation applied in Poland and Belarus they look similar in some points and sometimes contrary in others. The both countries monitor the teacher's qualifications, comfortable environment and the availability of learning resources. At the same time the Polish Accreditation Committee pays attention to capacity of higher education institution for internationalisation of studies, cooperation with the business sector during education and the realization of learning outcomes in the form of knowledge, skills and social attitude. In Belarus the Department for Quality Assurance in Education is focused more on the availability of the required documents than on the implementation of educational process in reality. Some elements of the Soviet system of education, i.e. the ideological reports and staff, seem useless in the quality assurance policy. What is more important is a contradiction between the conditions in which higher education institutions have to provide education and the criteria of assessment of learning results. The diversity of students and their interests can't be covered by the universal educational standards approved by the Minister of Education and applicable by all institutions while composing their own methodological documents. Taking into consideration that the academic freedom of universities is limited, it is hard to agree that the programmes and syllabi offered to students are aligned with their needs. At the same time being restricted higher education institutions are evaluated on the subject of achievement of learning outcomes imposed them from above.

In order to evaluate the outcomes of higher education the European institutions follow the qualification-based approach, or in other words the effectiveness of education is measured by the potential employability of graduates illustrated through the obtained knowledge, skills and social attitudes. During the programme evaluation the Polish Accreditation Commission pays a lot of attention to the wording of these outcomes and the assessment of their achievement by learners. In Belarus the quality of higher education is narrowly understood as conformity to educational standards for programmes and syllabi or management standards such as ISO and measured by their observance by higher education institutions.

Although learning outcomes are included in the content of educational standards, their wording correlates with the description of job duties than the competences of learners contained in the European Qualifications Framework. The educational standards use the following words: learners must know, be able to do and possess. The use of the imperative

form of verbs in the description of learning outcomes was typical for education during the Soviet Union¹²⁵¹. For example, the educational standard for legal studies at the first level states that a graduate must be able to work in a team and must possess the communicative skills. In terms of the professional qualifications a graduate must be able to start a criminal investigation and must be competent to provide legal advices to clients¹²⁵².

5.6.3. Training of teaching staff and the development of their qualifications

It would be brave to claim that university life is founded upon a few unacceptable assumptions. It is supposed that a good student will become a good scientist. Who is good at research, will perform excellent teaching. None of these statements are confirmed in the practice. Excellent students conduct disturbingly bad research. Superb academics, whose names often emerge in scientific reviews, provide so boring classes that students leave lecture rooms “like dew under the African sun”¹²⁵³.

The teacher’s profile and their professional development within the academic and scientific career directly affect the quality of education. The teacher’s role is crucial in forming a high quality student experience and enabling the acquisition of knowledge, skills and values. Bearing in mind the degree of staffing autonomy higher education institutions have primary responsibility for the quality of their employees and for ensuring them a supportive environment that allows teachers to carry out their work effectively. According to the European Standards and Guidelines such conditions are ensured by:

- clear, transparent and fair processes for staff recruitment and conditions of employment that recognise the importance of teaching;
- opportunities for the professional development of teaching staff;
- encouraging factors to link didactical and research activities;
- promotion of innovations in teaching methods and the use of new technologies¹²⁵⁴.

Depending on the country specific the creation of supportive environment may be a subject to either national regulation or the internal matter of higher education institutions. The mixed version is also possible. Higher education institutions in Poland and Belarus are

¹²⁵¹ *Белая книга, op.cit., с.48.*

¹²⁵² Образовательный стандарт высшего образования, первая ступень, специальность 1-24 01 02 правоведение, п. 6.2-6.4.

¹²⁵³ The author describes his observations of academic career in the UK. Nevertheless these assumptions may find the proof in any country. N. Barley, *The Innocent Anthropologist: Notes From a Mud Hut*, 1983, p.7.

¹²⁵⁴ *Standards and Guidelines for Quality Assurance, op.cit., p. 13.*

free to a certain extent to create comfortable conditions of education and to recruit specialists that fit the strategy and purposes of the university. This part of the research is dedicated mainly to the quality of academic staff involved in higher education with the focus on law teachers, unless the matter of staff qualifications and recruitment is regulated and therefore analysed in the broader context of the entire country.

The legislation on higher education in Poland defines two groups of employees of the higher education institutions – academic and non-academic staff. For the purposes of the educational process both groups are important, however only academics are involved in the law teaching and the preparation students to their future careers. According to the Law on higher education and science the academic career related to the teaching process starts with the position of an assistant or lecturer and ends with obtaining the position of professor¹²⁵⁵. It is important to remember that the position of a professor in the higher education institution differs from the academic rank/title of professor. The academic rank of professor is awarded by the President with the approval of the Central Commission for Degrees and Titles, whereas a scholar without the academic rank of professor can be assigned at the position of professor.

The Law on higher education and science defines in general words credentials required for the academic teacher position¹²⁵⁶. Beside the academic degree the law prescribes the full legal capacity and the possession of public rights, a lack of the disciplinary and criminal penalty. To obtain the lowest position in higher education institution a candidate shall possess at least the master's degree in the specialized area¹²⁵⁷. It means that a graduate of the master course in law has the right to become a law teacher in Poland. At the first glance it seems the doctoral degree is not required for teaching. Nevertheless, in the scientific community the academic degrees and titles are highly appreciated in order a scholar to be accepted by the academic elite. Recognising the institutional autonomy of universities the Law on higher education and science allows to define additional credentials for academic staff in the statute of institutions¹²⁵⁸.

In line with the European Standards and Guidelines for Quality Assurance the quality of academic staff is assured by the competitive character of appointment. The Law on higher education and science prescribes that public universities conduct competitions for a position of academic teachers. The procedure and conditions of selection of candidates are

¹²⁵⁵ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 116.

¹²⁵⁶ Ibidem, art. 113.

¹²⁵⁷ Ibidem, art. 116 ust. 2.

¹²⁵⁸ Ibidem, art. 116 ust.4.

defined by the university¹²⁵⁹. This enables the selection of scholars whose scientific achievements and didactical experience fit better to the strategy and expectations on higher education entity. Unfortunately, the competitions that are officially called open and fair are not like that. There are law violations, fictitious competitions and competitions non-compliant with the national and international rules¹²⁶⁰.

The quality assurance in higher education is ensured *inter alia* by the scientific achievements of teachers. One of possible proofs of being an expert in the particular legal discipline is the possession of scientific title or degree. Moreover, the professional growth within the academia also requires the doctoral degree. The legislation on higher education encourages the academics to develop constantly their professional competences¹²⁶¹. The Law on higher education and science brought some changes in the career growth of academic staff. The habilitation remains as the proof of scientific achievements, however it is not mandatory any more for the career growth as well as the doctoral degree or professor title¹²⁶². Before the law amendment higher education institutions possessed the right to change the employment duration for teachers without a scientific degree within 8-year term¹²⁶³.

Not surprisingly, the long and hard way of the academic career raises the profession of an academic teacher to the top in the social ranking. The sociological research admits that an academic professor (i.e. a member of the academia, an employee in the system of higher education) is one of the most prestigious positions in the Polish society, it occupies the second place in the ranking after the profession of a fireman¹²⁶⁴.

Thinking of quality assurance it is worth to recall the purposes of higher education. It aims to prepare students for active citizenship and their future employability, education supports their personal development. Teaching staff encourages learners to create an advanced knowledge background and to conduct research and innovation. All these

¹²⁵⁹ Ibidem, art. 119.

¹²⁶⁰ The Watchdog.edu.pl team conducted the nationwide monitoring of recruitment procedures in 55 different academic units of public universities in 2013-2015. After the thorough analysis the experts prepared the report with 615 comments and wrote a set of recommendations for universities. *Otwarte i uczciwe konkursy na stanowiska nauczycieli akademickich – reguła czy wyjątek?* Monitoring otwartych konkursów na zatrudnienie nauczycieli akademickich, Watchdog #5, Warszawa, 2016, available at <http://konkursy.polska.edu.pl/> [accessed on 4 March 2018].

¹²⁶¹ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 115 ust. 2.

¹²⁶² Ibidem, art. 116 ust. 4 pkt. 2.

¹²⁶³ Ibidem, art. 120 ust.1.

¹²⁶⁴ The research was completed in 2013 by the Research Centre of the Public Opinion in Poland. The profession of an academic teacher was awarded the second place in the ranking of the most respected profession, available at http://www.cbos.pl/SPISKOM.POL/2013/K_164_13.PDF [accessed on 11 February 2017].

purposes are not achievable without teacher's input. The ability to share knowledge, to train someone's skills and form social attitudes is no less significant teacher's qualification than the deep expertise in certain legal science. The Law on higher education and science states that one of the goals of higher education institution is to train teaching staff and promote the academic profession¹²⁶⁵. During the uniform law studies students are eager to gain the practical skills of lawyers and to learn how to exercise the legal clauses in practice. There are no subjects related to the adult education or teaching methodology of legal disciplines. This means that law graduates are trained mainly to serve justice in the society and to perform legal functions on behalf of the state or clients. The law diploma proves the obtained knowledge, skills in law and social competences. When can the didactical qualifications of law teachers be learned? Law graduates are not prepared to transfer legal knowledge in secondary schools or in higher education institutions. It would be fair to admit that the orientation to the further pedagogic activity is also missing at other faculties such as economics, medical or technical science, because these departments are aimed to train professionals, not educators. Nevertheless, the scientific interest to the research and further academic career in the dimension of legal science is usually demonstrated by students in the last years of the studies. The student's motivation to be a member of academic community becomes the background for the further doctoral studies where a scholar is expected to deepen the research skills and develop the teaching competences. In this place the focus of the researcher is dedicated to the training of teaching staff, in particular general and law didactics during the doctoral study and afterwards.

The doctoral studies at the law faculty in Poland are a combination of possibilities to deepen the professional knowledge in the selected legal subject, to broaden the research interest and to learn how to transfer the gained knowledge to others. The Ph.D studies in law are the main and sometimes only possibility where scholars are taught the basic pedagogical approaches. Basing on academic freedom of universities the programme of doctoral studies in law varies by law schools and their available resources. However, a glance at the programme of doctoral studies in various universities points at the subject titled "Teaching methods in higher education"¹²⁶⁶, "Active teaching methods and

¹²⁶⁵ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 11 ust.1 pkt. 5.

¹²⁶⁶ The subject of 45 academic hours is included in the programme of Ph.D studies at the law faculty of the University in Białystok, academic year 2015/2016, available at http://www.prawo.uwb.edu.pl/prawo_new/studenci.php?p=1470 [accessed on 11 February 2017].

presentation skills”¹²⁶⁷, “Rhetoric and self-presentation”¹²⁶⁸ and others. Moreover, the programme of doctoral studies also includes the teaching practice¹²⁶⁹. Ph.D students are obliged to participate in the preparation of the materials for the legal disciplines and/or conduct the practical lessons for the master’s degree students.

Another point that is worth to be criticised is a lack of monitoring of teaching practice conducted by doctoral students. In the majority of situations the didactic practice looks like an independent work of a doctoral student with undergraduate students. Doctoral students must hold the practical classes on legal subjects, while the theoretical part is lectured by their supervisors or other professors. Although in Poland law students obtaining the master’s degree often combine their study at university with the practical work in law firms or corporations, it is unreasonable to expect from them big practical experience when they start doctoral studies. As a result, doctoral students must teach the practical aspects of legal disciplines having the necessary experience neither in teaching law nor in legal practice.

To our mind, these two components of the doctoral programme, i.e. pedagogic subject and teaching practice, result in only an introduction to the profession of an academic teacher. They don’t ensure that doctoral students will become good educators and obtain the comprehensive understanding of pedagogical work in higher education institutions. To become a good lawyer 3-5 years of study are required, to become a good law teacher 30-60 hours of learning and teaching practice seem obviously insufficient. Pedagogy is as extensive as law, it is impossible to embrace psychological, didactical, methodological and administrative aspects of teaching in higher education institution within a few classes.

Academic and scientific work in higher education institutions requires the continuous professional and personal development of teaching staff. The role of an academic teacher is to share knowledge that is actual and to keep the students up to date about innovations, the latest changes and modern approaches in science and practice. Therefore, the regular assessment of teacher’s qualifications is a necessary and mandatory procedure. According

¹²⁶⁷ It is one of 4 subjects of a total 80 academic hours for doctoral law students at the University of Lodz providing knowledge, skills and competences in teaching in higher education institution. The programme for academic year 2017/2018, available at <https://www.wpia.uni.lodz.pl/doktorant/plany-i-programy> [accessed on 4 March 2018].

¹²⁶⁸ This is one of 3 optional subjects dedicated to pedagogy. It consists of 30 academic hours of workshop and 30 hours of practice. The programme for academic year 2017/2018 at the Jagiellonian University, Law and Administration Faculty, available at <http://www.wpia.uj.edu.pl/doktoranckie/program> [accessed on 4 March 2018].

¹²⁶⁹ The practice covers 125 hours. The programme for the doctoral studies at the Law Faculty of the University in Bialystok, academic year 2015/2016, available at http://www.prawo.uwb.edu.pl/prawo_new/studenci.php?p=1470 [accessed on 11 February 2017].

to the legal regulations the evaluation of the academic staff occurs at least once per 4 years¹²⁷⁰. The rector of the higher education institution defines the criteria and evaluation procedure. For example, the teaching staff of the University in Białystok is evaluated based on their scientific, didactic and organisational competences¹²⁷¹. Student's opinions on the performance of the didactic functions by the teacher are taken into consideration by the commission. Additionally, teacher's work is examined for the compliance with the intellectual law as well¹²⁷². In theory, the professional development of teaching staff in terms of the legal disciplines is equally important as the enhancement of pedagogical qualifications of teachers. Any activity aimed to improve the law teaching is equally appreciated as the participation in the scientific conference or the publication of a scientific work in the scope of the certain legal discipline.

As it has been mentioned above the international documents encourage higher education institutions to offer and promote opportunities directed to professional development of teaching staff, including their pedagogical qualifications. Application of innovation in teaching and the use of new technologies should also be encouraged. In fact, the Polish scientific community recognises a challenge in terms of the development of didactic skills of teaching staff. "One of the challenges of higher legal education in Poland is neglecting of research dedicated to the methodology of law teaching. In Anglo-Saxon countries the shelves of bookstores are full of books about how to teach the law. In Poland it doesn't occur. We [teachers] give lectures and conduct practical classes and workshops as our professors did it twenty years ago. Moreover, some of us are convinced that this is the best or even the only possible way of teaching law."¹²⁷³

The quality assurance in terms of teaching staff in Belarus is very similar with the Polish regulations, however some country specifics are provided. As it has been noticed quality assurance of teaching staff in Poland is ensured by the complex of the general national regulations of higher education and the internal tools of higher education institutions. Belarusian higher education is characterised by the strong centralized management system including the sphere of quality education. Higher education institutions are more limited to define the quality rules and standards different from the nationally approved ones.

¹²⁷⁰ Ustawa Prawo o szkolnictwie wyższym, art. 128 ust.2.

¹²⁷¹ Statut Uniwersytetu w Białymstoku, uchwalony w dn. 4 kwietnia 2012 z późn zm., Załącznik 2 – Regulamin okresowego oceniania nauczycieli akademickich, para. 3.

¹²⁷² Ibidem, para. 3 ust. 1 pkt. 4 and Ustawa Prawo o szkolnictwie wyższym, art. 128 ust. 1.

¹²⁷³ P. Machnikowski, *op.cit.*, s. 48.

As it has been mentioned the legal studies in Belarus are divided into two degrees: the first and later the second level of higher education. Unlike the European model of bachelor and master's degree Belarusian students may obtain the specialist degree and afterwards the master's degrees in law. Therefore, the qualifications expected from the academic staff involved in law teaching at different levels differ. Although the Code on education is a unified document on education irrespective its level, form and type it doesn't describe in details the requirements to the teaching staff of higher education institutions. The credentials can be found in the educational standards designed for each level of education¹²⁷⁴ and for various specialisations within higher education¹²⁷⁵. Hence, the portrait of an academic teacher of the law faculty is defined by two standards – the standard of higher legal education of the first level¹²⁷⁶ and the standard of higher legal education of the second level¹²⁷⁷. Higher legal education in Belarus has a few specialisations – jurisprudence, business law, and international law – which are sometimes taught at different faculties, e.g. the international law specialization is provided by the faculty of international relations of the Belarusian State University whereas jurisprudence is taught at the law faculty¹²⁷⁸. Despite the different names of specialisations the requirements to the academic teachers within jurisprudence and other legal specialisations are the same. As consequences, to ensure the quality higher education universities must meet the requirements of educational standards for each level of education and in addition the separate standards adopted for each specialisation taught at higher education institution.

Academic staff involved in law teaching at the first level must:

- possess a higher education diploma¹²⁷⁹ of the specialisation relevant to the field of teaching disciplines;
- possess, as a rule, a scientific degree or title;
- be engaged in the scientific research;

¹²⁷⁴ Standards are designed separately for specialist and master study. Кодекс об образовании, ст. 92.

¹²⁷⁵ There are separate standards for jurisprudence, political sciences, economic law, international law and other specialisations within the legal science. Кодекс об образовании, ст. 205.

¹²⁷⁶ Образовательный стандарт высшего образования, первая ступень, специальность 1-24 01 02 правоведение.

¹²⁷⁷ Образовательный стандарт высшего образования, вторая ступень (магистратура), специальность 1-24 80 01 юриспруденция.

¹²⁷⁸ The list of the specialisations taught at different faculties of the Belarusian State University, *available at* <http://bsu.by/ru/main.aspx?guid=4771> [accessed on 18 February 2017].

¹²⁷⁹ The law doesn't clarify what level (the first or second) of higher education must be completed in order to be hired as teaching staff. On the date of writing of the dissertation the amendments to the educational standards in law were in process. The list of occupations and qualifications for all fields of economy states that scientific and pedagogical activity in law has the code 24 80, this code matches the educational standard of higher education at the second level. It means teaching personnel must have at least master's degree.

- develop the personal and professional qualifications by attending the courses designed for these purposes at least once per 5 years;

- have the personal, educative and technological capacities to organize an effective learning process with students¹²⁸⁰.

Since the academic master study (the second level) are addressed to those who might be continue the scientific and pedagogic career at the university, the requirements to the teaching staff of the master courses are higher than for the academics teaching at the first level. The scientific degree or academic title is a mandatory requirement for law teachers at the second level¹²⁸¹. The other characteristics of teaching staff at the first and second levels are the same. Thus, graduates with the completed second level degree may become law teachers in its full sense.

For the justice's sake it is necessary to add that a teacher's profile is framed not by educational standards mentioned above, but by the list of occupations and qualifications for all fields of economy¹²⁸². This is a document containing the job description and the required qualifications for different positions in any field of economy in general and at higher education intuition in particularly. Each job position requires the particular characteristics of a candidate to be hired at it. For example, the dean of the faculty must possess the master's degree, the scientific degree, the 5-year experience at the academic position, scientific achievements or patent. A lecturer must have the higher education degree in the respective field of study and retraining on the specialisation "Pedagogy" irrespective of teaching experience¹²⁸³. Other academic and non-academic positions like a senior lecturer, assistant, professor or the head of internship are also included in the list. Non-compliance with these provisions results in a violation of the law. Educational standards for teaching staff of higher education institution referred above are composed on the background of the nationally recognized and approved list of occupations in higher education.

¹²⁸⁰ Образовательный стандарт высшего образования, первая ступень, специальность 1-24 01 02 правоведение, с. 40-41.

¹²⁸¹ Образовательный стандарт высшего образования, вторая ступень (магистратура), специальность 1-24 80 01 юриспруденция, с. 14.

¹²⁸² Кодекс об образовании, ст. 51 п.1. Additionally the Code of education states that people deprived of the right to teach or who have previous convictions or legally incapacitated are not allowed to participate in pedagogical activity in any institution of education.

¹²⁸³ Постановление Министерства труда Республики Беларусь от 28 апреля 2001 г. № 53 „Об утверждении квалификационного справочника должностей служащих”, Выпуск 28 - должности служащих, занятых в образовании, должность – декан, НРПА 2012, 8/25813.

According to the list of occupations in higher education one of the requirements for the teaching position is knowledge and skills in the field of didactics, pedagogy and psychology. This is a way to guarantee that a law teacher is not only a good researcher, but is able to share the professional knowledge with others. The Belarusian model of higher legal education includes the course on didactics in the programme of the academic master's degree (the second level). The subject of 84 academic hours titled "Pedagogy and psychology of higher education"¹²⁸⁴ provides future law teachers with the pedagogic qualifications. Thus, the formal requirement is satisfied if a candidate to the position has a master's degree or has a certificate of retraining to pedagogical specialization.

The next elements of quality assurance policy are a method of recruitment and professional development of teaching staff. The rules of recruitment procedure have been already described in the sub-chapter devoted to the staffing autonomy of universities. To avoid the repetition the focus is made on the quality assurance elements of recruitment. The national provisions regulating the competition encourage junior law teachers to continue their academic career and study at higher levels of education. The guidelines on competition for vacancies of academic staff in higher education states that graduates of the first level can be hired at the position of lecturer-intern for a 1-year contract, while the general duration of a labour contract for teachers selected through the competition is equal to 5 years¹²⁸⁵. During the competition candidates are evaluated by their scientific achievements, personal characteristics and work experience. The list of patents, publications and innovations is a mandatory annex to the application form. Candidates from other educational institutions must submit a reference letter as well. The pedagogical experience is required as much as the list of occupations in the field of higher education defines it¹²⁸⁶. Unfortunately, this characteristic points to the fact that didactical skills of teachers are important for the compliance with the legal provisions only, but not considered by the selection commission. In general, the competition is a safeguard of the selection of qualified personnel that satisfies the needs of higher education institutions and enables the mobility and equal treatment of researchers across Europe.

¹²⁸⁴ Типовой учебный план по специальности высшего образования второй степени (магистратуры), 1-24 80 01 юриспруденция.

¹²⁸⁵ Пастанова Савета Міністраў Рэспублікі Беларусь 21 чэрвеня 2011 г. № 806 „Аб зацвярджэнні Палажэння аб парадку правядзення конкурсу пры замяшчэнні пасада педагогічных работнікаў з ліку прафесарска-выкладчыцкага складу ва ўстановах вышэйшай адукацыі Рэспублікі Беларусь”, НРПА 2011 г., №72, 5/34007, п. 5, 9.

¹²⁸⁶ Ibidem, п. 14-15.

Despite the provision of the Code on education stating that teaching staff has the right to professional development of qualifications¹²⁸⁷ the educational standards for law education see it rather as an obligation of teaching staff than their right. The requirement to complete the courses designed with the purpose to enhance the personal and professional competences of teachers is monitored during the regular evaluation of teaching staff as well as during the recruitment procedure. The lifelong learning of academic teachers is regulated by the general rules of the Code on education¹²⁸⁸ and other provisions of the national dimension¹²⁸⁹. The specialised courses may be provided by higher education institution where the teacher works or organized by the National Institute of Higher Education¹²⁹⁰ where the law teacher can be directed to. Depending on the resources higher education institutions establish a separate department or legal entity oriented to provide additional professional education offers to teaching staff as well as specialists of the certain field of economy. For example, on the basis of the Belarusian State University it was created the Institute of professional development of judges, prosecutors and other specialists of the system of justice¹²⁹¹. The Institute offers a range of educational opportunities for practising lawyers and at the same time organises trainings and workshops for teaching staff of law faculties and vocational education institutions across the country. It is worth to highlight the role of the National Institute of Higher Education in the process of professional development of academic staff. It plays the significant role in the educational policy of the country aimed to the professional growth of academic teachers and introduction of innovations in the higher education. The institute offers a big variety of courses and trainings for the academic and non-academic staff, training for a new profession in education is also designed for specialists with work experience and without the pedagogical ground. Management in education, IT technologies in the learning process, innovative teaching methods¹²⁹² are a few topics of the various educative activities

¹²⁸⁷ Кодекс об образовании, ст. 52 п. 1.8.

¹²⁸⁸ Ibidem, главы 50-54.

¹²⁸⁹ Постановление Совета Министров Республики Беларусь от 15 июля 2011 г. № 954 „Об отдельных вопросах дополнительного образования взрослых”, НРПА 2011, 5/34189.

¹²⁹⁰ The institution was established in 1973 and so far plays the significant role in the development of higher education system in the country. The main goals of the institute are to provide positive transformation in the realm of higher education and to improve the quality of higher education in the state based on the international experience.

¹²⁹¹ The establishment of the Institute was initiated by the decree of the President. Указ Президента Республики Беларусь от 30 июня 1998 г. № 348 “О создании Института переподготовки и повышения квалификации судей, работников прокуратуры, судов и учреждений юстиции”. More about the institute is available at <http://www.lawinstitute.bsu.by> [accessed on 4 March 2018].

¹²⁹² The lists of trainings offer for 2017/2018, available at <http://nihe.bsu.by/index.php/ru/obuchenie> [accessed on 19 February 2017].

organized by the Institute. The academic personnel also have a possibility to learn new courses on-line or to attend the workshops organized externally by the non-governmental organizations. These activities are also recognized as professional training of teachers.

We may conclude that the quality assurance policy regulating the activity and profile of teaching staff is in place in both countries. In Poland the Law on higher education and science regulates the core rules of quality assurance policy granting to higher education institutions the authority to formulate the internal rules on the requirements, recruitment and evaluation of teaching staff. The Belarusian model of quality assurance implies a nationally managed mechanism where standards, rules and guidelines are adopted by the governmental bodies and spread their power on all institutions. Quality assurance mechanism monitors different facets of law teaching: the content and learning process, the qualifications of academic staff and generally learning environment. Although quality processes are in action in Belarus and Poland, there are still points to be improved. Analysing the outcomes of the empirical research conducted among the Belarusian and Polish law teachers and students it is necessary to pay attention to the didactical component of university work and pedagogical qualifications of teaching staff.

The survey carried out among law students in Poland bared the main problems of higher legal education. Only every third law student (32,9%) is convinced that law studies are well organized and prepare him or her for the legal profession in the future. 73,73% of respondents believe that classes provided at the university are too theoretical and the learning material is mainly gained by memorizing. More than a half of students (60,54%) claim that legal education doesn't teach creative problem solving¹²⁹³. Moreover, the students who combine legal studies with work are more critical towards theoretical and, therefore, useless for the legal profession higher education than non-working students¹²⁹⁴. It is worth to agree with the authors stating that didactically legal studies are taught as a rule by means of lecturing where knowledge is perceived as facts and students must only memorize them without any analysis or discussion¹²⁹⁵. Learners are very few involved in the educational process and quickly lose what they are taught. Such pedagogical approach is easy to apply, but not effective form the point of view of quality education.

¹²⁹³ A. Czarnota, M. Paździora, M. Stambulski, *op.cit.*, s. 13.

¹²⁹⁴ Over 60% of working students think that legal studies don't prepare well to the profession, while only 45% non-working respondents think the same.

¹²⁹⁵ A. Czarnota, M. Paździora, M. Stambulski, *op.cit.*, s. 14. The similar findings are presented in the annual survey conducted by ELSA among law students. *Studenci prawa w Polsce 2018, op.cit.*, slide 15.

Thinking over the reasons of the little didactical innovations in higher legal education it is important to refer to the empirical data. The analysis is to be started from the basic point, i.e. to define sources of pedagogical knowledge and skills of teaching staff. Then it is rational to examine the ways of lifelong learning of academic teachers.

The results of the empirical research show a few sources of pedagogical knowledge of law teachers. There are presented in the descending order by the number of mentioning by the respondents: personal experience (34), international and national colleagues (32), training, workshops and conferences (32), internet resources and books (30). The majority of answers points that the law teachers gain the pedagogical experience from a few sources, however in the majority of cases it is based on the personal experience of work at the university. During the interviews only two respondents mention the subject on pedagogy included in the programme of doctoral studies. However, the reference has rather a negative meaning, as the respondents say that the course was useless and they didn't benefit from it at all (Nadezhda, Belarus; Ekaterina 2, Belarus).

The contemporary content of the doctoral studies differ from what have been taught in the previous decades, therefore the respondents with the longer pedagogic experience point to the personal experience as a source of knowledge more often than others. In additional, the literature on the andragogy underlines the significance of the personal experience in the learning process of adults. Learners remember better the material when their personal contribution is brought to learning. Hence, the respondent's answers are aligned with the scientific findings. *In the beginning of my teaching career I applied the teaching methods by intuition. There were no courses or workshops like we have nowadays* (Marta, Poland). *I am self-educated, no one taught me the teaching methods* (Arkadiusz, Poland). *My way of learning how to teach is based on trial and error. Although there was a subject "Didactics in the higher education" during the doctoral studies, it was theoretical classes when we memorized the content of the textbook to pass the final examination* (Nadezhda, Belarus).

The experience of others is also valuable source of knowledge. *A lot of excellent teachers were met on my way in the legal science, career and life. I learned from them. Moreover, I was brought up in teacher's family and learned from parents* (Joanna, Poland). It is pleasant to admit that law teachers are eager to share their best pedagogical practices by publishing articles and books, participating in the professional seminars and conferences. It's worth to take into consideration that teaching methods are universal in the majority of cases. The same methods can be applied to teach different social science and humanities – psychology, sociology, economics and law. Therefore, law teachers gain

teaching experience in the various training courses and literature dedicated to education in general. *I have children who go to school, therefore in general I am interested in education and read a lot on psychology of learning* (Piotr, Poland). *I took part in the training course “Trainers of human rights” organised by the non-governmental organisation and apply the same methods in my legal classes* (Tatsiana, Belarus). *I like reading the manuals issued by the Helsinki committee of human rights, EU institutions (for example, the manual called Compass), these publications describe many teaching methods applicable in all social disciplines* (Aleksandr, Belarus). *In the beginning of my academic career I learned methods from my colleague-psychologist. She is the best in the interactive methods of education* (Ekaterina, Belarus).

It's doubtless that clinical legal education plays the important role in the creation of a generation of teachers with the innovative approach to the legal education. It supports the development of the socially oriented legal profession and at the same time creates a basis for professional growth of law teachers. *I learned the main teaching methods in the Georgetown University in 1997 when I took part in the 3-week training course for clinical teachers. These methods I use in my regular legal classes and in clinical education* (Barbara, Poland). *For a long time I cooperated with the Street law programme and spread its ideas in Central Asia. It was very helpful for learning a lot about interactive teaching and methodology of learning* (Igor, Belarus). *In 2001 I participated in the establishment of the legal clinic at my university and read a lot of literature about the clinical teaching methods* (Alesia, Belarus).

The knowledge of the pedagogical tools and the capability to apply them properly can guarantee, on the one hand, the fruitful educational activity and, on the other hand, the consciousness of lifelong learning in the changing educational environment. The law requires academic teachers to constantly improve their qualifications. During the interviews the respondents were asked of how they perform the professional development, in particular improve their didactical knowledge and skills.

The main motivating factor for the continuous professional development of pedagogic capacities of law teachers is a law requirement. The regular evaluation of law teacher's work and the obligation to pass professional development training is called by the respondents more often (15 respondents) than other reasons, such as interest in personal growth (7) or the will to career perfection (3). *I have started the studies at the faculty of psychology to obtain the conscious awareness of the learning process* (Katarzyna, Poland). *In order to continue my work at the university I have been forced to complete the*

retraining on pedagogy. I consider that study very important for my personal development either (Denis, Belarus).

Nevertheless, it is worth to mark the opinions where the law teachers care of learning outcomes obtained by students and the diversity of student's needs, therefore they work on their professional performance. The law teachers are interested in professional development in order to be in line with the innovations in education for adults. *If I want to create a lecture or practical lesson which students will like and attend, I have to select useful materials and teach them in an interesting, sometimes unusual way. No way to always do lecturing. That is why I sometimes look for articles of law teaching (Kszysztof, Poland). A new generation of students motivates me to adapt my classes to their capabilities and interests. It is not only about the content of the lesson, but also a method of delivery of information (Liudmila 2, Belarus).*

The law academics use different possibilities to enhance their trainer's skills with the country-based specific. The Belarusian teachers use mainly the locally provided resources such as books and manuals written in the Russian language, the courses on professional development organized by higher education institutions, workshops held by professional community, observation of colleagues in action. Their Polish colleagues benefit to a greater extent from the international cooperation and sharpen their presenting skills by teaching as visiting professors during their overseas visits and speaking at international conferences. Indeed, the long isolation of scientific community in Belarus from international cooperation (Belarus joined to the European Higher Education Area in 2015 only) didn't support learning from others.

Nevertheless, the European programme of Erasmus plus, the Visegrad foundation, the professional community such as Global Alliance for Justice Education¹²⁹⁶ and the European Network for Clinical Legal Education¹²⁹⁷, educational non-governmental organisations ensure the exchange of experience and development of qualifications of law teachers. *My cooperation as a trainer with the international organisations such as OSCE, American Bar Association, New Eurasia motivates me to grow professionally. I prepare training and learn together with the participants (Igor, Belarus). The most useful and interesting experience I had during the study visit organized by the Foundation of the*

¹²⁹⁶ The global conference of lawyers, law teachers and human rights defenders is organized one time every two years and aimed to create a platform for knowledge and skills sharing. More information is available at www.gaje.org [accessed on 04 March 2017].

