

Volume 19, Issue 4
December 2021

ISSN 1731-8297, e-ISSN 6969-9696
<http://czasopisma.uni.opole.pl/index.php/osap>

ORIGINAL ARTICLE
received 2021-08-30
accepted 2021-11-02



The voluntary activity of students and doctoral students in self-governments and university organizations on the basis of the regulations of the Law on Higher Education and Science Act

Dobrowolna działalność studentów i doktorantów
w samorządach i organizacjach uczelnianych
na gruncie regulacji ustawy – Prawo o szkolnictwie wyższym i nauce

PIOTR GAJEWSKI

University of Gdańsk

ORCID: 0000-0002-5745-0446, piotr.gajewski@phdstud.ug.edu.pl

Citation: Gajewski, Piotr. 2021. The voluntary activity of students and doctoral students in self-governments and university organizations on the basis of the regulations of the Law on Higher Education and Science Act. *Opolskie Studia Administracyjno-Prawne* 19(4): 19–30. DOI: 10.25167/OSAP.3778.

Abstract: In this article, the author presents his studies regarding the legal situation of organisational forms, by means of which college students and doctoral students may carry out voluntary activities based on the organisational structure of a higher education institution, and in particular – regarding the law-forming activities of organisations associating students or doctoral students. The research methods used by the author were a critical analysis and linguistic analysis of the provisions of the Law on Higher Education and Science Act, as well as statements of doctrine and court rulings. In addition, the author attempted to solve the issue of the possibility of intercollegiate student organizations.

Keywords: self-governments, student self-governments, doctoral students' self-governments, non-economic self-governments

Abstrakt: W niniejszym artykule Autor opisuje swoje badania naukowe dotyczące sytuacji prawnej form organizacyjnych za pomocą których studenci i doktoranci mogą prowadzić

dobrowolną działalność w oparciu o strukturę organizacyjną uczelni wyższej, a w szczególności dotyczące prawotwórczej działalności organizacji skupiających studentów albo doktorantów. Metodami badawczymi użytymi przez Autora były analiza krytyczna oraz analiza lingwistyczna przepisów ustawy – Prawo o szkolnictwie wyższym i nauce, oraz orzecznictwo sądowe. Ponadto, Autor podjął próbę rozwiązania kwestii dotyczącej możliwości międzyuczelnianej działalności uczelnianych organizacji studenckich celem dokonania badań na temat możliwości organizowania wspólnych organizacji międzyuczelnianych organizacji studenckich.

Słowa kluczowe: samorządy, samorządy studentów, samorządy doktorantów, samorządy niegospodarcze

1. Introduction

The higher education mission is, inter alia, to shape civic attitudes. One of the instruments that facilitate the formation of civic attitudes among college students and doctoral students is the functioning of students' and doctoral students' self-governments, but also voluntary associations such as university student organisations or doctoral student organisations within the entity running a doctoral school. During his pedagogical career, J. Korczak noticed the essential role of self-governments in shaping civic attitudes (Binytska and Kokieli 2017: 153). Owing to the activities of associations of this type, it is possible to develop civic attitudes among people studying within the framework of the higher education system (Berlinskyi 2017: 154 and Khuziakmetov 2016: 88). According to the data as of 2020, in the Republic of Poland, there are 396 students' self-governments, which justifies the need for conducting detailed research on their legal situation.

The objective of this article will be to conduct an analysis on how student and doctoral associations function within the structures of universities, and how the legislator defined the framework for the functioning of these associations in the Act of 20 July 2018 known as the Law on Higher Education and Science (hereinafter: LHES). Despite the functioning of the principle of autonomy of universities, it seems that the legislator ought to provide the legal basis and the basic framework for the operation of self-governments and voluntary associations of students and doctoral students at universities, because the legislator reserved the possibility of establishing a particular self-government only through acts of a statutory rank.

