

The Legal Nature of Grading Decisions and the Implications for Handling of Academic Complaints in or out of Court: A Comparative Legal Analysis of Academic Litigation in Europe

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Abstract : This research examines complaints against grading in higher education institutions in four different European regions: England and Wales, Flanders, the Netherlands, and France. The aim of the research is to examine the correlation between the applicable type of complaint handling on the one hand, and selected qualities of the higher education landscape and of public law on the other hand. All selected regions report a rising number of complaints against grading decisions, not only as to internal complaint handling within the institution but also judicially if the dispute persists. Some regions deem their administrative court system appropriate to deal with grading disputes (France) or have even erected a specialty administrative court to facilitate access (Flanders, the Netherlands). However, at the same time, different types of (governmental) dispute resolution bodies have been established outside of the judicial court system (England and Wales, and to lesser extent France and the Netherlands). Those dispute procedures do not seem coincidental. Public law issues such as the underlying legal nature of the education institution and, eventually, the grading decision itself, have an impact on the way the academic complaint procedures are developed. Indeed, in most of the selected regions, contractual disputes enjoy different legal protection than administrative decisions, making the legal qualification of the relationship between student and higher education institution highly relevant. At the same time, the scope of competence of government over different types of higher education institutions; albeit direct or indirect (o.a. through financing and quality control) is relevant as well to comprehend why certain dispute handling procedures have been established for students. To answer the above questions, the doctrinal and comparative legal method is used. The normative framework is distilled from the relevant national legislative rules and their preparatory texts, the legal literature, the (published) case law of academic complaints and the available governmental reports. The research is mainly theoretical in nature, examining different topics of public law (mainly administrative law) and procedural law in the context of grading decisions. The internal appeal procedure within the education institution is largely left out of the scope of the research, as well as different types of non-governmental-imposed cooperation between education institutions, given the public law angle of the research questions. The research results in the categorization of different academic complaint systems, and an analysis of the possibility to introduce each of those systems in different countries, depending on their public law system and higher education system. By doing so, the research also adds to the debate on the public-private divide in higher education systems, and its effect on academic complaints handling.

Keywords : higher education, legal qualification of education institution, legal qualification of grading decisions, legal protection of students, academic litigation

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