¹²⁹⁷ ENCLE aims to bring together persons from different countries in order to promote justice and increase the quality of law teaching through clinical legal education. More about the ENCLE is available at www.encl.org [accessed on 04 March 2017].

polish legal clinics when the participants had spent for 3 entire days in the law faculty in Lodz observing the work of law teachers (Yulia, Belarus). I prefer to attend the workshop organized outside of the academia, for example at the training of the Polish Society of Anti-Discrimination Law I have gained both the methods of delivery and useful learning facts applicable in my regular legal classes at the university (Barbara, Poland).

Besides the formal courses within higher education and non-formal training for trainers, conferences and study trips aimed to share the experience in law didactics teaching staff applies to traditional ways of learning. *Nowadays the electronic resources play important role in our personal and professional life. I can find in Internet the books on interactive methods, the description of a particular method or entire plan of the lesson (Maria, Belarus). Every intelligent person has a predisposition to reflection. If my students are not satisfied with the class I taught I analyse why it has happened and try to improve it. It is my way to grow professionally (Łukasz, Poland).*

The verbal answer to the research question is just half an answer of the respondents. Their facial expression and body language provide other informative signals. During few conversations the respondents got confused by the question of how they improve their didactics and did not give a direct answer. *It is our teacher's obligation to enhance pedagogical skills and I do it (Olga, Belarus). I wish I could prepare an e-learning legal course if I knew where to learn doing it (Agata, Poland).* We assume that such explanations are given to avoid the confession of a lack of professional development. Although the participants of the research have been informed of the anonymous reference to their words and they have agreed with it, the social and/or scientific status of them or other reasons prevent them to provide an honest answer. At the same time, two respondents confessed to a lack of enhancement of pedagogical skills. *I don't participate in any courses on teaching methodology because I don't know about any training organised by our higher education institution for the academics (Mikołaj, Poland). I am not interested in self-education unless it is taken into account during the regular evaluation of teaching personnel (Kirill, Belarus).*

The respondents' answers point to one of the challenges of continuous legal education. The courses devoted to the didactics and pedagogy and included in the curriculum of master's degree (in Belarus) or doctoral studies (in Poland) are not sufficient for future teachers. Obviously learners can spend time on self-education by reading articles and books or attending the specialised training for trainers, including beyond the formal education. Junior teachers can strive to develop their teaching skills by providing education

to others and thus learning by doing it. It means tertiary education will not perform its functions as it is supposed to do. The solutions to overcome this challenge are seen in different layers of the system of education. Firstly, the legal didactics should become an essential part of legal education. The matter of how to teach law is as important as the content of legal sciences. It shall be raised by the academia, managers of the system of education and learners. It will result in increase of scientific discussions, practical and theoretical publications and conferences devoted to the methodology of law teaching and hopefully improve the student's satisfaction in studies. Secondly, the pedagogical experience and achievements should be taken into due consideration during the recruitment procedure and regular evaluation of teaching staff in their qualitative facet than in quantitative. The teaching experience evaluated by number of years is important for the appointment to a certain academic position from the point of law abidance. However the outcomes of his or her pedagogical work in the form of student's awards or methodical guidelines on teaching are to be considered. Interdisciplinary scientific research, the cooperation of law teachers with people of non-legal professions such as a social worker or psychologist, the national strategy directed to the removal of strict borders between sciences, sectors and professions may result in the development of learning process. Legal education will be evaluated from the point of content and process and may bring fruitful results for economy, education and science.

Summarizing the discussion on quality assurance it is important to highlight that there is no single and clear understanding of what quality of higher education is. Neither the Standards and Guidelines for Quality Assurance in the European Higher Education Area nor other documents make an attempt to provide the definition of quality or to identify measurement criteria to call education qualitative. The states are given a margin of appreciation to identify the own approach to quality assurance. The analysis of the national legislation enables stating that quality assurance in Poland is focused on learning process, meanwhile the Belarusian model of quality assurance monitors the content of education to a bigger extent. There is no a correct answer what approach is better, however it is worth to remind the following. Thinking of innovations in economy, struggling for high positions in the world rankings and expecting the enhancement of the national welfare one must focus on both elements of quality education – process and content.

International law grants to the states a liberty to choose appropriate tools ensuring the quality assurance. Accreditation and licensing, universal standards, study visits and opinions of independent experts are the external tools of quality assurance system in

Belarus and Poland. There is a variety of internal quality assurance processes that allow monitoring of quality education across the institution. How the internal policy is implemented, monitored and revised is the institution's decision. The application of internal tools reduces a burden of duties from the governmental bodies and ensures the institutional autonomy of higher education institutions. On the other hand, the introduction of external control by an independent agent results in a fair and transparent process.

Concerning the quality assurance of teaching staff the analysis of the national legislation confirms the variety of methods guaranteeing the recruitment of qualified specialists and the effective mechanism of motivation them to the professional and personal development. At the same time the results of the empirical research point out weak sides of the quality assurance policy. Although legal provisions are adopted at the national level, the factual situation may differ due to the archaic approaches or historical traditions in education. Taking into account that teaching staff is a crucial element of learning process, non-satisfactory quality assurance policy for teachers will result in degradation of learning outcomes.

The findings presented at the Bologna Follow-Up Groups meeting in February 2018 and concerning the Belarus roadmap demonstrate that the concept of quality assurance is still predominantly understood as quality control by the governmental body. The work on the establishment of an independent quality assurance agent has not started in Belarus, the reference to the Standards and Guidelines for Quality Assurance are not made in the national provisions. The draft on the National Qualifications Framework was postponed, although the work on it was launched with the adoption of the national strategy on promotion of employment in 2014-2015¹²⁹⁸. The national authority has presented to the Advisory Group the amendment to the list of occupation and qualifications for all fields of economy, but it was “rather an occupational standards framework than a qualifications framework outlining generic competences laid down along the Dublin Descriptors”¹²⁹⁹.

5.7. Acceptability of legal education

In the current part of the research it is necessary to focus on a not very evident, but significantly important characteristic of education – acceptability. Legal education is recognized acceptable if it is based on the moral and societal values, develops and

¹²⁹⁸ С. И. Романюк, *Национальная система квалификаций Республики Беларусь: подходы к разработке национальной рамки квалификаций*, Высшая школа, № 6, 2017, с. 7.

¹²⁹⁹ Bologna Follow-Up Group Meeting 58, draft final report, *op.cit.*, p. 2-3.

enhances human dignity of learners. The analysis of learning programmes or educational standards where the social competences of graduates are demonstrated doesn't provide the full picture to recognize higher education as acceptable. The content of education, the way of its delivery to learners, learning environment in the form of academic schedule, student-teacher interaction, dressing rules and other factors determine whether education is consonant with the human dignity and individuality of learners. Entering the university campus students do not lose their human rights and the inherent dignity. On the contrary, education must be directed to the full development of the human personality.

Some factors defining whether higher legal education is acceptable have been already described in other parts of this research. These are the aims of education and the quality assurance mechanism. Here it is investigated whether the state formally fulfils its obligation to provide education or it ensures that education is qualitative and equips learners with knowledge, skills and social aptitudes. Additionally, to call legal education acceptable it is necessary to pay attention to assurance of the following characteristics:

1. Legal ethics and human rights are important elements of higher legal education.
2. Education is provided in student-participatory environment where learners are more than merely passive recipients.
3. The human dignity of participants of the educational activity is protected.

Admitting that the contemporary society undergoes a profound crisis of values resulting in international and internal conflicts, natural disasters, religious and nationalistic controversy, the humanitarian component of tertiary education must be included in any learning programme. Social sciences in general and law in particular are historically developed on the ideas of liberty, morality, freedom, dignity and duty. Nowadays many legal disciplines are based on the conceptual framework containing these notions. The theory of law, sociology or philosophy of law raise the matters of morality, dignity and humanity to some extent. At the same time it is not so explicitly expected that during a lecture on certain aspects of, for example, tax law or criminal procedure a law professor will refer to human values and morality. In reality, there are many case studies, such as suicide, euthanasia, same-sex marriage, refugees, abortion or gender inequality, that are thematically related to a specialised legal discipline and, on the other hand, concern the vulnerable facets of the human existence. To include or not such cases in the material for

study is a matter of personal decision of law teachers¹³⁰⁰. Discussing these topics in the legal classes supports the learner's reflection on moral values and leads them to the development of human dignity. This results in ensuring the acceptability of higher education. Nevertheless, it is worth to underline that the development of student's social competences is important, but not a core task of higher education that is focused on the professional training.

5.7.1. Legal ethics and human rights within legal education

Representatives of legal industry hold a privilege position within society. It is explained *inter alia* not only their high incomes. Lawyers possess a valuable power: knowledge about the law. They know the law and can apply it in practice. However the exceptional characteristic of legal profession making it the elite of the society is community interest to legal knowledge. Lawyers work for and within the community. They enter people's lives often at highly sensitive times when clients are at a crisis point of their life. Although lawyers are often perceived as professionals striving to enrich themselves, it is a profession dedicated to the public good. Therefore professional qualifications of lawyers are considered as significantly important as their professional and personal virtues that guide them in the performance of the socially valuable work.

Obtaining the particular social status in the society lawyers are bound with additional rules often called the code of ethics. The term "legal ethics" has different meanings that are discussed in the national and international literature¹³⁰¹. In a general meaning it is understood as an independent field of legal science analyzing the norms and rules that prescribe professional and personal virtues of lawyers¹³⁰². Each legal specialization requires certain type of conduct and traits of lawyers, therefore there are separate ethical codes for advocates, judges, solicitors and other legal occupations. For the examination of the acceptability of legal education legal ethics is seen as a part of legal curriculum. Undoubtedly, the norms of legal ethics, as any other legal regulations, are better

¹³⁰⁰ In the legal didactics pervasive teaching method is often applied to combine the elements of legal ethics with substantive, theoretical and procedural law in every single subject instead of teaching separately legal subjects on facts and morality. T. David, *The pervasive method of teaching ethics*, Scholarly Works, 1989, p. 485-489. P. Skuczyński, *Pervasive method w edukacji etycznej a kierunki badań w etyce prawniczej*, w: P. Skuczyński, H. Izdebski (red.), *Edukacja etyczna prawników - cele i metody*, Materiały z konferencji 8 czerwca 2009, Warszawa, 2010.

¹³⁰¹ P. Skuczyński, *Status etyki prawniczej*, Warszawa, 2010. The author describes the essence of legal ethics from the perspective of philosophy and presents the American, French and German traditions of ethics for lawyers.

¹³⁰² R. Tokarczyk, *Etyka prawnicza*, Warszawa, 2007, s. 46.

comprehended by lawyers during the practice. Nevertheless, in many countries the access to perform legal services requires law graduates to pass the obligatory course on legal ethics¹³⁰³; questions about professional ethical rules are included in the examination on license. Legal ethics is the only subject of the curriculum which every student who will become a lawyer, regardless of the path of legal career is selected, will face in practice.

In Poland as well in Belarus the ethical rules are adopted for various legal practitioners – advocates¹³⁰⁴, legal advisors¹³⁰⁵, prosecutors¹³⁰⁶ and judges¹³⁰⁷ and the others. The first discussions in the academic community in Poland concerning the necessity to introduce ethical matters in legal education emerged about a century ago, however the practical realization of the ideas of the debates happened in the late 90s¹³⁰⁸. It doesn't mean that legal ethics was not taught at all. It was one of other aspects which graduates learned during the legal apprenticeship in the specific professional association, but not at law school. The critical positive changes in the university legal education in Poland occurred with the appearance of legal clinics. Starting from 1997 after the study visits of the academic teachers from Poland to the American universities the legal clinics were founded at the Polish law schools¹³⁰⁹. Beside the introduction of practical law teaching the main impact of the clinics on the inner development of law students includes the mandatory course on professional legal ethics within higher education. Additionally, the clinical supervisors have contributed greatly to the didactics of legal ethics. The book "Professional legal ethics – in theory and case studies"¹³¹⁰ written in Polish and later translated into English implies a manual for academic teachers or trainers of legal

¹³⁰³ In the USA where legal ethics takes its roots the subject was included in the legal curriculum as mandatory in 1974. Law school won't be accredited by the American Bar Association if legal ethics is not taught to students. H. Izdebski, P. Skuczyński (red.), *Etyka zawodów prawniczych. Etyka prawnicza*, Warszawa, 2006, s. 10.

¹³⁰⁴ Zbiór Zasad Etyki Adwokackiej i Godności Zawodu (Kodeks Etyki Adwokackiej), uchwalony przez NRA z dnia 19 listopada 1998, uchwała № 52/2011 ze zmian.; Правила профессиональной этики адвоката, утв. постановлением Министерства юстиции Республики Беларусь от 27 июня 2001 № 15.

¹³⁰⁵ Kodeks Etyki Radcy Prawnego, załącznik do uchwały № 3/2014 Nadzwyczajnego Krajowego Zjazdu Radców Prawnych z dnia 22 listopada 2014 r.

¹³⁰⁶ Zbiór Zasad Etyki Zawodowej Prokuratorów, załącznik do uchwały Krajowej Rady Prokuratorów Przy Prokuratorze Generalnym z dnia 12 grudnia 2017 r.; Кодекс чести прокурорского работника Республики Беларусь, принят на совместном заседании коллегии Генеральной прокуратуры и президиума Белорусской ассоциации прокурорских работников 22 декабря 2007 г.

¹³⁰⁷ Zbiór Zasad Etyki Zawodowej Sędziów i Asesorów Sądowych, załącznik do uchwały № 16/2003 Krajowej Rady Sądownictwa z dnia 19 lutego 2003 r. ze zmian; Кодекс чести судьи, принят первым съездом судей Республики Беларуси 5 декабря 1997 г.

¹³⁰⁸ A. Korzeniewska-Lasota, *Nauczanie etyki prawniczej na studiach prawniczych*, Studia Elckie, 17 (2015) nr 4, s. 373.

¹³⁰⁹ M. Klauze, *Kilka słów o klinikach prawa*, Filizofia Publiczna i Edukacja Demokratyczna, T. 2, 2013, №2, s. 55.

¹³¹⁰ M. Król (red.), *Etyka zawodów prawniczych. Metoda case study*, 2011.

apprenticeship, a commentary of law for practising lawyers and a textbook for law students. As it is mentioned in the review of the book “instead of traditional commentary of the cited norms, the authors illustrated the examples of professional misconduct of lawyers and supplemented them with a fully designed scenario for a class activity. In that way legal ethics is presented in an innovative way”¹³¹¹. The network of the legal clinics is spread over the country planting the ideas of ethical education among more law students. The Standards adopted by the Polish Legal Clinics Foundation oblige all existing and new established clinics to provide ethical education for law students¹³¹². Nowadays, 25 law faculties in Poland¹³¹³ have legal clinics and raise the awareness of future lawyers on interdisciplinary issues of morality, social justice, human dignity and pro bono culture.

No depreciating the impact of clinical legal education on the formation of professionalism of lawyers it is worth to remind that legal clinics in Poland exist in different organizational forms (scientific or research circle, an optional or mandatory course, student internship, foundation, etc.). Due to short financial and human resources only the limited number of law students can participate in its activity and gain the valuable practical experience and knowledge on professional ethical rules. Legal clinics planted the seeds of ethical ideas in the mind of law students. Then students went deeply to the matters of legal ethics in the framework of higher education. They established the Student Union on Legal Ethics¹³¹⁴, the Institute of Legal Ethics¹³¹⁵, organized a number of scientific conferences¹³¹⁶. In this context, the introduction of legal ethics in the law curriculum seems significantly important from the perspective of the academic community as well as from the student’s perspective¹³¹⁷.

In the nearest past the higher education institutions created their learning programmes based on the model standards approved by the Ministry of Science and Higher Education. Although the educational standard for law didn’t include legal ethics among the

¹³¹¹ The citation of the the review of prof. S. Kaźmierczak, Wrocław University.

¹³¹² Standardy działalności uniwersyteckich poradni prawnych, uchwalone przez Radę Fundacji w dniu 8 marca 2014, nr 9/2014, art. 1 ust. C.

¹³¹³ M. Klauze, *op.cit.*, s. 56.

¹³¹⁴ Studenckie Stowarzyszenie Etyki Prawniczej is a research circle founded at the Faculty of Law and Administration of the Warsaw University in 2001.

¹³¹⁵ The Institute was created in 2007 in the form of non-governmental organisation. So far, its specialists conducted a few research projects, created the library with the thematic literature and contributed to the development of ethical issues in the legal doctrine. *See more* at the web-page of the organization, <http://etykaprawnicza.pl> [accessed on 13 May 2018].

¹³¹⁶ For example, the conference titled „Etyka akademicka - etyka prawnicza” on 25 February 2002, another conference „Edukacja etyczna prawników - cele i metody” organized on 8 June 2009 resulted in the monograph with the same title. P. Skuczyński, H. Izdebski (red.), *Edukacja etyczna prawników...*, *op.cit.*

¹³¹⁷ The law student’s survey has revealed some conduct which is negatively assessed from the point of legal ethics. M. Raczkowski, P. Skuczyński (red.), *Studenci prawa o etyce: wyniki ankiety 2002*, Warszawa, 2006.

fundamental mandatory subjects, it prescribed law schools to ensure the provision of knowledge about legal ethics and to equip law students with the capability to apply this knowledge in future legal activity¹³¹⁸. Nowadays meeting the main principles of the Bologna process – academic freedom and institutional autonomy – higher education institutions create the content of the learning programmes aimed to achieve the self-designed learning outcomes. Hence, teaching legal ethics varies around the country. In the major law schools in Poland legal ethics implies an optional subject of 15-30 academic hours in the form of lectures granting 2-6 ECTS. At some law schools lecturing is supplemented with workshop or seminar and it is taught mainly for the first and second year law students¹³¹⁹. The syllabus of the subject embraces the general knowledge about ethical rules and some aspects of legal ethics, at the same time the ethical rules of student and the matter of disciplinary liability are missing in the content.

Like Poland the development of legal ethics as an independent legal discipline occurred in Belarus in the late 90s, although the first, and the most important in the Russian legal doctrine, text on the moral characteristics of judges and other participants of the criminal trial was presented by A. Koni in 1901¹³²⁰. During the Soviet period legal ethics was not researched at all. The adoption of the ethical code of judges¹³²¹ can be recognized as the commencement of the development of the national ethical rules for lawyers.

The standards of education for law students at the first and the second levels of education prescribe that law graduates must know and obey professional ethical rules¹³²². At the same time the standards don't contain legal ethics in the list of mandatory subjects, but law faculties are allowed to include it in the plan as an optional subject. Since the plan and programme of education of law faculties in Belarus are not always available at the web-site of the Belarusian university, it seems a challenging task to identify the place of legal ethics in the curriculum. 4 of 20 law faculties in Belarus make the syllabus of legal

¹³¹⁸ Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego z dnia 12 lipca 2007 r. w sprawie standardów kształcenia dla poszczególnych kierunków oraz poziomów kształcenia, a także trybu tworzenia i warunków, jakie musi spełniać uczelnia, by prowadzić studia międzykierunkowe oraz makrokierunki, Dz. U. 2007 nr 164 poz.1166, załącznik nr 85, pkt V ust. 2.

¹³¹⁹ A. Korzeniewska-Lasota, *op.cit.*, s. 376-377.

¹³²⁰ It was titled "Moral principles in the criminal process (general ideas of judicial ethics)" (original title is *Нравственные начала в уголовном процессе (общие черты судебной этики)*). А.В Дулов, *Юридическая этика*, Минск, 2005, с. 13.

¹³²¹ It happened on 5 December 1997.

¹³²² Образовательный стандарт высшего образования, первая ступень, специальность 1-24 01 02 правоведение, п. 6.3. Образовательный стандарт высшего образования, вторая ступень (магистратура), специальность 1-24 80 01 юриспруденция, п. 6.3.

ethics available online and teach it as an independent discipline¹³²³. Law students of the second or third year of study at the first level learn this subject during 20-26 academic hours of lectures and 10-14 hours of practical classes.

In other higher education institutions the matters of ethical conduct are incorporated in the content of other subjects. So called the pervasive teaching method has already proved its effectiveness in many countries and can be successfully applied in legal education in Belarus. The contextualization of ethical rules while learning the provisions of substantive and procedural law assures better understanding and application of the rules by students. Taking into account that the plan of education shall enable law students the achievement of the expected learning outcomes, it is rationale to refer to the disciplines which equip law students with the knowledge of professional ethics. Approving the standard of education for legal specialization at the first level the Ministry of Education recommends to teach legal ethics within the following disciplines: the history of law and the state, the theory of law, the judicial system, all disciplines of substantial and procedural law. Continuing education at the master's course law students are assumed to learn legal ethics during the 2-week internship in the governmental bodies, law firms or departments of the judicial system¹³²⁴.

Like the legal clinics in Poland the clinical legal education in Belarus contributes a lot to the development of practical skills and social competences of future lawyers. During the international round table occurred in Minsk, Belarus in 2011 the representatives of legal clinics developed "The recommendations of organisation of legal clinics in Belarus" aimed to define the fundamental principles of clinical education, to ensure its sustainability and to maintain the quality legal education. Thus, in the Framework of legal clinics students must learn the ideas and principles of professional ethics¹³²⁵. The ethical rules of legal professions and ethics of student-advisors are learned by the means of interactive teaching methods and in the context of a case study of clinic's clients¹³²⁶.

¹³²³ Yanka Kupala State University of Grodno, Vitebsk State University, Polotsk State University, Minsk Innovation University, Belarus Economic State University.

¹³²⁴ Ibidem, п. 7.4.1.

¹³²⁵ Рекомендации по организации деятельности юридических клиник Республики Беларусь, п. 3.1, разработаны и одобрены участниками круглого стола «Юридическое клиническое образование: опыт и перспективы», проведенного 11-12 ноября 2011 года в городе Минске, Клиника Права, декабрь 2011, №1, с. 20-21.

¹³²⁶ Legal clinic is included in the law curriculum of some universities with the title „Practical skills for lawyers”. See, for example, the curriculum at the law faculty of the Brest State University. Практические навыки профессиональной деятельности юриста, учебная программа по специальности правоведение, утв. 29 декабря 2015 г., available at <http://www.brsu.by/div/prakticheskie-navyki-v-professionalnoj-deyatelnosti-yurista> [accessed on 14 May 2018].

Comparing the status of legal ethics as an independent scientific discipline in higher legal education of both countries it is hard to agree with some opinions expressed in the legal doctrine. One of them is that legal ethics occupies a modest position in the law curriculum¹³²⁷. At the first glance it seems so judging only by the number of ECTS or the amount of lecture hours. However, the inclusion of the subject in the law curriculum as an independent discipline or in the content of various disciplines, the organisation of conferences and debates, the numerous publications on legal ethics and its didactics demonstrate the significance of ethical education. The comprehensive invasion of ethical matters in legal education ensures its important role in the development of professionalism and humanism of future lawyers.

Another opinion is that ethics should be inherent to legal practice, in other words to be taught during the legal apprenticeship. It can be contested by student's initiatives to research legal ethics. The scientific circle on professional deontology of lawyers established by law students and research projects demonstrate their interest to the topic during legal studies. Moreover, it is worth to refer to the answer of the honourable judge Maria Teresa Romer to the question "When is to start teaching ethics?". Her answer was short-spoken, but precise: "at home, in school, at university, during apprenticeship" is proper time to enhance moral values¹³²⁸.

Another legal subject that aims to enhance the human dignity of law students and develop their sensibility to intolerance, injustice and rights violation is human rights. Following the provisions of the Basic Principles of the Role of Lawyers urging the States to include the study of international human rights law in legal education, one can find either an independent subject concerning human rights law or a range of topics on human rights within other legal disciplines. Both countries selected for the research honour their legal duties and political commitments and provide human rights education in the frame of higher education, in particular for future lawyers. The form of teaching and the content of learning materials vary greatly and enable law students to obtain the theoretical knowledge and to practise skills of the interpretation and application of international norms at the domestic level. The academic interest to the matters of human rights education in legal education is expressed in the conferences, meetings and scientific discussions. For example, the participants of the educational and methodological seminar on the theme "Mainstreaming of the elements of human rights and gender equality concept in the

¹³²⁷ A. Korzeniewska-Lasota, *op.cit.*, s. 376.

¹³²⁸ *Ibidem*, s. 378.

educational process of higher legal education system of the Republic of Belarus” discussed the possibilities and main challenges of teaching human rights to law students, focused their attention to the innovative didactical tools and analysed the low number of students’ research papers on human rights.

Like teaching of legal ethics there are three main ways of transfer human rights law to students of the law faculty in Belarus and Poland: an independent legal discipline, a few topics on human rights incorporated into the content of other legal disciplines and within the activity of legal clinics. What is more important is that all three forms of teaching can take place all together complementing each other and enriching the learning outcomes. In the majority of universities in Poland and in some law faculties in Belarus human rights law is taught as an optional subject of 20-30 academic hours with 2-6 ECTS¹³²⁹. Since the Polish universities possess the bigger level of academic freedom in the formation of curriculum the list of optional subjects usually consists of different educational offers in order to adapt education to students’ interests. As a rule, there are a few subjects, seminars or workshops on the themes strictly related to human rights or its interdisciplinary fields, such as the patient rights, rights of the child, non-discrimination law, European migration law¹³³⁰.

Due to the application of the two-tier Bologna model of higher education in Belarus the duration of the full time legal studies has been reduced from 5 to 4 years. As a result, the syllabus of international public and humanitarian law or constitutional law has merged the topics on human rights law. In addition, law teachers convince that teaching of human rights issues is important in learning of other legal disciplines, such as commercial law, agrarian law or consumer rights¹³³¹.

The particular role in human rights education belongs to legal clinics. In the first place students involved in the clinical activity learn and deepen their knowledge and skills on

¹³²⁹ Plan studiów, lista przedmiotów fakultatywnych i wykaz seminariów, prawo stacjonarne, studenci rozpoczynający studia od roku 2016-2017, Wydział Prawa i Administracji Uniwersytetu Mikołaja Kopernika w Toruniu, available at <https://www.law.umk.pl/student/prawo-2/prawo/> [accessed on 16 May 2018]; Lista przedmiotów do wyboru na kierunku prawo, semestr zimowy, Uniwersytet Adama Mickiewicza w Poznaniu, available at https://prawo.amu.edu.pl/_data/assets/pdf_file/0010/111889/Przedmioty-do-wyboru-na-kierunku-prawo-201314-studia-stacjonarne.pdf [accessed on 16 May 2018]; Учебная программа спецкурса „Право прав человека”, правоведеы 1 курс, юридический факультет БГУ, available at <https://law.bsu.by/materials/kafedra-konstitucionnogo-prava/discipliny-specializacij-3/prava-cheloveka-47.html> [accessed on 16 May 2018].

¹³³⁰ The list of optional subjects for law students at the Jagiellonian University in summer semestr 2017/2018, available at <http://prawo.up.krakow.pl/wp-content/uploads/2018/01/KF-wersja-2.0.pdf> [accessed on 16 May 2018].

¹³³¹ Mainstreaming of the elements of human rights and gender equality concept in the educational process of higher legal education system of the Republic of Belarus, Materials of the international educational and methodological seminar, 30—31 October 2015, Minsk, p. 8-9.

human rights. Clinical legal education plays a crucial role in developing student's empathy, compassion and respect for the human dignity regardless of wealth, sex orientation, religion or nationality of individuals. In the second place legal clinics popularize human rights among non-lawyers.

Historically legal clinics over the world were created with two main aims:

1. to improve the outcomes of legal education and to equip law students with practical qualifications within higher education;
2. to provide a free access to legal support for the most vulnerable people in the society¹³³².

With the expansion of the clinical legal movement law schools may modify the directions of activity of student-clinicians under the influence of the social changes in the local community and the academic mainstream following the basic aims of clinical education. It is important to underline that these aims are complementary and inherent. The founder of the first legal clinic at the Jagiellonian University in Poland M. Szewczyk points out that pro bono work of law students for the sake of poor people and individuals in need within the scope of clinical activities has significant academic value in addition to the function of social justice¹³³³. Law students solve legal issues of clinical clients and face the financial, psychological or moral challenges of other people. Dealing with misfortune of others future lawyers acknowledge the social mission of their profession, defend equally the rule of law for richest and poorest and develop their empathy to social injustice. The assessment of that legal work is not limited to the certain amount of ECTS or the examination grade, the quality of legal support provided in the clinic is ensured by clear conscience and the feeling of responsibility for someone's fate of the clinical student¹³³⁴.

The diversity of organisational forms of clinical legal education, different academic and social interests cause a range of possibilities to learn and apply human rights law. The legal clinics consist of different sections determined by the field of law (criminal, civil, ecological law) or by the profile of stakeholders who will benefit from the clinical services (children, immigrants and refugees, victims of domestic violence, prisoners). In the first place a legal clinic is a practical form of learning irrespective whether it is legal knowledge on discrimination or writing or communicative skill. Law students therefore participate in

¹³³² In the world dimension there is no a single approach what aim of clinical legal education should be prevailing. Social needs, financial sustainability and human resources of law schools, the pattern country of clinical knowledge are a few factors determining the form and aims of a law clinic in a particular region. K. Olechnowicz, *Historia klinik prawa*, *Klinika*, 5 (9) 2008, s. 18-19.

¹³³³ M. Szewczyk, *Idea uniwersyteckich poradni prawnych*, *Klinika*, №1/1999, s. 14.

¹³³⁴ *Ibidem*, s. 15.

various forms of learning – workshops, interactive seminars, debates, moot courts – where they obtain the classical triad of knowledge, skills and social competences or values. The content of the educational component is created by the clinical supervisors who then verify the student’s papers prepared for client’s case studies and evaluate the overall student’s work.

It is interesting to observe the examples of the human rights-based approach in the activity of law clinics in Belarus and Poland. In Poland a few legal clinics¹³³⁵ create sections with the focus on human rights where law students learn and then interpret the international and national legal norms through the prism of human rights, they can also draft the application alleging human rights violation¹³³⁶. At the same time the student’s research papers on criminal, migration or health law have the reference to human rights law either. There are clinical sections where students pay attention to the selected human rights, for example, the section on children’s right at the University of Łódź, the gender discrimination clinic at the Warsaw University, the section on migration law at the John Paul II Catholic University of Lublin¹³³⁷. The harm reduction clinic of the Warsaw University provides legal support to drug users and people with HIV and their relatives, the clinical activity aims to defence human rights and dignity of those people in everyday life and to lessen the negative consequences associated with their legal or illegal behaviour¹³³⁸.

In Belarus among 11 legal clinics there is no a section that strictly deals with only human rights and international law¹³³⁹. However, student-clinicians face human rights matters in different situations. The content of the clinical training programme aimed to develop practical skills includes the fundamentals of national, regional and international systems of human rights protection. During interactive workshops law students expand their knowledge on the legal provisions in general and focus their attention on the norms regulating the rights and duties of particular vulnerable groups who will benefit from legal services of the legal clinic, e.g. prisoners, people with disabilities, orphans. Later on, dealing with a client’s case and drafting a research paper future lawyers search, analyze

¹³³⁵ Human rights section is created in the legal clinic of the Jagiellonian University, University of Białystok, Warsaw University.

¹³³⁶ Students of the clinic at the Warsaw University participated in drafting the application for Alicja Tysiąc who won the case in the European Court of Human Rights. N. Mileszyk, K. Trzpioła, *Sekcja sądownictwa międzynarodowego*, *Klinika*, 7 (II) 2009, s. 16.

¹³³⁷ Roczne sprawozdanie z działalności uniwersyteckich poradni prawnych w roku akademickim 2015/2016, available at <http://www.fupp.org.pl/kliniki-prawa/publikacje/raporty> [accessed on 17 May 2018].

¹³³⁸ T. Budnikowski, *Redukcja szkód w klinice prawa WPIA UW*, *Klinika*, 5 (9) 2008, s. 16.

¹³³⁹ Актуальное состояние и перспективы развития юридического клинического образования в Республике Беларусь, Итоговый отчет по результатам исследования, Минск, 2015, с. 5.

and apply the legal norms that may concern human rights. The environmental law clinic, the clinic for prisoners, the clinic on the rights of disabled and veterans are the sections of the legal clinics in Belarus where students can gain knowledge on human rights and apply their professional skills¹³⁴⁰. In Belarus peer-to-peer legal education occupies an important place in the clinical legal education. Street law, Rights for every day or Live law clinic are the names of clinical activity based on the provision by law students legal and civic education at secondary schools. 10 of 11 legal clinics in Belarus are engaged in the Street law movement and raise awareness of population on their basic rights, ways and means of their protection¹³⁴¹.

In the current part of the research the focus is made on the study of professional responsibility and human rights by law students. During the interview law teachers were asked about social values obtained by average law students. 3 law teachers have made difficulties to provide the examples of social values developed during studies of law. If teaching personnel doesn't pay attention to the social mission of legal studies it is hardly to expect the awareness on the matter from students. *In the Street law clinic we teach students to compose a lesson plan defining knowledge, skills and social values which learners will possess after the class. The formulation of social values is the most difficult task for law students, because they don't know what it means. It is a signal for me and my colleagues that within legal education little attention is paid to matters of social values* (Ruslan, Belarus).

