

Marcin Wielec

The Cardinal Stefan Wyszyński University in Warsaw
m.wielec@uksw.edu.pl

Coincidence of Criminal and Disciplinary Proceedings in the Context of the Provisions of the Law on Higher Education

Abstract: The current formula of disciplinary liability is neither clear nor uniform. Built on the basis of a number of independent regulations, it is inconsistent with the general pattern of uniformity and universal use. Interesting are situations in which criminal liability and disciplinary liability become interdependent. The question then arises as to whether a crime and possible initiation of criminal proceedings by a member of a student community imposes an obligation on the authorities of the university to initiate and conduct disciplinary proceedings in parallel.

Keywords: criminal proceedings, disciplinary liability, students

1. Introductory comments

The current formula of disciplinary liability is neither clear nor uniform. Built on the basis of a number of independent legal regulations, it is inconsistent with the general pattern of uniformity and universal use. A large number of statutory regulations organizing disciplinary liability by means of different solutions evokes interest. Yet similar to any other legal liability, disciplinary liability is generally always determined by the system of interdependent norms of substantive law and formal law operating in specified Acts¹. These legal regulations define a disciplinary act, indicate conditions of holding someone disciplinary liable, specify effacement of disciplinary punishment, disciplinary penalties, prerequisites of initiating disciplinary

1 W. Kozielowicz, Odpowiedzialność dyscyplinarna sędziów, prokuratorów, adwokatów, radców prawnych i notariuszy, Warszawa 2012, p. 18; W. Kozielowicz, Odpowiedzialność dyscyplinarna notariuszy – problematyka materialno prawna i procesowa, „Rejent” 2006, No. 16, p. 25; R. Giętkowski, Odpowiedzialność dyscyplinarna w prawie polskim, Gdańsk 2013, p. 182.

proceedings, institutions of disciplinary procedure (Disciplinary Ombudsman, disciplinary committees) as well as appellate proceedings.

Disciplinary law and disciplinary proceedings have been even perceived for quite a long time now as a distinct and peculiar section of legal liability². However, there is no agreement with regard to the question whether disciplinary law is a typically separate branch of law, or perhaps it is a specialized area of legal regulations connected to a smaller or larger degree with the currently existing areas of law such as criminal law, or maybe administrative law³.

Signalled suppositions of disciplinary liability allow to define disciplinary law and disciplinary proceedings as well as specify generic differences of this area; yet it is strongly emphasized that the creation of a comprehensive definition is quite difficult here⁴. One may encounter proposals according to which disciplinary law and disciplinary proceedings are identical with the collection of legal provisions specifying liability for acts breaching official duties and types of penalties for these acts as well as principles and course of procedure when a breach of official duties has been ascertained⁵. Determining disciplinary liability, the focus is often placed on combining the model of diligence (professionalism) in performing professional duties with the model of an ethical and moral attitude of an individual functioning in a specific group where cherishing the group's value is as important standard as factual quality or reliability. It is also emphasized that disciplinary liability should enhance and assure prestige of a specific community, or guarantee jurisdictional independence of members of institutions or corporations acting according to specific rules⁶. Disciplinary liability is also a legal institution of self-discipline and self-control of organizationally and legally distinct social groups⁷.

Hence the question arises here whether a commission of an offence by a member of a student community and possible initiation of criminal proceedings imposes on the university's authorities an obligation to bring and pursue parallel disciplinary proceedings. According to a dictionary definition, coincidence is just a simultaneous occurrence of some things, co-existence of certain relations or phenomena, or simply a concurrence of situations⁸.

2 Z. Leoński, *Odpowiedzialność dyscyplinarna w prawie Polski Ludowej*, Poznań 1959, p. 9.

3 P. Czarnecki, *Postępowanie dyscyplinarne wobec osób wykonujących prawnicze zawody zaufania publicznego*, Warszawa 2013, p. 34 ff.

