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Senate's range of competence in a state school of higher education in the lights of the constitution for science

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Summary: The reform of schools of higher education and science in Poland has become one of the main assumptions of minister Jarosław Gowin's policy. After two years of intensive works on its assumptions, followed by a bill draft, the academic community received the long-awaited normative act. However, as in the case of many other reforms conducted in Poland after 1989 this one raises a lot of controversies even before it becomes legally effective. One of many interesting and new solutions is the introduction of completely new idea in the Polish system of higher education - the system of managing a state school of higher education. In addition to the deeply rooted in the academic dimension collegial body of a senate, also a new one was introduced - a school's council. By doing this the senate's tasks at state school of higher education have changed and its role has been marginalized.

Key words: reform of higher education system, Act 2.0, Constitution for Science, senate of state school of higher education, school's council at schools of higher education.

Kompetencje senatu uczelni publicznej w świetle przepisów konstytucji dla nauki

Streszczenie: Reforma szkolnictwa wyższego i nauki w Polsce stała się jednym z głównych założeń polityki prowadzonej przez ministra Jarosława Gowina. Po blisko dwóch latach intensywnych prac nad przygotowaniem założeń do niej, a następnie projektu ustawy, środowisko akademickie otrzymało długo oczekiwany akt normatywny. Jednak, podobnie jak wiele innych reform przeprowadzanych w Polsce po 1989 roku, tak i ta wzbudza wiele kontrowersji jeszcze przed jej wejściem w życie. Jednym z wielu interesujących, nowatorskich rozwiązań jest wprowadzenie zupełnie nieznanego dotąd polskiemu systemowi szkolnictwa wyższego - systemu zarządzania uczelnią publiczną. Wprowadzono bowiem, prócz zakorzenionego w przestrzeni akademickiej od lat organu kolegialnego, jaki jest senat, nowy organ kolegialny - radę uczelni. Tym samym zmianie uległy zadania senatu uczelni publicznej, a jego rola została zmarginalizowana.

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Słowa kluczowe: reforma szkolnictwa wyższego, Ustawa 2.0., Konstytucja dla Nauki, senat uczelni publicznej, rada uczelni.

After a few dozen years of difficult functioning of the development of Polish academic life in the times of the People's Republic of Poland, one of the desired elements of the following ruling authorities after the state's transformation in 1989, was the attempt to achieve growth of popularity of higher level education³. The official structure of the higher level education has undergone revolutionary changes a few times over the last 30 years. One of the determinants of such changes was demography. Four times increase of the scholarization gross index, defined as a relation between all people learning at a certain level to the whole population of people that are potentially ascribed to that level of education (19-24 years of age), that in the academic year 1990/1991 amounted to 12.9 and in 2010.2011 reached 53.7, is a remarkable feature, which has not occurred in any other Central or East-European country⁴. Quite often such changes were both desired and initiated by the academic environment. The last reform of the higher level education, that is valid as of 1 October 2011 and was a leading programme supported by the minister of that period - Barbara Kudrycka, was triggered off by enormous demographic "depopulation" of all types of Polish schools of higher education as well as the attempt to adapt the Polish system of education at higher level to standards of at least the West-European countries⁵. The reform's praiseworthy assumptions, however, failed in contact with everyday administrative life of schools and excessive amount of normative acts that were amended at a speed not allowing the reform's main assumptions to be implemented⁶. The position of Polish schools of higher education, according to the Shanghai ranking has never been satisfying, with the best Polish schools ranked in the fifth hundred of the QS World University Ranking⁷.

The problem of schools of higher education has never been a leading topic of any election campaigns that accompanied every election. Increase of spending on that public sector, changing scientific career path, including the institutional system connected with conferring scientific degrees have been the most often quoted election slogans. Academic circles, as one of the least consolidated in domestic public space,

³ M. Karoński, *Polska nauka czy nauka w Polsce?*, „Nauka” 2015, no 3, p. 26.

⁴ *Szkoły wyższe i ich finanse w 2016 r.*, Main Statistical Office, Warsaw 2017, p. 26; in the academic year 2016/2017 gross scholarization coefficient according to current data by GUS, amounted to 47,4.

⁵ In the justification of the bill's draft that is almost 30-page long, (the Sejm document no 3391, 6th term of office) the following weaknesses of the higher education system were indicated: no quality-based elements in the system of financing, low level of making studies international, inadequate structure of major subjects of studies, complicated path of scientific career, system of managing schools as well as weak relation between schools and their social and economic surrounding. The correction of these negative phenomena for the Polish higher education was meant to be achieved, according to the legislator, on the basis of three elements: efficient model of higher education management, dynamic model of a career in science and effective model of teaching.