13 of 40 respondents have described general social values that are brought up in every single person regardless of his or her occupation – the role and duties in the society, societal competence in the democratic state, teamwork skill and group responsibility for our common good within or outside of the university. *I believe that law graduates are little conscious of social problems of minorities or poorest and feel responsible to support those in need, at least somewhere deeply in their mind it must appear* (Katarzyna, Poland).

25 of 40 law teachers have mentioned social competence and values related to the legal profession. The respect for human rights and the obedience of legal ethics are mentioned in 4 interviews only. *Many law students come to the profession with the aim to fulfil their personal ambitions (financial, professional). On the other hand, I do my best to*

¹³⁴⁰ K. Bielakova, Y. Filipchanka, *Human rights and values as a substantial element of the courses taught at the law clinic*, in: Mainstreaming of the elements of human rights and gender equality concept in the educational process of higher legal education system of the Republic of Belarus, Materials of the international educational and methodological seminar, 30-31 October 2015, Minsk, p. 14-15.

¹³⁴¹ Актуальное состояние и перспективы развития юридического клинического образования в Республике Беларусь, Итоговый отчет по результатам исследования, Минск, 2015, с. 13.

show the social mission of lawyers to my students. Working as either advocates or public servants lawyers must go towards both personal objectives and public good prioritizing the latter (Nadezhda, Belarus). I teach my students that taking a decision in the legal case a lawyer must think of its consequences in a broad dimension analyzing economic, political, social affect of the solution. The social role of lawyers and legal ethics are also elements of my subject (Piotr, Poland). Social elements of legal education, e.g. pro bono culture or social mission of lawyers, emerge mainly during the workshops in legal clinics. Honestly speaking, not every section of the legal clinic deal with social competences... It is also true for law firms in Poland. Only big law corporations care of their pro bono image, while others see their aim in providing legal service as business (Barbara, Poland).

The analysis of legal doctrine, curricula of law schools, the voices of academics and law students affirm that higher legal education in Belarus and Poland provides future professionals with a powerful tool to struggle for social justice. During the legal studies learners gain professional knowledge and skills, at the same time future lawyers have an opportunity to develop their inner culture and spiritual values related to profession, to learn the norms of morality and to measure the power of law in action. Legal education, in particular clinical legal education, provides evidences how illegal norms can result in discrimination, limitation and infringement of rights and freedoms of less defended individuals. Thereby law students make aware of their mission in the society. The comprehensive content of higher legal education in Belarus and Poland deserves to admit it acceptable.

5.7.2. Student-participatory environment

Reaffirming the provision of Article 12 of the Convention on the Rights of the Child and the statement of the Special Rapporteur on the right to education concerning the student-participatory educational environment¹³⁴² it is necessary and sufficiently to analyse the feature of acceptability in two following dimensions. The first approach assumes the right and possibility for students to participate in the education management and to express their own opinion on the affecting them matters as a precondition of the acceptable higher education¹³⁴³. The second dimension is spread on the learning environment, including

¹³⁴² Article 12 of the Convention states that a child must have the opportunity to express his or her own opinion on the affecting his or her matters, including within educational process. The acceptability means that the learner be recognised as the active right holder in the educational process.

¹³⁴³ P. Bielecki, *Koncepcja studenta jako aktywnego partnera objaśniająca relacje między studentem a uczelnią*, w: P. Bielecki (red.) *Rola studentów w zarządzaniu szkołą wyższą*, Warszawa, 2010, s. 51.

teaching methods. The acceptable education enables learners to gain knowledge, skills and values in a way consistent with their human dignity. Learners should be perceived as “active and effective participants in, rather than mere objects of, the educational process”¹³⁴⁴. To ask questions, to argue and disagree, to interact with other students, to learn by doing are examples of learning methodology based on the involvement of learners and their active position.

Following the first approach the system of higher education must assure to students the freedom of expression of their opinions in all matters affecting them. It includes the student representation in governing bodies of higher education institutions and in the structures at the national level. The Polish Law on higher education and science guarantees to students the right to establish the student government¹³⁴⁵ and student unions¹³⁴⁶ which goals vary from the social and cultural development of student life to the representation of student’s interests and giving opinions on matters concerning them. The representatives of the student governments created over the state compose the Student Parliament of the Republic of Poland, it is considered an official voice of student’s community and represents them towards public authorities at the highest level¹³⁴⁷. According to Article 338 of the Law on higher education and science a bill concerning student’s matters is reviewed by the Student Parliament. The organisation is entitled to express opinions and to submit proposals to the public authorities on behalf of all students. It is not surprising to see the members of the Student Parliament sitting in advisory bodies, such as the Main Council of Science and Higher Education¹³⁴⁸, Committees of Sejm and Senat, working groups in the Ministry of Science and Higher Education, National Agency of the Academic Mobility¹³⁴⁹.

Such functions of student unions demonstrate that student’s society possesses the self-governance characteristics making it an active partner in the delivery of the national policy on higher education towards youth.

The current legislation on higher education in Belarus ensures to students the right to participate in the management of higher education institutions¹³⁵⁰ and involvement in professional, youth and other public unions¹³⁵¹. While the current law is totally silent on

¹³⁴⁴ Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), UN Doc. A/RES/45/112, 14 December 1990, note 162, para. 21(c).

¹³⁴⁵ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 110.

¹³⁴⁶ Ibidem, art. 111 ust.1.

¹³⁴⁷ Ibidem, art. 338 ust.1.

¹³⁴⁸ The Council includes four students selected by the Student Parliament. Ibidem, art. 331 ust.1 pkt.4.

¹³⁴⁹ Ustawa o Narodowej Agencji Wymiany Akademickiej, art. 10 ust.1 pkt.9.

¹³⁵⁰ Кодекс об образовании, ст. 31 ч.1 п. 1.20.

¹³⁵¹ Ibidem, ст. 31 ч.1 п. 1.23.

the student self-government within higher education, the provisions of the preceding version of the law on higher education precisely guaranteed such right. It stated that students had the right to establish self-governance structures¹³⁵². Moreover, the wording of the current legislation is limited to student's involvement in any kind of unions and keeps the laws vague in terms of whether students are entitled to create such unions. Nevertheless, the analytical data demonstrate that higher education institutions in Belarus have different kinds of student's unions in their structure – student council, student union, professional student organisation¹³⁵³. Their activity is mainly directed to the cultural and sport entertainment of students, health care and resolving of various issues in the student dormitories¹³⁵⁴.

The participation of students in the management of higher education institutions is of nominal character. Unlike the European traditions where the council of a higher education institution is a decision-making player, the council of the university in Belarus is an advisory body. The main decisions are made by the rector or the Ministry of Education. The law prescribes that 25% of the council members are representatives of student's community¹³⁵⁵. However higher education institutions not always comply with this rule. For example, the leading university in the country – Belarusian State University – has only 12 students in the 87-person council¹³⁵⁶. Thus, student representation consists of about 13% only. The council of the State University in Vitebsk has 14 students of 57 members composing 25%¹³⁵⁷, the State University in Gomel also complies with the legal requirement and includes 12 students of 48 members¹³⁵⁸. The factual involvement of students in the management of higher education institutions is almost excluded, although the legal provisions assure that right. The lack of significant changes in the student self-government provided by the Belarusian authorities was negatively assessed by the Advisory Group of the Bologna Committee following up the progress towards the

¹³⁵² Закон о высшем образовании от 11 июля 2007 г. №252-3, НРПА 2007, №2/1349, ст. 30 ч.1 п. 1.8.

¹³⁵³ Белая книга, *op.cit.*, с. 102.

¹³⁵⁴ For example, the leading university of the country – Belarusian State University – has in its structure the Student Union as an independent organisation. According to its statute the union is established to protect student's rights, to participate in the management of education within the university, including in the internal legislation process, to express opinions on matters concerning students. However, the official web-page of the organisation contains the news of cultural and artistic character only. Available at <https://www.bsu.by/ru/main.aspx?guid=7761> [accessed on 31 May 2018].

¹³⁵⁵ Положения о совете учреждения образования, утв. постановлением Министерства образования от 18 июля 2011 г. № 84, НРПА 2011 г., №95, 8/24039, п. 6.

¹³⁵⁶ The list of members of the university council is available at <https://www.bsu.by/ru/main.aspx?guid=166961> [accessed on 1 June 2018].

¹³⁵⁷ The list of members is available at <https://vsu.by/sovets-universiteta.html> [accessed on 1 June 2018].

¹³⁵⁸ The list of members is available at <http://gsu.by/council-of-the-university> [accessed on 1 June 2018].

commitments of the Roadmap. “By the middle of 2017 the Ministry of Education will submit to Parliament proposals for required measures to incorporate the principles of the Magna Charta Universitatum... As a result, the draft of amendments to the Code on education [presented by the state] does not mention any relevant governance models (e.g. academic councils, etc.). The draft does not provide any information on the election of student representatives... There is no structured consultation with students on higher education reform...”¹³⁵⁹. Such situation is justified by different reasons. These are the lack of independence of student unions within the institutional hierarchy, the lack of institutional autonomy of higher education institutions and the strict state control of the system of higher education in a broader perception of the problem. The management of education is provided by means of the administrative mechanism, e.g. prescription and provisions of the Ministry of Education, than democratic values.

At the same time it is worth to mark the emergence of student activity outside of higher education institutions – as an independent youth organisation or informal club – that ensures more freedom and independence in the development and implementation of its strategy and activity. Student association BOSS¹³⁶⁰, Belarusian Students' Association¹³⁶¹ (the only representative of Belarusian students in the European Students' Union), Student Union¹³⁶² and other organisations are aimed to defend student's rights and to raise their awareness of the principles of self-governance, academic freedoms and solidarity.

Summarizing the analysis of student's involvement in the management of higher education it is fair to state that the legal norms in Poland and Belarus are mainly consistent with the international recommendations and guidelines. *De jure* students are given the possibility to affect the decisions concerning their matters in higher education and can participate in the management of universities. At the same time, *de facto* the realization of this right varies in the selected countries. While the public and university authorities in Poland support the establishment of students' union or self-governance structures within higher education institutions recognizing them as the means of an effective dialogue between all stakeholders, the Belarusian students are struggling for their rights and freedoms outside of the university walls. The student organisations established within the system of higher education develop only the scientific, cultural and sport aspects of student

¹³⁵⁹ Bologna Follow-Up Group Meeting 58, Draft final report, *op.cit.*, p.6.

¹³⁶⁰ See more at <https://aboss.by> [accessed on 1 June 2018].

¹³⁶¹ The organisation was deprived its official legal status in 2001 by the court decision after the campaign aimed to defend student's rights. Then the organisation kept doing its projects for the benefit of students as non-registered initiative. See more at <http://zbsunion.by/> [accessed on 1 June 2018].

¹³⁶² See more at <http://studrada.org> [accessed on 1 June 2018].

life. The right of students to express their opinions and participate in the governance of education is merely declared in law of Belarus.

The second dimension of the student-participatory environment is based on the involvement of learners in the educational process as active participants. Following the norms of the international treaties the right to education leads to free development of the personality. The involvement of students in the governance of education and the freedom of expression as the essential elements of the right to education have transformed the role of learners within the educational process. They are not passive recipients of learning outcomes anymore as well as the teachers are not the ultimate depository of wisdom.

Based on the student-teacher relations the systems of education are split into two major models – authoritarian and liberal¹³⁶³. The authoritarian model is marked with the dominating role of a professor, the elimination of discussion and debates, the exercise of administrative sanctions in education. The liberal model of education refers to the ideas and values of Dewey's theory. It is founded on the partnership of students and professors, the creative contribution of students and their individual interests to education, a lack of ready knowledge transferred to learners. Purely authoritarian or liberal models are not widespread in the world, many systems of education display the mixed complex of features. The system of education in Poland, in particular higher education, is characterised as transitional one¹³⁶⁴. Due to the numerous reforms occurred in higher education legal studies turn from the authoritarian model into liberal, however it is a long process to see immediate results. A long list of optional subjects for students, the student right to select courses for learning and the specialisation of legal studies enable the enhancement of student-centered approach in legal education.

Legal studies in Belarus can hardly be called liberal. Hierarchically superior position of professors, a lack of optional subjects, the administrative regulation of the content of teaching courses and curriculum are the major characteristics of higher legal education¹³⁶⁵. Nevertheless, under the influence of the international cooperation the system of higher education is being reformed and the elements of student's involvement in education are introduced. The Ministry of Education has approved the model plan of legal studies at the first level with four optional courses – Latin, legal English, practical skills for lawyers and

¹³⁶³ R. Tokarczyk, *Dyktator czy partner. Model autorytarny a model liberalny*, Przegląd akademicki, 1994, nr 9, s. 23.

¹³⁶⁴ R. Tokarczyk, *Komparystyka prawnicza*, 2008, s. 162-163.

¹³⁶⁵ Отчет по результатам мониторинга нарушений академических свобод, *op.cit.*, с. 22.

the paper work of lawyers¹³⁶⁶. Moreover, higher education institutions are recommended to provide students with the possibility to choose about 50% of courses for studies among those created by the universities¹³⁶⁷. Although this liberalisation within the system of higher education is a small part of student freedom, it could be a starting point for the development and future reforms leading to the student-participatory higher education in Belarus.

The analysis of the learning environment is not limited to the student involvement in management of the university and a level of academic freedom. It is worth to pay attention to law teaching from the didactic perspective and to analyze the student's involvement in the learning process. In both countries the legal didactics is a subject of criticism by the academic community¹³⁶⁸, professional society¹³⁶⁹ and students themselves¹³⁷⁰. The results of the law student's survey show that learners are expected to memorise and repeat masses of information provided by the professors, law teaching is too theoretical¹³⁷¹. There are different aspects of law teaching which are debated by the opponents of the current model of legal education. Among them one can find the discussion about academic versus vocational education, one- or two-degree legal education. Reaffirming that the acceptable education develops the human dignity and recognizes law students as active participants of learning in this part of the dissertation the focus is given only to teaching methods used by the law professors in Belarus and Poland.

The standards and guidelines ensuring the quality higher education in the European Higher Education Area prescribe to universities to organize teaching and learning in a way that encourages students for self-reflection, motivates them for studies and stimulates the active involvement in the learning process¹³⁷². Student-centred learning, teaching and assessment encourage a sense of autonomy in the students and attend to the diversity of learners and their needs. The student-participatory environment can be assured by the

¹³⁶⁶ Типовой учебный план по специальности высшего образования первой степени, 1-24 01 02 правоведение.

¹³⁶⁷ Приказ Министерства образования о порядке разработки и утверждения учебных планов, п. 4.9.

¹³⁶⁸ F. Zoll, *op.cit.*; R. Tokarczyk, *Komparystyka...*, *op.cit.*, s. 164; U. Mirowska-Łoskot, *Jak uczyć prawników, czyli co zrobić, żeby elita nie pracowała w supermarkecie*, Debata przedstawicieli Wydziałów Prawa uczelni wyższych zorganizowana przez Dziennik Gazeta Prawna, materiał z dn. 23 lipca 2015, available at <http://prawo.gazetaprawna.pl/artykuly/884609,jak-uczyc-prawnikow-czyli-co-zrobic-zeby-elita-nie-pracowala-w-supermarkecie.html> [accessed on 14 April 2018].

¹³⁶⁹ М. Латышева, *op.cit.*, с. 7.

¹³⁷⁰ A. Pawlak, *op.cit.*, s. 10.

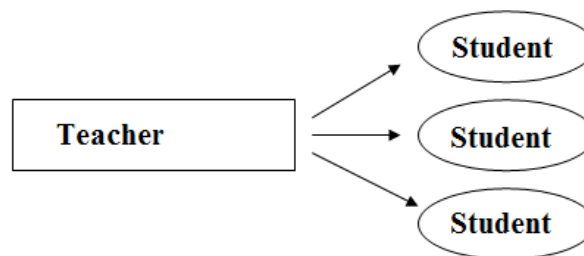
¹³⁷¹ Over 70% of law students believe that legal studies are theoretical and require too much to be learned by heart. About 60% of respondents think that creative problem-solving is not taught at law faculties. A. Czarnota, M. Paździora, M. Stambulski, *Nużąca konieczność. Powody podjęcia i ocena studiów prawniczych na WPAE UW*, Wrocław, 2017, s. 13.

¹³⁷² *Standards and Guidelines for Quality Assurance*, *op.cit.*, p. 12.

means of different learning methods, various forms of education, including distance learning, flexible learning paths for international, part-time and employed students and a variety of pedagogic tools. For the verification of the student role in learning the teaching methods used in higher legal education are analysed.

There are different classifications of teaching tools and methods in the pedagogic doctrine by their aim and dimension of application, sources of learning outcomes, type of learning activity and other criteria. In terms of the student activity in the educational process it is worth to overlook the classification of teaching methods based on the student-teacher cooperation. Depending on the role of the teacher and the activity of learners the teaching methods are divided into passive, active and interactive¹³⁷³.

Picture 2. Passive teaching methods



Source: own elaboration

Education based on the passive methods (picture 2) shifts the focus from learning towards teaching and the main role in the process is assigned to a teacher as the main source of knowledge and expertise. Learners are passive recipients of information and follow the teacher's instructions. Lecture, observation, audio- and video-presentations are examples of passive methodology. Although the learners can gain a big volume of knowledge during such exercises, their practical skills and social attitudes are not trained much. Due to the passive digestion of information the average student retention rate for lectures and audio-visual materials doesn't exceed 20%¹³⁷⁴. The major advantage of passive methods is that they enable to transfer a lot of information within the limited time framework. The students are mainly motivated to study by the external factors, such as scores, parents' opinion and teacher's requirements, the pressure from the society.

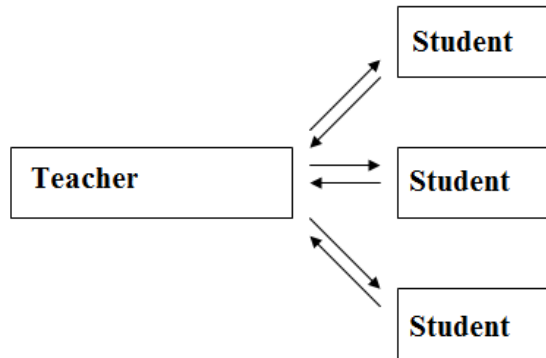
Active teaching methods (picture 3) are based on the mutual student-teacher relations. Although the teacher remains the major person in teaching, the students are engaged in

¹³⁷³ Е.М. Кропанева, *Теория и методика обучения праву*, Екатеринбург, 2010, с. 101.

¹³⁷⁴ The Learning Pyramid was researched and created by the National Training Laboratories in Betel, Maine in the 80s. It illustrates the average percentage of learner recall that is associated with different pedagogical methods. Lecture, reading, audio-visual and demonstration belong to the group of passive methodology and result in a low retention of learning. Е.М. Кропанева, *op.cit.*, с. 102-103.

education by means of giving their opinion and feedback, asking questions and maintaining a dialogue with the teacher. The research proves that active participation of students in learning results in a higher retention¹³⁷⁵.

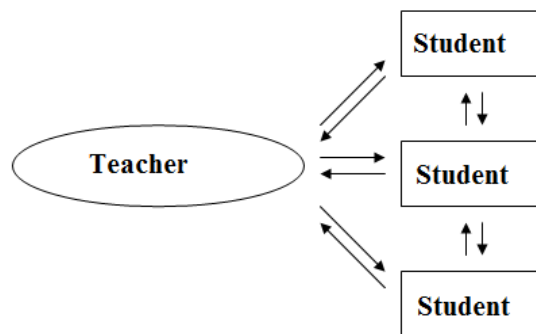
Picture 3. Active teaching methods



Source: own elaboration

The last but not least group is interactive methods. In the pedagogic doctrine one may find the opinions that active and interactive teaching methods are similar¹³⁷⁶. Indeed, they have much in common and are often combined in one group in contrast to passive methods of teaching. At the same time, it is worth to underline the particular characteristics of interactive teaching methods. Interactive methods are truly student-centred tools based on student's motivation, experience and interests. A teacher still participates in the learning process, but his or her role is shifted from the main source of knowledge towards a facilitator and a consultant for learners.

Picture 4. Interactive teaching methods



Source: own elaboration

¹³⁷⁵ Socrat dialogue is an example of active teaching method which encourages the development of cognitive and communicative competences, problem-solving skill and critical analysis, active listening and tolerance. The retention rate of the group discussion may reach 50%. P. Walczak, *Rozmowa sokratyczna: założenia, przebieg, praktyka*, Przegląd Filozoficzny, 2012, Nr 3 (83), s. 377-378.

¹³⁷⁶ For example, the chapter II describing methods for teaching legal ethics is titled "Active learning methods". In fact, the description of methods illustrates their interactive character. M. Król (red.), *op.cit.*, s. 128-235.

The picture 4 illustrates that the students learn from each other and apply to the teacher for assistance. It would be wrong to exclude at all or to decrease the significance of the teacher's role during the application of interactive methods. The teacher arranges learning by providing the necessary theoretical input, selecting the proper exercises and assessment methods that fit the diversity of learners, their needs and learning outcomes, monitoring the effectiveness of a group work. In an interactive lesson plan the contribution of the facilitator constitutes 15-20% of the lesson time, the main part of learning process refers to the interactive work of the learners¹³⁷⁷. The emotional and behavioural engagement of the students in education leads to a high retention rate. The application of learning methods, such as a group discussion, learning by doing and teaching others, enhances the memory activity and 75-90% of the data remain in the active usage by students¹³⁷⁸.

There is no universal approach to what teaching methods are better. Each group of teaching methods has its advantages and disadvantages enabling the effective learning of one disciplines and being considered inappropriate for others. Moreover, the learning pyramid cited in the various pedagogic sources has found its proponents as well as opponents¹³⁷⁹, therefore its findings doesn't serve as the guidelines for everyone. Traditionally, the selection of methods of instruction is a prerogative right of teachers who make a decision taking into consideration the own experience, learning objectives, the target group and other criteria. The combination of various teaching methods results in the achievement of complex of the learning outcomes, however requires additional efforts and preparations from the teaching staff.

It has been already noted that there are few papers dedicated to the legal didactics in the researched countries, none of them analyses thoroughly the student involvement in learning. Therefore, the verification of the activity of law students is based on the findings of the empirical research conducted within the work. The law professors teaching in Poland and Belarus have been asked what teaching methods they know and they use in their work. Furthermore, the research also defines the teacher's motivation to use innovative tools and reasons to avoid the application of active and interactive methods. The

¹³⁷⁷ Л. Красницкая, *Структура интерактивного занятия*, in: А.С. Балашенко (ред.), *Обучение в юридической клинике (правовые основы, методики, юридическая техника и практикум)*, Минск, 2008, с. 76-77.

¹³⁷⁸ Е.М. Кропанева, *op.cit.*, с. 102-103.

¹³⁷⁹ The opponents point out to the lack of credible research supporting the percentage of student retention. There are many variables affecting memory retrieval: age, the content of the material, delay between test and study, etc. D. Willingham, *Cone of learning or cone of shame?* 2013; J. Lalley, R. Miller, *The learning pyramid: does it point teachers in the right direction?* Education, 2007, № 128 (1), p.64-79.

findings demonstrate that active and interactive teaching methods founded on the student-centred approach are occasionally used in law teaching in Belarus and Poland, although law professors know such methods and have heard about their effectiveness. In the opinion of the law professors the student-participatory methodology is not the end in itself and should be applied in a proper place and time. Nevertheless, the law professors involved in clinical legal education demonstrate higher motivation to use the student-centred teaching tools in their regular classes than the law professors without the clinical background.

Both Belarusian and Polish law teachers mention a great range of teaching methods they know. Lecture and audio-,video-presentation, group work and work in pairs, brainstorming, moot court and mock trial are the most often mentioned answers. Moreover, 13 Belarusian and 9 Polish respondents arrange the methods in the groups by different characteristics. The passive-active-interactive classification, the division of methods whereby the expected outcomes to be achieved and the classification of methods with the focus on the training of a particular competence demonstrates the broad awareness of the teaching staff of legal pedagogy. *The division of teaching methods on active, passive and interactive started in 1990 when the training courses and seminars on human rights education were organised and the background of the law didactics were taught within the trainings* (Igor, Belarus). At the same time, it is worth to underline that some law professors in both countries demonstrate the knowledge of innovative teaching methods based on the student involvement in education. *I know many good methods enabling the active involvement of students in learning. There are SWOT, snow ball, debate, take a stand and others* (Barbara, Poland). *Oxford debate and Socrates dialogue are learning methods that I know but not often use* (Piotr, Poland). *Jig saw is a very effective way to transfer a lot of data to students and at the same time to make them active participants of the learning process* (Ruslan, Belarus). *Teaching others is a method with the high data retention rate, however it requires the preparation and sufficient time frame* (Yulia, Belarus). *A collage, simulations, quizzes prepared by students are the methods that positively accepted by law students in my classes* (Hanna, Poland). As it has been mentioned earlier in the research, the teaching staff has many sources to learn the fundamentals of pedagogy and didactics and many teachers benefit from them. The backgrounds of pedagogy and andragogy within the formal postgraduate education, external seminars and self-education, including online learning, provide the possibility to gain the experience required for effective teaching. A particular role for the development

of pedagogic skills plays clinical legal education where law professors learn innovative teaching methods and apply them in practice.

During the research the respondents demonstrate the high overall knowing of teaching approaches in legal education and their outcomes. The law teachers in Belarus and Poland know and can describe the traditional teaching methods along with the innovative approaches in legal education directed to the interaction of students with each other, self-education and reflection. However, 4 of 40 respondents show their scanty knowledge of teaching methods and the low motivation to develop it. *I have heard about interactive teaching methods but I am not good at them* (Agnieszka, Poland). *I know the methods that I mainly use in my classes – lecture, seminars, PowerPoint presentation, student’s presentation* (Olga, Belarus). There are also comments demonstrating the improper usage of the pedagogical vocabulary. *The method I know and like very much is problem-based learning, it is an alternative to boring lecture*¹³⁸⁰ (Tamara, Belarus). *At our university we have a limited level of freedom in regards of methods. Certain classes are to be taught as lectures, meanwhile others are seminars or practical lessons*¹³⁸¹. *We can’t change their form as they are prescribed by the syllabus and plan* (Krzysztof 2, Poland). Such responses demonstrate the inappropriate quality of the training and development of teaching staff. The qualitative education means that law teachers have an expertise in the subjects they teach and know how effectively to transfer knowledge and skills to students. It is important to highlight that these single responses compose the minor imperfection pointing to the lapses in the training of academic staff. Therefore, it is important to encourage the academic teachers to develop their didactic competences and to create opportunities for teachers to grow professionally. For instance, higher education institutions can initiate the internal seminars on didactics and support the interdisciplinary research projects on law teaching. The conferences and round tables dedicated to legal education should raise the actual issues of law interpretation along with legal didactics.

The application of active and interactive learning methods in higher education is one of the possibilities to ensure the active involvement of students in learning. The perception of learners within higher education differs from the teaching approach in secondary school.

¹³⁸⁰ Problem-based learning is rather called a student-centred approach or methodology, however in the doctrine sometimes one may find its description as a teaching method. J. Figurski, T. Ornatowski, *Praktyczna nauka zawodu*, 2000, s. 18; W. Okoń, *Wprowadzenie do dydaktyki ogólnej*, Warszawa, 2003, s. 237; F. Szlosek, *Wstęp do dydaktyki przedmiotów zawodowych*, Warszawa, 1995, s. 83.

¹³⁸¹ The respondent might misunderstand the notions of teaching methods and forms. A form of teaching is a organisational way of learning process, a metod is seen a mode of intercation of a teacher with learners. The legal pedagogy defines the following form of learning: lecture, seminars, practice, conference, legal clinic, final thesis, essay and others. К. М. Левитан, *Юридическая педагогика*, Москва, 2008, с. 187, 235.

Students of higher education institutions are adult and capable to learn independently or with the limited supervision. Hence, the creation of the conditions in education when law students investigate, learn and discover the essence of law with a big level of liberty and involvement matches with the idea of acceptable education based on the student-centred methodology.

Every single law teacher participating in the empirical research claims that he or she uses all spectrum of learning methods he or she knows in the law classes. However, the proportion of methods based on the passive perception of information by law students is much higher than the application of active and interactive methods in both countries. *In fact, interactive methods are applicable in any work with students – during lecture, seminar or practical class. However I can't replace the entire lecture with the interactive education, but I introduce some elements of active learning in all my classes. It may be 15 minutes during lectures and 30-45 minutes of practical seminars (Ruslan, Belarus). During lectures I often maintain a dialogue with students if they are responsive. Every second seminar is organized with the application of interactive teaching (Nadezhda, Belarus). 20% of lectures and 50% of practical classes consist of active and interactive learning methods (Liudmila, Belarus). I use very often active methods (about 60-70% of the lesson plan) and sometimes interactive methods, such as a group work, each one teach one, which amount to about 30% of the lesson plan (Denis, Belarus).*

Polish colleagues demonstrate the similar approach in law teaching when the interaction of law students with each other is limited to a group work on a case study or a group discussion. *In the contemporary world of IT technology, fast changes and the variety of interests I can hardly imagine a lecture in the form of reading of a book. Therefore, my collaboration with students is based on the application of different methods. During lectures I always communicate with them. In the practical classes I avoid repeating the material from lecture, hence I force them to work independently or all together. For example, I split students in groups or assign a personal task. I more often use active teaching methods, than interactive ones (Rafał, Poland). Students don't have sufficient knowledge in order to collaborate with each other during lectures, so I share with them my knowledge and draw very often schemes on the blackboard. Active and interactive methods are mainly used in the seminars only (Ewelina, Poland). I may ask students to write a contract clause in a small group while I am conducting a lecture on the civil law, however it is rather an exception and takes 10-15 minutes only to switch their attention. In the seminars I more often organize a group work or group discussion (Piotr, Poland). During*

lectures when I have 100 students I don't organize a mock trial, but can sometimes prepare a role play or use brainstorming, snow ball, SWOT. Teaching smaller groups I am eager to practise all diversity of active and interactive methods. My students prepare a collage, watch films and teach each other on different issue of international criminal process (Barbara, Poland).

Although Belarusian and Polish law teachers admit that they use all diversity of teaching tools in legal education, their detailed answers illustrate the occasional application of student-participatory teaching methodology¹³⁸². Passive teaching methods such as lectures and PowerPoint presentations are mixed up with questions and answers, discussions and case study. The pure interactive learning tools based on the tight cooperation of the learners with each other and encouraging law students to self-education and reflection rarely exceed one third of time of the learning activity. It is not surprisingly that the results of student survey cited above demonstrate the low satisfaction of students in learning process. Law students are perceived the passive recipients of knowledge gathered and delivered to them by the experienced law teachers. The broader application of active and mainly interactive methods in legal education will improve the quality of higher education, encourage law students to the personal and professional development and increase the satisfaction of law teachers from their work. The law teachers that use innovative teaching methods in their law classes call the following justification to continue doing it:

1. Giving the feedback to the law professor the learners express huge satisfaction from active participation in learning and demonstrate higher scores in the assessment in comparison with other students (11 respondents from Belarus and 13 respondents from Poland).
2. The educator tries to do his best and feels satisfied with the results of the own efforts (9 respondents from Belarus and 10 respondents from Poland).
3. The time of classes passes fast (4 respondents from Belarus and 2 respondents from Poland).

¹³⁸² The legal doctrine affirms that the dominating pedagogical practice in Poland is based on traditional knowledge [in contrast to skills and values] and/or teacher-centred teaching methodology. This is considered an obstacle in obtaining the learning outcomes defined in syllabi in their fullness. K. Mamak, K. Kowalska, E. Milan, P. Klimek, *The past, present and future of clinical legal education in Poland*, International Journal of Clinical Legal Education, 2018, Vol 25, No 2, p.108.

4. The combination of active and passive methods helps to prevent tiredness and total exhaustion of both the teacher and students (3 respondents from Belarus and 1 answer from Poland).

Some respondents justify their interest to the innovative teaching tools by other, no less important reasons. *Once participating in the interactive training I was inspired and even encouraged to conduct my classes in the similar way. "You can also do it" was said to me and this challenged me. I am glad that I didn't step back and accepted the challenge. I have grown professionally and personally* (Magdalena 2, Poland). *The role of a teacher of higher education is to support students in learning, but not teaching. I try to do my job well and use the active and interactive methods to create the supportive environment for learning of law students* (Tatsiana, Belarus). *Asking to repeat the material of lecture I will verify the memory of a student. During the interactive classes I can evaluate knowledge, skills and sometimes their values* (Denis, Belarus).

Although the effectiveness of active and interactive learning methods is demonstrated by the pedagogic doctrine and different research, it is important to emphasize that these learning methods are not the end in themselves. They serve a helpful tool to achieve the educational goals defined by the law teacher and prescribed by the learning programme. A method will bring good results when its application works for fulfilment of a certain task, but not for the sake of its use. For gaining of knowledge one methods will work well, for practising skills other tools should be used, for the assessment of student development the law teachers may apply a complex of methods. It is worth to agree with Kropaneva that a law teacher can benefit more from the variety of learning methods in the class than from the permanent use of the best and most effective method¹³⁸³. The same justification one may find in the comments of the law teacher participating in the research. *Some time ago I carried out an experiment on students. In my classes on constitutional law I used only interactive methods during all semester. In the end, I made a conclusion that in higher education this is not the best way of teaching. I strongly believe that the combination of all teaching methods enables to achieve better results and complete the educational goals of the formal education* (Aleksandr, Belarus).