4 Z. Leoński, *Odpowiedzialność dyscyplinarna w prawie Polski Ludowej*, Poznań 1959, p. 233 ff.

5 J. Paśnik, *Prawo dyscyplinarne w Polsce*, Warszawa 2000, p. 8.

6 M. Zubik, M. Wiącek, O spornych zagadnieniach z zakresu odpowiedzialności dyscyplinarnej sędziów Trybunału Konstytucyjnego – polemika, „Przegląd Sądowy” 2007, No. 3, p. 70.

7 W. Kozielowicz, *Odpowiedzialność dyscyplinarna i karna notariusza – wzajemne relacje*, „Rejent” 2011, No. 10, p. 85.

8 S. Skorupka, H. Auderska, Z. Łempicka, *Mały słownik języka polskiego*, Warszawa 1968, p. 283.

2. Grounds for student disciplinary liability

Grounds for university student disciplinary liability are regulated in the Act of 27 July 2005 – Law on Higher Education (hereinafter the LHE)⁹, which in Section IV titled “Studies and students” includes Chapter 6 titled “Student disciplinary liability” (Art. 211-225). Yet, Art. 224 of the LHE contains the norm according to which Minister competent for higher education shall determine in a Regulation rules of investigation and disciplinary procedure. Currently, it is Regulation of Minister of Science and Higher Education of 6 December 2006 on the rules of investigation and disciplinary procedure against students¹⁰.

3. A disciplinary tort in the Law on Higher Education

Under Art. 211 of the LHE, a disciplinary act is an act breaching valid university regulations as well as any conduct offending student dignity for which a student shall be liable in a disciplinary action

before a disciplinary committee or a student disciplinary panel of the student self-government.

Art. 211 of the LHE does not include a definition of a student disciplinary tort; in any case, the legislator has similarly adopted here a model already known in the criminal law, which does not define an offence too, i.e. it only specifies elements thereof upon which its final form may be formulated.

The content of Art. 211 of the LHE contains two foundations necessary to attribute disciplinary liability to a university student. This Article assumes that an act committed by a student must involve a breach of valid university regulations while its significance and effects must offend student dignity.

These two statements reveal a form of a disciplinary act combining a student's duty to observe the provisions of law regulating higher education and the highest values constituting the essence of dignity of every individual even though the values exposed here are attributed mainly to the academic community.

A set of features which at the same time constitute the values of a student community are most often included, among other, in the text of a student pledge which, generally, should be made by each student during matriculation. The significance and content of the pledge are usually placed in individual regulations of individual majors. On the other hand, conduct offending student dignity is rather an open catalogue of attitudes contrary to generally accepted ethos of higher education based on a search for the truth, freedom, research, respect to others, justice, honesty

9 Consolidated text Journal of Laws of 2016, No. 164, item 1365 [Tekst jedn. Dz.U. z 2016 r. Nr 164, poz. 1365].

10 Journal of Laws of 2006, No. 236, item 1707 [Dz.U. z 2006 r. Nr 236, poz. 1707].

and public service. Any conduct breaching either valid university regulations or offending a model of respectable student conduct is the ground for treating them as disciplinary acts.

The issue of breaching valid university regulations contained in the content of Art. 211 of the LHE is quite simple to interpret. This notion embraces all internal university provisions such as, e.g., regulations, articles of association, university and faculty authorities' orders, etc.; and yet this obligation also concerns the observance of commonly valid provisions of the Law on Higher Education by students¹¹. The Law on Higher Education, first and foremost, imposes on a student obligations after all directly connected with his or her study. It is directly specified in Art. 189 of the LHE, which obliges a student to act in accordance with the pledge, attend courses and institutional activities in compliance with study regulations, take examinations, undertake practical trainings and satisfy other requirements envisaged in the study programme as well as observe valid university regulations.

Taking into account the subjectivity of disciplinary liability, it should be noticed that a person who already enjoys a student status shall be subject to this liability, i.e., under Art. 2 of the LHE, it is a person enrolled to study in a first or second cycle programme or uniform master's programme offered by the authorized university who has taken a student pledge.