⁶ More on the results of reform of schools of higher education introduced in 2011: J. Guliński, *Od reformy do reformy*, „Nauka i Szkolnictwo Wyższe” 2017, no 2, p. 280.

⁷ L. Tomala, *QS World University Ranking: first appearance of 5 Polish universities: Warsaw University in the fourth hundred* <http://naukawpolsce.pap.pl/aktualnosci/news%2C29821%2Cqqs-world-university-ranking-debiut-5-polskich-uczelni-awans-uw-do-4-setki>, [11.08.2018].

have not been determined enough to enforce meeting of promises made during the election campaigns by their potential employers. Jarosław Gowin, who has been the minister of science and higher education after the election in 2015, assumed the preparation and gradual introducing of a system reform of Polish science and schools of higher education as one of his main aims, that also fitted in the strategy of the newly established Minister's Council. In February 2016, the ministry of science and schools of higher education invited for a contest to provide assumptions to a bill - named "Act 2.0". The formula that has far been unknown to Polish legislation has resulted in the fact that 15 teams have decided to take part and the contest committee consisting of eminent scientists, active teachers, experts, entrepreneurs and academics from all over Poland have selected three groups of experts: SWPS Social and Humanistic University, Adam Mickiewicz University and Allerhand's Institute. In September 2016, minister Jarosław Gowin announced the strategy of development for Polish schools of higher education and science based on three main premises: the Constitution for Science that is to bring about system changes in higher education, Innovations for Economy that combines commercialization of research and partnership with business sector and the Science for You as a programme of social responsibility of science. It was exactly a year later, which was spent on numerous consultations, debates, programme conferences dealing with all key areas of science and higher education that a draft of the bill was presented at the National Congress of Science to a few thousand of gathered academic representatives - the project of so called "Act 2.0". The presented project of a bill was to serve as a remedy to the following problems of science and higher education: inadequate adapting of the higher level educational system to social and economic challenges, limited financial autonomy of schools, not satisfying quality of teaching at studies of higher level, low efficiency of teaching at PhD (doctoral) studies, system of ranks and degrees hindering scientists' strivings towards scientific perfection and conducting interdisciplinary research, not sufficient level of the importance of research results conducted in Poland in the world's science as well as faulty rules concerning the organization and structure making effective management very difficult⁸.

On 5 April 2018, the prime minister Mateusz Morawiecki, submitted to the Speaker of the Polish Parliament (the Sejm) Marek Kuchciński, a project (draft) of a bill of The Law on Schools of Higher Education and Science (Parliament's document no 2446). For this kind of document, the legislative proceedings require also submitting of such bill's draft justification. In this case, the document of the bill's draft that was "more of a political document in character"⁹ stated the weaknesses of the system of higher education that was formulated in the widely discussed bill's draft. The project authors consolidated basic regulations from the realm of higher education and science that so far had been regulated in the act of: The Law on Higher Education, Rules of Financing Science, Scientific Degrees, Ranks and Titles in Science as well as on Student's Loans and Credits. As it was emphasized in the bill's draft justification,

⁸ More at: <http://konstytucjadlanauki.gov.pl>, [11.08.2018].

⁹ H. Izdebski, J. Zieliński, *Prawo o szkolnictwie wyższym. Ustawa o stopniach i tytułach naukowych. Komentarz do nowelizacji*, Warszawa 2011, p. 11.

such initiative “does not mean a simple transferring of current regulations into the act in being in preparation. It is, however, action aimed at coherent regulating of the dispersed matter in one legal act” with the aim of “making the normative regulations in that area simpler and clearer”¹⁰. The legislative process that lasted almost five months was completed by signing on 1 August 2018 by the President of Poland the act of the bill passed by the Sejm on 20 July 2018 (called hereinafter the Act 2.0 or the Constitution for Science¹¹). The act became effective as of 1 October 2018 and all schools of higher education were granted one year to adapt their organization and structures to the new legal solutions. To a large extent, the change concerns the competences of specific monocratic bodies and school collegial organs, both public and non-public ones, which were imposed by the legislator with many new tasks. One of such organs is a senate that so far has been ascribed many important competences connected with school functioning. Further considerations will therefore concern the issue of competence change as regards a senate in relation with the widely understood reform of higher education introduced by the Act 2.0. Considering the importance of the problem and its extensive character, the considerations will focus on state schools of higher education according to their legal status as of 1 October 2018.