In the light of the international standards higher legal education in Belarus and Poland could be recognized acceptable to the larger extent if legal didactics promotes the more often application of active and interactive methods in all its diversity. In order to give any

¹³⁸³ E.M. Кропанева, *op.cit.*, с. 98.

recommendations for the improvement of law teaching in the researched countries it is essential to understand the teacher's motivation to avoid the use of the student-centred methods in higher education. In the literature on law teaching one may find the mentioned below reasons why law teachers in the Russia and Eastern Europe are not eager to apply the innovative approaches in education¹³⁸⁴. The findings of the empirical research prove that the statements are applicable to the higher legal education in Poland either.

Firstly, the fixed forms of education defined in the syllabus prevent to organize interaction during lectures. *I have to follow the approved syllabus, some topics can hardly be presented in other way than a lecture* (Sergei, Belarus; Izabela, Poland). Moreover, if the schedule prescribes to conduct a particular number of lectures it assumes that over 100 students will attend it, for truly interactive trainings the number of participants should not exceed 30. *I can't conduct role games or simulations if 150 students are sitting in the auditorium* (Agnieszka, Poland). *If a lecture is assigned it means I have to deliver the material to students. We can't change the form of education as it is prescribed by the syllabus and plan* (Krzystof 2, Poland; Liudmila 2, Belarus).

Secondly, it is insufficient teacher training. Beyond all doubt, a range of the applied methods is limited by the knowledge and experience of a law teacher to use these tools. Law teachers don't know how properly to use student-centred methods in their very academic classes. *Everyone uses those methods which he or she understands well and knows how they function. If someone knows only lecture and believes that this method will enable him or her to achieve the expected learning outcomes it will be the main teaching tool for such educator* (Barbara, Poland). *The didactic course on higher education is taught for Ph.D students in the amount of 10 academic hours. It is not enough to become a good teacher. Moreover, among law teachers one may find many people having a second job as the main one, they didn't learn pedagogy at all* (Alesia, Belarus).

Thirdly, one of the reasons is a failure to understand the essence, power and effectiveness of the interactive learning. This reason results from the previous statement. *I am scared to use a new teaching method unless it was tested on me personally* (Ruslan, Belarus). *I don't use innovative methods because I think that law students are not familiar with the material required for the effective performance of the task* (Tadeusz, Poland) In fact, active and interactive methodology works well with the new data as well as the gained earlier experience of learners. Law students can work with the new material during the

¹³⁸⁴ Ibidem, c. 112.

interactive class if it is provided by the educator. Additionally, law teachers wrongly perceive these methods as entertainment for fun. *These innovative methods are less known by us, law teachers. We were taught to be lawyers, but not educators. I am personally not fond of them because they are a kind of games than a tool to teach* (Evgeni, Belarus).

Fourthly, teaching prevails learning in the teacher's objectives. Some respondents care of the completion of the learning programme and the preparation of students for the assessment. The development of long-term universal competences such as critical thinking, analysing, negotiating, reflecting and self-learning is sidelined by the necessity to fulfil the formal programme. *When I conduct a lecture or maintain a dialogue with students asking questions I manage to deliver more material required for their examination than if I use interactive games* (Agata, Poland). *If I had to select between a deep analysis of one case study or a fast analysis of a few cases I would follow the first approach. Deep learning is my motto, however I know that many my colleagues try to provide more information to students instead of the thorough work with the same case* (Mikołaj, Poland). *My hands are tight with the content of the syllabus. If a control happens during my classes I have to prove that during a lecture students receive a certain volume of information, at the seminar we resolve particular cases from the approved plan* (Ekaterina 2, Belarus).

The fifth reason is efforts-outcomes ratio. The preparation before the implementation of the student-centred methods requires time which law teachers don't often possess. *The thorough preparation and testing of the material for simulations or mock trial took 5 years, during the next 15 years I only benefit from them selecting one of the totally ready case studies. The writing of a simulation takes about a week* (Barbara, Poland). For the comparison the preparation of the content of a 1-hour new lecture takes about 6 hours¹³⁸⁵. *I believe that laziness of teachers is also a reason. It is easier to read the text composed 6 years ago than to prepare the totally new handouts and an interactive lesson plan where each minute is controlled* (Yulia, Belarus). *Law teachers with many years of the pedagogic experience have already the developed lessons. Why will they change them to something new?* (Tatsiana, Belarus).

The last but not least reason is responsiveness of learners to these learning methods. *No every student is interested in drawing of schemes or putting efforts in analysing. Some of them select the easiest way of learning, i.e. to merely repeat the text of lecture provided*

¹³⁸⁵ Ibidem, c. 54.

by the professor. It is hard to encourage those students to active learning (Katarzyna, Poland).

Although the Ph.D degree is required to enter the academic profession in Belarus and Poland, the teacher training is not satisfactory. Law teachers don't reach the sufficient level of teaching proficiency during doctoral studies. Moreover, there are legal exceptions enabling to teach in higher education institutions without teaching competences. The application of the innovative teaching methods in legal education has an occasional character. Analysing the reasons of avoidance of the student-centred teaching methods in higher legal education it is recommended to enrich the content of the teacher training and continuing professional development course with the information of student-centred teaching methodology. It is also important to provide the opportunity to law teachers to see these methods in action, in particular to teach academic staff by the means of such methods. Traditionally, in the selected countries the promotion of teachers is based on their research outcomes. Giving teaching due parity with research is a recommendation to all European countries striving to improve teaching and learning in higher education¹³⁸⁶. The encouragement of academic staff, in particular seniors and those who are in the middle of the career, to invest in being a good teacher will be rewarded appropriately. The more the teachers organise classes with the focus on learners the more often the students will express their interest and satisfaction from such learning. Education in general and tertiary education particularly must look at learners as active participants in the educational process. By means of the innovative teaching methods students can learn law in action expanding knowledge, practising professional skills and, what is more important, developing their social values that constitute the essence of human dignity. The methods of provision and the content of higher education enhancing the human dignity of learners are preconditions to call education acceptable.

In the light of the 4-A scheme clinical legal education that is widely spread in Belarus and Poland deserves a high appraisal for the formation of the acceptability of higher legal education. On the one hand, clinical education based on the active and interactive teaching methods creates the student-participatory environment for learning. Clinical methodology is based on the principle "learning by doing" when law students provide legal support in real or simulation cases and thereby learn a certain provision of law. In the live client clinics the law students perform the role of lawyers of vulnerable clients and face the

¹³⁸⁶ *Modernisation of higher education in Europe: Academic staff 2017*, Eurydice, 2017, p. 18.

problems of legal character interwoven with moral and societal issues. Being an active player the students develop all spectrum of learning outcomes, they gain professional knowledge and skills as well as develop and enhance their human sensitivity to inequality and injustice. On the other hand, clinical legal education is also valuable for law teachers what is confirmed by the findings of the survey. The results of the application of interactive teaching methods in clinical education motivate academic staff to use them in the traditional legal courses and encourage for the professional development of didactic skills. *I have learned the teaching methods during my internship in the legal clinic. Nowadays I use them in the trainings in legal clinic as well as in my regular law classes* (Barbara, Poland). *Fewer students select the course which is taught in a traditional, sometimes boring way* (Katarzyna, Poland). *The experience of educator that I possess now has been created mainly by clinical legal education. Besides the knowing of clinical methods of teaching I have met wonderful people and learned the different systems of education. The experience of others serves a pointer to the directions of my personal development* (Ekaterina, Belarus). *I often think that I would not continue Ph.D studies and would not work at the university if I had not experienced the clinical legal education as a student and later as an educator* (Liudmila, Belarus).

Summarizing the findings of the research in regard to the student-participatory environment it is worth to underline the following. Quality teaching results in quality education when the university graduates not only complete the approved programme and obtain a professional title, but also demonstrate the capacity to deal with challenges in the changing conditions independently and with confidence. Recognition of law students as mature learners demands the implementation of the student-centred approach in education and requires the changes of teaching methods used by academic staff. Good teaching is neither a skill to force nor the ability to persuade a student to learn. It is an art to create conditions in which the student convinces himself to learn. According to the doctrine active and interactive learning methods succeed to reach this goal. However, the findings of the research illustrate that the creation of the student-participatory environment faces various obstacles both on the side of academic staff, students and the system of higher education.

5.7.3. Human dignity and discipline in higher education

One of the elements of the acceptable higher education is the provision of education in the conditions ensuring the human development and enhancement of the human dignity,

self-esteem and self-confidence. Teaching the legal ethics and human rights, combining the problems of law application with the social aspects of justice, focusing on the societal values in law teaching academic staff supports the enhancement of student's dignity. On the other hand, the acceptable education means also the protection of learner's dignity from humiliation and inappropriate treatment by the personnel and other students. Nowadays it is difficult to imagine the administration of corporal punishment in higher education in Europe, the cases of suspension or expulsion from higher education institutions as a disciplinary punishment for pregnancy is not permissible either.

However, the cases illustrating partiality and intolerance against racial, religious and ethnic groups or on other grounds of diversity still occur in higher education institutions, but they have latent character. A female student of the law faculty of the John Paul II Catholic University in Lublin failed a credit for the family law course when the professor learned about her child born out of wedlock¹³⁸⁷. Another case almost happened between law students at the Belarusian State University. During the course on international law a debate on the migration issues was organized, Belarusian and foreign students were presenting the legal arguments to support their opposite opinions. At one moment their arguments went out of the sphere of law and touched the personality of the opponent. The law teacher immediately interrupted the debate¹³⁸⁸.

The human dignity is innate in every human being. Becoming students of higher education institution the learners don't lose it. The task of higher education is to create conditions of learning where the human dignity of both learners and educators is protected from any infringement and, moreover, enhanced. In the doctrine there is no a universal definition of dignity, the notion of dignity takes its roots from the ancient times and can be found in the works of different philosophers. It is not an objective of the current research to define the essence of the human dignity. However the understanding of the notion is necessary to consider whether the efforts of all stakeholders in education are directed to the development of human personality and the recognition of the inherent dignity.

The human dignity is understood in the literature in four meanings¹³⁸⁹. The first meaning is the inherent characteristic of everyone to be treated well. The feature belongs to

¹³⁸⁷ The case was told to the scholar in the private conversation with the participant of the international conference at which the scholar presented the current thesis. The academic abuse of authority took place in 2010.

¹³⁸⁸ The story was told by the respondent from Belarus taking part in the empirical research of the scholar.

¹³⁸⁹ D. Orłowska, M. Tomkiewicz, *Materiałne podstawy odpowiedzialności dyscyplinarnej studentów*, w: P. Skuczyński, P. Zawadzki (red.), *Odpowiedzialność dyscyplinarna: podstawy, procedura i orzecznictwo w*

human beings by virtue of the human existence. The second meaning considers the dignity as an award for the quality of human behaviours, in other words it is a human merit. The human dignity is seen as the feeling and self-esteem of being a respectful person, of occupying an important position in the society, of being needed. The last meaning of the dignity is expected from particular social groups in connection with their professional duties. It is often called the professional dignity. The international treaties concerning the right to education reaffirm the importance of assurance of environment that fosters respect for the human dignity without the precise clarification of its meaning. The human dignity of participants of the educational process is reflected in different dimensions. Students and academic teachers are treated as human beings with due courtesy and respect. Occupying the high rank among other social groups their perception of themselves and by others is modified. Performing a particular role in the system of higher education they are bound with the professional rules.

The notion of the human dignity is deeply incorporated to the context of the disciplinary liability and professional ethics of student and academic teacher. Although being a learner is not meant the performance of the professional activity the status of the student of higher education institution implies higher moral obligations and requirements to behaviour. Thinking of the dignity of students the moral virginity is not required from them. At the same time it is worth to underline that current students will become the elite of the society after the graduation, they therefore must avoid any conduct inconsistent with the worth of the members of the elite strata¹³⁹⁰. Academic teachers occupy the position of trust and confidence, they have considerable influence over their students by virtue of their work. The Socrates's metaphor comparing teaching to midwifery¹³⁹¹ when students are leaded by the teacher towards the truth vividly describes the power of academic positions. Misbehaviour or moral misdemeanour of academic staff results in the creation of wrong ideals or the loss of respect for teachers. Undoubtedly, the norms of the ethics and disciplinary liability serve the frame of proper conduct expected from the members of academia. They are guidelines for students and academic staff how to behave and treat others with dignity and respect. On the other hand, the norms of disciplinary liability

sprawach studentów Uniwersytetu Warszawskiego 2000-2005, 2008, s. 49-52. R. Kleszcz, *O godności nauczyciela akademickiego*, Nauka-Etyka-Wiara, 2011, s. 392-402.

¹³⁹⁰ R. Gietkowski, *Odpowiedzialność dyscyplinarna studentów Uniwersytetu Gdańskiego: procedury, przepisy, orzecznictwo*, 2011, s. 10.

¹³⁹¹ P. Gonzales, *op.cit.*, p. 4.

prescribe the punishment to be given for the wrong act and thereby prevent from depreciation of someone's dignity.

The national legislation of the both researched countries contains the provisions on the disciplinary liability of students. The Code on education in Belarus assigns two chapters to provide the definition of the notion and to define the prerequisites of the liability, the procedure and the types of punishment¹³⁹². In Poland the Law on higher education and science provides the regulation on disciplinary liability of students in the similar scope¹³⁹³. In a nutshell, disciplinary liability can be administered for a failure or improper performance of the student's duties enshrined in the legislative acts and the internal regulations of the higher education institution. Additionally, according to Article 307 of the Polish Law on higher education and science the conduct detracting the student reputation and dignity is a sufficient separate cause to initiate the disciplinary investigation. Unlike the legislation in Poland the Belarusian law on the liability doesn't refer literally to the humiliation of the human dignity as a background of the disciplinary procedure. However, it results from the analysis of the list of student's obligations defined by the Code on education. Learners must seek to the moral, spiritual and physical development and self-improvement and respect the honour and dignity of other participants in the educational process¹³⁹⁴. The internal regulations of higher education institutions contain the broader list of student's duties, including those mentioned in the Code on education. For example, the statute and the internal rules at the Belarusian State University define the obligation of students and employees of the university to avoid any acts offending the human dignity of other members of academia¹³⁹⁵. In Poland the internal rules of universities repeat the wording of the Law on higher education and science and often expand the list of the student's moral obligations. The Statute of the Gdansk University describes the acceptable behaviour of learners as "behaviour compliant with the wide recognized academic traditions and good practices and in line with the made oath"¹³⁹⁶.

Thus, the provisions prescribing to students the high moral conduct and respect for the human dignity can be found in the national law as well as in the internal rules of higher education institutions in Belarus and Poland. The infringement of these rules stipulates the

¹³⁹² Кодекс об образовании, ст. 126-136.

¹³⁹³ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 307-321.

¹³⁹⁴ Кодекс об образовании, ст. 32 ч. 1 п. 1.2, 1.4.

¹³⁹⁵ Устав Белорусского государственного университета, утв. Указом Президента Республики Беларусь от 16 июня 1999 № 334, НРПА 1/435 с изм., п. 28. Правила внутреннего распорядка для обучающихся в Белорусском государственном университете, утв. приказом Ректора от 14 марта 2007 № 111-ОД, п. 5.5, 5.19, available at <https://www.bsu.by/main.aspx?guid=12791> [accessed on 27 July 2018].

¹³⁹⁶ R. Gietkowski, *op.cit.*, s. 9.

disciplinary investigation with the possible expulsion from the higher education institution. These rules are spread over all students regardless of the form and type of studies, the selected faculty. Besides the formal provisions concerning the ethical behaviour of learners there are “soft law” sources, such as an ethical code, moral rules etc. A few of the adopted documents are addressed to law students as future representatives of the profession of high moral standards. One can read the Ethical code of students at the Brest State University¹³⁹⁷, the Code of ethics and moral rules of law students at the Belarusian State University¹³⁹⁸. In Poland the adoption of the ethical regulations in higher education was started more than two decades ago. Nowadays it is hard to find the higher education institution that doesn't possess the academic ethics or the code of moral rules of students¹³⁹⁹. The ethics for law students at the Warsaw University were delivered through the periodic publication titled Rules of Ethics of Law Students¹⁴⁰⁰.

The demonstrated above analysis of the legal norms concerns the student's obligation and liability oriented towards the respect for the human dignity. It is important to pay attention to the fact that academic staff is also a part of academia and interacts with colleagues and learners. Higher education can be considered unacceptable in the light of the international treaties due to the misconduct of academic teachers. So the scope of disciplinary liability is expanded to academic staff accordingly. In Poland the Law on higher education and science provides the clauses on disciplinary liability of academic teachers in the similar with student liability content. According to Article 275 teachers of higher education institutions take on disciplinary liability when the following conditions are occurred together or separately: undue performance of teacher's duties or/and behaviour inconsistent with the reputation of academic profession. While the scope of professional teacher's duties is presented in Article 115 and some clauses of Articles 125 and 127, that can be somehow measured, there is no a description of proper ethical behaviour of teachers due to its philosophical background. Nevertheless, some attempts to describe the unacceptable ethical behaviour of academic staff is made in Article 287, it

¹³⁹⁷ Этический кодекс обучающихся учреждения образования “Брестский государственный университет имени А.С. Пушкина”, утв. приказом Ректора от 30.10.2010 *available at* <http://www.brsu.by/div/normativnye-dokumenty> [accessed on 27 July 2018].

¹³⁹⁸ Морально-этический кодекс студента юридического факультета Белорусского государственного университета, 17 марта 2007, *available at* <https://law.bsu.by/student/moral-and-ethical-code.html> [accessed on 27 July 2018].

¹³⁹⁹ *Kodeks Dobre Praktyki w Szkołach Wyższych*, opracowany przez Fundację Rektorów Polskich i uchwalony 26 kwietnia 2007 roku, Kraków, 2007, s. 5.

¹⁴⁰⁰ *Zasady etyczne studentów prawa*, Uniwersytet Warszawski, Warszawa, publikacja coroczna w 2003-2006.

concerns plagiarism, honesty in research, receipt of material gifts and other examples. Due to the vague wording of Article 275 defining the prerequisites of disciplinary liability it is considered true that the perception of dignity is not limited to the workplace of academic teachers, but includes their social and public life, private relations¹⁴⁰¹.

There is no a formal clause in law prescribing to teachers to treat learners and colleagues with respect recognising their human dignity. Like moral rules it is a widely accepted rule of human interaction irrespective of the profession. The guidance by the principle of trust, respect and tolerance towards any kind of behaviour, opinions and the mode of life appropriate to law is one of the fundamental rules of good practices adopted in higher education¹⁴⁰². The clause stating the provision of higher education in a spirit of respect for the human dignity can be found in the fundamental documents of the universities in Poland¹⁴⁰³. They refer to the entire academic society. In regard with academic staff it is important to refer to the Good manners in science¹⁴⁰⁴ and the Code of ethics for research workers¹⁴⁰⁵. Teachers play different roles in academia – a researcher, an educator, an expert, a manager and others – each of which requires a particular model conduct in the light of ethical regulations. The rule to behave so by recognising the human dignity of others whether it is students, colleagues or a target group of the research is an initial principle of the ethics of humankind¹⁴⁰⁶. Humanity and humanism cover the world of science like they bound the rest of humankind. Occupying the high rank in the social hierarchy scientists shall meet the additional requirements. Selecting human beings as the subject of the research the scientist should conduct the procedure in a manner which does not degrade human dignity or violate humanitarian principles¹⁴⁰⁷. In the role of academic teacher he or she must respect the human and civic rights of students and treat the learners with benevolence and due respect¹⁴⁰⁸. The chapter 4 of the Good manners in science in

¹⁴⁰¹ H. Izdebski, J. Zieliński, *Prawo o szkolnictwie wyższym. Komentarz*, Warszawa, 2013, s. 355.

¹⁴⁰² *Kodeks Dobre Praktyki w Szkołach Wyższych*, *op.cit.*, s. 8.

¹⁴⁰³ Statut Uniwersytetu Wrocławskiego, uchwała Senatu nr 32/2012 z dnia 25 kwietnia 2012 ze zm., para.2, available at <http://www.bip.uni.wroc.pl/188/66/statut-universytetu-wroclawskiego.html> [accessed on 28 July 2018]. Statut Uniwersytetu UMCS, uchwała Senatu z dnia 14 czerwca 2006 ze zm., para.4, available at <https://www.umcs.pl/pl/statut-umcs.2457.statut-umcs-tekst-ujednolicony.2593.chtm> [accessed on 28 July 2018].

¹⁴⁰⁴ *Dobre obyczaje w nauce. Zbiór zasad i wytycznych*, Warszawa, 2001. The text was adopted by the Committee for Ethics in Science at the Board of the Polish Academy of Sciences in 1994. The document is considered a successful attempt to define the fundamental ethical rules of academic staff in Poland.

¹⁴⁰⁵ *Kodeks etyki pracownika naukowego*, Warszawa, 2017. The initial text was adopted in 2012, then amended in 2016 taking into account the comments of the academic community. The document is focused primarily on preventing plagiarism and carrying out honest research.

¹⁴⁰⁶ *Dobre obyczaje w nauce*, pkt 1.1.

¹⁴⁰⁷ *Ibidem*, pkt 2.5.

¹⁴⁰⁸ *Ibidem*, pkt 4.1.

each statement contains the recommendations how to create the learning environment consistent with the dignity of students. Thus, the form of teaching, the equipment and the schedule of classes are provided with care of student's interests¹⁴⁰⁹. Students are assessed by their merits¹⁴¹⁰, not by the details of the private or social life. There are also other rules composing the image of an academic teacher of high moral standards.

For justice sake, R. Kleszcz says that the adopted ethical standards may differ from the beliefs of academic teachers and even their factual behaviour within and outside of the university¹⁴¹¹. The facts of misconduct violating the norms of the professional ethics occur in academia occasionally or systematically forcing the scientific society to work on the development. E. Łojko admits the collapse of academic ethos, including the prestige of teaching profession. "We often treat students like they are amorphous mass. We have neither the willing nor the necessity to reach their individual interests and demands. It is rather an accident if academic teachers make students aware of their abilities and talents. They [students] are perceived in our vision like half-educated people. We use our didactic skills to convince students of their low knowledge of the taught subject instead of motivating them to the deep study and raising their interest to the topic. The observations prove that academic teachers more often express their dislike to students than sympathy and respect"¹⁴¹². The findings of the interviews given by the law teachers illustrate the opposite – good – side of teaching profession when law teachers inspire, motivate and encourage the learner's development and receive the good feedback on their efforts. However, it is hard to contest that the situations described by E. Łojko don't take place in higher legal education in Poland.

At the end it is important to emphasize the role of ethics in the academic profession. Although the cited above documents are not strict codes in the legal perception, they are aimed to build awareness and promote a sense of moral responsibility in the world of science. The authors of ethical rules pay attention of the academic community to a loss of values in science, provide motivation to take responsibility for such situation and to improve it. They seek to "fight against the weakness of human nature in order that the bad

¹⁴⁰⁹ Ibidem, pkt 4.2.

¹⁴¹⁰ Ibidem, pkt 4.4.

¹⁴¹¹ R. Kleszcz, *op.cit.*, s. 397.

¹⁴¹² E. Łojko, *Etyczne problemy kształcenia prawników w świetle badań nad studentami WPiA UW*, w: E. Łojko (red.), *Etyka prawnika. Etyka nauczyciela zawodu prawniczego*, Warszawa, 2010, s. 114-115.

be eliminated from it and the reliability and prestige of work in science and higher education assured”¹⁴¹³.

In Belarus the commitment of academic teachers to students and to the profession is included in Article 53 of the Code on education. The clause enumerates seven main duties of pedagogical staff without the division of employees according to the level of education. Two of them concern the professional ethics of educators. All teachers, including academic staff of higher education, are required to perform their professional work obeying the legal, moral and ethical rules¹⁴¹⁴. They also must respect for the honour and human dignity of learners as well as other participants of the educational process¹⁴¹⁵. Obviously, the professional obligations of academic staff are not limited to these seven duties, moreover they neither illustrate the specifics of work in higher education institutions. The full description of teacher’s duties can be provided by national legal acts, the statute and other internal regulations of an education institution, a labour or civil contract signed by an employee and employer¹⁴¹⁶. In higher education the rights and obligations of the personnel employed in higher education institution is regulated by the norms of labour law. The institute of professional liability of academic teachers is regulated by labour law either. According to the Labour code each employer must draw up the internal labour regulations of the entity and inform each worker with its content which includes the rules of employment and dismissal, employee and employer’s obligations, working schedule, the award procedure, the disciplinary liability¹⁴¹⁷. Hence, the major source that may describe the acceptable moral behaviour of academic staff and the disciplinary measures for the undue performance of the professional duties is the internal labour regulations of the institution.

The content of the internal labour regulations adopted by the Belarusian universities don’t differ much between each other since they are written on the draft of the model regulations adopted by the Ministry of Labour¹⁴¹⁸ and enriched with the provisions of the Code on education. Considering the teacher’s obligation to obey the ethics and moral rules it is worth to admit that the neither the national legislator, nor the academic society in Belarus has produced the code of professional ethics for academic staff. There are no any

¹⁴¹³ *Dobre obyczaje w nauce*, przedmowa, s. 6.

¹⁴¹⁴ Кодекс об образовании, ст. 53 ч. 1 п. 1.2.

¹⁴¹⁵ Ibidem, ст. 53 ч. 1 п. 1.3.

¹⁴¹⁶ Ibidem, ст. 53 ч. 2.

¹⁴¹⁷ Трудовой кодекс, ст. 194-195.

¹⁴¹⁸ Постановление Министерства труда Республики Беларусь об утверждении Типовых правил внутреннего трудового распорядка от 05 апреля 2000 г. №46, НРПА 2000, 8/3389 с изм.

consolidated written rules defining the ethical norms for researchers, educators and other roles that are performed by academic staff. At the same time the norms of professional ethics are discussed in the doctrine¹⁴¹⁹ and future academic teachers study the course of pedagogic ethics within their doctoral studies. The merely adoption of the code of ethics in higher education will not resolve the problem of academic misconduct or amoral behaviour of the members of academic community. However, the development of the code of ethics increases the chance of teachers to behave according to the expected model of conduct. Nowadays the protection of human dignity during the social interaction of academic teachers with students, colleagues and entire scientific community is ensured by the following requirements to academic staff enshrined in the internal labour regulations:

- to be polite and respectful, to behave in accordance with the academic traditions;
- to encourage the independence, creative thinking and scientific curiosity of students;
- to respect the personal dignity of students and colleagues¹⁴²⁰;
- to conduct the scientific activity with the respect for human rights and freedoms, with the care of health of others;
- to maintain the healthy lifestyle and to set a pattern for others¹⁴²¹.

An unlawful failure or undue performance of the professional duties by academic teachers causes the measures of disciplinary liability. As it has been illustrated, the professional duties embrace both labour obligations and ethical requirements. The institute of disciplinary liability is regulated by the norms of the Labour code¹⁴²². The legislation in Belarus and Poland protects the human dignity of the members of academia. The notion of dignity is meant in different context, the legal doctrine therefore doesn't provide a universal meaning of the term. The human dignity of both learners and academic teachers is subject to protection according to the norms of disciplinary liability. Participants of the educational process must care of their dignity as the characteristic of human beings. Moreover, since they create the elite of the society, their behaviour must be consistent with the professional reputation and ethical rules of the community. The code of ethics or other forms of standardisation of moral templates of conduct serve as guidelines for students and

¹⁴¹⁹ Т.В. Мишаткина, *Педагогическая этика*, Ростов на Дону, Минск, 2004, с. 59-87.

¹⁴²⁰ Правила внутреннего трудового распорядка Белорусского государственного университета информатики и радиоэлектроники, утв. приказом ректора от 14 февраля 2007, п. 19.13, 21.3, 21.4, available at https://www.bsuir.by/m/12_100229_1_119042.pdf [accessed on 30 July 2018].

¹⁴²¹ Правила внутреннего трудового распорядка Белорусского государственного университета, утв. приказом ректора от 29 апреля 2013, п. 15.5, 16.9, available at <http://research.bsu.by/wp-content/uploads/2015/03/work-schedule.pdf> [accessed on 30 July 2018].

¹⁴²² Трудовой кодекс, ст. 197-204.

academic staff in their scientific and educational life. However, the level of codification of ethical norms in higher education and science differs in the selected countries. While the scientific community in Poland displays a diversity of separate documents concerning the academic ethics for students, researchers, teachers, the Belarusian higher education institutions incorporate the moral rules for the members of academia in the internal regulations of the entity.

Summarizing the discussion on the feature of acceptability the norms regulating higher legal education in Belarus and Poland can be considered mainly corresponding to the international recommendations. The national regulations assure the quality higher education that is directed to the development of human personality and the enhancement of the dignity of students. Despite the main aim of the system of higher education is to equip the national economy with qualified specialists, one may find the humanistic content in the programme as well as in law teaching. The programme of legal studies in both Belarus and Poland includes the courses on human rights, professional ethics and other subjects where matters of humanity, dignity, justice and others are incorporated in the curriculum, these courses are supposed to result in the development of learner's societal and civic values. However, it is hard to expect the high impact of them on all law students. The courses are mainly optional with the limited number of credits or often taught within other courses. The far-reaching influence on the learning outcomes and ethical conduct of law students is exercised by legal clinics. There law students face different aspects of infringement of legal norms, develop their *pro bono* culture and fight over justice in the interests of vulnerable people. Additionally, clinical legal education treats law students active participants of education and ensures them learning by doing. The acceptable higher education requires the student-participatory environment where learners are seen as active participants of education. Although the empirical research demonstrates the awareness of academic teachers of the student-centred methodology its usage in law teaching in Belarus as well as in Poland is limited. The reasons of it vary from the lack of academic freedom in higher education to the low personal motivation and insufficient competence of educators to apply the innovative methods in legal education. The role of students in the management of higher education institutions also vary in the researched countries. In Poland by virtue of the national law students are presented in the governing bodies of higher education institutions, they participate in different meetings as their members and speak out on the matters them concern. In fact, they actively exercise their right and affect the decision-making process. In Belarus the student's impact on the management of higher education

institution is rather nominal. The national law assures the student involvement in the management of the entity and educational process. However, the factual involvement is limited in the activity of the youth organisations which participate only in the development of scientific, cultural and sport sides of student life. The right of students to express their opinions on the matters of education and the life in the country in general is not ensured in its full potential, moreover students are subject to disciplinary liability for their active civil or political position.

5.8. Adaptability as a multilevel challenge for legal education

The last but not least feature of the 4-A scheme is adaptability of higher education. The right to education has the inherent dualism in its essence. On the one hand, it is an individual right of human beings, on the other hand it benefits the society in which it is provided. In this context it is necessary to analyze the adaptability of higher legal education in two dimensions: individual and collective. The first perspective illustrates how higher education can benefit the individuals and fits their cultural and social settings. The second approach demonstrates whether higher legal education in Belarus and Poland is adapted to the needs of the society and professional community.

5.8.1. Higher education and the diversity of individual's needs

Recognizing the diversity of people residing in the country the state ensures the right to education by the provision of “learning environment taking into consideration the national traditions, individual needs, merits and demands of learners”¹⁴²³. Describing the content of accessible higher education the attention is focused on the principle of non-discrimination and mentions special target groups, i.e. indigenous peoples, cultural and linguistic minorities, disadvantaged groups, for which the access to higher education should be provided on the basis of equality with others. Unlike primary education higher education is not compulsory, moreover the access to it is provided in a competitive way based on the student's merits. Being admitted to study in the particular conditions in higher education institutions, e.g. in a foreign language, students have to demonstrate their capacity to fulfil the requirements. There is no a legal obligation to ensure education in a native language of students. Nevertheless, the social and cultural diversity of learners should be taken into consideration by the administration and academic personnel of

¹⁴²³ Кодекс об образовании, ст. 3 ч. 7.6.

educational entities in other matters. Higher education degree is not an end which must be achieved by learners at any cost. It is a learning process based on the mutual cooperation of students, academic staff and other stakeholders. Hence, the adaptability of higher education to the different settings of learners as well as to the needs of changing society requires flexible curricula, the variety of teaching methods, different delivery systems, such as distance learning or evening education, and other modifications.

K. Tomasevski has described the adaptability of primary and secondary education in terms of learners with disabilities, working children and children under occupation¹⁴²⁴. Analysing the feature of adaptability it is worth to consider higher legal education in Belarus and Poland within the local context. Therefore, the following focus groups of learners are selected: working students, student-parents and pregnant women, liable for military service students, in case of the Belarusian reality, and disabled.