Hence a student shall be held disciplinary liable on the basis of the Law on Higher Education if one of the two assumptions ensued from Art. 211 of the LHE is satisfied, i.e. a commission of an act breaching valid university regulations or offending student dignity¹².

4. Coincidence of disciplinary criminal liability

If two systems of criminal and disciplinary liability overlap, the question arises whether it is possible to carry out separately two parallel proceedings: criminal and disciplinary. Firstly, situational variants with regard to the venues where these acts have been committed should be considered as it will primarily affect the occurrence of the subject coincidence of these two proceedings.

If an offence has been committed by a student within the university premises, the matter is quite obvious because valid university regulations have been infringed

11 E. Ura, (in:) W. Sanetra, M. Wierzbowski (eds.), *Prawo o szkolnictwie wyższym. Komentarz*, Warszawa 2013, p. 479.

12 *Ibidem*, p. 479 and the Judgment of the Supreme Administrative Court of 6 April 2006, II FSK 542/05, <http://orzeczenia.nsa.gov.pl/doc/4B3F5E69A0>, (accessed: 2 April 2014), the Judgment of the Supreme Administrative Court in Gliwice of 13 June 2008 r., III SA/Gl 1697/07, <http://orzeczenia.nsa.gov.pl/doc/DB57D55D6D> (accessed: 2 April 2014).

while the commission of an offence will always be a negative act clearly offending university student reputation and dignity.

On the other hand, doubts arise when a student commits an offence outside the university premises.

Regardless of its type, the commission of an offence by a student is a negative act, all the more since students oblige themselves to cherish and respect higher social values which are naturally embedded in the mission of higher education. The offence's generic burden, its effects and motifs will also have certain impact on the assessment of a student's act.

Considering this variant when deciding about the student's disciplinary liability, the moment when the authorities of a university where the student (a potential perpetrator of the offence) is studying were informed about launched, pending or terminated criminal proceedings against the student is mostly important.

In this case, attention should be paid to the content of Art. 261 § 3 of the Code of Criminal Procedure (hereinafter the CCP), according to which the court shall be obligated to promptly notify the employers, school, or university or, in the case of a soldier – his commanding officer, or if the accused is an entrepreneur or member of the entrepreneur's management who is not an employee – the CEO of the enterprise, upon his or her request, of the imposition of preliminary detention.

Thus there is no obligation to notify a university about the launch of criminal proceedings against a person who is a university student. On the other hand, if an extraordinary preventive measure is applied in the form of preliminary detention, the above mentioned immediate obligation to notify is imposed on criminal procedural authorities¹³. This obligation is implemented by the court applying preliminary detention *ex officio* regardless of the arrested person's opinion thereon even if he or she would not approve of it while the implementation of this duty is justified by humanitarian reasons¹⁴.

Moreover, a university is informed about the student's preliminary detention in order to prevent possible perturbations connected with the study, i.e. the fulfilment of student duties such as obligatory attendance in classes, a specified number of permitted absences, taking examinations and tests, or typically institutional duties such as submission of a student book, enrolment to individual classes, etc.

Informing a university about the student's preliminary detention is also important for family reasons because the student's nearest and dearest, especially when the student does not reside in the place of studying, are not able to receive certain information about his or her unexpected absence. Experience proves that a university

13 J. Grajewski, L.K. Paprzycki, S. Steinborn (eds.), *Kodeks postępowania karnego*, Warszawa 2010, p. 849.

14 T. Grzegorzczak, *Kodeks postępowania karnego oraz ustawa o świadku koronnym*, Warszawa 2010, p. 579.

is indeed one of the first places a family would contact when they are not able to contact the student if, obviously, law enforcement agencies did not inform the family or another person designated by the arrested student earlier. It is important since “a choice of the nearest person belongs to the procedural authority which, however, should consider the suspect’s wish in this respect. In special cases, particularly if there is a possibility of obstruction of justice or warning accomplices who are not detained, the suspect’s wish to inform a specific person may be disregarded”¹⁵. A university is in this case an exceptionally objective entity.