This article also includes a description of research aimed at systematising provisions on certain features that can be attributed to students' and doctoral students' self-governments, as well as activities undertaken by them.

2. The legal basis for the student and doctoral student government activities

The constitutional basis for introducing the act regulating the system of universities in Poland can be found in Article 17 sec. 2 of the Constitution of the Republic of Poland of 2 April 1997 (hereinafter: Constitution of the Republic of Poland), which states that “other types of self-government may also be established by law. These self-governments shall not infringe on the freedom to practice a profession or limit the freedom to engage in economic activity” – the status of self-governments has been regulated in Ukrainian law in a similar way (Binytska and Kokieli 2017: 154).

Two premises can be derived from this provision, which are required for the establishment of a self-government to be lawful – it should be set up by way of an act and its functioning may not violate the freedom to practice a profession or limit the freedom to engage in economic activity. The first prerequisite does not raise any interpretational doubts – a local government may be established either by means of a separate act or by regulations which constitute only a part of a given act.

When referring to the premises included in Article 17 sec. 2 of the Constitution of the Republic of Poland, it needs to be pointed out that, first of all, the provisions establishing these self-governments should be contained in the act. For the legislator, it is not necessary to include these provisions in the act regulating the system of public universities operating in the Republic of Poland, but using the reasoning *a rubrica*, it seems to be reasonable to place these provisions in the act regulating the system of public universities – the legislator included the legal basis for the existence of the activities of the student government and doctoral student government in the Law on Higher Education and Science Act, which, in accordance with its Article 1, defines the functioning principles of the higher education and science system.

It would appear that the second premise – *expressis verbis* – does not apply to the student and the doctoral student governments. It seems, however, that by analogy one can derive the premise according to which the provisions relating to the student and the doctoral student governments cannot limit the access of students or doctoral students to the government, because the rights associated with the activity in the student or doctoral student government are related to the rights of a student or doctoral student. Such a meaning of Article 17 sec. 2 second sentence of the Polish Constitution seems to be in line with *ratio legis* of this provision, which is the inability to take the rights to be a member of the local government and to operate in it from persons who do

not practice the profession of public trust referred to in Article 17 sec. 1 of the Polish Constitution.

The above view is justified by the content of Article 17 sec. 1 of the Polish Constitution, Article 110 and Article 215 sec. 1 of LHES, which stipulate that students or doctoral students make up a self-government by virtue of the law itself, and do not require that students or doctoral students meet any additional premises.

3. Features of the student government, doctoral student government and activities undertaken by them

The fundamental feature of the student and doctoral student governments is that affiliation with them is by operation of law – a student or doctoral student becomes a member of the student government upon acquiring the status of a student or doctoral student, and the act does not make the formation of a local government community dependent on additional conditions. Due to the fact that a student or doctoral student is part of a self-government, it is not possible for a student or doctoral student to resign from being part of this self-government. What is more, if the regulations provide for being part of the self-government at the moment of obtaining the status of a student, then losing it results in the expiry of the rights and obligations related to the self-government activity.

Despite being a member of a self-government by operation of law, student or doctoral student activity within the self-government is voluntary. It is up to the free will of the student or doctoral student to be active in a local government or to support its activities. This is highlighted by the wording of Article 110 sec. 2 of LHES, pursuant to which the student government operates through its bodies. The legislator did not impose any obligation on students and doctoral students to undertake any activities for the student or doctoral student government or to stand for candidates for self-government bodies.

Within the meaning of the provisions of Article 110 sec. 3-5 of LHES, which – on the student government and doctoral government – impose the obligation to represent all students of the university, conduct activities related to the student affairs at the university and decide on the distribution of funds allocated by the university for student affairs, it should be considered that one of the features of the student government and doctoral students' self-government is the necessity to act in the interests of the student or doctoral community they represent. The necessity to act in the public interest of the community represented by the self-government is justified by the obligation to ensure the participation of representatives of students or doctoral students when establi-

shing internal law at the university. Moreover, self-government bodies should also be provided with the possibility of issuing an appropriate opinion that should be considered.