Senate as one of the organs in a state school of higher education

Duality of functions as conducted by school's organs is manifested, on the one hand, by the fact that they may perform the function of public administration organs, but on the other, that they appear as organs of legal persons who are ascribed some specific and specialized functions according to common normative acts as well as some internal normative ones¹². The Constitution for Science as the basic legal act regulating organization, functioning of higher education and science in art. 17 par. 1 item 1) states that an organ of a state school is made up of: a school's council, a rector and the senate with the reservation that a statute of a state school may provide for other school organs. In so far legal regulations, pursuant to the content of art. 60 par. 1 of the act dated 27 July 2005 Law on Higher Education, collegial organs of a state schools are senate and council of basic organizational units, with the reservation of par. 2, which states that a statute of a state school may provide for another collegial body instead or alongside the senate.

The Constitution for Science introduces a completely new for Polish state schools of higher education form of a collegial body - a school's council. Organ of

¹⁰ The Sejm document no 2446.

¹¹ Critical considerations on the adopted nomenclature was discussed by J. Szymanek, *Opinia merytoryczna o rządowym projekcie ustawy Prawo o szkolnictwie wyższym i nauce* (druk nr 2446) oraz o rządowym projekcie ustawy Przepisy wprowadzające ustawę Prawo o szkolnictwie wyższym i nauce (druk nr 2447), p. 3 in., <http://www.sejm.gov.pl/sejm8.nsf/opinieBAS.xsp?nr=2446>, [13.08.2018].

¹² T. Brzezicki, *Ustrój szkolnictwa wyższego w Polsce*, Toruń 2010, p. 157; M. Czakowska, *Kompetencje senatu uczelni publicznej w świetle nowelizacji przepisów ustawy Prawo o szkolnictwie wyższym*, [in:] J. Pakuła (edit.), *Prawo o szkolnictwie wyższym. Nowe prawo - aktualne problemy*, Toruń 2012, p. 103.

that kind has been functioning successfully in many schools all over the world. As an alternative form of co-managing a school, it addresses the challenges posed by contemporary societies and economies. The formula also encompasses not only a modern type of management of a state legal entity but also implements the suggestion that a structure of higher education systems should be adapted to social and economic challenges as much as possible and thus strive to provide sustainable growth of the higher education in Poland. In this assumption, the legislator attempts to implement and not only suggest the school's cooperation with its social and economic surrounding. One of the flagship's point of minister Barbara Kudrycka's reform such as establishing¹³ cooperation of a school with its social and economic surrounding¹⁴, could not find its place in the reality at all and as soon as the reform became effective in the autumn of 2011, the academic circles started discussions¹⁵ concerning the need to introduce new changes in the still ailing system, which additionally since 2010 had been included in the European Area of Higher Education.

The organ of the school's council¹⁶ constitutes, as R. Jastrzębski aptly remarked, "a novelty in the Polish system of higher education and is modelled on solutions applied in other countries, especially in Germany and the English-speaking countries"¹⁷. The legislator rules, according to art. 19 of the act, that such organs should consist of over 50% of persons from outside the school's community, including 6 or 8 persons as elected by a senate and a head of student's self-government body of such school. It is hard to argue with R. Jastrzębski's opinion that "such organ

¹³ It was hard in the years 2010-2011 - at the first stage of preparing the bill's project on changing the act on schools of higher education that became effective on 1 October 2011 to consider the development of cooperation of schools with their social and economic surrounding that would result in the fusion of the worlds of science and economy and lead to economic progress as such did not exist in the form indicated by the legislator. Convents of higher schools, both state and private ones, invited for cooperation representatives of social and economic surrounding with advisory voice. Therefore, in the opinion of the legislator then, it was necessary to implement formally such practice in the Polish academic space that was both known and appreciated at many universities all over the world.

¹⁴ Justification of the governmental project of the bill, document no 3391, 6th term of office

¹⁵ H. Izdebski, J. Zieliński, op. cit., p. 13.