The application of preliminary detention against a student does not automatically imply that he or she must have committed a prohibited act. Prerequisites that decided about the application of preliminary detention are also not important here.

The obligation resulting from Art. 261 §3 of the CCP is purely informational and should not be the ground for undertaking actions connected with the launch of disciplinary liability at this stage. Preliminary detention is applied at stages, and it obviously does not imply that a suspect will finally take criminal liability. The application of preliminary detention is connected with the fulfilment of specific codified prerequisites¹⁶. This implies a different purpose of applying preventive measures, i.e. to ensure that the course of justice is not impeded, and they may never transform into anticipation of penalty¹⁷. That is why criminal proceedings rightly imply that “the very fact of applied preliminary detention cannot be recognized as abolition of the principle of assumed innocence”¹⁸. In any case, this opinion concerns every preventive measure because the application of a lighter or harshest preventive measure (i.e. preliminary detention) does not abolish assumed innocence¹⁹.

Specificity of preliminary detention, which is one of the preventive measures, and the stage at which it was applied do not require further action to be undertaken by a university, which is not bound by any provision imposing on it a duty to initiate disciplinary proceedings against a preliminary detained student. In any case, it would be difficult to carry out disciplinary proceedings on the basis of only scant information about the application of preliminary detention against a student. On the other hand, the principle of assumed innocence is permanently binding. Disciplinary proceedings are out of the question in such a case because preliminary isolation simply excludes even a possibility of interrogating a student as the accused in disciplinary

15 J. Izydorczyk, *Stosowanie tymczasowego aresztowania w polskim postępowaniu karnym*, Kraków 2002, p. 230.

16 R.A. Stefański, *Środki zapobiegawcze w nowym kodeksie postępowania karnego*, Warszawa 1998, p. 13.

17 The decision of the Appeal Court in Katowice of 22 October July 2008, II AKz 793/08, „Prokuratura i Prawo” 2009, No. 9, p. 45.

18 The decision of the Appeal Court in Katowice of 16 July 2008, II AKz 514/08, „Biuletyn – Orzecznictwo Sądu Apelacyjnego w Katowicach” 2008, No. 3, p. 15.

19 S. Waltoś, *Proces karny, zarys systemu*, Warszawa 2003, p. 411.

proceedings and putting disciplinary charges against him or her. It is not certain at all if an offence has actually been committed and whether it has been committed by the student who is preliminarily detained. If only the university is not harmed by the student's act, the university then does not have, among others, a free access to the files of the investigation procedure because it is not a party to these proceedings and it does not enjoy any other procedural status legitimizing it to undertake actions in the investigation procedure. And yet, attention should be paid to the fact that under the principle of Art. 156 § 1 and 5 of the CCP, depending on the stage of the proceedings, first of all, the files may be accessed by other persons too upon the court President's consent; secondly, in the same meaning, the files may be exceptionally accessed by other persons during the investigation procedure upon the prosecutor's consent. In any case, if the university is not involved in criminal proceedings at least as a party thereto, a possibility of providing access to the files envisaged in the above invoked provision depends on a decision taken by a specified procedural authority indicated in Art. 156 of the CCP. The university only receives information about the student's preliminary detention without the causes of his or her detention or any circumstances thereof. That is why the form of this information under Art. 261 § 3 of the CCP coming from the court applying preliminary detention should be limited to merely a brief note possibly providing the student's place of temporary residence, a date of detention and a date of issue of a decision on the application of preliminary detention together with the duration of temporary isolation. A duty to notify burdens a presiding judge who indicates which person should be informed about preliminary detention while issuing the order²⁰.

A letter informing about student's preliminary detention should be sent immediately. However, it should be noticed that under Art. 252 § 1 of the CCP, a student or his or her defence counsel may submit a complaint about the decision on the application of this preventive measure. That is why it is also rational that a notice of the application of preliminary detention under Art. 261 § 3 of the CCP assumes the decision's validity. In effect of the complaint, the second instance court controlling accuracy and purposefulness of a decision on the application of preliminary detention becomes active. The information provided under Art. 261 § 3 of the CCP should include a possible decision of the second instance court, which may be identical with the ruling rendered in the first instance, or totally different.