It should also be indicated that the self-government of students and the self-government of doctoral students somehow uses features of the autonomy of universities, which the university itself has under Article 70 sec. 5 of the Polish Constitution and Article 9 of LHES. It is primarily about organisational autonomy (Florczak-Wątor, Tuleja [ed.] 2019) – its consequence is that local governments have the power to adopt their own regulations of operation; including the appointment of additional bodies not explicitly mentioned in the content of Article 110 sec. 2 of LHES. The boundary of organisational autonomy is Article 110 sec. 8 of LHES, which allows the president of a university to repeal local government legal acts that would be contrary to the generally applicable law, the statute of the university, the study regulations, or the regulations of the local government.

It should also be underlined that the activity of self-government should be open and transparent. This is illustrated by Article 61 sec. 1 of the Polish Constitution, according to which a citizen has the right to obtain information, *inter alia*, on the activities of local governments – which is confirmed by the judicature of the Supreme Administrative Court (file reference number: I OSK 1932/18). Furthermore, the very provisions of the Act on Law on Higher Education and Science impose obligations on the self-governments related to the transparency of its operation. Pursuant to Article 110 sec. 5 of LHES, “the student government shall draw up a report on the distribution of funds and the settlement of these funds at least once in the academic year and makes them available in the BIP (Public Information Bulletin) on the university’s website.” This means that the act establishes a kind of obligation to ensure transparency in the actions of local governments through the necessity of making public the settlement of funds entrusted to universities.

4. Voluntary association of students and doctoral students

Apart from being active in self-government, students and doctoral students have the right to voluntarily associate in student organisations, which meets the provisions of constitutional freedom of association. The Provincial Administrative Court in Gdańsk is of a similar opinion (file reference number: III SA/Gd 576/19), believing that the mere possession of the student status provides a particular student with the rights of a student, including association in university student organisations, and after graduation, the student rights are lost, including the right to operate in university student organisations.

A. Mrozowska implies that, admittedly, it is about the right to associate (Mrozowska, Woźnicki [ed.] 2019); nevertheless, it is not possible to consider the constitutional law and freedom as identical concepts. Yet, her view that citizens' freedom of association is implemented in the Act of Law on Higher Education and Science, is correct. The essence of the freedom of students and doctoral students to be able to associate within the university is reflected in the view of A. Bednarczyk-Płachta, who believes that "university bodies cannot take steps that could impede the functioning of such organisations" (Bednarczyk-Płachta, Chmielnicki [ed.], Stec [ed.] 2017).

Pursuant to Article 111 sec. 1 of LHES, students have the right to associate in university student organisations. Doctoral students have the right to associate in doctoral student organisations within the entity running the doctoral school, in accordance with Article 216 sec. 1 of LHES. Therefore, it does not seem that people who do not have the status of a student or doctoral student could, accordingly, be members of a student or doctoral organisation (Mrozowska, Woźnicki [ed.] 2019). Nonetheless, it does not seem to be consistent with the *ratio legis* of introducing the possibility to associate by students, as the purpose of introducing a university student organisation is to activate students of a given university to work within the organisational structure of the university, so that they can fulfil the organisation's goals provided for in the regulations of the association. This view is supported, for instance, by the Provincial Administrative Court in Warsaw (file reference number: II SA/Wa 1892/15).

Moreover, it seems that it is not possible to establish such an organisation within a university, whose members would be both students and doctoral students, and it would be a voluntary association to which the Act on Law of Higher Education and Science applies, because the Act of Law on Higher Education and Science demarcates voluntary associations of students or doctoral students, and does not provide for any type of association joining students and doctoral students.