Students who combine their higher education with other activities, such as a job, family duties or medical treatment, may need a schedule of learning different than other students who are able to attend classes at the regular hours. In fact, the reasons of selection of a flexible path of education may be of personal, social or other nature. The admission commission, as a rule, doesn't require the proven justification of the selected form of education¹⁴²⁵ and entrants are free to consider various educational offers of higher education institutions. The Code on education defines a few forms of higher education in Belarus – full-time and part-time, evening studies¹⁴²⁶ and distance learning¹⁴²⁷. What is interesting is that the government in Belarus is entitled to limit the areas of science where education can be provided in the forms different from a full-time form. Over 80 specialisations, e.g. pedagogy, architecture and linguistic science, can be taught only in a full-time form of education, part-time and/or evening studies are not allowed¹⁴²⁸. Legal studies are not mentioned in the list, hence the Belarusian universities offer a various range of forms of education for law students.

¹⁴²⁴ K. Tomasevski, *op.cit.*, p. 31-39.

¹⁴²⁵ In Belarus the state-funded seats of part-time and evenings studies are available for employed entrants only. They must submit the labor contract or the self-employment certificate to the admission commission in order to be qualified for the enrolment process. Указ Президента о правилах приема, п. 13.

¹⁴²⁶ Unlike the approach in Poland where evening studies belong to a part-time form of education, in Belarus evening form of education is a type of full-time education.

¹⁴²⁷ Кодекс об образовании, ст. 17.

¹⁴²⁸ Постановление Совета Министров Республики Беларусь от 21 июня 2011 г. № 807 „Об утверждении перечня специальностей, по которым не допускается получение образования в вечерней, заочной формах получения образования, и признании утратившими силу некоторых постановлений Совета Министров Республики Беларусь”, НРПА 2011, 5/34023.

The division of higher education into full-time and part-time is also ensured in the Law on higher education and science in Poland. While full-time education is understood as learning where at least half of the curriculum has a form of didactic classes based on the student-teacher interaction, a part-time form of education is defined by the senate of the institution and differs from a full-time form¹⁴²⁹. Based on the findings of the POL-on database all higher education institutions in Poland which offer legal studies provide them in both forms¹⁴³⁰. Part-time legal education means that students have classes at the university mainly every second weekend and the rest of the materials are learned without assistance. Among part-time legal studies one may find evening education when teaching is organized in the afternoon or in the evening during weekdays¹⁴³¹. Distance learning is also allowed depending on the specializations and education degree for obtaining some learning outcomes¹⁴³². Distance learning cannot replace totally the face-to-face higher education, the number of obtained ECTS and passed by students learning courses cannot exceed 50% of the ECTS defined for the entire learning programme¹⁴³³.

Different forms of education offered to law students are one of measures to adapt education to learners with particular needs. Another possibility is a flexible curriculum that is applicable to disabled learners, working and gifted students alike. The scope, composition and realization of a flexible curriculum differs in the selected for the research countries owing to the different levels of harmonization of the system of higher education with the principles of the Bologna process. Belarus is still at the transition stage and introduces gradually to its practice the ideas that have been applied for decades in other European countries, including Poland. The system of higher education in Poland demonstrates a bigger level of flexibility of both curriculum and schedule of study.

By default, educational process is organised in a collective form, in other words students study in groups by attending the classes in the higher education institution. By virtue of Article 31 of the Code on education of Belarus a learner has the right to study according to an individual plan¹⁴³⁴. In particular situations with the consent of the head of

¹⁴²⁹ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 63 ust. 1.

¹⁴³⁰ Zestawienie prowadzonych studiów na kierunku prawo, POL-on, *available at* <https://polon.nauka.gov.pl/opi/aa/kierunki/studia?execution=e2s1> [accessed on 11 August 2018].

¹⁴³¹ For example, see it at the Faculty of Law, Administration and Economics of the University of Wrocław, *available at* <https://prawo.uni.wroc.pl/node/189> and the Faculty of Law and Administration of the University of Gdansk, *available at* https://prawo.ug.edu.pl/wydzial/struktura_wydzialu/dziedzinat/prawo_niestacjonarne_wieczorowe [accessed on 11 August 2018];

¹⁴³² Ustawa Prawo o szkolnictwie wyższym, art. 67 ust. 4.

¹⁴³³ Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie studiów, para. 13.

¹⁴³⁴ Ct. 31 p. 1.5.

the educational institution an individual plan of study can be defined based on the model curriculum approved for this field of science¹⁴³⁵. In general, students who due to the justified reasons can't attend temporarily or constantly the didactic classes and/or complete the assessment in the due term may study by following the individual plan¹⁴³⁶. In the reality it means that a student with the individual plan of study is required to learn the materials mainly independently with the limited duty to attend didactic classes personally. Then the student passes the assessment process at the time agreed with the academic teachers. The change of studied courses is also allowed, but less applied in the practice¹⁴³⁷.

An individual plan of study includes the list of educational courses to be completed, the individual workload of the student, academic schedule including the timetable of practice. The national provisions concerning higher education are silent on the category of learners who are entitled to study following the individual plan and on the administrative procedure of its composition and approval. These aspects are defined and regulated by the internal rules of institutions. The categories of students who can qualify for an individual plan of study include, but not limit to, students working in the field similar with the area of studies, participants of international mobility programmes, sportsmen participating in the national and regional competitions¹⁴³⁸, students passing the rehabilitation or conservative treatment, student-parents caring of a child under the age of 3¹⁴³⁹. As a rule, full-time studies require the regular attendance of didactic classes and assessment, hence these students request the creation of flexible curriculum and schedule of study. However, the part-times students and also full-time students beside the categories mentioned above have the right to request a flexible curriculum on the ground of exceptional circumstances with the consent of the head of the institution.

It is worth to underline that an individual plan of study should be considered as an alternative opportunity to continue and complete higher education in the situations when various obstacles arise during studies. If a student wants to combine education with other activities from the beginning it is recommended to select part-time form of education

¹⁴³⁵ Кодекс об образовании, ст. 212 ч. 4, 7.

¹⁴³⁶ Ibidem, ст. 217 ч. 6.

¹⁴³⁷ Students participating in the academic exchange programmes, e.g. Erasmus+, are often requested to complete the national curriculum although the similar subjects were learned overseas. Bologna Follow-Up Group Meeting 58, Draft final report, *op.cit.*, p.5.

¹⁴³⁸ Порядок проектирования и реализации индивидуального учебного плана студента, Гродненский государственный университет им. Я. Купалы, П 30.2-015, п. 7, available at https://mf.grsu.by/Students/ind_grafik/order.pdf [accessed on 12 August 2018].

¹⁴³⁹ Положение об обучении по индивидуальному учебному плану в БарГУ, утв. Приказом ректора от 06 сентября 2016 №390, п. 6, available at https://www.barsu.by/umu/downloads/pologenie_ob_obychenii.pdf [accessed on 12 August 2018].

instead of requesting a flexible curriculum which is approved, as a rule, for 1-2 semesters¹⁴⁴⁰.

The Polish law on higher education and science enshrines the right of students to learn according to an individual curriculum including, but not limiting to, a flexible schedule¹⁴⁴¹. The rules of a flexible learning are defined by the internal regulations of universities. The norms have much in common with the regulations of the higher education institutions in Belarus. Thus, students with disability, student-parents caring of a child or those who study in a few places may request the setting of the individual plan of study¹⁴⁴². Unlike the Belarusian reality higher education institutions in Poland accept the changes of learning schedule (priority of courses to be learnt, the date and form of assessment) as well as the modification of curriculum (the replacement of courses). Additionally, students have the right to adapt the number of subjects and ECTS at each academic year to their needs¹⁴⁴³. As a result, they can shorten the total duration of studies.

In addition to different forms of education and a flexible plan of study the Belarusian system of education has an adaptable measure addressed to graduates of vocational legal trainings. Unlike legal education in Poland higher education institutions in Belarus offer to complete a short course in law with obtaining bachelor and subsequently master's degree based on the diploma of the college¹⁴⁴⁴. Besides higher education institutions law is taught as a vocational course in the colleges, their graduates often are employed as administrative staff in the courts, customs. If a graduate of the college wishes to continue education in the legal field the law faculties offer a short course in law. The duration of studies is shortened by a year in the both full-time and part-time forms of education, in other words law students of the short course study 3 and 4 years accordingly¹⁴⁴⁵. Such type of education encourages graduates to lifelong learning.

¹⁴⁴⁰ Положение об обучении по индивидуальному учебному плану в БарГУ, утв. Приказом ректора от 06 сентября 2016 №390, п. 10; Порядок проектирования и реализации индивидуального учебного плана студента, Гродненский государственный университет им. Я. Купалы, П 30.2-015, п. 3.

¹⁴⁴¹ Ustawa Prawo o szkolnictwie wyższym, art. 85 ust.1 pkt. 2.

¹⁴⁴² Regulamin studiów pierwszego stopnia, drugiego stopnia oraz jednolitych studiów magisterskich, uchwała Nr 45/IV/2015 z dnia 29 kwietnia 2015, para. 25 pkt. 5, *available at* <http://www.dydaktyka.uj.edu.pl/documents/1333504/79fbc98e-31ee-4d2a-a59a-fc503a8f723a#16> [accessed on 15 August 2018].

¹⁴⁴³ The total number of ECTS of the unified legal studies shall not be less than 300. It means that the completion of an academic year results in obtaining about 60 ECTS. Ustawa Prawo o szkolnictwie wyższym i nauce, art. 76 ust. 1 pkt.1c.

¹⁴⁴⁴ Указ Президента о правилах приема, п. 10.

¹⁴⁴⁵ Сроки обучения для абитуриентов, зачисленных в БГУ в 2014 году, *available at* <https://www.bsu.by/Cache/Page/659293.pdf> [accessed on 12 August 2018].

The described above measures – different forms of education and a flexible curriculum – can be seen universal because they are applicable, as a rule, to various target groups. Beside the mentioned adaptive tools these groups have their own preferences enabling to realize the right to higher education.

The labour law regulations ensure the following measures to realize the right to education for working students. In Poland if an employee improves his or her professional skills through any form of education by the initiative or with the consent of an employer he or she is entitled to a sabbatical leave (6 or 21 days depending on the purpose) and a shorter working day to attend the trainings with the retained remuneration¹⁴⁴⁶. If the professional development of employees is triggered off by themselves they might have the measures mentioned above without the retained remuneration. In this case the duration of a sabbatical leave has to be agreed with the employer¹⁴⁴⁷. The national provisions in Belarus maintain the similar approach to the rights of working students. The Belarusian legislation states that in order to create favourable for education conditions employees are entitled to a social leave¹⁴⁴⁸. Among the reasons for which a social leave is provided the professional development or the completion of education is not mentioned, however one may find the right to ask for a social leave up to 30 calendar days to work on doctoral thesis, to write a textbook and other reasonable grounds¹⁴⁴⁹. It seems rationale to consider the right to education as a significant ground of the leave. Article 190 of the Labour Code underlines that the remuneration of working students during such leave is not ensured unless otherwise stated in the collective agreement or agreed with the employer. So, the law of both countries is favourable to combine education with work.

In regards to parents with children and pregnant women continuing the learning within tertiary education the norms of the law on education create the family-friendly environment either. Pregnancy leave during the pregnancy and for childbirth¹⁴⁵⁰, parental leave to take care of their children under the age of 3¹⁴⁵¹, social fellowship for pregnant women and parents with children under the age of 18¹⁴⁵² are legislative guarantees demonstrating the performance of the state's duty to fulfil the right to education in Belarus. In Poland student-parents or pregnant learners have the similar preferences. The right to

¹⁴⁴⁶ Ustawa z dnia 26 czerwca 1974 Kodeks pracy, Dz. U. 1974 Nr 24, poz. 141 ze zmian., art. 103¹ ust.2-3.

¹⁴⁴⁷ *Idem*, art. 103⁶.

¹⁴⁴⁸ Трудовой кодекс, ст. 183 ч. 1.

¹⁴⁴⁹ *Ibidem*, ст. 190.

¹⁴⁵⁰ Кодекс об образовании, ст. 49 п. 2.

¹⁴⁵¹ The right to parental leave belongs to either of parents factually taking care of a child. *Ibidem*, ст. 49 п. 3.

¹⁴⁵² *Ibidem*, ст. 42 п. 5.

the leave for a student expecting a baby or after childbirth to care of a child is regulated by the internal regulations of higher education institutions¹⁴⁵³. As a rule, the pregnancy, parental or other types of leave is provided by the head of the department on the student's request. The grounds are the following: medical recommendations, an overseas fieldtrip, pregnancy, childbirth or other family or personal situations¹⁴⁵⁴. Student-parents have the equal with other students right to social fellowship if they meet the requirements defined by the law. At the same time, due to the fact of the family circumstances (residence with an unemployed spouse and/or a child) the size of the fellowship can be increased¹⁴⁵⁵. Moreover, the entire family of the student has the right to reside in the student dormitory¹⁴⁵⁶.

The Constitution of Belarus requires men of certain ages and qualifications to serve in the military¹⁴⁵⁷. It is the civic obligation of primarily male citizens of Belarus. Although the law grants military service deferment for the period of higher education¹⁴⁵⁸ a student may meet his civic obligation and then continue higher education under the rules of his admission. Article 49 of the Code on education ensures the right to leave for the period of military.

The adaptability of higher education to the needs of disabled people is tightly interrelated to its accessibility what has already been presented in the previous sub-chapters. An open door to higher education for everyone is a necessary, but not sufficient condition to admit higher education adaptable. Learning environment should be so to ensure factual possibility for disabled students to obtain education. The Law on higher education and science in Poland precisely states that one of the principal tasks of higher education institution is to ensure conditions enabling the full participation in higher education for people with disabilities¹⁴⁵⁹. The similar provision one may find in the Code on education of Belarus¹⁴⁶⁰. The national legislation of both countries ensures a range of measures that are equally applicable to people with disabilities as to other students with

¹⁴⁵³ Ustawa Prawo o szkolnictwie wyższym, art. 87 ust. 2.

¹⁴⁵⁴ See for example Regulamin studiów na Uniwersytecie Szczecińskim, załącznik do uchwały nr 19/2015 z dnia 26 marca 2015 r., para. 51, *available at* http://www.wzieu.pl/imgs_2/regulaminy_uchwaly/regulamin_2015_16.pdf [accessed on 15 August 2018].

¹⁴⁵⁵ Ustawa Prawo o szkolnictwie wyższym, art. 182 para. 2. The norm is effective until October 1, 2019. Then the Law on higher education and science will be in force.

¹⁴⁵⁶ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 104 pkt. 2.

¹⁴⁵⁷ Article 57.

¹⁴⁵⁸ Закон о воинской обязанности и воинской службе от 05 ноября 1992, №1914-ХІІ, Вѣдамасці Вярхоўнага Савета Рэспублікі Беларусь, 1992 г., №29, ст. 32.

¹⁴⁵⁹ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 11 ust. 1 pkt. 6.

¹⁴⁶⁰ The provision of higher education for people with disabilities is based on the creation of special learning conditions according to their psychophysical development. Кодекс об образовании, ст. 15 ч. 2.

special needs. The development of an individual plan of study, distance learning if available, an academic short or long-term leave are universal preferences provided by higher education institutions to adapt the learning environment to special needs of disabled students.

Besides all, higher education institutions strive to introduce and maintain other adaptive conditions for education of these people. This includes but not limits to the application of particular pedagogic approaches to such learners, the creation of inclusive environment on the territory of the campus and in the dormitories, the development and provision of technical, didactic and human resources necessary for effective learning process. In Belarus disabled people often select social sciences and humanities, law and economics, pedagogy and art¹⁴⁶¹, therefore the adaptability of legal education is not only an object of scientific interest, but the necessity of practical nature. It is important to refer to the good practices implemented in the system of higher education by the Belarusian universities:

1. There are working places adapted to the needs of blind learners in the computer classes and the library.
2. The development and adoption of the university policy of inclusion of people with disabilities (2013-2017). The document describes activities to be conducted at the university to create comfortable conditions of learning.
3. The establishment of the special department responsible for the adaptation of didactic materials and communication with blind students. The personnel of the department assist learners with various technical issues.
4. The assessment methods are defined by academic staff individually for each learner with special needs. Teachers design also a set of special assignments for disabled students, e.g. printed in large font.
5. The introduction of distance learning and webinars as methods of higher education¹⁴⁶².

Social taxi for people in need is service included in the national policy of social protection of population in 2016-2020¹⁴⁶³ and provided by the local authority to different target groups. For example, social taxi is offered to students in the wheelchair free of charge or at the low price, depending on the local budget, to reach higher education

¹⁴⁶¹ В. Жураковский, К. Мирецка, И. Стычынська, *op.cit.*, с. 20.

¹⁴⁶² О. Трипутень, *op.cit.*, с. 10-13.

¹⁴⁶³ Постановление Совета Министров Республики Беларусь от 30 января 2016 г. № 73 Об утверждении государственной программы о социальной защите и содействии занятости населения в 2016-2020, НРПА 5/41675.

institution. Thus, the government puts efforts to meet the requirements of the law on special education¹⁴⁶⁴. On the other hand, this service is available to students in the wheelchair only, however other physically handicapped students also need that kind of support. Moreover, social taxi is provided no more than 2 times a week, it is definitely considered insufficient for full-time students¹⁴⁶⁵.

In this context it is worth to refer to the best practices in Poland that are based on the European experience and can be transferred to the system of higher education in Belarus¹⁴⁶⁶. First of all, the establishment of ombudsman on the rights of disabled people is a significant achievement in lobbying the interests of disabled learners. There is no legal norm requiring the administration of universities to assign a person or to establish the entire department responsible for the protection of rights of the disabled. At the same time, such persons assist learners with special needs and promote the policy of equal treatment within higher education. The ombudsman on the rights of the disabled can cooperate with the student organisation established to represent the interests of learners with special needs in the board, self-government or council of faculties.

The cooperation of higher education institutions can be organised based on the signed agreements. Institutions may share the didactic materials and methodology of teaching the disabled students or can organize the joint classes, e.g. physical training. This reduces the expanses on special education of single entities and makes higher education attractive for students benefiting from the achievements of a few higher education institutions. The cooperation can also be established between educational institutions and non-governmental organisations specializing in a narrow area, e.g. language courses for blind people or career counselling.

Higher education institutions in Poland benefit a lot from the financial support of the European funds. Thus, universities conduct the modification of existing buildings, provide a signer and buy the equipment enabling the creation of environment without barriers.

¹⁴⁶⁴ Learners with disabilities have the right to special transport to reach educational institutions. Закон Республики Беларусь об образовании лиц с особенностями психофизического развития (специальном образовании) от 18 мая 2004 г. № 285-З, НРПА от 03.06.2004 г., № 87, 2/1034, ст. 13 п. 1.7.

¹⁴⁶⁵ О. Трипутень, *op.cit.*, с. 10.

¹⁴⁶⁶ More details on the best practices are illustrated in the following sources. *Dostępność edukacji akademickiej dla osób z niepełnosprawnościami: analiza i zalecenia*, Zasada równego traktowania – prawo i praktyka, nr 16, Biuletyn Rzecznika Praw Obywatelskich 2015, nr 5, Warszawa, 2015, s. 50-53; J. Sztobryn-Giercuskiewicz, *Alter idem – student z niepełnosprawnością w systemie szkolnictwa wyższego*, w: E. Zakrzewska-Manterys, J. Niedbalski (red.), *Samodzielni, zaradni, niezależni. Ludzie niepełnosprawni w systemie polityki, pracy i edukacji*, 2016, s. 99-145.

Despite of a range of good examples of how higher education can meet the special needs of students, the problem of adaptability of higher education to the needs of people with disability is not totally solved. It is worth to highlight the concerns of the Commissioner for Human Rights in Poland stating that academic community is not fully aware of the challenges faced by disabled people in higher education. The stereotypes about needs and expectations of these learners are often the dominating postulates instead of the findings of research and real facts¹⁴⁶⁷. Indeed, the training of academic staff, including the administrative personnel, is a primary objective of higher education institutions to eliminate obstacle in higher education for the disabled. The topics of training vary greatly – from intellectual property law for inclusive education and adaptive methods of teaching to the influence of mental diseases on education and the participation of a personal assistant during the assessment of the student. Trainings on different aspects of disability are also addressed to students dealing every day with their colleagues in the scientific and casual conditions.

Taking into consideration the examples described above one may admit that the states and higher education institutions in Belarus and Poland put efforts within their available recourses to make higher education adaptable to the needs and expectations of disabled people. However, the possibility for improvements still remains. The focus should be made on overcoming the stereotypes and prejudice about disability and the needs of learners, removal of any kinds of barriers in the infrastructure and educational process, deeper cooperation of higher education institutions with each other and the government to ensure a two-way dialogue¹⁴⁶⁸.

The measures available for various target groups of students are provided by different stakeholders – the governmental bodies of the state (the right to fellowship), the administration of higher education institutions (forms of education or the adoption of an individual plan of study), academic personnel (didactic materials or applied teaching methods). The national law in Belarus and Poland and the internal regulations of educational institutions of these countries demonstrate the sensitivity of higher education to individual needs of learners whether they are pregnant women, parents taking care of a child or a person with disability. The legal doctrine concerning the adaptive didactic approaches used by academic teachers in higher education is limited to a particular target

¹⁴⁶⁷ *Dostępność edukacji akademickiej dla osób z niepełno sprawnościami, op.cit.*, s. 19.

¹⁴⁶⁸ *Ibidem*, s. 54-62; О. Трипутень, *op.cit.*, с. 15.

group of learners. The researchers don't analyze the comprehensive picture of adaptable higher education, but present challenges in higher education for particular groups¹⁴⁶⁹.

The questionnaire of the empirical research conducted by the researcher contains the single open-ended question "what didactic approaches do you apply to different target groups?". The given by the teachers answers were scanty, mainly describing the difference in education of the first and last-year students. At the same time a few respondents have illustrated how they adapt their teaching style to foreign students, working students and freshcomers. *Since recently we have a lot of foreign students from Turkmenistan who are not fluent in the Russian language although they pass the preparatory year with the intensive language course. They study law in the groups together with Belarusian and Russian students. When I organize interactive trainings where active involvement of students is required I use different approaches to students from Turkmenistan and other learners (Liudmila, Belarus). With younger students I work differently than with the last-year students. More patience and many explanations are needed for effective learning, however they are responsible and almost always prepared to classes in comparison with the elder students (Izabela, Poland). For working students theoretical passive learning may be boring. They have some legal experience and my task is to organize the transfer of new knowledge based on their practical experience. For example, I think useless to describe the kinds of bank contract for people working in the finance and banking. Instead, I gave them templates of different contracts from different banks in Belarus and they analyzed their terms pointing to the differences in practice (Yulia, Belarus). My course was taught previously for four-year students, then the changes happened and it was included in the curriculum of the third-year students. Now I teach it within the first semester and it is a challenge. The content of the course remained the same. Definitely I have to adapt teaching approaches to these learners who don't understand yet clearly where they are and what a teacher requires from them (Ekaterina, Belarus).*

Based on these answers the comprehensive analysis of pedagogic strategies in higher legal education can hardly be conducted. Nevertheless they point to the challenges and gaps in legal education. Didactics and developed teaching skills of academic personnel are

¹⁴⁶⁹ P. Hut, E. Jaroszewska, *Studenci zagraniczni w Polsce na tle migracji edukacyjnych na świecie*, Warszawa, 2011; Z. Kawczyńska-Butrym (red.), *Migracje edukacyjne. Studenci zagraniczni – dwie strony księżycy*, Lublin, 2014; *Dostępność edukacji akademickiej dla osób z niepełno sprawnościami*, op.cit.; M. Struck-Peregończyk, A. Rozmus (red.), *Między integracją a wykluczeniem: wybrane problemy edukacji akademickich osób niepełnosprawnych*, Rzeszów, 2011.

as essential for the qualitative and effective higher education as adaptive curricula and the plan of study.

5.8.2. Higher legal education and the needs of society

The second meaning of adaptability of higher education is reflected in the satisfaction of the needs of society in specialists. Skills, knowledge and levels of qualification are primarily needed in the various sectors of the economy. It is those what higher education must ensure to the graduates. Representatives of legal profession are essential elements of a democratic state. Lawyers participate in different spheres of life starting from the law drafting to its adoption, interpretation, execution and protection. The important role of lawyers in the society is highlighted by the high place of the profession in rankings¹⁴⁷⁰. The logical continuation of graduation from higher education institutions is professional performance, hence law graduates must be prepared sufficiently well to compete independently on the labour market after legal studies.

Analysing the aims of higher education the polemics about academic and vocational aspirations of legal education in Belarus and Poland has been presented. It is not necessary to raise the discussion again referring to the advantages and disadvantages of each approach. At the same time the study of vocational component matters in the analysis of adaptability of legal education to the needs of society. Hence, the main findings concerning the vocational orientation of legal education in both countries should be provided in the current part of the research.

The national regulations of higher education in both countries state that the main mission of higher education is to produce the manpower of the society through the effective training of qualified specialists for all fields of the national economy. Law graduates must be trained to apply their competencies in the workplace, thereby enhancing the welfare of the state. In Poland the Law on higher education and science grants the broad autonomy to higher education institutions how to achieve their mission. At the same time the Minister of Science and Higher Education in Poland is entitled to monitor the performance of this function. A higher education institution may not receive a permission

¹⁴⁷⁰ The profession of lawyer and judge are supported by 63 and 60% of respondents in Poland accordingly and occupy the 12th and 15th places in the ranking of the most honorable professions in 2013. The survey was conducted by the Research Center of Public Opinion, the report BS/164/2013 is *available at* http://www.cbos.pl/SPISKOM.POL/2013/K_164_13.PDF [accessed on 17 February 2017].

to launch certain studies if these studies don't correspond the social and economic demands of the society¹⁴⁷¹.

Higher education institutions in Poland provide legal education of two profiles – academic and practical. The academic profile of legal education aims to equip students with the in-depth academic knowledge and is provided by the majority of faculties, mainly by universities. Practical legal education is primarily offered in private law schools or at multidisciplinary faculties. Although the university degree in law entitles graduates to practice law as an in-house lawyer or at the law-related positions with some restrictions, the professional training of lawyers is organized within further legal apprenticeship of 2-3 years. In the recent years with the increase of academic mobility and under the influence of the overseas models of legal education the changes in higher legal education in Poland occur. The solid frontier between the academic university education and practical apprenticeship of lawyers is subject of critique in the academic and professional communities. Moreover, law students point to the unsatisfactory training of professional skills during legal studies in comparison with the required level of their development at the labour market¹⁴⁷². Among the main challenges that law students face at the labour market the lack of professional training is mentioned by about 70% of respondents¹⁴⁷³.

In Belarus the educational standards of legal education precisely assert that law graduates must be trained to apply the gained competences in practical activity. The model legal curriculum describes the complex of knowledge, skills and values that law graduates must possess at the end of legal studies. Legal apprenticeship is required for some legal occupations and last about 6 months.

5.8.2.1. Professional requirements to representatives of legal professions

In order to verify whether legal education is adaptable to the needs of the society it is necessary to focus on the formal requirements to candidates making their first steps into legal professions and to assess how legal education corresponds to them. Acknowledging a big variety of occupations in the legal industry the focus is given to a few professions only based on their comparability and numerical dominance. Although law is a common term unifying different representatives of legal industry, students are forced to identify their interests to a particular sphere of law during their legal studies. Optional subjects from

¹⁴⁷¹ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 55 ust. 2.

¹⁴⁷² Studenci prawa w Polsce 2018, *op.cit.*, slide 15.

¹⁴⁷³ *Ibidem*, slide 33.

different legal disciplines, specialization in the last years of studies or practical internship in a legal company or governmental body are the factors stimulating the conscious choice of the particular legal path in the career. The variety of legal professions in Poland and Belarus are rather similar, but the conditions to practise them differ according to the national regulations.

Having a glance at the field of law the professions that first come to mind are classical ones – a judge, a prosecutor, an advocate or a notary. The perception of legal industry through the prism of these jobs is formed under the influence of mass media and cinematography which mainly show an image of a lawyer in the courtroom or a partner of the law firm. In fact, there are many other professions that are required legal experience and undertaken by graduates of law schools. It is interesting to pay attention to the list of 107 jobs in the legal industry available for law graduates in the USA¹⁴⁷⁴. Judges and advocates would not be able to perform their obligations without the support of legal clerks, paralegals, document processors, trial consultants, law library technicians and other legal-related professionals. Many of these occupations or at least their equivalents can be found in the labour market in Belarus and Poland, however there are others which existence is based on specifics of the common-law legal system. It will not be surprisingly in the nearest future to see the position of a lobbyist, a juvenile counsellor or a compliance specialist among the job offers in civil-law countries requiring *inter alia* legal education.

In Belarus and Poland there are five main paths in legal professions: an advocate, a legal advisor, a judge, a prosecutor and a notary. Graduates with the law degree are also welcome in the public administration, the department for the execution of judgements, customs bodies, mediation and litigation sectors, diplomacy and other areas. There are heard the voices of just critique in the legal education community that legal profession is not limited to the job of a judge or an advocate or a legal advisor only. “Undoubtedly, one of the causes preventing the improvement of legal studies in Poland is primarily an incomplete understanding of the lawyer's role in the contemporary world. It is still being looked at through the prism of classic professions – judges, legal advisors and prosecutors. At the same time, current graduates of the law schools will perform different social roles. A significant number of graduates, of course, will apply for the membership in the bar

¹⁴⁷⁴ S. Echaore-McDavid, *Career Opportunities in Law and the Legal Industry*, New York, 2007. In the UK the legal services providers vary from traditional solicitors, barristers and legal executives to other legal service provisers like will writers, immigration advisers, conveyancers. T. King, *The future of legal education from the profession's viewpoint: a brave new world?*, in: H. Sommerlad and others (eds.), *The futures of legal education and the legal profession*, 2015, p. 183.

associations. However, the rest will become lawyers in offices, banks, insurance companies and various other enterprises, and their daily work will require a completely different complex of knowledge and skills than the work of an advocate”¹⁴⁷⁵.

Annually about ten thousand students graduate from the Polish law schools¹⁴⁷⁶ and fine and half thousand law graduates are in Belarus¹⁴⁷⁷. Many of them select one of the fifth most popular and numerous legal careers (table 8), others will apply their university knowledge and skills working at legal-related positions.

Table 8. The statistic data on the number of lawyers in both countries

| Legal profession | Number of people in Belarus | Number of people in Poland |
|------------------|-----------------------------|----------------------------|
| Advocates | 1938 ¹⁴⁷⁸ | 17 267 ¹⁴⁷⁹ |
| Legal advisors | | 33 857 ¹⁴⁸⁰ |
| Prosecutors | 1785 ¹⁴⁸¹ | 5 877 ¹⁴⁸² |
| Judges | 1128 ¹⁴⁸³ | 10 096 ¹⁴⁸⁴ |
| Notaries | 896 ¹⁴⁸⁵ | 3281 ¹⁴⁸⁶ |

¹⁴⁷⁵ P. Machnikowski, *op.cit.*, s. 48.

¹⁴⁷⁶ Zawody deficytowe i nadwyżkowe w 2016 roku, Ministerstwo Rodziny, Pracy i Polityki Społecznej, p.29, available at <https://www.mpips.gov.pl/analizy-i-raporty/raporty-sprawozdania/rynek-pracy/zawody-deficytowe-i-nadwyzkowe/ok2016/> [accessed on 6 January 2018].

¹⁴⁷⁷ Концепция развития юридического образования в Беларуси до 2025 г, с. 7.

¹⁴⁷⁸ After the reform of legal profession in 2011 the number of practising advocates includes legal advisors either, available at <http://www.rka.by> [accessed on 5 January 2018].

¹⁴⁷⁹ The number of practising advocates, available at <http://www.rejestradvokatow.pl> [accessed on 5 January 2018].

¹⁴⁸⁰ The number of practising legal advisors, available at <https://rejestradcow.pl> [accessed on 5 January 2018].

¹⁴⁸¹ Since 2012 the prosecutor office is separated from the investigative department. The senior investigators can become only people with higher legal education, while associates in the investigative body can be graduates of vocational legal schools. As result, the number of prosecutors dropped down due to the separation of prosecutors and investigative department. Указ Президента Республики Беларусь от 10 ноября 2011 года №518 “Вопросы Следственного комитета Республики Беларусь”, НРПА 2011, № 128, 1/13068, п.14.

¹⁴⁸² *European judicial systems: efficiency and quality of justice*, the report of the European Commission of the Efficiency of Justice, Edition 2016 (2014 data), p. 121.

¹⁴⁸³ Указ Президента Республики Беларусь от 26 сентября 2005 г. № 452 „Об установлении количества судей судов общей юрисдикции, президиумов верховного суда, областных, минского городского судов”, НРПА от 28.09.2005 г. № 1/6820.

¹⁴⁸⁴ *European judicial systems: efficiency and quality of justice*, *op.cit.*,p. 90.

¹⁴⁸⁵ The minimum number of notaries for the proper functioning of legal suport to the population estimated by the Ministry of justice based on the number of population, number of requests to the notary during last 2 years, the localization of cities and towns, etc. Постановление Министерства юстиции Республики Беларусь от 13 декабря 2013 г. № 197 „Об установлении критериев расчета количества нотариусов в нотариальных округах и установлении количества нотариусов”, НРПА № 8/31801 от 21.02.2017 с изм.