Another situation occurs when the proceedings carried out against a student have comprehensively come to an end; yet there are arguments saying that it is unclear whether termination of proceedings should be understood here as a completion of a stage, e.g. of the investigation procedure and drafting and sending the indictment

20 D. Świecki, B. Augustyniak, K. Echstaedt, M. Kurowski, Kodeks postępowania karnego. Komentarz, Warszawa 2013, p. 802.

to a court, or whether it is complete termination of criminal proceedings by a final judgment.

Art. 21 § 1 of the CCP applies here, according to which, when official proceedings have been concluded against persons employed in state, local government and community institutions, school pupils, students of schools and colleges as well as soldiers, their respective superiors will be notified immediately.

This provision depicts a group of persons whose superiors should be notified about concluded criminal proceedings that have been earlier initiated against these persons *ex officio*. The above norm ensues that it mainly concerns proceedings carried out *ex officio*, that is subject to public prosecution. This obligation does not concern private prosecution. With regard to the above mentioned doubt about the meaning of criminal proceedings' termination, the science of criminal law rightly claims that an authority which closed the proceedings shall send a notice thereon (a prosecutor or court) while proceedings' termination is understood as final termination thereof and not just the end of a given stage of the procedure²¹.

Before criminal proceedings are finally terminated, different types of rulings including a positive decision for a student may be issued therein. Thus it appears that the interpretation of the content of Art. 21 § 1 of the CCP should involve termination of a final stage of criminal proceedings, that is of a jurisdictional stage finished with a final judgment. According to this interpretation, the obligation envisaged in Art. 21 § 1 of the CCP is fulfilled if in pending proceedings a judgment has been rendered and recognized as final²². Certainly, the obligation under Art. 21 § 1 of the CCP does not involve informing a student's superior about individual actions effected in specific stages of criminal proceedings such as: information about the issue of a decision on the launch of investigation procedure, on the issue of a decision on charges, on suspension of investigation procedure, on sending the indictment to the court, etc.

The information about final termination of criminal proceedings under Art. 21 § 1 of the CCP is precise as to the form. It certainly should be made in writing and indicate a manner of the proceedings' termination (acquittal, conviction, conditional discontinuation of criminal proceedings, etc.), a type of a potentially imposed sanction, a prohibited deed the subject is held criminally liable for, or applied measures of probation. An official copy of a final judgment terminating criminal proceedings does not have to be enclosed.

We should consider now whether sending information in compliance with Art. 21 § 1 of the CCP containing a final judgment other than acquittal should effect in the launch of disciplinary proceedings against a student. In fact, an offence has

21 K.T. Boratyńska, A. Górski, A. Sakowicz, A. Ważny, Kodeks postępowania karnego. Komentarz, Warszawa 2014, p. 84.

22 P. Hofmański, E. Sadzik, K. Zgryzek, Kodeks postępowania karnego. Komentarz do artykułów 1-296. Tom I, Warszawa 2011, p. 222.

been committed and already this very fact offends student dignity who, accepting obligations connected with a student community, has obliged himself or herself to simply act honestly and respectably.

With regard to the pursuit of criminal and disciplinary proceedings when a student has committed an offence and has not been preliminarily detained, it seems that criminal proceedings will take precedence here for pragmatic reasons.

Pursuant to Art. 217 § 2 of the LHE, punishing a student for the same act in criminal proceedings or proceeding on misdemeanours is not an obstacle to initiate proceedings before a disciplinary committee. The content of this norm ensues that first criminal proceedings or proceedings on misdemeanours are launched and terminated and only then disciplinary proceedings may be launched.

Undeniably, criminal proceedings' findings are more precise and a range of possibilities to check the circumstances of an act, conditions and motifs of its commission, or a final impact on a student is broader. Investigative capabilities of disciplinary ombudsmen or, later on, capabilities of taking evidence by disciplinary tribunals or committees are considerably lower than law enforcement agencies' abilities. In any case, before the final conclusion of criminal proceedings, a university may simply be unaware of the fact that the student has committed an offence unless he or she has been preliminarily detained, but this case has already been analyzed above.