The organisation of doctoral students within the entity running the doctoral school is an organisation operating within the entities authorized to run doctoral schools. This means that in connection with the organisation establishment, the president of the university or other body with similar powers to the university president in the institute should be informed. This is demonstrated by Article 216 sec. 2 of LHES, which imposes the appropriate application of the provisions on university student organisations to the organisation of doctoral students.

The current provisions of the Act of Law on Higher Education and Science do not regulate what should be understood as a university student organisation. The provisions of the previously applicable Act of 27 July 2005 – Law on

Higher Education (hereinafter: LHE) indicated examples of university student organisations and these were scientific clubs as well as artistic and sports teams. Under the current act, it would be reasonable to recognize such organisations as university student organisations – this view is justified by the wording of Article 295 sec. 1 of the Act of 3 July 2018 – Provisions implementing the Act – Law on Higher Education and Science (hereinafter: PIALHES), under which university student organisations existing during the validity of the Act – Law on Higher Education – are also covered by the current Act. Pursuant to Article 111 sec. 5 of LHES, it should be pointed out that the associations composed only of students or doctoral students or university employees operating at the university, do not constitute university student organisations and the provisions of the Act of Law on Higher Education and Science, and the provisions of the Act of Law on Associations do not apply to them.

Doubts may arise as to the possibility of establishing scientific club councils within the organisational structure of a given university. The provisions of the Act of Law on Higher Education and Science do not provide for the possibility of establishing scientific associations. In connection to the above, it does not seem that the initiatives of scientific clubs could lead to the formation of scientific club councils. The same solution should be adopted in relation to the associations of scientific clubs operating at different faculties.

Another issue is the creation of a scientific club council as an advisory body to the university body responsible for the issues of scientific clubs. It seems that such a solution is possible, however only through an appropriate order of the president or dean of a given faculty at the university, and not through a resolution of representatives of scientific clubs. In addition, it is not possible, by analogy, to apply Article 110 sec. 9 of LHES towards the councils of scientific clubs, which requires the student self-government to ensure the conditions necessary for the functioning of the student self-government, because such a council of scientific clubs would not constitute a student government body.

The provisions of the Law on Higher Education and Science Act do not require the university president to keep a register of university student organisations or doctoral student organisations within the entity running the doctoral school. Nevertheless, such organisations should inform the university president about their formation. Yet, the provisions of the Act do not regulate what student organisations and doctoral student organisations should include in the information intended for the university president. It seems that the principle of university autonomy would enable the university president to issue an ordinance that would regulate the elements of information submitted to the university president about the establishment of a student organisation or an organisation of doctoral students operating within the university. Above all, the university

president should require the presentation of the regulations of a given organisation in order to check them against the acts of a higher order.

It results from the provision of Article 111 sec. 2 of LHES that it is the organ of the organisation that should inform the university president about its establishment – it seems that it can be any organ provided for by the provisions of the statute of a given organisation. It appears that these organisations should inform the president of the university about the composition of the organisation's bodies and about the rules of the organisation. The obligation for a body of a student organisation to submit the regulations of the organisation is dictated by Article 111 sec. 3 of LHES, which allows the university president to repeal an act of the body of the university student organisation, which would be inconsistent, *inter alia*, with the regulations of this organisation.

5. Control of the legality of the local government and university organisations' activities

The provisions of the Law on Higher Education and Science Act provide for the university president's supervisory powers over the student self-government, doctoral student self-government, university student organisations and the organisation of doctoral students within the entity running the doctoral school. Pursuant to Article 110 sec. 8, Article 111 sec. 3 and Article 111 sec. 4 of LHES, the university president is empowered to repeal and dissolve the acts of the student government and doctoral student government of students and doctoral students' organisations.