¹⁴⁸⁶ The number of notaries on the date of November 2015. J. Tekielak, *Notariat jako element rynku zawodów prawniczych w Polsce – szanse i zagrożenia*, w: K. Pujer (red.), *Rynek pracy w Polsce – szanse i zagrożenia*, Wrocław, 2016, s. 115.

| | | |
|--------------|-----|----------------------|
| Tax advisors | n/a | 8914 ¹⁴⁸⁷ |
|--------------|-----|----------------------|

Source: Data from the bar associations, the country reports and national legislation.

In general, the independent legal practice in one of the mentioned above professions is impossible without the following steps:

- pass the entrance examinations to the apprenticeship;
- complete the apprenticeship on the particular aspects of the legal profession;
- pass the final examinations and make an oath as a member of the professional community.

In Poland a membership in the bar associations of advocates and legal advisors is open for those who graduated from the Polish higher education institution with the master's degree in law, completed the apprenticeship in Poland and passed the final bar examinations¹⁴⁸⁸. The law also requires that a candidate must fully enjoy the public rights and behave properly (i.e. without criminal records) to be proudly called a lawyer. The law degree obtained in a foreign higher education institution may be recognized in Poland. The apprenticeship is a costly and substantial challenge for many law graduates, it postpones the start of the professional career for a few years. First of all, the entrance examination to the apprenticeship is organized once per year and contains 150 one-choice questions concerning all legal disciplines¹⁴⁸⁹, the correct answers to at least 100 questions is required for the successful pass¹⁴⁹⁰. Although the questions are composed based on the programme of legal studies the positive results of the entrance examinations are received by less than 60% of candidates¹⁴⁹¹. It means that the obtained law degree doesn't guarantee an easy access to the apprenticeship programme.

The goal of a graduate to become an advocate is challenging. Firstly, law graduates must sharpen their professional knowledge, skills and values during lifelong learning starting from the graduation. It can be a training course preparing to the admission examinations or independent work in the library. Secondly, the admission to the

¹⁴⁸⁷ The number of practising tax advisors, available at <https://krdp.pl/doradcy.php> [accessed on 5 January 2018].

¹⁴⁸⁸ Ustawa Prawo o adwokaturze z dnia 26 maja 1982 r., Dz. U.z 1982, Nr 16, poz. 124 ze zmian., art. 65 i ustawa o radcach prawnych z dnia 6 lipca 1982, Dz. U.z 1982, Nr 19, poz. 145 ze zmian., art. 24.

¹⁴⁸⁹ The Ministry of Justice annually publishes the template of tests with the correct answers, available at <https://www.ms.gov.pl/pl/egzaminy-prawnicze/egzaminy-na-aplikacje/zestawy-pytan-testowych/news.9814.zestawy-pytan-testowych-wraz-z-wykazami.html> [accessed on 31 December 2017].

¹⁴⁹⁰ The preliminary results of the entrance examinations to the legal apprenticeships in 2017 are published by the Ministry of Justice, available at <https://www.ms.gov.pl/pl/egzaminy-prawnicze/egzaminy-na-aplikacje/ogloszenia-i-komunikaty/news.9816.wstepne-wyniki-egzaminow-na-aplikacje-prawnicze.html> [accessed on 31 December 2017].

¹⁴⁹¹ Ibidem.

apprenticeship programme leads to the next three-year learning on the particular facets of the certain legal profession. During this period law graduates don't contribute to the prosperity of the state economy and to the development of social justice, but continue their professional, better to say vocational, education. Thirdly, the cost of the entrance examinations to the apprenticeship, the price of three-year programme during which an intern doesn't gain remuneration, the expenses on the learning materials and lastly the cost of the final examination constitute a sufficient financial burden for law graduates in their access to the profession¹⁴⁹².

Is the long-term and costly apprenticeship essential? There are different opinions supporting and criticising the apprenticeship of legal professions. Undoubtedly, the quality of legal work depends on *inter alia* the awareness of the specifics of the profession. Freshcomers in the legal industry possess the general knowledge and are not familiar with the particularities of the legal job they are going to perform. Then, the apprenticeship is fairly considered a safeguard against professional mistakes. In addition, the UN Special Rapporteur on the independence of judges and lawyers calls for the necessity of the apprenticeship for advocates and legal advisors. "In a number of states admission to the bar is granted on the basis of a university examination in law. In view of the varying educational quality of such university examinations, this may pose a significant obstacle to the reliability and effectiveness of the professional legal counsel provided by lawyers. The introduction of a mandatory training period prior to admission to the legal profession would certainly enhance the general quality of lawyers' services"¹⁴⁹³. The state is responsible not only to provide the access to legal help to everybody, in some cases it is free of charge legal aid, but also guarantee that the quality of legal support is compliant to the standards and minimum requirements. In the variety of legal professions in which lawyers can act and manage human lives the no harm principle becomes a core benchmark of the quality of their work. Therefore, during the apprenticeship each intern is assigned to a tutor/patron – a practicing lawyer – who supervises the work of the future lawyer, trains

¹⁴⁹² The price of each step is defined by the Ministry of justice as pro rata to the minimum remuneration for All professions in the country. Thus, in 2016 the cost of the apprenticeship for legal advisors was consisted of the following expenses: the entrance exam - 925 PLN, the registration on the list of interns – 185 PLN, the annual cost of apprenticeship – 5735 PLN, the final bar exam – 1480 PLN. The information is addressed to the legal advisor interns, available at <https://www.oirp.warszawa.pl/oplaty-informacje-ogolne/> [accessed on 31 December 2017]. Since the 1st of January 2017 the annual cost of the apprenticeship was reduced for all legal professions. For legal advisor and advocate interns it amounts to 5200 PLN. Rozporządzenie Ministra Sprawiedliwości z dnia 12 grudnia 2016 r. w sprawie wysokości opłaty rocznej za aplikację radcowską, Dz. U. z 2016, poz. 2078.

¹⁴⁹³ G. Knaul, The annual report of the Special Rapporteur on the independence of judges and lawyers to the Human Rights Council, UN Doc. A/HRC/14/26, para.41.

the practical skills and presents the reality of legal job. Moreover, the interns must participate in a number of workshops, trainings and seminars held by experienced judges or lawyers. The regular examinations during the apprenticeship monitor the development of the interns. The final bar examination closes the apprenticeship and opens a way to independent practice. It is rational to admit that the apprenticeship and the final bar examination are tools to train and then evaluate the competencies of legal graduates unless their experience is recognized sufficient to practise law without any additional training. On the other hand, too long and costly apprenticeship implies an obstacle in the access to legal professions and reflects doubts about the effectiveness of higher legal education. Under the international law the responsibility to educate and train on the ideals and ethical duties of the lawyer, human rights and fundamental freedoms lies on higher education institutions, professional associations and governments¹⁴⁹⁴. The curriculum of legal studies embraces many legal disciplines including legal ethics, legal writing, moot court, legal clinic and others which prepare law students to the future legal career and enhance practical skills. The apprenticeship organized on the base of educational institutions (possibly in shorter term) is one of thoughts how to reform the legal apprenticeship, insofar it is not supported by the professional bar associations in Poland¹⁴⁹⁵.

The Polish law offers other ways to become an advocate or legal advisor without the mandatory apprenticeship. Scientists with the high academic qualifications (habilitated doctor and professor), graduates of the doctoral studies in law with the 3-year legal experience or the members of other legal bar associations are allowed to become an advocate or a legal advisor without both the apprenticeship and the final bar examination. In-house lawyers with the 4-year legal experience or with Ph.D degree in law but without sufficient experience may take the final bar examinations without the apprenticeship¹⁴⁹⁶.

At first glance the access to the legal professions of advocates and legal advisors in Belarus seems similar. The higher legal education degree, the completed apprenticeship in certain cases, the final bar examination are the legal requirements for members of the bar association¹⁴⁹⁷. In addition, the law allows the membership in the advocate bar association to the citizens on Belarus only. Foreign citizens with the law degree are not allowed to

¹⁴⁹⁴ Basic Principles on the Role of Lawyers, para. 9.

¹⁴⁹⁵ Stanowisko Prezydium Krajowej Rady Radców Prawnych z dnia 30 listopada 2017 roku w sprawie proponowanych zmian modelu organizacji aplikacji, available at <http://kirp.pl/stanowisko-prezydium-krajowej-rady-radcow-prawnych-30-listopada-2017-roku-sprawie-proponowanych-zmian-modelu-organizacji-aplikacji/> [accessed on 1 January 2018].

¹⁴⁹⁶ Ustawa Prawo o adwokaturze, art. 66 i ustawa o radcach prawnych, art. 25.

¹⁴⁹⁷ Закон об адвокатуре и адвокатской деятельности в Республике Беларусь от 30 декабря 2011 г. № 334-З, НРПА 30.12.2011 г. N 2/1884, ст. 7.

practise as advocates, but can provide legal advice on civil, corporate law and in administrative cases or as in-house lawyers¹⁴⁹⁸. The significant difference in the apprenticeship in Belarus and Poland is in the status of interns. There is no entrance examination for interns. The number of demand requests from law firms, bar associations or lawyers working individually to accept interns for the apprenticeship are decisive. The law doesn't define the criteria of selection of candidates for the apprenticeship in case when the number of applicants exceeds the number of requests from the law firms. Consequently, the access to the legal profession is imprecise and non-transparent at the stage of the apprenticeship what may provoke discrimination and is incompliant to the Basic Principles on the Role of Lawyers¹⁴⁹⁹. In the reality interns search for the law firm or corporation where they can be assigned to complete the apprenticeship and then submit their application for the apprenticeship to the regional bar association. The status of interns during the apprenticeship in Belarus is very much different from interns in Poland. During the apprenticeship Belarusian lawyers-to-be are hired signing the short-term labour contract with the bar association or law firm and receive the remuneration from them¹⁵⁰⁰, whereas Polish interns compete with each other during the entrance examination and then pay the big price for being taught by experienced lawyers. To accept an intern means to carry an additional financial burden for the law company. The law firm or practising individually lawyer pays the salary to interns, but *de jure* can't include these expenses in the client's bill. As a result, it creates challenges for candidates to the apprenticeship to find a law firm or corporation to undergo the professional learning¹⁵⁰¹. Just few law companies recognize interns as future employees and are eager to invest in them during the apprenticeship. As a consequence, the personal contacts and family in the legal profession in Belarus are more helpful to become an intern than deep knowledge and skills gained during higher legal education.

The apprenticeship in the bar association or law firm in Belarus lasts from 3 to 6 months for those who have less than 3-year legal experience, if the legal experience

¹⁴⁹⁸ Belarusian lawyers who are members of the Russian bar association are not accepted in the legal proceedings in Belarus, although the international agreement on cooperation in civil, criminal and administrative cases was signed between countries. М. И. Пастухов, *Адвокатура в Республике Беларусь: законодательство и практика*, Евразийская адвокатура, № 4 (29), 2017, с. 24.

¹⁴⁹⁹ Paragraph 10 of the Basic Principles states that governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into within the legal profession on the grounds of race, colour, sex, ethnic origin, religion etc.

¹⁵⁰⁰ Закон об адвокатуре и адвокатской деятельности, ст. 10, п. 1.

¹⁵⁰¹ Н. Майорова и др., *Комментарий к Закону Республики Беларусь „Об адвокатуре и адвокатской деятельности”*, Минск, 2014, с. 51.

exceeds 3 years the candidate is allowed to take the final bar examination without the apprenticeship¹⁵⁰². The exact duration of the apprenticeship is decided by the regional bar association. The completion of the apprenticeship ends with the qualification bar examination. The final bar exam consisting of the written test and the oral case analysis grants or denies the access to the membership in the association and the legal practice¹⁵⁰³.

Taking into account that the advocates and legal advisors manage the human lives and the quality of their work shall be ensured at the high level, the professional requirements to the candidates of being an advocate or legal advisor defined by the national rules of the selected countries are considered justified. Indeed, the practice-oriented, workplacement-based apprenticeship programme, the competitive intermediate and final bar examinations maintain the high standard of the quality of lawyer's work. On the other hand, the government, the professional associations of lawyers and higher education institutions collaborate together in order to train the qualified specialists. Higher legal education results in obtaining the law degree with the certain scope of knowledge, skills and values transferred from the experienced law professors to students. Undoubtedly, law graduates can't be compared with the practising lawyers in their knowledge how to apply law in practice, therefore the legal apprenticeship is required justly. Nevertheless, the 3-year apprenticeship in Poland seems the unreasonably long term of professional training and infringes the overall value of higher legal education as the academic programme creating the human capital.

Moreover, the Polish law on advocates and legal advisors seems to appreciate the academic outcomes to higher extent than the professional legal experience. For example, the graduates of the 4-year doctoral legal studies are allowed to take the final bar examination without the apprenticeship, whereas the holders of the master's degree in law are granted the same privilege after 4 years of legal work¹⁵⁰⁴. In the researcher's opinion the graduates with the doctoral degree in law could be considered less prepared for the practical work of lawyers than graduates with master's degree in law who have already gained the professional experience. During studies doctoral students focus on the narrow scientific problem in the particular legal discipline, generally speaking they are more academic than practice-oriented, in particular if their interests lie in theoretical disciplines. The position presented in the Belarusian law on advocates reflects more practice-oriented

¹⁵⁰² Закон об адвокатуре и адвокатской деятельности, ст. 9, п. 1-2.

¹⁵⁰³ Ibidem, ст. 9, п. 6-7.

¹⁵⁰⁴ Ustawa Prawo o adwokaturze, art. 66 ust.2 p. 3-4a.

approach. It rationally allows graduates with the law degree but without the sufficient legal experience to conduct the short-term apprenticeship focusing on the practical facets of legal profession. The legal apprenticeship is an important safeguard of the quality of the provided legal service and must be kept in the national regulations on the legal occupations, but the term and content of the apprenticeship shall be adequate to the scope of future legal work and the outcomes of higher legal education.

Other legal professions – a judge, a public prosecutor, a notary – offer the similar path for law graduates to the career – the entrance examination, the completed apprenticeship and final examinations. The specifics of prosecutor and judge’s work and their status in the legal proceeding require the strict selection of candidates to the profession and more thorough professional training. In Poland the apprenticeship for prosecutors and judges is organized by the Polish National School of Judiciary and Public Prosecution¹⁵⁰⁵. One of the criteria for being a judge or a prosecutor is the Polish citizenship¹⁵⁰⁶. After the entrance examination interns start the general apprenticeship which lasts for 3 years, but can be reduced by up to 1 year in certain circumstances¹⁵⁰⁷. The apprenticeship is carried out by the state institution, therefore it is free of charge for interns. In addition, interns can apply for scholarship¹⁵⁰⁸.

In Belarus the position of a prosecutor is civil service and regulated by the law on prosecutor¹⁵⁰⁹. The public servant working in the prosecutor office must be a citizen of the Republic of Belarus and possesses higher legal education, in addition interns shall have no criminal records and display high standards of moral behaviour¹⁵¹⁰. The access to the profession of a prosecutor is organized in a similar with advocates way, but with some specifics:

1. the qualification examination to assess the candidates’ professional knowledge and skills to the requirements of prosecutor’s duties¹⁵¹¹;
2. the apprenticeship in the prosecutor office¹⁵¹²;

¹⁵⁰⁵ Ustawa o Krajowej Szkole Sądownictwa i Prokuratury z dnia 23 stycznia 2009, Dz. U. Nr 26, poz.157 ze zmian.

¹⁵⁰⁶ Ibidem, art. 24 ust.1 p.1.

¹⁵⁰⁷ Ibidem, art. 27 ust 1 p.1 and 7.

¹⁵⁰⁸ Ibidem, art. 41a.

¹⁵⁰⁹ Закон о прокуратуре от 8 мая 2007 г. № 220-3, НРПА 2009 г., № 16, 2/1559 с изм.

¹⁵¹⁰ Ibidem, art. 48.

¹⁵¹¹ Указ Президента Республики Беларусь 27 марта 2008 г. № 181 „Об утверждении Положения о прохождении службы в органах прокуратуры Республики Беларусь”, НРПА 2008 г., № 80, 1/9577 с изм., п. 7.

¹⁵¹² Ibidem, p. 10.

3. the appointment of the candidate to the position through the competition procedure¹⁵¹³.

The qualification examination is the first and the most important selection of the best law graduates or specialists for the work in the civil service. The candidates must prove their high academic knowledge on different legal disciplines and their professional skills and values essential for the work with mainly criminal cases. The result of the examination is decisive whether the candidate will be included in the list of interns or not. The apprenticeship in the prosecutor office implies a probation term of 6 months for those who don't have work experience in the public service¹⁵¹⁴. One part of the apprenticeship of the duration of 3 weeks is organized in the Institute of advanced training of judges, prosecutors and judges and implies a range of theoretical workshops and trainings to introduce interns with the particularities of prosecutor's work and the principles of the public work. This part of the apprenticeship is a kind of the introduction to the profession of a prosecutor for law graduates and specialists from other legal areas. The second part of the apprenticeship is carried out in the form of supervised work in the prosecutor office¹⁵¹⁵. The law states that interns sign a short-term labour contract and receive the remuneration for their trial work at the prosecutor office¹⁵¹⁶.

According to Article 94 of the Code on the judicial system and status of judges in the Republic of Belarus¹⁵¹⁷ to the position of a judge in the general or commercial court a person complying with the following requirements can be assigned:

- a citizen of Belarus;
- the completion of 25 years old;
- higher legal education;
- knowledge of Russian and Belarusian languages;
- at least 3-year experience of legal work.

The candidate to the position of a judge must pass the qualification examination during which the professional readiness to the judicial work and the moral characteristic of

¹⁵¹³ Ibidem, p. 9.

¹⁵¹⁴ Without the completion of the apprenticeship people with the work experience in other legal spheres, like the bodies of internal affairs, the investigation committee, department of financial investigation, the bar association or civil service can be accepted. Положение о прохождении службы в органах прокуратуры Республики Беларусь, п. 13.

¹⁵¹⁵ Ibidem, p. 10.

¹⁵¹⁶ Закон о прокуратуре, ст. 49.

¹⁵¹⁷ Кодекс о судоустройстве и статусе судей в Республике Беларусь от 29 июня 2006 N 139-3, НРПА 2006 г., № 107, 2/1236 с изм.

the candidate is evaluated¹⁵¹⁸. Like the appointment of prosecutors the positive result of the qualification examination of candidates to the position of a judge results in the inclusion of the candidate in the reserve list. Once a vacancy in the general or commercial court appears the candidate is directed to the judicial apprenticeship which last for 1 year¹⁵¹⁹.

Such approach to the apprenticeship of prosecutors and judges reflects the perception of higher legal education as the main way to gain legal knowledge, skills and values, meanwhile the apprenticeship within the legal profession provides the opportunity to sharpen the specifics of legal job that can hardly be transferred during higher education. The duration of the apprenticeship of from 6 months to 1 year seems reasonable in accordance with the complexity of the future legal work in the civil service. Taking into account the possibility to change the sphere of specialization from advocates to prosecutors, from legal advisors to judges and vice versa the Belarusian law defines the cases when candidates to the particular legal profession with certain work experience can be accepted without the apprenticeship or with its completion in a shorter term. This displays the collaboration of government, professional associations and higher education institutions in regulating the access to legal professions based on the gained education.

After the analysis of the formal requirements to the legal occupations a few conclusions are expected. First of all, there is no obvious collaboration of professional associations and higher legal education institutions in Poland that causes unpleasant consequences for everyone involved in the system. The long-term apprenticeships postpone the entrance to the profession for law graduates. The apprenticeship for occupation of an advocate, a legal advisor and a notary is also significant financial burden for entrants. The entire system of legal education might be seen ineffective and the society would have the low trust to the quality of higher legal education if law graduates have to “study” additional 3 years. The outcomes of higher legal education are often reviewed from a one-side, even erroneous, perspective to prepare to the apprenticeship examination. For example, higher education institutions are ranked by the results of the entrance examinations to the legal apprenticeship, although the labour market offers a big variety of jobs to the law graduates. Furthermore, the professional community of lawyers in Poland expresses its disagreement with the idea of the university-based legal apprenticeship for

¹⁵¹⁸ Ibidem, art. 96.

¹⁵¹⁹ Ibidem, art. 98.

advocates and legal advisors although the law provides such opportunity¹⁵²⁰. Such cooperation of the academia and practising lawyers won't infringe the supervision function of the bar associations stated in the decisions of the Constitutional Tribunal¹⁵²¹. Nowadays the cooperation of the Polish law schools and the bar associations is presented in the form of the paid training course aimed to prepare law graduates to the entrance examination to the apprenticeship. The course is logistically organised by higher education institutions, however the classes are held by practising lawyers who often act as academic teachers.

It is worth to remind that there are other regulated legal professions in Poland and Belarus where law graduates can start their professional career – a notary, a debt collector, a tax advisor, a legislator, a mediator and many others. There are also in-house lawyers who are hired in small and middle-size companies and provide the legal support for them¹⁵²². Taking into account the diversity of legal professions available for law graduates and the easy transfer from one legal specialization to others¹⁵²³ it is important to consider higher legal education as the major source of legal knowledge and capacities. Higher legal education provides the overall information on the systems of law, the comprehensive knowledge of national and international legislation and presents to law students the systematic approach of interpretation, analysis and exercise of law applicable to each single law case. The qualification examination testing the overall preparation of a candidate to perform a certain legal work is required to grant an access to the legal profession of public trust. However, the legal apprenticeship should be considered a

¹⁵²⁰ Higher education institutions may organize the studies in cooperation with bar associations, bodies conducting the qualification examination for graduates, departments granting the license to practice, commercial structures and others. The form and terms of provision of studies shall be defined in the agreement between the educational institution and other subject. The agreement may concern the form of teaching, the contribution of parties in the composing of syllabus, expecting learning outcomes, a way to conduct the internship. Ustawa Prawo o szkolnictwie wyższym i nauce, art. 61.

¹⁵²¹ In the decision on 22 May 2001 r. (K 37/00) the Tribunal points that the professional bar association is an entity that supervises the proper performance of the profession of public trust by its members of the corporation. Supervision includes the legal apprenticeship and the disciplinary liability of lawyers. In the decision on 19 April 2006 r. (K 6/06) the Tribunal clarifies that one of the tasks of the legal bar association is to care for the proper substantive and ethical training of interns for the future performance of the profession of an advocate. See more P. Kuczma, *Adwokat jako zawód zaufania publicznego w orzecznictwie Trybunału Konstytucyjnego*, *Palestra*, Nr 3-4, 2012, s. 146-157.

¹⁵²² The legal work of in-house lawyers is regulated by the internal documents by the company where he or she is hired. They provide the legal support of the commercial activity of the company, deal with labour law cases and support the human resource department, participate in negotiations, judicial trials on behalf of the legal entity. The number of in-house lawyers is hardly estimated because the requirements to candidates to the position are defined by an employer only.

¹⁵²³ The profession of a tax advisor in Poland requires higher education, not exactly legal, the completion of 6-month professional internship or legal work and the passed qualification examination. Ustawa o doradztwie podatkowym z dnia 5 lipca 1996 r., Dz. U. Nr 102, poz. 475 ze zmian., art. 6. The 6-month of legal work in the role of an advocate or a legal advisor, 2-year academic work with the disciplines of tax law are equal to the required professional internship. Rozporządzenie Ministra finansów z 5 października 2014 r. w sprawie praktyk zawodowych kandydatów na doradców podatkowych, Dz. U. z 2014 r. poz. 1401.

complementary element of professional training, but not post-graduation education with the duration longer than a master course in law in some countries.

Higher education institutions compete with each other for the best students and possibility to provide an interesting educational offer to them. Graduates who become famous in their profession promote their *alma mater* then. The professional community must consider higher legal education as a workshop for critically thinking people who possess the knowledge on social justice, legal ethics and promote the rule of law and apply these ideas in their practical work regardless it is legislative, judicial or commercial. The cooperation of the legal community with the academia supports the elimination of a gap between the legal theory and practice, enhances the mutual trust in the functions which each community performs and the improvement of both the quality of legal education and legal work.

5.8.2.2. Legal professions at the labour market

The right to education is the fundamental human right leading individuals to the personal, social, professional and spiritual development. From the point of view of the public policy, by gaining the professional knowledge human beings may contribute to the prosperity and welfare of the society through the development of industry and the growth of production and services. The professional development of population builds up the financial sustainability of their personal life and enhances the realization of other human rights. The appearance in the scientific stream of the discipline of economy of education points to the growing role of the right to education in the economic categories. The term “education” is often met in the doctrine, the governmental programmes and public policies on economic sustainability of the state.

The Constitutional Tribunal of Poland states the following: “The right [to education] shall be perceived as an individual value as well as the significant and fundamental good of the society. Education is not a special privilege of a human being, but an indispensable condition for the development of society [...] universal education has become a driving force of economic growth and the development of civilization in the modern world”¹⁵²⁴. Indeed, by means of education, particularly vocational and higher education, students become specialists and contribute to the development of the economic prosperity of the community. It is important to ensure that the scope of knowledge, skills and values gained

¹⁵²⁴ Uzasadnienie wyroku Trybunału Konstytucyjnego z 8 listopada 2000 r., sygn. akt SK 18/99.

by learners is actual and applicable. The effectiveness of higher education is assessed in the light of employability of graduates, the introduction of innovations in the economy and industry, the progressive enhancement of sustainability of the country.

In Poland the long-term strategy of development of higher education in 2015-2030 is aimed at achieving four goals, one of which is to improve the quality of higher education and to adapt it to the economic needs¹⁵²⁵. The enhancement of the national competitiveness and economic sustainability is one of the objectives of higher education in the welfare state. In the Global Competitiveness Index the economic situation of the country is evaluated based on various pillars. The efficiency of higher education and training in Poland is placed at the 40th position of 137 states and follows the Czech Republic (24th), Russian Federation (32d), Portugal (34th)¹⁵²⁶. It is not a good result comparing it with the position of the countries with the similar social and economic characteristics. The international reports also point to the high percentage of specialists with higher education degree being employed at the workplace requiring low and medium qualifications¹⁵²⁷. Moreover, the findings of the national study of the human capital in Poland show that the employer's expectations to hire candidates with particular professional and personal characteristics are not fulfilled in about 60% situations¹⁵²⁸. The reasons of discrepancy of learning outcomes and the expectations of business sector have different roots.

Taking into account the results of the national research and international findings the government has undertaken the reform of higher education, including the changes oriented to enhance the cooperation of academia and business sector and thereby increase the competitiveness of the economy. The plan of activities to be implemented by the Ministry of Science and Higher Education in realm of higher education has a complex and comprehensive character – starting from the enhancement of the didactic competencies of academic staff to the increase of the students and professors mobility in order to learn the best practices abroad. By such means the content and outcomes of higher education shall be adjusted to the social and economic needs of the state.

The Polish Law on higher education and science defines different ways of cooperation between the Polish higher education institutions and the economic sector. Educational

¹⁵²⁵ Program rozwoju szkolnictwa wyższego i nauki na lata 2015-2030, Ministerstwo Nauki i Szkolnictwa Wyższego, available at <http://www.nauka.gov.pl/aktualnosci-ministerstwo/program-rozwoju-szkolnictwa-wyzszego-i-nauki-na-lata-2015-2030.html> [accessed on 23 December 2017].

¹⁵²⁶ K. Schwab (ed.), *The Global Competitiveness Report 2017–2018*, World Economic Forum, 2017, p.330-331.

¹⁵²⁷ *Education policy outlook, Poland*, OECD, 2015, p.6.

¹⁵²⁸ J. Górnjak, *Polski rynek pracy – wyzwania i kierunki działań*. Raport na podstawie badań Bilans Kapitału Ludzkiego 2010–2015, Warszawa-Kraków, 2015, s. 17.

institutions can conduct the scientific research and developing works with the commercial entities, a new legal entity may be founded by both a higher education institution and a commercial company. The law allows the creation of practice-based studies by a higher education institution together with a business entity¹⁵²⁹. Although it has more obvious influence on the technical and engineering studies, legal studies can benefit also from such forms of cooperation.

Although there is no research on profitability of legal studies for the state budget in Poland, some observations can be made in terms of higher legal education and its graduates. First of all, it is essential to underline that legal occupation as a profession of public trust shall not be considered a commercial activity. One of the characteristics of lawyer's work is to serve for public good, but not to obtain the profit. This idea is expressed precisely in the legal doctrine¹⁵³⁰ and the judicial decisions¹⁵³¹. In the economic context higher legal education is seen as professional workshop of specialists who will be able to organize their financially sustainable life after the graduation. If law graduates are employed or manage their own law firm or an advisory office, if they are engaged in any other form of labour activity they are profitable for the economy of the state. In fact, no reliable research has been carried out to learn the business needs and the degree of saturation of labour market in lawyers. So, the number of unemployed law graduates can illustrate to some extent the adaptability of legal education to the needs of economy.

3569 of 23084 registered advocates doesn't practise law, what constitutes about 15% of all advocates¹⁵³². However it doesn't mean that every sixth advocate doesn't contribute to the welfare economy. The law on advocates defines the situations when an advocate is not allowed to practise – after the employment according to the labour code, in case of permanent health problems preventing the practice, profession suspension¹⁵³³. In the light of the prompt growth of number of interns in the legal apprenticeships during the recent years the professional community more often points to an issue of possible unemployment of representatives of legal professions. Indeed, the statistic data (table 9) illustrate the threat of unemployment among graduates with higher legal education.

¹⁵²⁹ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 62.

¹⁵³⁰ See B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa, 2009, s. 117. Ł. Błaszczak, *Radca prawny jako przedsiębiorca – refleksje na tle art. 43(1) KC i art. 479(1) KPC*, Monitor Prawniczy, 2004, nr 13. It is significant to admit the difference in the status of an advocate and a legal advisor, the latter can obtain profit, however provision of legal services is not a commercial activity.

¹⁵³¹ Wyrok Trybunału Konstytucyjnego z 22 listopada 2004 r., SK 64/03.

¹⁵³² The number of practising/non practising advocates, available at <http://www.rejestradvokatow.pl> [accessed on 6 January 2018].

¹⁵³³ Ustawa prawo o adwokaturze, art. 4b ust. 1.

Table 9. The ranking of higher education specialisations with the biggest number of students of higher education institutions and number of unemployed, Poland

| Specialisation | Number of students of the last academic year in 2015/2016 | Number of unemployed with higher education on 31 December 2016 |
|------------------------|--|---|
| Management | 14 911 | 6 350 |
| Pedagogy | 12 001 | 13 127 |
| Finance and accounting | 11 191 | 2 292 |
| Law | 9 918 | 3 681 |
| Administration | 8 679 | 8 870 |
| IT | 7 960 | n/a |
| Economics | 7 837 | 8 543 |

Source: the report of the Ministry of Family, Labour and Social Policy on the shortage and surplus occupations, 2016, p.29¹⁵³⁴.

In 2016 the labour market registered in total 1 146 660 unemployed people, among them there are 177 675 with higher education¹⁵³⁵. Law graduates without a job constitute 0,3% of all unemployed and 2% of unemployed with higher education. Taking into account that the law faculties are in the top list of the most popular higher education degrees the surplus of specialists with legal education in the amount of 2% is a healthy percentage of unemployment.

Other innovative tool enabling to follow the graduates career path and therefore to evaluate the quality of higher education in the light of adaptability to the needs of business sector is the monitoring system ELA (Ekonomiczne Losy Absolwentów)¹⁵³⁶. It was created by the Polish experts by virtue of the Law on higher education and science¹⁵³⁷. The database collects, analyses and presents the economic data about the professional path of

¹⁵³⁴ Zawody deficytowe i nadwyżkowe w 2016 roku, Ministerstwo Rodziny, Pracy i Polityki Społecznej, p.29, available at <https://www.mpips.gov.pl/analizy-i-raporty/raporty-sprawozdania/rynek-pracy/zawody-deficytowe-i-nadwyzkowe/ok2016/> [accessed on 6 January 2018].

¹⁵³⁵ Ibidem, p.28.

¹⁵³⁶ <http://ela.nauka.gov.pl> [accessed on 01 September 2018].

¹⁵³⁷ Ustawa Prawo o szkolnictwie wyższym i nauce, art. 352.

graduates of all higher education institutions in Poland. The system launched in 2016 and provides the reports on the salary and the number of unemployed graduates, the duration of search for a job starting from 2014. Depending on the higher education institution the risk to become unemployed after the graduation for law students varies from 0 to 31%, the average per cent of unemployed graduates in the country from the fields of law, including administration, law, criminology, European studies and etc., amounts to 9%. The graduate of legal studies looks for a full-time job within 8 months¹⁵³⁸. By the means of the system higher education institutions can evaluate the effectiveness of the educational service they provide at different faculties through the competitiveness of their graduates at the labour market. It is worth to clarify that the results of the monitoring system demonstrate the employment of graduate without the consideration of their job position. A law graduate hired at the position of a data analyst is recognized employed. Hence, in the system unemployment is understood as an inability to find a paid job regardless of the fields of economy.