Art. 217 § 2 of the LHE completes § 18 of the Regulation of Minister of Science and Higher Education of 6 December 2006 on the rules of investigation and disciplinary procedure against students²³, according to which a disciplinary committee may suspend disciplinary proceedings if criminal proceedings or proceedings on misdemeanours have been launched in the case of the same act. Furthermore, a disciplinary committee may reopen suspended proceedings at any time and should do so not later than within three months from the final termination of criminal proceedings or proceedings on misdemeanours.

We should notice here that under § 18 of the Regulation of 6 December 2006, a disciplinary committee may suspend disciplinary proceedings. This is effected only during a disciplinary hearing, that is after the conclusion of investigation procedure carried out by Disciplinary Ombudsman. On the other hand, even if a university is informed about an alleged commission of an offence by its student, it does not implicate mutual contacts between the university and law enforcement agencies in any way. There are no legal bases for the authorities pursuing investigation procedure to reveal information about an event just to a university even if a suspect is this university's student. In an opposite situation, i.e. when a student commits an offence within the university premises, then, of course, the university authorities are obliged to notify the law enforcement agencies about it; and if the university is harmed in

23 Journal of Laws of 2006, No. 236, item 1707 [Dz.U. z 2006 r. Nr 236, poz. 1707].

the effect thereof, it may take an active part in the proceedings as the injured party. It results, however, from a general provision of Art. 304 § 1 of the CCP, according to which whoever learns that a prosecuted offence has been committed shall be under a civic duty to inform the state prosecutor or the Police, as well as the provisions of Art. 49 of the CCP et seq., and Art. 53 of the CCP et seq.

A pursuit of disciplinary proceedings against a university student after a final judgment convicting him or her of an offence or misdemeanour incurs an objection of double (multiple) jeopardy, i.e. violation of the *ne bis in idem* principle, which is derived from the constitutional principle of a democratic state of law expressed in Art. 2 of the Polish Constitution²⁴. The principle *ne bis in idem* is an unquestionable constitutional norm which is additionally essential to the concept of a democratic state of law and results from the provisions of Art. 2, Art. 30 and Art. 45 par. 1 of the Polish Constitution²⁵. By analogy, it may be added that a ban on double (multiple) jeopardy is mentioned in Art. 4 par. 1 of the Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms drafted on 22 November 1984 in Strasburg²⁶, stipulating that no one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State. Another act of international law banning multiple jeopardy is Art. 14 par. 7 of the International Covenant on Civil and Political Rights²⁷, according to which, no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country. A ban on the application of the principle of double jeopardy has been considered, among others, by the Constitutional Tribunal, which clearly ruled that the principle *ne bis in idem* is a ban on double jeopardy of the same person for the same act not only with reference to imposing penalties for an offence but also applying other repressive measures, including criminal and administrative sanctions²⁸.

5. Final conclusions

The above presented analysis revealed that present provisions of the Law on Higher Education permit the occurrence of the phenomenon of coincidence depicted

24 L. Garlicki, Polskie prawo konstytucyjne. Zarys wykładu, Warszawa 1997, p. 83.

25 A. Sakowicz, Zasada *ne bis in idem* w prawie karnym, Białystok 2011, p. 57

26 Journal of Laws of 2003, No. 42, item 364, as amended [Dz.U. z 2003 r. Nr 42, poz. 364 ze zm].

27 Journal of Laws of 1977, No. 38, item 167, as amended [Dz.U. z 1977 r. Nr 38, poz. 167 ze zm].

28 The Judgment of the Constitutional Tribunal of 29 April 1998, K 17/97, OTK ZU No. 3/1998, item 30 and the Judgment of the Constitutional Court of 4 April 2007, P 43/06, OTK ZU No. 8A/2007, item 95.

in the title of this study between the validity of legal provisions allowing to pursue disciplinary proceedings and criminal proceedings.