Pursuant to Article 110 sec. 8 of LHES, the university president has the power to repeal the acts that are inconsistent with provisions of the generally applicable law, the statute of the university, the regulations of studies, or the regulations of the self-government. It follows from the content of this provision that the revocation of the act is the responsibility of the university president as soon as he or she becomes aware of the non-compliance of the act of the student government or doctoral government with the above-mentioned legal acts (Ura, Wierzbowski [red] and Sanetra [ed.] 2013). As stated in the content of the quoted provision, the university president's competence covers the repeal of acts of student or doctoral students' self-government adopted by any body of the self-government – not only by the legislative body, but also by the executive body of the self-government. A different meaning of Article 110 sec. 8 of LHES by the executive body would be incompatible with *ratio legis* of this provision, which aims to provide the university president with the possibility of removing from the university legal order of those legal acts

that are inconsistent with legal acts of a higher level. Additionally, the acts of the executive body of the student or doctoral students' self-government, which may be composed of one-person, may be adopted arbitrarily and violate the legal order.

In the view of A. Mrozowska, Article 111 sec. 3 of LHES, it is possible to interpret the obligation to inform the university president of each adoption of an act of internal law by the university student organisation and the organisation of doctoral students within the entity running the doctoral school (Mrozowska, Woźnicki [ed.] 2019). It seems that no such obligation can be strictly deduced from Article 111 sec. 3 of LHES, but such an obligation could be introduced in the internal legal acts of universities, because the principle of university autonomy allows for it.

Pursuant to Article 111 sec. 4 of LHES, the university president, by way of an administrative decision, dissolves the university student organisation that grossly or persistently violates the provisions of generally applicable law, the university statute, study regulations or the regulations of this organisation. This provision does not indicate how the university student organisation would breach the provisions of the legal order functioning at the university in order to be dissolved. It seems, however, that it concerns both legal acts and actual acts undertaken by the university student organisation through its bodies. The purpose of this provision is to enable the university president to dissolve those organisations that violate the provisions in force at a given university, i.e. a broad interpretation of the possibility of infringing on the provisions can only ensure compliance with *ratio legis* of this provision.

An attempt should be made to clarify what should be understood as gross or persistent violations of the regulations. It appears that due to the lack of a legal definition of gross or persistent violation, it would be justified to consider these premises in their dictionary meaning. Therefore, a gross violation of regulations should be considered a very serious violation of the regulations in force at a given university – this violation would have to directly violate provisions of generally applicable law, the university statute, study regulations or regulations of this organisation. However, a persistent violation of regulations should be considered a breach that has occurred several times in the activities of a given organisation, concerning the same issue, despite being aware of the breach of regulations.

6. Conclusions

The current regulations constitute a sufficient compromise between the principle of the autonomy of universities and the need to provide a cer-

tain legal framework for local governments and voluntary associations of students and doctoral students operating within the organisational structure of a university. The legislator has sufficiently ensured the implementation of constitutional rights that students and doctoral students should be entitled to as part of their studies at universities, and are not directly related to the constitutional right to education. A detailed catalogue of rules that should be implemented by the legislator when adopting regulations on student self-government was formulated by O. Binytska and A. Kokieli (Binytska and Kokieli 2017: 155-156). It seems that the Polish legislator has implemented all of these postulates, and paid the greatest attention to the postulate of transparency in the operation of self-government and the democratic principles of self-government activity.

The legislator should introduce an organisational form, the members of which could be both students and doctoral students, and to which the Law on Higher Education and Science Act would apply. This would enable a broader exchange of experiences between students and doctoral students – doctoral students could assist students in the initial phase of their future scientific activities.

Moreover, the lack of the university president's obligation to provide a list of university student organisations and the organisation of doctoral students within the entity running the doctoral school should also be assessed negatively. Thanks to the provision of a list of voluntary associations operating within the organisational structure of a given university, interested students and doctoral students could obtain information on the currently existing associations. Furthermore, ensuring such a list by the university president could make it possible to coordinate the student movement within the departments of particular universities.