Above all, higher legal education institutions have to pay more attention to the demand of the professional legal community to avoid the growth of unemployment among lawyers. The professional legal community in Poland organizes annually the market of legal practice and job offers. It is a good chance for law students to observe the trends in the legal industry, to verify their knowledge in the legal game or to learn useful skills and knowledge during workshops conducted by experienced lawyers. What is the most important is that the market provides the opportunity to find a law company to carry out the mandatory practice during the legal studies. In the future it may become the first workplace for a law graduate. While big law corporations search for perspective candidates for their vacancies, small law firms face a shortage of specialists working in a narrow-specialized topic. For example, in the labour market there is a lack of lawyers dealing with tax law, law firms also search for specialists capable to find solutions in multidisciplinary cases - law, finance and accounting¹⁵³⁹. The law on social benefits is one of the most comprehensive and complex fields of law with many regulations and exceptions, therefore it is not easy to find a good specialist who can solve the legal case from this branch¹⁵⁴⁰. Professional knowledge on a particular business-legal topic, complex legal support and

¹⁵³⁸ Infographic for graduates within 2014-2016, available at <http://ela.nauka.gov.pl/> [accessed on 01 September 2018].

¹⁵³⁹ The answers of practising lawyers during the VI legal market of internships and jobs in 2016. J. Styczyński, *Rynek weryfikuje oczekiwania młodych prawników. Szanse na zatrudnienie będą coraz mniejsze*, *Gazeta Prawna* z dnia 17 marca 2016.

¹⁵⁴⁰ K. Antonów, *Sprawy z zakresu ubezpieczeń społecznych*, 2011, s.333.

expertise in legal proceeding and precedents in a narrow field of law are the main reasons why in-house lawyers ask for legal support from their colleague-corporate lawyers¹⁵⁴¹. The annual market is primarily addressed to law students and graduates. Meanwhile, if academic staff responsible for the creation of legal curricula attended such events it would be very useful for the development of learning outcomes of learners and its adaptability to the needs of the labour market.

Summarizing the findings presented above it is worth to admit that the Polish government takes various measures of the legislative and executive nature to maintain higher education actual, competitive and profitable to the constantly changing conditions within the country and at the international level. The clauses of the legislation and the statements of the national policy concerning higher education underline the significance of higher education for the economic prosperity of the country. On the other hand, the factual adaptability of higher legal education to the economic reality is a controversial issue with both positive and negative sides. The increasing number of lawyers at the labour market affects the cost and availability of legal services for the population. Lawyers, regardless they are advocates, prosecutors or judges, improve and broaden the access to justice for business entities, ordinary and vulnerable people. The government must create conditions to perceive legal services available for everybody, not only businessmen¹⁵⁴².

At the same time, a lack of control over the number of law graduates will may result in their unemployment. Although the labour market is sensitive to the massive appearance of people of the same profession, the number of unemployed lawyers remains low in comparison with other professions. Moreover, though the state is equipped with different measures to control the level of unemployment, no one can precisely predict what career path will be selected by the law graduate – a legal journalist, a human rights defender or a judge¹⁵⁴³. In the market economy the rule of supply and demand is a better regulator than any administrative decisions. Narrow specialization, the internship during legal studies and

¹⁵⁴¹ *Pierwsze badanie Dyrektorów Działów Prawnych Przedsiębiorstw w Polsce 2014*, raport Polskiego stowarzyszenia prawników przedsiębiorstw, 2014, s. 26.

¹⁵⁴² Due to the low legal culture only 14% Poles (mainly businessmen and farmers) applied to a practising lawyer for legal support in 2004-2009. *Zawody prawnicze w opinii i doświadczeniu Polaków*, badanie TNS OBOP na zlecenie Krajowej Rady Radców Prawnych, 2009. The main reason not to apply for the professional support in legal disputes was low legal culture of citizens. They didn't consider legal professionals as someone required. In 2017 87% respondents state that at least once a year would apply to a lawyer, but only 8% do it. *Badanie na zlecenie Towarzystwa Ubezpieczeń Ochrony Prawnej*, w dniach 15-23 maja 2017.

¹⁵⁴³ This argument is mentioned several times in the legal doctrine. See T. Giaro, *Kształcenie, wykształcenie i niedokształcenie polskiego prawnika*, *Pauza akademicka*, Nr 270, 2014, s. 2. P. Machnikowski, *op.cit.*, s. 48-49.

the lifelong personal and professional development are recommendations for law students in order to compete successfully at the labour market.

Regarding Belarus the national policy on higher education seems progressive and contains the statements about adaptability to the needs of labour market. The Code on education states that the government policy in the realm of education is based on the following principles:

- the priority of human rights and human values;
- the provision of the right to education to everyone;
- the equal access to education;
- the integration to the international educational area with the maintenance the national traditions in education;
- the provision of education in conformity with the protection of ecology¹⁵⁴⁴.

In addition, the Code proclaims the maintenance and development of education in accordance to the socio-economic development of the state and the socio-governmental character of the governance of education¹⁵⁴⁵. These principles sound very progressive and are in line with the international provisions regulating the human right to education. Nevertheless, the Belarusian scientists¹⁵⁴⁶ inform the national and international society on the declarative character of the Code's provision without their practical effect. The significant challenges for the development of higher education in consistency with the economic, social and political conditions in the country and in the world constantly emerge.

Giving comments about the quality of education in the country the government of Belarus often refers to the statistics of the international reports. Indeed, in the international rankings concerning education Belarus occupies the high positions owing to the high literacy rate for adults resulted from the settled public opinion on the value of educational degree for the financial development of population. For example, the percentage of people with higher education in Belarus is higher than in Austria, Italy, Hungary and the Czech

¹⁵⁴⁴ Кодекс об образовании, ст. 2.

¹⁵⁴⁵ Ibidem.

¹⁵⁴⁶ С. Мацкевич, *Высшее образование Беларуси: вызовы современности и ответы архаики*, 2013, available at http://cet.eurobelarus.info/files/File/Higher-Education-Belarus_RU.pdf [accessed on 17 September 2017]. С.Н. Кройтор, *Проблемы и перспективы развития белорусского образования*, в: Управление в социальных и экономических системах: материалы XVII Международной научно-практической конференции (2-6 июня 2008 г. Минск), Минск, 2008. С.Н. Кройтор, *Высшее образование РБ в мировом контексте: проблемы повышения качества и конкурентоспособности*, в: Диалог цивилизаций в условиях глобальной экологической нестабильности: материалы Международной научной конференции молодых ученых (24 мая 2012 г. Минск), Минск, 2014.

Republic¹⁵⁴⁷. Every fourth adult possess the professional knowledge and skills to contribute to the economic development of the country. Thus, Belarus is presented in one-criterion rankings. However, the complex statistics and rankings with several indicators display the systemic crisis of the system of education. The statistic data on gross domestic product (GDP) put Belarus on the 68th position among all the UN countries neighbouring with Cuba, Sudan and Sri Lanka, whereas Poland occupies the 23rd line in the list¹⁵⁴⁸. In the Human Development Report based on the analysis of 17 different indicators (life expectancy birth, schooling, gross national income and others) Belarus is included in the second 50 countries of the world being behind almost all European countries¹⁵⁴⁹. The essence of the human capital theory is based on the idea that the educated population affects the growth of prosperity and enhances the economic development of the state. Nevertheless, the economic theory doesn't work in its full extent in the reality of some post-soviet countries, including Belarus.

In the literature the issue of inefficiency of the Belarusian higher education has been discussed in various contexts, including the adaptability of education to the economic needs of the country. The findings of the Belarusian researchers point to the qualitative and quantitative discrepancy between the demands of the labour market and the profile of graduates of higher education institutions¹⁵⁵⁰. The numbers of enrolment in the last years show the stable interest of entrants to the economics, administration and legal studies (table 10). However, the labour market is not interested in big numbers of economists, lawyers, civil servants and managers. Unfortunately, the official statistics don't illustrate the numbers of unemployed by the field of economy or areas of study. Neither higher education institutions monitor the career path of their graduates. Indirect way to verify the demand of the labour market for lawyers is job offers. The main internet portals with job vacancies contain few offers for people with higher legal education in comparison with

¹⁵⁴⁷ According to the OECD report the average percentage of adults with the tertiary education in EU is about 30%. Austria – 20%, Italy – 16%, Hungary – 22%, Czeck Republic – 19%. Education in a Glance 2014, Table A1.3a, p. 46. In Belarus as well in Poland graduates of higher education institutions form 25% of population at the age of 20-64 according to the National Statistics on 2016. Образование в Республике Беларусь, Статистический сборник, Минск, 2017, с. 142.

¹⁵⁴⁸ GDP and its break down at current proces in US dollars (2015), available at <https://unstats.un.org> [accessed on 13 January 2018].

¹⁵⁴⁹ Poland is ranked 36 in the list, Belarus occupies the 52nd line of all 188 countries. Human development report 2016: human development for everyone, UNDP, 2016, p. 198

¹⁵⁵⁰ В. Дунаев, *Человеческий капитал: беларуское высшее образование в межстрановой перспективе*, Исследование в рамках проекта BISS „Человеческий капитал в Беларуси: источники конкурентоспособности и модернизации”, 2013. А.М. Погорельская, *op.cit.*, с. 116–125.

other professions¹⁵⁵¹. Employers require specialists in engineering, industry, transport and logistic, medical services (table 11).

Table 10. The number of graduates of higher education institutions in 2013-2016, Belarus

| Item | 2013 | 2014 | 2015 | 2016 |
|---|--------|--------|--------|--------|
| The number of graduates of higher education institutions | 82 700 | 81 100 | 78 000 | 74 600 |
| The number of graduates of law, business, administration, communication specialisations | 38 200 | 34 600 | 33 100 | 31 400 |
| The number of law graduates | 6 457 | 5 907 | 6 450 | 6 657 |
| The number of the registered unemployed | 20 959 | 24 192 | 43 332 | 35 300 |
| The number of the registered unemployed with higher education degree | 2 331 | 2 680 | 6 240 | 5 047 |

Source: Statistical book: education in the Republic of Belarus, Minsk, 2017, p.147; Statistical book: labour and employment, Minsk, 2016, p. 210. Концепция развития юридического образования в Беларуси до 2025 г., проект, Минск, 2017, с. 7.

Table 11. The number of top employer's requests for candidates by the field of economy, 2013-2015, Belarus

| The field of industry, specialization | 2013 | 2014 | 2015 |
|---|--------|--------|--------|
| Industry | 13 188 | 8 197 | 4 796 |
| Engineering | 6 902 | 3 947 | 3 877 |
| Transport and logistic | 5 100 | 1 957 | 1 663 |
| Medical services | 4 380 | 4 277 | 5 002 |
| TOTAL NUMBER of requests from employers | 50 485 | 33 588 | 26 680 |

Source: Statistical book: labour and employment, Minsk, 2016, p. 228.

The major reasons of supply-demand mismatch are the communist legacy in the governance of the educational system causing bureaucracy and formalism, a lack of integration of the best practices into education from other post-Soviet countries like Ukraine, Russian Federation and the neighbouring countries of the European Higher

¹⁵⁵¹ There are 199 job offers for lawyers on <https://jobs.tut.by>, 44 offers are on <https://rabota.by>, 120 offers are on www.praca.by. The numbers illustrate the vacancies over the country [accessed on 13 January 2017].

Education Area, a low level of institutional autonomy and freedom within higher education, the aging of academic staff, the financial and administrative obstacles for young generation for the entry to academia. Each of the mentioned reasons affects the particular facet of higher education (e.g. didactics and methods of assessment, funding or student and staff mobility), all together they result in a low level of adaptability of higher education to the economic needs of the country.

Thinking of recommendations aimed to improve the adaptability of higher legal education to the demands in economy it is rational to refer to the educational policy in the first turn. According to the Code on education the management of the system of higher education is still focused in the hands of the President of Belarus and the national and regional governmental bodies responsible for education¹⁵⁵². The major decisions concerning the quality of education, the enrolment rate, the content of curricula and others are made by the Ministry of Education¹⁵⁵³, whereas higher education institutions are to execute the decisions adopted by the respective governmental agents and to provide education. As consequences, the solutions enabling to improve the economic attractiveness of higher education lie to the great extent on the side of the governmental bodies.

The governmental programme “Education and youth policy during 2016-2020”¹⁵⁵⁴ defines three goals to be achieved in the realm of higher education by the due term; two of them concern the correlation of higher education and the needs of economy of the state:

- Goal 1 - practice-oriented training of students and establishment of cooperation between higher education institutions and employers, labour market.
- Goal 3 - improvements in planning of curricula and student enrolment rates according to the needs of economy.

The government will measure the effectiveness of achievement of these goals by means of the content of educational standards, the model syllabi and curricula of different specialisations and disciplines; a number of internships and practical learning organised in the workplace; the variance between the enrolment to higher education institutions and employment of graduates, trends on the labour market and specialists in demand¹⁵⁵⁵.

¹⁵⁵² Кодекс об образовании, ст.106.

¹⁵⁵³ Постановление Совета Министров Республики Беларусь от 04 августа 2011 № 1049 „Об утверждении положения о Министерстве образования Республики Беларусь”, НРПА 2011 г., № 92, 5/34264.

¹⁵⁵⁴ Государственная программа „Образование и молодежная политика на 2016-2020 годы”, гл.3, утв. постановлением Совета Министров Республики Беларусь от 28 марта 2016 № 250, НРПА, 2016, 5/42890.

¹⁵⁵⁵ Ibidem.

Other important legal acts regulating the enrolment rate to higher education institutions were adopted by the Council of Ministers¹⁵⁵⁶. The Ministry of Economy along with the Ministry of Labour and Social Protection are responsible for the forecast of manpower required for the economical sustainability of the country. The Ministry of Education agrees the enrolment rate for public and private educational institutions with higher education institutions. The governmental bodies estimate the manpower forecast based on the annual labour flow, the qualitative and quantitative changes of employees, the governmental policies and business projects in the region. The private business entities can be invited for cooperation in the preparation of the forecast. The forecast of manpower with higher education degree is prepared for the next ten-year period¹⁵⁵⁷.

The strong centralisation of the managerial functions in the hands of governmental bodies causes the delay in the introduction of required changes in the system of education. The governmental reaction to the changes in the business sector is not prompt due to the involvement of many stakeholders, although it may be expected by business. The estimation of student enrolment rates engage different ministries, it can be considered a positive feature, because the situation in the various fields of economy are taken into account. On the other hand, reaching the consensus by different stakeholders of the process takes time. The estimation of enrolment is profitable for the budget of the country in case it is done for a long term, i.e. 5-10 years, what doesn't fit the constantly changing conditions of the labour market. Isolation of education from the reality of market economy causes the situation when the prestige and value of higher education degree goes down. Entrants select higher education institutions by the low price and the short duration of their study in order to obtain a university degree, but not professional knowledge and skills¹⁵⁵⁸. Every third specialist occupies the position different from the obtained degree and the university specialization¹⁵⁵⁹. Consequently, the low motivation of students during their studies, a lack of interest to continue learning at the higher level of education, the "old" academia with the archaic methods and forms of teaching are a few outcomes of the discrepancy between the

¹⁵⁵⁶ Постановление Совета Министров Республики Беларусь от 19 июля 2011 г. № 972 „О некоторых вопросах формирования заказа на подготовку кадров”, НРПА 2011, №85, 5/34182. Постановление Совета Министров Республики Беларусь от 28 декабря 2017 г. № 1016 „О некоторых вопросах прогнозирования потребности экономики в кадрах”, НРПА 2018, 5/44634.

¹⁵⁵⁷ Постановление Совета Министров о некоторых вопросах формирования заказа, п. 4-6.

¹⁵⁵⁸ Students of the Belarusian state university were asked about the aim of their study. To obtain a degree was an answer of 25 and 26% of the first-year and the last-year students accordingly. Л.Г. Титаренко, *Новые и старые проблемы качества образования в Беларуси*, Социология, № 2/2014, с. 108.

¹⁵⁵⁹ Л.Г. Титаренко, *op.cit.*, с. 109. See also the results of the survey conducted by the research center Headhunter with the team rabota.tut.by in 2013, available at <https://finance.tut.by/news345356.html> [accessed on 14 January 2018].

demands of labour market and the offered specialisations of higher education institutions. We shall not forget the negative consequences of the inadaptability of higher education for the industry. Taking into account the above mentioned it is not surprisingly to see Belarus among the less developed countries in the world ranking by GDP.

Being aware of the challenges facing higher legal education in Belarus in the recent years the Ministry of Justice, the Ministry of Education in the cooperation with the leading law schools of the country started working on the concept of development of legal education in Belarus during 2018-2025¹⁵⁶⁰. It is not the first time in the history of the country when legal education is in the focus of the legislative initiative. The concept of the development of legal education during 2006-2010¹⁵⁶¹ informed the pedagogic and professional community of the following problems in realm of higher legal education:

1. The unjustified growth of the number of educational institutions that teach law student.
2. The low quality of legal education due to the lack of high qualified academic staff, teaching materials and scientific research in law.
3. The ungrounded growth of number of law students, in particular the dominance of part-time law students in comparison with the full-time ones.
4. The emerging features of disrespect for studies in law in the society¹⁵⁶².

To overcome the challenges the Ministry of Justice and the Ministry of Education elaborated and then implemented the action plan that included the monitoring of the quality of legal education, the creation of the list of job positions which require the degree in law, the organization of professional development and training of academic staff, the reduction or termination of enrolment rate in certain cases, the monitoring of employment of law graduates¹⁵⁶³.

It is worth to admit that the annual number of law students in 2013-2016 (table 10) was changing slightly, while the total admission rate in higher education institutions was reducing. The demographic situation in Belarus as well as in Poland within the last decade pointed out the decrease of overall enrolment rates in the system of higher education. Nevertheless, the statistics on higher legal education don't reflect less interest to this field

¹⁵⁶⁰ In July 2018 the work on the content of the document has not finished, the document is finalized and then will be approved by the appropriate governmental bodies.

¹⁵⁶¹ Постановление Министерства образования Республики Беларусь и Министерства юстиции Республики Беларусь от 13 июня 2006 г. № 61/30 „О мерах по совершенствованию системы подготовки юридических кадров в Республике Беларусь”, НРПА 2006 № 169.

¹⁵⁶² Ibidem, п.1.

¹⁵⁶³ Ibidem, Annex 2.

of study, whereas the reduction of numbers of all students is obvious. There are a few explanations to this fact. First of all, the total admission of law students remains almost the same, while the reduction of enrolment rates occurs for the budget-funded type of education only (table 12). The numbers of budget-funded and paid seats are annually agreed by higher education institutions with the Ministry of Education, however the enrolment of students over the approved quota is allowed only for the paid form of education. The total number of the paid seats can't exceed the quota defined in the license for provision of higher education¹⁵⁶⁴. The second reason is the growth of number of foreigners, particularly from Tadjikistan, Kirgizstan and Turkmenistan, at the law faculties since 2012. Foreign students are accepted beyond any limits¹⁵⁶⁵ as they are seen as one of the main sources of funding of higher education in Belarus.

Table 12. The enrolment number of the budget-funded and paid seats in higher legal education in the selected institutions during 2016-2018, Belarus.

| Higher education institutions, law faculty, speciality – law | The enrolment rate in 2016/2017 | | The enrolment rate in 2017/2018 | |
|---|--|-------------|--|-------------|
| | Budget | paid | Budget | paid |
| Baranovich state university | 0 | 150 | 0 | 112 |
| Belarusian state university | 184 | 413 | 172 | 320 |
| Brest state university | 0 | 220 | 0 | 180 |
| Grodno state university | 54 | 316 | 49 | 321 |
| Vitebsk state university | 15 | 193 | 20 | 161 |

Source: Entrant manuals of the selected universities in 2016/2017 and 2017/2018, enrolment rates, www.abiturient.by.

Unfortunately, the content of the current concept of the development of legal education until 2025 has much in common with the previous document. It means the previous policy was not fulfilled. At the same time there are new priorities and directions of improvement of legal studies stimulated by the integration of the Belarusian system of

¹⁵⁶⁴ Указ Президента о правилах приема, п. 8.

¹⁵⁶⁵ The admission rules to higher education institutions in Belarus allows to admit foreign students from Russian Federation, Kazakhstan, Tadjikistan and Kirgizstan and offer them the same financial conditions as to Belarusian students due to the participation in the international union. They can pass the admission examinations and compete with Belarusian students for the budget-funded seats at higher education institutions. Указ Президента о правилах приема, п. 3. But the majority of foreign students submits the application to study at the paid form of higher education.

education with the European Higher Education Area. Concerning the adaptability of higher legal education to the needs of economy the provisions of the concept don't bring new ideas. The authors of the document recommend to adjust the enrolment rate to the demographic situation in the country, the number of higher education institutions and requests for lawyers in the economic sector¹⁵⁶⁶. The action plan for the concept specifies the establishment of the National Council for Training and Employment of lawyers which will conduct the 1-year programme of master's studies for interdisciplinary legal-related occupations. Such, the government strives to adjust the legal studies to changing labour market requests and promote lifelong learning among lawyers. Another idea of the concept aimed to improve the employment of people with the degree in law is similar with the recruitment of judges and prosecutors in Poland. The governmental bodies in Belarus are going to create the reserve list of candidates with the completed higher legal education who will pass the apprenticeship and hold the position in the civil service.

Summarizing the findings it is fair to admit that the governments of both countries – Belarus and Poland – demonstrate the adaptability of higher legal education to the demands of the national economy in the national regulations. Indeed, the governmental bodies adopt the national policies and provisions aimed to provide higher education in consistency with changing economic reality. The norms have a form of the educational principles, separate programme of development, policies. The other side of these clauses is their declarative character. Stakeholders face obstacles of different nature while applying the norms of policies in practice. For example, the cooperation of higher education institutions and business sector is demonstrated as innovative approach of practice-based teaching instead of a tradition of higher education.

On the other hand, the administrative regulation of higher education area infringes other core elements of the right to education, e.g. institutional autonomy of institutions or an access to free education. When the Belarusian government puts efforts to take control over the admission rate of law faculties it means that fewer students will have a chance to study law free of charge. The accessibility of higher education is put in the danger then. In the view of human rights law the reduction of seats in higher education institutions with the purpose to control the labour market contradicts the idea of a non-discriminative access to higher education. The state's intervention in the regulation of professions is permissible with the fulfilment of two conditions – the demonstration of the exhausted capacity of

¹⁵⁶⁶ Концепция развития юридического образования в Беларуси до 2025 г, *op.cit.*, с. 12.

educational institutions to take students and the enrolment of students is still based on their merits. In the case of Belarus there are no evidences that higher education institutions remain limited in the human and financial resources due to the high number of law students. On the contrary, the law schools demonstrate their readiness and eager to enrol a big number of law students, including from other countries, what is proved by the annual statistics of law students. The enrolment rate remains almost the same even in the years of the demographical crisis.

The planning and forecast in the realm of higher education is an essential element of the management of education. However, in the contemporary world the national forecast of the number of specialists with higher education in the specific field for the next 10-year term, how it is done in Belarus, seems irrational and even archaic. The Belarusian governmental bodies shall shorten the forecast, for example, to the 3- or 5-year term and to engage independent analytics or representatives of the business entities in the process. In this context, the Polish initiative to monitor annually the career path of graduates is considered more rational and adequate tool which provides entrants, students and higher education institutions with the analytical data of economic character.

5.8.2.3. Adaptability of legal curricula and teaching methods

At the level of higher education institutions legal studies adapt to the needs of labour market through teaching methods and the content of the taught subjects. Indeed, legal curricula and how it is delivered to the learners influence much the learning outcomes to be obtained by law graduates. An array of indispensable professional knowledge, habits, skills, convictions and values forms the image of a successful and effective lawyer in the society and at the labour market. In the legal doctrine a lot of authors make attempts to explore these qualities in order to support students and new lawyers in building an authentic professional identity¹⁵⁶⁷. Moreover, the description of the professional qualities of lawyers encourages law schools to train the specialists that are required in the society.

Neither the professional community in Poland, nor the Belarusian lawyers have developed the set of competencies that could serve a benchmark for law schools or employers in the evaluation of lawyers. However, in the legal literature on the matter one

¹⁵⁶⁷ I. Mulak, M. Szeroczyńska, *Jak uczyć prawników dobrej komunikacji z klientem*, Warszawa, 2006; *Essential qualities of the professional lawyer*, Instructor's manual, American Bar Association, 2013; C. D. Cunningham, *What do clients want from their lawyers*, 2013; A. Pawlak, *op.cit.*, s. 3-11; H. Brayne, *The legal skills book: a student's guide to professional skills*, Oxford, 2005; B. Wagner, *Defining key competencies for business lawyers*, *Business lawyer*, Vol.72, 2016-2017, p.101-129; E.H. Доброхотова (ред.), *Навыки юриста*, Спб., 2006.

may find the reference to the MacCrate Report¹⁵⁶⁸ composed by the American Bar Association that describes 10 essential characteristics of a competent law graduate¹⁵⁶⁹. The academic community describes the professional competences of law graduates in the form of the expected learning outcomes enshrined in the educational standards, the model curricula and syllabi, the programmes designed by higher education institutions for certain legal specialisations and syllabi of law professors. The spectrum of these documents defines the image of a successful lawyer with the variety of knowledge, skills and attitudes.

According to the legal provisions in Poland the programme of legal studies must define learning outcomes in line with demands of the labour market and the results of graduates career monitoring¹⁵⁷⁰. At the same time it is crucial to make a review of the factual realization of this norm in higher legal education to confirm or contradict the opinions disseminated in the public debates about the adaptability of legal education to the needs of economy¹⁵⁷¹. In this context it is analysed the following elements of legal studies: a range of optional courses, teaching methods developing hard and soft skills, legal clinic and legal practice as teaching methods, extracurricular activities developing professional competences of future lawyers. It seems important to highlight that some above-mentioned elements have been analysed in other parts of the research, therefore in the current sub-chapter they are only briefly presented.

Optional courses. The institutional autonomy and academic freedom of law teachers includes the possibility to design optional legal courses as a quick reaction to changes in the legal profession. In some countries there are attempts to foresee what fields of law and what professions will be in demand in a few years¹⁵⁷². The expansion of legal mediation, the development of IT law, the merger of jurisdiction of advocates and legal advisors have forced the changes in the legal education content. Taking the changes into consideration

¹⁵⁶⁸ Legal education and professional development –an educational continuum, Report of the Task Force on law schools and the profession: narrowing the gap, American Bar Association, 1992, p. 135-221.

¹⁵⁶⁹ The professor F. Zoll considers the MacCrate Report a universal description of legal competences. F. Zoll, *op.cit.*, s. 107. In the German literature one may find the similar approach. A. Bucker, W.A.Woodruff, *The Bologna process and german legal education: developing professional competence through clinical legal experiences*, German law journal, 2008, vol. 9, Nr 5, p.590.

¹⁵⁷⁰ Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie studiów, para. 7 ust. 2.

¹⁵⁷¹ M. Gutowski, P. Kardas, *Nadprodukcja niedouczonej prawników [opinia]*, Gazeta Prawna z dn. 30 sierpnia 2017, available at <http://prawo.gazetaprawna.pl/artykuly/1067344.nadprodukcja-niedouczonej-prawnikow.html> [accessed on 25 February 2018]; U. Mirowska-Łoskot, *op.cit.*; Т. Сысыев, А. Козик, Юридическое образование в Беларуси: проблемы и перспективы (аудио), 7 августа 2018, available at <https://jurist.by/statia/yuridicheskoe-obrazovanie-v-belarusi-problemy-i-perspektivy-audio> [accessed on 20 August 2018].

¹⁵⁷² These are legal fees analyst, legal project manager, online dispute resolution practitioner, legal knowledge engineer are a few legal professions of the future. R. Susskind, *Tomorrow's lawyers*, 2017, p. 173.

law schools are able to adapt the educational offers to an inquiry of students, clients and the legal industry in the whole. However due to the massive structure of the institutions, sometimes bureaucratic governance and the specific academic calendar the system of higher education adapts to the economic changes much slower, than the business area. Therefore higher education institutions strive to be a step ahead. Besides the optional courses offered to students during studies law schools launch new legal specialisations for entrants, design postgraduate education opportunities for legal graduates and teach a new profession in a shorter term on the basis of other higher education degree. Although these solutions find their opponents and proponents in the academic literature, their practical realization takes place in both countries. The Polish higher education institutions demonstrate a broad range of optional legal courses¹⁵⁷³ and postgraduate offers¹⁵⁷⁴. In Belarus since joining the European Higher Education Area higher education institutions are entitled to compose the list of courses at the student's option, however in the reality students can't realise their right due to the limited offer¹⁵⁷⁵. At the same time the law degree can be obtained in any Belarusian institution with the law faculty during 3-3,5 years, if an entrant already has other higher education degree.

Undoubtedly, the classical legal occupations like a judge or a legal advisor are grounded on the full legal studies and often require many years of legal experience. These occupations remain unchanged forming the core pillar of the legal industry. On the other hand, interdisciplinary lawyers or technicians with the legal background will soon be in demand. The economy requires specialists with either multidisciplinary or, contrarily, very narrow and innovative knowledge. Members of the business sector, analytics and educators assert that the development of the world occurs so fast that the first-year students study the material that is considered outdated by the day of their graduation. Only a lack of bureaucracy in the management of education, the cooperation of higher education

¹⁵⁷³ The faculty of law and administration at the Adam Mickiewicz University in Poznan offers 27 optional courses in the academic year 2018-2019, available at <https://prawo.amu.edu.pl/dla-studenta/dla-studenta/zasady-studiowania/sylabusy/prawo-studia-stacjonarne-przedmioty-do-wyboru> [accessed on 25 November 2018]. Law students at the University in Białystok must obtain at least 30% of all ETCS by attending and approving the optional courses. In the study plan starting from the academic year 2017-2018 there are 49 optional courses to choose, available at https://www.prawo.uwb.edu.pl/prawo_new/studenci.php?p=185 [accessed on 25 November 2018].

¹⁵⁷⁴ The list of postgraduate legal courses of the Warsaw University and the Gdansk University is available accordingly at <http://rekrutacja.wpia.uw.edu.pl/oferta/studia-podyplomowe/>, https://prawo.ug.edu.pl/oferta/studia_podyplomowe [accessed on 25 November 2018].

¹⁵⁷⁵ During the academic year 2018-2019 law students of the Brest State University after A. Pushkin have 4 courses to choose, one of two subjects can be selected by the first-year students, another one is by the second-year students, available at <http://www.brsu.by/div/spetsializirovannyye-moduli-na-20182019-uchebnyj-god> [accessed on 25 November 2018].

institutions with the professional community and the orientation of education on the economic processes will make higher legal education attractive for entrants, profitable for educational institutions and necessary for the society.

Teaching methods. The ability to succeed in the legal profession does not solely depend on academic achievement of the student. A set of factors and skills including the ability to prioritize and to plan, the managerial and analytical skills, the ability to connect and communicate with others influence the future career success¹⁵⁷⁶. Law students must develop their professional skills along with the social, communicative ability which forms the important part of the personal portfolio of a specialist. This is ensured by different learning tools and their proper application by the academic teachers. Some methods develop the learner's professional skills, while others are aimed to provide with the theoretical knowledge. There are also teaching methods that ensure law students to learn the specifics of the future legal occupation and enhance the legal aptitude.

Good teaching means the awareness of a diversity of teaching methods and knowing when it is appropriate to use a particular learning tool. In this light the reference to one of the respondent's comments will be to the point. *All teaching methods are very effective and powerful. The matter is whether a teacher knows how to use the method appropriately and whether it is a proper method to achieve the expected learning outcomes. A role play or mock trial may be the worst learning tool if it doesn't fit the topic, expected results, learners and is applied in a wrong place* (Sergei, Belarus). Undoubtedly, each teaching method has its power and the educator is responsible for the good choice. Earlier in the research we have already demonstrated the findings of the empirical research concerning the application of different methods in law teaching. Although active and interactive teaching methods enable the effective development of professional skills and values of future lawyers in addition to the high memory retrieval, in the opinion of the academic staff these teaching tools are not the end in themselves. Moreover, they don't work perfectly in every group of learners.

The pedagogic choice of the law teachers participating in the research is determined by two main factors: the educational aim of the teacher (27 respondents) and the profile of

¹⁵⁷⁶ M. Shultz, S. Zedeck, *Predicting lawyer effectiveness: broadening the basis for law school admissions decisions*, Law & social inquiry, Vol.36, Issue 3, 2011. The authors develop the MacCrate Report and describe 28 factors merged into eight groups to assess the ability of a law student to succeed as a practicing lawyer. Besides the strict legal skills (research, problem solving, fact finding, interviewing) one may find so called the soft skills (speaking and negotiation, networking and seeing the world through the eyes of others, mentoring) along with other professional abilities (business development, strategic planning, community involvement).

the student group (35 respondents). Among other factors influencing the choice of the teaching method there are topics to be taught (5 respondents), the teacher's level of health (3 respondents), the type of educational activity (7 respondents).

The aim of education activity is understood as the expected learning outcomes that are defined by the law teacher for a particular lesson or/and prescribed in the study programme and syllabus. Undoubtedly, the aims of lectures differ from the objectives assumed for the practical seminar or workshop. If a law teacher strives to provide the students with a big volume of knowledge and the essence of law is crucial he or she will use rather passive methods – lecture, discussion, presentation. For the development of empathy and sensitivity to the social inequality and injustice the law students must be in the shoes of vulnerable people, therefore, the law teachers use role plays, simulations, debates and other active and interactive methods instead of lecturing. Additionally, if the learning programme defines a progressive evaluation of the student performance within the course and the interim evaluation is included in the final score, the law professors select the learning methods that enable to conduct the assessment of the learners during the class as well as to transfer knowledge, skills and values.