If university authorities are aware of the commission of a prohibited act by a student against whom criminal proceedings are carried out, they may initiate parallel disciplinary proceedings. Yet, the above mentioned shortcomings of disciplinary liability implied by the Law on Higher Education emerge here.

Criminal procedural bodies have a considerably larger scale of impact than institutions operating within disciplinary proceedings. Regardless of any definition of disciplinary law and proceedings, it is indisputable that an inseparable element of this segment of legal liability are sanctions which must not be imposed on the same person twice. Disciplinary proceedings against university students envisage a specific catalogue of sanctions for the commission of a disciplinary tort under Art. 212 of the LHE setting forth that disciplinary penalties include: admonition, reprimand with caution, suspension of specific student rights up to one year, and expulsion from a university. Hence it is apparent that disciplinary proceedings against students belong to the group of proceedings using repressiveness as a response to the violation of law. Just this type of proceedings was a subject of the above mentioned analyses of the Constitutional Tribunal's case law, which has generally approved of the ban on multiple jeopardy in any legal proceedings.

Furthermore, we must not lose sight of the fact that disciplinary law and proceedings should be reserved for other and generically more trivial acts than those which activate criminal liability. Despite partial resemblance to criminal liability, at least with regard to the model of proceedings and applying repressions, a role of disciplinary liability is diametrically different. An act itself is already distinct as its current form allows to distinguish an offence from a disciplinary offence without a problem. Disciplinary liability is envisaged only for the maintenance of order and reliability of the practiced profession, efficient organization of a community and support for specific values of a social and professional group. Disciplinary liability is not obligatory because even if a certain group of members sharing the same common goal is organized, it does not entail a mandatory creation of the structures of disciplinary liability for such entities.

It seems necessary to introduce a strict separation between disciplinary liability and criminal liability which engulfs disciplinary issues with respect to the effects. This postulate mainly concerns the above analyzed Law on Higher Education. According to the provisions of this Law, disciplinary liability of a university student should mainly determine liability for acts that are specifically connected with the academic community. To be more precise – its institutional order, substantive expectations and a typical system of values; while with regard to the venue – it should refer to the acts mostly committed within the university premises. Whenever a student's act takes the form of an action whose effects considerably exceed internal rules of the community and its territory and violate common bans and orders of reasonable conduct thus

offending public order and common values, then criminal liability is activated while disciplinary liability comes to an end.

In this regard, it would also be useful to introduce a specific provision to the Law on Higher Education, which would provide the exclusive right to carry out criminal proceedings in the presence of disciplinary proceedings. Then the argument of multiple jeopardy – punishing a person once for committing an offence and second time for committing a disciplinary offence whose source of liability is the same act – would be dismissed. If this opinion was further reinforced by the absolute directive *ne bis in idem* derived from, among others, the content of Art. 2 of the Polish Constitution, it would exclude possible objections of non-constitutionality of proceedings of disciplinary authorities initiating and pursuing disciplinary proceedings despite the fact that criminal proceedings were terminated by a final judgment.

An educational aspect of the provisions of the Law on Higher Education should also be considered. With regard to the professions of public trust, combined criminal and disciplinary proceedings are justified. In this case, mandatory maintenance of a model of diligent conduct, respect for values typical of this corporation, issues of responsibility for others, etc., must determine professionalism of a member of this community. In any case, Acts determining the organization of public trust professions often condition joining such professions upon a clean criminal record of their prospective members. On the other hand, the Law on Higher Education does not have a requirement of a student's clean criminal record, or even flawlessness of character inherent to, among others, certain professional groups (e.g. judges)²⁹. Therefore educational reasons should prevail here over repressions the student has experienced anyway going through criminal proceedings or proceedings on misdemeanours and suffering the consequences of potentially imposed sanctions.

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29 A. Jasiakiewicz, Wzorzec sędziego a odpowiedzialność dyscyplinarna sędziów, „Studia Iuridica” 2006, No. XLVI, p. 123.

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