Moreover, the legislator could pay more attention to situations in which the regulations of a voluntary association of students or doctoral students – or the activities undertaken by them – are inconsistent with the law in force at a given university. Firstly, the legislator should impose the possibility of hearing the bodies of a given association before the university president decides to dissolve a given association; this would allow the university president to understand the motives of the association's activities before its dissolution. Secondly, the legislator should introduce the obligation for the university president to verify the regulations of a given association before a university student organisation or an organisation of doctoral students in the entity running a doctoral school commences its activity, because the current provisions of the Law on Higher Education and Science Act make it impossible for the university president to completely waive the regulations of a given association.

References

Legal acts

- Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku, Dz.U. z 1997 r. Nr 78, poz. 483 z późn. zm., tekst jednolity.
- Ustawa z dnia 27 lipca 2005 roku – Prawo o szkolnictwie wyższym, Dz.U. z 2017 r., poz. 2183 z późn. zm., tekst jednolity.
- Ustawa z dnia 3 lipca 2018 roku – Przepisy wprowadzające ustawę – Prawo o szkolnictwie wyższym i nauce, Dz.U. z 2018 r., poz. 1669, tekst jednolity.
- Ustawa z dnia 20 lipca 2018 roku – Prawo o szkolnictwie wyższym i nauce, Dz.U. z 2020 r., poz. 85 z późn. zm., tekst jednolity.

Jurisprudence

- Wyrok NSA z dnia 25 stycznia 2019 r., I OSK 1932/18, Dostęp: 20.03.2021, LEX nr 2616330.
- Wyrok WSA w Warszawie z dnia 18 maja 2016 r., II SA/Wa 1892/15, Dostęp: 20.03.2021, LEX nr 2072877.
- Wyrok WSA w Gdańsku z dnia 10 stycznia 2020 r., III SA/Gd 576/19, Dostęp: 20.03.2021, Legalis nr 2270033.

Secondary sources

- Bednarczyk-Płachta, Agnieszka. 2017. W: *Prawo o szkolnictwie wyższym. Komentarz.*, (red.) Paweł Chmielnicki, Piotr Stec, Warszawa: Wolters Kluwer, wydanie elektroniczne LEX, dostęp: 20.03.2021.
- Berlinskyi, Yuri. 2017. The status of self-government in Ukraine, *Studium (2248-2164)*, 10, 153-156.
- Binytska, Olena, and Andrzej Kokieli. 2017. Student Self-Government in the System of School Management in the Context of Humanistic Values of Modern Education. W: *Perspektywy rozwoju organizacji w świetle paradygmatów zarządzania i finansów*, (red.) Andrzej Kokieli, 151-158, Poznań: Wydawnictwo Wyższej Szkoły Bankowej w Poznaniu.
- Florczyk-Wątor, Monika. 2019. W: *Konstytucja Rzeczypospolitej Polskiej. Komentarz.*, (red.) Piotr Tuleja, Warszawa: Wolters Kluwer, wydanie elektroniczne LEX, dostęp: 20.03.2021.
- Khuziakmetov, Anvar N., 2016. Social Competence Formation of Students in the Process of Students Self-Government, *Mathematics Education* 11(1), 81-89.
- Mrozowska, Anna. 2019. W: *Prawo o szkolnictwie wyższym i nauce. Komentarz.*, (red.) Jerzy Woźnicki, Warszawa, Wolters Kluwer: wydanie elektroniczne LEX, dostęp: 20.03.2021.
- Ura, Elżbieta. 2013. W: *Prawo o szkolnictwie wyższym. Komentarz.*, (red.) Walerian Sanetra, Marek Wierzbowski, Warszawa: Wolters Kluwer Polska, wydanie elektroniczne LEX, dostęp: 20.03.2021.

Internet sources

European University Association, Dostęp: 20.03.2021. <https://www.university-autonomy.eu/dimensions/organisational/>

Zintegrowana Sieć Informacji o Nauce i Szkolnictwie Wyższym, Dostęp: 20.03.2021. <https://polon.nauka.gov.pl/siec-polon#numbers>