The second determinant factor is a profile of learners. The law professors in Belarus and Poland pay a lot of attention to who they are going to cooperate with. The learners differ by their age, academic background, the form of study they have selected and their personal motivation to learn. The same topic is rarely presented in the same way and with the same learning methods for different groups of law students. The respondents of the research state that in the evening students are exhausted and are less active for interactive learning, therefore lecturing with discussion seems a proper teaching method (Rafał, Poland; Małgorzata, Poland; Yulia, Belarus). Law teachers also point to a lack of theoretical knowledge by law students in some cases (Barbara, Poland; Ekaterina 2, Belarus). This causes obstacles for the application of active teaching methodology and the development of professional skills and values, because the enhancement of soft skills is not a primary educational goal of legal studies.

The law teachers also underlines that some courses are theoretical, even doctrinal, by their nature and can be hardly taught in other way than through lecturing or presentation. Indeed, the history of law or philosophy is not comparable in a teaching style with the classes on legal proceedings or alternative dispute resolution where different practical exercises can be used. Moreover, the size of student groups varies for different educational activities and can determine the selected learning method. Lecturing is often organized for

a big group of about 100 or more students, while workshops and seminars are planned for a smaller group of 20-30 people. Accordingly, the teacher should select the appropriate teaching methods. While brainstorming fits well big groups enabling students to train analytical, fact finding and problem-solving skills, small groups require the selection of others methods, such as aquarium or a jig saw, where the teamwork skill can be developed together with interviewing and speaking. It is important to remember that the application of methods requires the thorough teacher's preparation and the precise instructions. The preparation of the scenario of moot court which lasts for a few hours takes a few days or even weeks. Hence, it is not surprisingly to hear from the respondents that their bad health or tiredness may affect the way of teaching. *When I have 8 academic hours in a row of lecturing my voice is disappearing by the end of the day. Therefore I try to mix different active and passive methods in order to achieve the learning outcomes I have planned and to save my health* (Izabela, Poland).

The above-mentioned findings are in line with the main ideas of the legal didactics. Kropaneva recommends the combination of different learning tools in law teaching and states the following principles of good teaching:

1. A teaching method should serve the means to achieve learning objectives in the appropriate educational conditions.
2. The willingness of students to learn something new is a supportive factor for the achievement of good outcomes.
3. The diversity of teaching methods prevents the loss of student's attention during the class. The application of the same method by the teacher, even it is the most effective and powerful, may get the learners bored.
4. Before the usage of innovative teaching tools the learners should be prepared. The best method will be useless if the auditorium is not familiar with the instructions. At the same time, the educator must be well prepared either.
5. It is important to estimate realistically the educator's efforts with the time consumption and obtained results¹⁵⁷⁷.

Legal clinics and legal practice. Among all law teaching tools there are a few elements that bring law students the most closely to their future work in the legal industry. One of them is legal clinics that have been already described in the different parts of the dissertation. Indeed, during the decades of its existence in many countries the clinical legal

¹⁵⁷⁷ E.M. Кропанева, *op.cit.*, c. 97-98.

education has proved its efficiency in terms of the training of the most effective and successful lawyers who also demonstrate sympathy to people in need and their emotions and work with the perseverance in the pro bono or paid cases. The contribution of clinical methods to the formation of professionalism of future lawyers is recognized by law students, academic staff and members of legal community. Concerning the adaptability of higher legal education to the need of the labour market in good specialists it is worth to refer to the results of the empirical research conducted among the Polish law students and alumni. They prove scientifically the statement that legal clinic is recognized as the most effective teaching method of higher legal education. Law students admit that their experience in the legal clinic enhance legal analysis and legal writing skill, factual investigation and legal research capability much more than it can be developed by means of traditional academic teaching methods¹⁵⁷⁸. Legal clinics enhance the development of professional skills, knowledge and values of future lawyers in total, while traditional academic methods of legal education focus mainly on the formation of comprehensive theoretical background and development of particular skills¹⁵⁷⁹. Therefore it is not surprising that legal clinics have been established and operate in 25 higher education institutions in Poland¹⁵⁸⁰ and at 11 universities in Belarus¹⁵⁸¹. The legal clinic courses are included in the legal curriculum mainly as an optional course, however some law faculties include it in the form of the mandatory subject.

Taking into account that the recruitment of law students for the work in the legal clinic is very competitive and about 10%¹⁵⁸² of students has such opportunity to experience the practice-oriented legal education, there is other possibility to face legal work in reality. According to the Law on higher education and science every single student in Poland must pass the legal practice during the studies with the practical orientation¹⁵⁸³. The law doesn't requires the mandatory practice in the legal studies with the academic orientation, however higher education institutions often include it in the programme of legal education. The professional practice is a part of the curriculum and regulated by the internal rules of the higher education institution. The practice lasts from 1 to 2 months and can be conducted

¹⁵⁷⁸ A. Pawlak, *op.cit.*, s. 10.

¹⁵⁷⁹ S.L. Stadniczeńko, P. Zamelski, *op.cit.*, s. 25.

¹⁵⁸⁰ M. Klauze, *op.cit.*, s. 56.

¹⁵⁸¹ Актуальное состояние и перспективы развития юридического клинического образования в Республике Беларусь, *op.cit.*, с. 2.

¹⁵⁸² Studenci prawa w Polsce 2018, *op.cit.*, slide 56.

¹⁵⁸³ Art. 67, ust. 5.

starting from the third year of study¹⁵⁸⁴. As a rule, students learn the professional rules of legal work in the court, prosecutor office, law firm or notary office. They can also gain the practical experience in the governmental bodies or to organise the legal practice abroad according to the rules of Erasmus+.

In Belarus the practice is also a mandatory element of the legal studies. The standard of legal education at the first level and the model plan of studies prescribe to pass three types of practice: introductory, judicial and prosecutorial practice together and the final practice before the defence of the thesis. In total, law students undergo 18 weeks of the practical training in the judicial, legal and administrative bodies¹⁵⁸⁵. It is important to highlight that the student work in the legal clinic is considered the high quality practical training of future lawyers, therefore law schools in Belarus and Poland often recognize the clinical subjects as the legal practice required by the curriculum¹⁵⁸⁶.

Extracurricular activities. The last but not least element of higher legal education that enhances the adaptability of legal education to the requirements of the labour market and professional community is student competitions. An individual or a team compete for an award within the higher education institution or across the country or internationally where legal skills and knowledge are assessed. The legal competitions are organised in both countries and encourage students to demonstrate their best traits. The organisers can be higher education institutions or the competition commission consisting of the representatives of the academic staff, practitioners and/or students as well as non-governmental organisations, authorities or even business companies. Different types of student competition occur among law students and alumni:

1. Essay. It is one of the most popular forms of evaluation of legal writing skills. The students can be asked to draft a legal document to a certain case¹⁵⁸⁷ or to describe their opinion on legal topics. When the competition is carried by the higher education institution, the winner can earn the exemption from the final exam of the academic

¹⁵⁸⁴ Program studiów na Wydziale Prawa, kierunek prawo, obowiązujący od roku akademickiego 2017/2018, załącznik 1 do uchwały nr 2554 Rady Wydziału Prawa UwB z dnia 19 maja 2017 r.; Ogólne zasady praktyk zawodowych na kierunku prawo, Wydział Prawa i Administracji Uniwersytetu Jagiellońskiego, *available at* <https://wpia.uj.edu.pl/program-praktyk/praktyki-prawo> [accessed on 16 December 2018].

¹⁵⁸⁵ Образовательный стандарт высшего образования, первая ступень, специальность 1-24 01 02 правоведение, п. 7.3.1.

¹⁵⁸⁶ This is provided by the internal regulation of the professional practice of law students at the Belarus State Economic University, the Brest State University named after A.S. Pushkin, the University of Warmia and Mazury in Olsztyn, the University of Łódź.

¹⁵⁸⁷ Regulamin konkursu z prawa gospodarczego publicznego, Wydział Prawa Uniwersytetu w Białymstoku, 2018, para. 4, *available at* http://www.prawo.uwb.edu.pl/prawo_new/news.php?n=2937 [accessed on 16 December 2018].

course¹⁵⁸⁸ or the certificate¹⁵⁸⁹. In the public competitions the prize varies from the money award to the paid practice in law firms and international legal institutions.

2. Simulation. Moot court and mock trial competition are a very popular form to develop the variety of legal skill, such as communication and self-representative skills, legal writing and argumentation. The popularity of such competitions at the international level and the prestige award for the winners cause that law faculties across the countries are highly motivated to train the team of participants and to delegate them for the participation in the national competitions. For instance, in Belarus 15 teams participated in the Jessup International Law Moot Court Competition 2018 at the domestic level, the team-winner presented the country at the international stage in Washington D.C¹⁵⁹⁰. In the IV National Commercial Arbitration Moot Court Competition in Poland 44 teams took part in 2018¹⁵⁹¹.
3. Competitions where separate professional skills are evaluated. Alternative dispute resolution, client counselling and interviewing, public speaking and other competitions are organised in both in Belarus and Poland and annually attract a lot of participants. At the same time it is worth to admit that the law student competitions in Poland have much longer history and therefore more popularity and support, for example from the side of sponsors, than the national competitions in Belarus. In 2018 the competition on mediation was organised in Belarus the third time¹⁵⁹², meanwhile the public speaking competition in Poland celebrated its 22d anniversary¹⁵⁹³.

¹⁵⁸⁸ Regulamin Konkursu Prawa Europejskiego, Koło Naukowe Prawa Europejskiego i Porównawczego, Wydział Prawa i Administracji Uniwersytetu Gdańskiego, 2017, para. 5, available at https://prawo.ug.edu.pl/media/aktualnosci/62098/konkurs_z_prawa_unii_europejskiej [accessed on 16 December 2018].

¹⁵⁸⁹ Конкурс правовых эссе студентов Института управленческих кадров „Право и мы”, Академия управления при Президенте, 2018, available at <https://www.pac.by/press-center/calendar-of-our-events/contest-legal-essays-of-students-of-institute-of-managerial-personnel-law-and-we/> [accessed on 16 December 2018].

¹⁵⁹⁰ Before 2014 only 2-3 teams took part in the national competition. The attention to the national round of the competition increased after 2014, when the Belarusian team participating at the international level was awarded the fifth place in the written pleadings ranking. Since then the number of teams increased to 6 and more. Philip C. Jessup International Law Moot Court Competition 2018, Polotsk State University, available at <https://www.psu.by/en/events-comments/10950-philip-c-jessup-international-law-moot-court-competition-2018> [accessed on 16 December 2018].

¹⁵⁹¹ IV Ogólnopolski Moot Court z Arbitrażu Handlowego 2018, ELSA Warszawa, available at <https://elsa.org.pl/ogolnopolski-moot-court-z-arbitrazu-handlowego/> [accessed on 16 December 2018].

¹⁵⁹² III Международный студенческий конкурс по медиации и переговорам “Медиация будущего”, available at <https://mediation-eurasia.pro/novosti/III-mezhdunarodny-konkurs-po-mediacii-i-peregovorov-mediacia-budushchego> [accessed on 16 December 2018].

¹⁵⁹³ XXII Ogólnopolski Konkurs Krasomówczy, 27 – 29 kwietnia 2018, <https://elsa.org.pl/okk/> [accessed on 16 December 2018].

Although a wide range of opportunities to develop and to enhance professional skills of law students are provided within higher education and in the form of extracurricular activities, they don't equip all law students with the required at the labour market competences.

CONCLUSION

Comparative research on education is not an easy task, particularly in times of legislative changes. The notion of education is a subject matter of different scientific disciplines that illustrate their perception of the learning process. However, analysis of education only through the lenses pedagogy, sociology or economics of education results in a narrow perception of the concept and eliminates other, no less important, aspects of education and learning. Philosophy answers the question of the essence and destination of education, pedagogy analyses the entire process of personal and vocational formation of human beings from birth to death. Through the economics of education, the system of higher education is perceived as a workshop of professionals for a wealthy and sustainable national economy. The review of different sciences brings confirmation of the first subsidiary thesis which states that education could be the subject matter of various scientific disciplines. The human rights-based scientific approach has been chosen in order to outline a comprehensive image of education. In confirmation of the second subsidiary thesis, it is worth marking the advantages and disadvantages of the human rights-based approach in achievement of the objectives of the research.

First, human rights law is rooted in different fields of science, which enables comprehensive analysis of economic, social, didactic, educational and legal aspects of higher legal education. Human rights theory merges the philosophical ideas of human existence and the moral and societal values of humankind with factual living and practical aspects of being. Second, the principal subject of the research is legal regulation of academic education. The research methodology of legal science suits best the achievement of this objective. Bearing in mind that national legal provisions vary in different jurisdictions, the comparison of national laws with each other is considered possible but irrational. Human rights law consists of a set of universal rules, provisions, recommendations and standards of behaviour that the states have agreed to comply to, demonstrating their free will. The human rights-based approach ensures a uniform vision of the main subject in the countries under study, even if they belong to different jurisdictions or systems of law. Human rights law also provides the margin of state discretion in the interpretation of the right to education without undue external interference.

On the other hand, although they define the frames of its interpretation, international legal provisions do not describe the precise meaning and content of the right to education.

Human rights law is a living mechanism of the international order and many factors affect how the human right should be perceived. The human right to education is recognized in over 100 international and regional legal documents, some of which are of a binding nature, whereas others contain recommendations and create only moral obligations for states. Conventions, covenants, charters along with general comments, recommendations, concluding observations and declarations create a broad framework for the understanding and realisation of the right to education at the national level. It is important to highlight that only a few international instruments are entirely dedicated to the right to education, e.g. the Convention against Discrimination in Education and Recommendation concerning the Status of Higher-Education Teaching Personnel. The fact that the right to education is reaffirmed by numerous documents causes a broad understanding of education. Indeed, the European Court of Human Rights analyses the right to education in its narrow meaning, i.e. the system of formal education guaranteed by governmental agents, whereas the Universal Declaration of Human Rights refers to all forms of education, including non-formal and at a fundamental stage. The Convention of the Rights of the Child refers to education for children only, including formal schooling and family upbringing. Treaties concerning the rights of disabled or indigenous people describe the right to education in terms of these target groups, leaving aside the difference of education providers. The uniform understanding of the term “education” is hardly found within international human rights instruments. Moreover, the mere definition of education does not outline the scope of its correct application, which is in line with the third subsidiary thesis. The state, rights bearers and other stakeholders must know what the right to education is to guarantee its full enjoyment and to avoid its violation.

The achievement of the second research objective – the understanding of the core content of the right to education – has been ensured through the analysis of both the legal doctrine and human rights instruments concerning the right to education. The researcher has faced a challenging task to define a generalised image of the right to education under international human rights law which will serve as a template for the assessment of the higher legal education in two countries – Belarus and Poland. The reference to a certain legal instrument, e.g. the Convention of the Rights of the Child or the Universal Declaration of Human Rights, enables a perception of the content of the right to education in a narrow context. Moreover, some important human rights instruments have a different ratification status in the chosen countries and thereby cannot be equally applied in the research.

Besides the interpretation of provisions of certain human rights instruments regarding education, there are other methods for discovering the combined content of the right to education. By merging human rights and freedoms in groups by certain criteria, e.g. by generation or a type of stakeholder's obligations, scholars define common features of all elements of the group. However, the assignment of the right to education to a certain group of human rights is also a challenging task. The right to education possesses characteristics which allow it to be linked to different groups of human rights. In general, it is an individual right, hence it should be placed either in the first or second generation group. At the same time, taking into account the rights of minorities or ecological education, one may justifiably argue that the right to education also belongs to the group of solidarity rights; in other words, this is the right of the third generation. In the legal doctrine, some scholars justify this viewpoint.

Another classification of human rights results from the difference of positive and negative duties of the state in the implementation of the right. However, the realisation of the right to education is based on both positive and negative obligations of the state. On the one hand governmental agents are obliged to put sufficient effort into the creation of the required conditions at the national level for the implementation of the right, i.e. to adopt the legislative and administrative measures, to provide financial and human resources. On the other hand, undue intervention from the side of the state into the matters of right-holders could be recognized as violation of the right.

Additionally, according to the classical division of human rights into civil, political, economic and others, the right to education belongs to the group of social rights. The main characteristics of the group of social rights are presented in the right to education. For instance, it includes, but is not limited to, the progressive realisation of the right, the limitation of the implementation of the right by the available resources of the state. However, limiting the right to the characteristics of social rights leads to an incomplete perception of the notion. It is worth highlighting that education is much more than literacy or a tool for economic development of the population. By means of education, individuals are prepared to fulfil their political and societal role in the society. Through education, members of the community inherit the cultural traditions and values of their ancestors. Education aims to enlighten and develop human dignity and personality; it also shape the humanitarian aptitude of individuals. Hence, the right to education epitomises the indivisibility and interdependence of all human rights. The multifunctional role of education in contemporary society leads to a reconsideration of the right to education as a

fundamental human right which supports and guarantees the full and effective realisation of other human rights, regardless of its place in the classification.

Lawyers, scientists and human rights practitioners perceive human rights and freedoms through the prism of state obligations. The right to education can be considered through the tripartite typology of state obligations - to respect, protect and fulfil. This typology is more comprehensive than merely a positive-negative right approach because it reflects the multi-sided nature of human rights. It could be a good way to discover the right to education under human rights law, unless the 4-A scheme has been created to describe the core content of the right.

The essence of the right to education enshrined in the numerous international human rights instruments of different nature and the content has been analysed deeply and presented in over 200 works by Katarina Tomasevski, the UN Special Rapporteur on the right to education. Carrying out her mandate, she investigated violations of the right and undertook an analysis of the global policies and factual situation in some countries. As a result of her efforts, the 4-A scheme serves as a framework for the content of the right to education and evaluation of its implementation and progress at the national level. Availability, accessibility, acceptability and adaptability of education are four main features of education that correspond to the core governmental obligations guaranteeing the right to education. Availability verifies whether education is generally available. Accessibility examines what obstacles in accessing education exist and must be removed. Acceptability refers to the various aspects of the content and ways in which education is delivered. Adaptability assesses to what extent education (the content, process and outcomes) is adapted to the needs of various categories of learners and the society as a whole.

The 4-A scheme possesses significant scientific and practical value. First of all, it illustrates the principal characteristics of education rooted in different human rights instruments. Although the scheme has primarily been developed on the basis of the International Covenant on Economic, Social and Cultural Rights, which is ratified by many states, its idea has been enriched through the interpretation of other documents relevant to the right to education, including non-binding instruments. The 4-A model reflects the international legal framework and constructs the core content of the human right to education applicable throughout the world. Secondly, the four characteristics describe what education should mean from the perspective of state obligations towards the full realisation of the human right to education. The scheme embraces the process and outcomes of

education, reviews the breakdown of learners by different criteria and focuses on the legislative, administrative and financial obligations of the governmental agents responsible for human rights implementation. Most importantly, the 4-A scheme is applicable to education at all levels, including higher education. Since in her work the UN Special Rapporteur on the right to education puts a great emphasis on the significance of the lower levels of education, she describes acceptability, availability, accessibility and adaptability of education with a focus on primary and secondary education. In the current work, the elements of the 4-A scheme are described in terms of higher education and it thereby creates a background for the verification of the main hypothesis of the research.

An understanding of the essence of the right to education under international human rights law is necessary, but not sufficient for assessment of the compliance of national regulations on higher education with international standards. For this purpose, indicators of the human right to education are required. UNESCO, OECD and World Bank analytical reports are based on such education indicators, which demonstrate the progress of the educational system over time and provide data for cross-national comparison. By contrast, right-to-education indicators analyse the qualitative and quantitative data concerning education and enable monitoring of the human right to education. The production of right-to-education indicators from the 4-A scheme endows the indicators with a normative basis. The application of right-to-education indicators provides results that serve as a legitimate justification for stakeholders to make claims on the state in order to encourage the full realisation of its obligations.

Although the right to education is well developed in the legal framework and academic research, it is important to indicate that higher education is the least represented the scientific works. Indeed, the international community expresses serious concern over the provision of primary education to everyone, whilst higher education is often seen as a luxury or unnecessary commodity for personal development and governments may fail to fulfil their obligations resulting from human rights instruments. The monitoring of state obligations concerning the realisation of the right to higher education is a voluminous task which exceeds the scope of this doctoral research.

Benefiting from the findings of other academic authors, considering the monitoring approaches of the international institutions and taking into account the availability and accessibility of the data concerning higher education in Belarus and Poland, 14 essential right-to-education indicators have been described. These indicators embrace the core content of the right to education and enable analysis of the realisation of the right without

losing its essence. In formulating the main objective and hypothesis of the research, an emphasis is put on the normative framework of legal education. It is important to underline that legal education is provided within the system of higher education. The assessment of how higher legal education conforms to international standards results, in the first place, from the verification of the legal framework of higher education. Thus, an analysis has been made of the funding of higher education institutions and the quality assurance mechanism, the admission rules, the system of financial support and inclusive environment in the light of the whole system of higher education in Belarus and Poland. These aspects are uniform in the context of the entire system of higher education, regardless of whether it concerns legal and other studies. On the other hand, the Law on higher education and science in Poland and the Code on education in Belarus ensure to a certain extent institutional autonomy in academic education, and some issues are regulated internally at the level of higher education institutions and their departments. Such aspects as the content of curricula and teaching methods, the educational objectives and the expected learning outcomes have been analysed only in relation to legal education.

The conclusions presented below are made on the basis of the analysis of legal provisions regulating the system of higher education and the internal regulations of higher education institutions. The right-to-education indicators have been applied mainly to the legal norms. In some cases, the indicators have been applied to the data of empirical research and reflect the realisation of the right to education in practice.

Having assessed higher legal education in Belarus and Poland through the prism of its availability, accessibility, acceptability and adaptability, it is important to state that although these four characteristics of the right to education describe different aspects of state obligations in education, they are interrelated and interdependent. The number of law schools, and therefore the availability of higher education institutions and academic staff, can be very high in a country; however, the law degree obtained is not respected by learners and employers due to the low quality of education (acceptability of education). The students may have broad access to higher education institutions (accessibility), but the learning outcomes are not adaptable to labour market expectations and graduates face challenges in finding employment (adaptability). The statement that one of the features of the right to education is not fulfilled by the state should be considered in the context of the entire 4-A scheme.

Secondly, it is important to highlight the historical legacy of the system of higher education in both countries. Legislation on education in Belarus has inherited the main

features of Soviet higher education, which is reflected in the top-down style of governance in education, broad scope of competence of governmental bodies and limited institutional autonomy of higher education units. At the same time, the system of higher education in Poland is grounded on the broadly recognized democratic values enshrined in various human rights treaties and agreements on education. The different approach to the governance of education in Belarus and Poland is illustrated in the quality assurance mechanism, the adoption of admission rules and possibility to create private institutions. For instance, the admission rules to higher education institutions in Belarus are adopted by the president of the country, who also approves the appointment of the rector of a university. Some decisions regarding the course of studies (the selection of the language of instruction) can be introduced with the consent of the owner – the Ministry of Education. This demonstrates a lack of respect for democratic values and academic freedom in the realm of higher education and science. Meanwhile, the system of higher education in Poland can be recognised as conforming to international standards to a much greater extent. Higher education institutions possess a high level of autonomy, they are sufficiently funded by the state, and the process and content of education is ensured by a quality assurance mechanism. The amendments to the law on higher education which have recently been adopted in the country are intended to improve the position of scientists, academic staff and higher education institutions within Europe.

The difference in the two systems of education is also illustrated in the definition of educational objectives. While the Polish legislature describes the role of higher education in the development of human dignity, respect for human rights and bringing up responsible citizens and professionals, the law in Belarus considers higher education as a means for preparing professionals to produce national economic wealth. The same approach is illustrated in the curricula and educational standards of legal education. Law graduates in Poland are expected to possess both academic knowledge and practical skills, to demonstrate a humanistic approach and to express empathy in the struggle with injustice, which conforms with the human rights instruments regulating the right to education. Law students in Belarus are mainly trained as professionals in the legal industry and the manpower of the national economy. Enhancement of human dignity, respect for human rights and societal values are developed within higher legal education to the extent necessary for the creation of a spirit of patriotism. *De jure* the development of social aptitudes within higher legal education is assumed in both countries, but on a different

scale, *de facto* for different reasons the moral and ethical education, the enhancement of personal development and societal awareness occupies little space in legal studies.

Description of the main characteristics of the 4-A scheme is part of higher legal education in Belarus and Poland, thereby confirming the main hypothesis of the research.

The availability of higher education demonstrates the strong and weak sides of state obligations in the selected countries. Both Poland and Belarus provide financial sustainability for higher education. Although the limits of funding have not been created universally, each government does its best to allocate enough funds for providing quality education. While the Polish government recognises the importance of scientific development for national wealth and annually increases the budget expenses for higher education and science, the authorities in Belarus transfer the financial burden onto learners, which is inconsistent with the idea of the 4-A scheme. Moreover, the reduction of budget-funded seats in higher education institutions and growing tuition fees go against the international recommendation to progressively introduce free higher education. Considering academic freedom and institutional autonomy as a part of available higher education, it is worth agreeing that there is still room for improvement in both countries. However, the results of government efforts in Poland to restore the prestige of higher education institutions after severe repressions in the past should be noted. In order to make higher education in Belarus available in its full meaning, the authorities should carry out significant reforms. The Bologna roadmap is suggested as a starting point for the changes. It includes structural reforms of the system, academic staff, student mobility and internationalisation, the expansion of the social dimension of higher education and the implementation of fundamental European values.

In terms of accessibility, the admission rules to higher education institutions of both countries are clear and equal for all students and future students are selected based on their merits. Moreover, higher education institutions create an inclusive environment for entrants with special needs during the admission process as well as while studying. The diversity of student profiles is taken into account by the legislator and higher education institutions. Fee-free higher education is an essential characteristic of the financial accessibility of education. The law also ensures the right to higher education for students with children, disabled students or those who face a lack of financial support. Inclusive learning conditions for foreigners are also created in the legal regulations and in practice. Although higher education in Belarus and Poland can be fairly recognised as accessible, the legal norms concerning access to higher education in Poland demonstrate a more

liberal approach than in Belarus. Online submission of papers required during the selection process, a lack of medical restrictions to study for disabled students, and fellowships for vulnerable students, regardless of the form of education, are not guaranteed in the Belarusian system of higher education.

On the other hand, this work exposes the gaps and discrepancy between the legal regulations and the realisation of the right to education in practice, which brings higher legal education into conflict with the idea of accessibility. It is necessary to take into account that the realisation of the right to education by the state is limited by the available resources, the creation of a barrier-free environment for disabled students or the provision of stronger financial support for learners occurs at a slower pace than expected by stakeholders in both countries. In Belarus there is also a dispute over undue interference to the right to higher education, which destroy its essence and nature. The presence of an entrant in person before the admission commission for the submission of papers and the requirement of original documents in the admission procedure seem an unjustified challenge to the provision of accessible higher education. The medical certificate confirming the absence of health barriers to studying often limits access to the chosen profession for disabled candidates who have the motivation and passion to study a particular area of science, although legal instructions define which areas of study are suitable for such people. Although the Code on education guarantees higher education free of charge, the number of available state-funded places at law faculties is much lower or even available non-existent, compared with paid places. Hence, the international community expresses serious concern over the fact that the burden of funding of higher education in Belarus is shifted to learners.

Higher legal education in Belarus and Poland can also be recognised as acceptable in the light of international human rights law. International law grants to the states the liberty to choose appropriate tools for ensuring quality assurance. A quality assurance policy, including institutional and programme accreditation, monitoring of the content and learning process, the qualifications of academic staff and general learning environment, is in place in Belarus and in Poland. However, the difference in approach to understanding “acceptability” causes an imbalance in the content and process of legal studies and leaves higher education in both countries open to criticism. The quality assurance mechanism in Poland is focused more on the learning process, while the Belarusian model of quality assurance pays more attention to the content of education. In Belarus the availability of the necessary documents (curricula and programme, educational standards and the list of

academic staff with a doctoral degree) is controlled more than the obtained learning outcomes of law graduates. In turn, the European model of higher legal education in Poland is assessed by means of a qualification-based tool, while Belarus is developing a new tool and can benefit from the existing approaches. During legal studies, students in both countries gain professional knowledge and skills, develop their personal profession culture and spiritual values, learn the norms of morality and measure the power of the law in action. The outcomes of empirical research demonstrate that Belarus and Poland must pay more attention to the didactic component of university work and pedagogical qualifications of teaching staff in order to create student-participatory conditions of learning.

The last element of the 4-A scheme also takes place in higher legal education in Belarus and Poland. Concerning the adaptability of higher legal education, it is fair to acknowledge that the national law in Belarus and Poland and the internal regulations of educational institutions demonstrate sensitivity in higher education to the individual needs of learners. Initially, this is ensured during enrolment. Following admission, different forms of higher education and teaching methods are provided during the learning process. There are conditions to combine education with work, family obligations and the level of health. Regarding the adaptability of higher legal education to the needs of society and the national economy, the legislation of the chosen countries and the approach of higher education institutions illustrate the vocational orientation of legal education. However, the vocational component of higher education is provided to a different extent in Belarus and Poland. Legal education in Poland is principally seen as an academic workshop of lawyers, while the long-term legal apprenticeship after graduation is considered a complementary element of professional training. On the one hand, such an approach creates a misleading value of a higher education degree, which is necessary but insufficient to practise as a lawyer. On the other hand, legal studies are universal and make law graduates flexible in the legal professions. Transfer from one legal branch to another occurs easily and a legal apprenticeship is mandatory only in some. In this context, Belarus considers higher legal education as the major source of legal knowledge, professional skills and societal values. A short-term apprenticeship is an introduction to the selected legal employment. Although the authorities adopt national policies and legal provisions aimed at providing higher education which is consistent with the changing economic reality, practice-based teaching or the cooperation of higher education institutions with the business sector is still viewed as an innovation rather than a tradition. Higher education should be responsible for

informing law students of the opportunities within the legal industry, the costs and terms of routes of entry. This will reduce unemployment among graduates and increase the satisfaction with expectations and results from legal studies.

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ANNEX 1 - questionnaire for law professors

During the interview the following terminology is used: passive, active and interactive teaching methods, legal clinic. The definitions of them are provided below.

Passive teaching methods are the methods when the information is transferred from a professor to students only in form of lecturing, presentation. Active methods are understood those teaching methods where as a two-way communication of a professor and students occurs, for example, question & answer, discussion, Socratic debate. Under interactive teaching methods are understood the methods of teaching during which students cooperate with each other to achieve the learning objective, a professor plays a role of a facilitator, i.e. a person who supports the group work or provides advices for effective teamwork. The examples of interactive methods are work in pairs or small groups, role place, moot court.

Legal clinic is an interactive, practice-based method of teaching law aimed to enable the acquisition of practical knowledge, skills and attitudes through (i) provision by law students of free legal services to poor people under the supervision and substantive care of researchers and practitioners and / or (ii) raising legal awareness of community by means of classes on legal subjects held by law students.

Part 1 – educational objectives and learning outcomes

1. How long do you work at the law faculty? What course do you teach?
2. What do you like in your work in the higher education institution?
3. What is your role as an academic teacher in higher legal education?
4. What students do you teach? Their age, form and type of studies, nationality?
5. What learning outcomes does an average law student obtain?
 - a. What is the scope of the gained knowledge?
 - b. What Professional skills do law graduates have?
 - c. What social competences do they possess?
6. What outcomes can be learned only during the practical work, but not during the academic study?
7. What knowledge, skills and competences of lawyers are necessary in the legal industry?

Part 2 – teaching methods

8. Do you like teaching?
9. What teaching methods do you know? Do you know any classification of teaching methods?
10. How did you learn to be a teacher? What are sources of your pedagogic knowledge?
11. What methods are the most effective to teach law students:
 - a. legal knowledge?

- b. practical skills?
 - c. attitudes and values?
12. How do you prepare your lesson plan?
 13. How much time do you spend for the preparation to lecturing and practical classes?
 14. What methods do you use for teaching of your courses?
 15. What variables affect your pedagogical choice?
 16. How does the number of students in the group affect your choice?
 17. How does the number of academic hours dedicated to the course affect your choice?
 18. What didactic approaches do you apply to different target groups?
 19. How often do you use active teaching methods?
 20. What motivates you to use active and interactive teaching methods?
 21. How often do you use interactive teaching methods?
 22. What are reasons to avoid using active and interactive methods?
 23. How do you develop your professional qualifications in the field of legal didactics?

Part 3 – clinical legal education

24. What is your role and duties in the legal clinic?
25. How long do you engage in clinical legal education?
26. How can you assess the clinical legal education towards the learning outcomes of law students?
27. Shall the clinical legal education be mandatory for all law students? Why?
28. How the experience gained in the legal clinic affects your teaching qualifications?

Social-demographic information collected before the interview, if available:

1. What is your age?
2. What is your sex?
3. What is the higher scientific degree and/or title?
4. What legal practice do you have? How long?

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