¹⁶ In one of the assumptions prepared by the team from Allerhand Institute headed by Arkadiusz Radwan in a contest mode to the Act 2.0, an idea of establishing at state schools of a collegial organ - a Trust Council was suggested. This idea was extremely interesting and took into account all aspects connected with the assumptions to the reform in 2011. Trust Councils as collegial organs at schools of higher education have been functioning successfully in many European countries (see more in: A. Budnik, *Państwo a szkolnictwo wyższe w Anglii i w Polsce*, Białystok 2016, M. Kwiek, *Transformacje uniwersytetu. Zmiany instytucjonalne i ewolucje polityki edukacyjnej w Europie*, Poznań 2010, <https://nkn.gov.pl/ustroj-uczeln-i-w-wybranych-panstwach/>, [12.08.2018]), but also in many non-state schools in Poland, including such ones as Uniwersytet Humanistyczno-społeczny SWPS, Akademia Leona Kozłmińskiego, Uczelnia Łazarskiego). This type of school's organ is a combination of the academic world and the world of politics, business and other entities; more in A. Radwan (ed.), *Plus ratio quam vis consuetudinis. Reforma nauki i akademii w Ustawie 2.0. Projekt założeń do ustawy Prawo o szkolnictwie wyższym*, Kraków 2017, p. 42 i n. A. Jajszczyk suggested establishing at state schools of higher education of patronage councils, whose tasks and structure, as a matter of fact, is similar to school's councils as prescribed in the Act 2.0, A. Jajszczyk, *Szkolnictwo wyższe - potrzeba całościowej reformy*, „Nauka i Szkolnictwo Wyższe” 2017, nr 2, p. 81.

¹⁷ R. Jastrzębski, *Opinia prawna dotycząca rządowego projektu ustawy – Prawo o szkolnictwie wyższym i nauce (druk nr 2446) oraz rządowego projektu ustawy – Przepisy wprowadzające ustawę – Prawo o szkolnictwie wyższym i nauce (druk nr 2447)*, p. 22, <http://www.sejm.gov.pl/sejm8.nsf/opinieBAS.xsp?nr=2446>, [12.08.2018].

generally resembles a board of management of a capital partnership that is beyond any control, and its members are not responsible for any taken actions and are not actually connected in any way with academic community"¹⁸. Their reliable evaluation may be made no sooner than after two years of their functioning in schools.

Term of office of a senate in a state school of higher education according to art. 30, par. 30, item 1 of the Act 2.0 still lasts 4 years and such term commences on 1 September in the year of election held at such school. Although the legislator has not defined the end, one may assume that it falls on 31 August in the year when such term of office expires. A good practice would be to continue the principle introduced by the reform in 2011 of not holding such positions for more than two terms of office (art. 30, par. 2).

Due to the introduction of a classification of state schools into academic and vocational ones, the legislator in the content of art. 29 of the Constitution for Science, provided for a separate rules in respect of state school's senates. Such senates in state academic schools of higher education consist of: state professors and professors nominated by such school (who make up at least 50% of the senate), students and PhD students (at least 20% of the senate), academic teachers employed in other posts than those defined in let. a , as well as employees not being academic teachers with at least 25% share in the senate. The senate of a state vocational school is made up of academic teachers having at least PhD degree that account for at least 50% of the senate, students with at least 20%, academic teachers without PhD degrees as well as other employees not being academic teachers with at least 25% share in the senate. What is important, the number of students and PhD students is determined proportionally to the amount of both such groups in school, with each group represented by at least one representative (art. 29, par. 2). People belonging to specific groups representing academic community elect their senate representatives from among themselves. A candidate may be proposed by any member of the school's community and a held ballot is secret. A senate member may be a person, similarly to being a school's council's member, who has full legal capacity and enjoys full civil laws, has not been punished by an absolute court judgment for intentional crime (also fiscal one) nor disciplinary penalty, and in the period between 22 July 1944 and 31 July 1990 did not work for the state security police forces as understood by art. 2 of the act dated 18 October 2006 on disclosing documents' information from the state security police forces from the years 1944-1990 as well as on contents of such documents (Vol. of Laws 2017, item 2186 with subsequent alterations), did not serve in the above forces nor is over 67 years of age when the term of office starts. Senate's membership expires in the same cases as the legislator determined for members of school's councils, i.e. in the case of their death, resignation, not submitting so called "vetting declaration", not submitting so called "vetting information" or no longer meeting requirements

¹⁸ Ibidem; the Author also deals with consideration, following M. Sadowski concerning potential "breach of art. 70 par. 5 of the Constitution of the Republic of Poland that guarantees autonomy to all schools of higher education. Establishing of school's councils will result in transferring of public budget means destined for research to organs that will not deal with research activities. In the view of limited and not sufficient financial means on science, further limiting of them to finance organs not dealing with research activities should be assessed as contradictory to the act's project".

for candidates in such organ (art. 29, par. 4). The expiry of senate's membership is testified by a head of such senate.

The Constitution for Science, regrettably, misses a regulation introducing a facultative ban resulting from statutes of state schools of higher education and concerning not combining a function of a senate's member with the function of a one-person organ of another school of higher education, with a function of being an establishing body of another private school of higher education and being a physical person or with the status of being a member of a legal person's organ who is an establishing body of another school of higher education. The facultative principle of *incompatibilitas* is especially aimed at preventing actions for school's disadvantage as well as conflict of interests. This time, however, the legislative solution, that has been so far positively viewed in the academic environment, has not earned the legislator's approval. The rule saying that a rector is a head of a senate resulting from the content of art. 31, par. 1 of the Act 2.0 has not changed. The rules and mode of functioning of a senate is prescribed by a statute (art. 34, par. 1, item 3). Having in mind current legal regulations, one may differentiate the following competences of a state higher school's senate: establishing and constitutive one, control-issuing opinion and creative one. The above considerations on the structure of a senate of a state school of higher education should be regarded as an introduction to further analysis of such senate's competences and granting it completely new ones as prescribed by the Constitution for Science.

Establishing and constitutive competences of a senate of a state school of higher education as well as competences related to functioning of such school

Although establishing competences of a senate in a state higher school should be considered as significant¹⁹, however they are not the most important ones for this organ in the view of the Constitution for Science. It results from the fact that alongside the introduction of a new collegial organ - a school's council, and applying of a central-oriented model of ruling a school, the legislator in a way devalued the so far most important collegial organ at state schools. Academic environment has received these solutions with a lot of, partially justifiable, criticism. According to J. Szymanek's opinion, senate is a deeply rooted and widely accepted organ in the tradition of Polish schools of higher education²⁰. As the author emphasizes, it is connected with resigning by the legislator from already well established division into school's basic units, including faculties, whose competences will be taken over by senates²¹. However, as J. Szymanek claims, according to the constitutional principle of school's autonomy, although they will be able to establish faculties in

¹⁹ H. Izdebski, J. Zieliński, op. cit., p. 163.

²⁰ J. Szymanek, op. cit., p. 9.

²¹ Ibidem.

the future as well, however, they will be ascribed completely different competences than before²². On the other hand, R. Jastrzębski claims that the central-oriented model of exercising authority in state schools vested with a rector results in considerable diminishing of entitlements held by “collegial bodies of schools of higher education, mostly a senate and specific faculties’ councils. In the last case, faculties and deans, who manage them, become bodies directly dependant on a rector. Shifting of decision making competences onto a rector will in practice mean wasting so far organizational achievements of Polish higher schools, especially the importance of faculties. It poses also a threat for internal autonomy of state schools as faculties’ councils as collegial bodies traditionally form the core of academic community, represent interests of specific branches of science and concentrate around proper didactic and scientific work”²³. This opinion in a public debate is not a single one. Also J. Guliński pointed out to the need of strengthening the position of collegial bodies, including a senate as an organ defending rector’s just management²⁴ According to art. 28, par. 1 item 1) of the act 2.0 one of the basic entitlements of state school’s senate is passing a statute as a legal act that regulates the organization and functioning of the school. Provisions of art. 34 par. 2 say that a statute of a state school is passed by a senate with absolute majority of votes in the presence of at least half of the statutory members after obtaining an opinion from the school’s council as expressed by its majority of statutory members and obtaining such school’s trade union’s opinion. The trade unions submit their opinions within 30 days from the date of receiving the statute’s project. In the case when the above period expires without effect, the requirement is considered to be met. In the law doctrine, it is pointed out that school’s statute is an establishing act. Taking into account the importance of such act, the establishing authority is mentioned that “comprises entitlement to establish general and individual norms, with the statute being a legal act creating general norms”²⁵.

School’s statute is also such a normative act where in many cases, as a result of statutory delegation, its content of generally valid law acts is more precisely determined.

In the group of constitutive competences, senate’s important prerogatives include: passing of fundamental for the school’s development and its didactic process strategies of development, studies regulations, determining of conditions, mode and dates of studies recruitment and specialist education process, determining studies syllabuses that should be preceded by obtaining student’s self-governmnet’s opinion (in the case of its expiry without effect as prescribed in the statute, this requirement is considered to be met), post-graduate studies and specialist education, determining of syllabuses in PhD schools, determining of ways of certifying results of learning, performing tasks connected with ascribing levels by the Polish Classification Framework called further “PRK” to qualifications granted after completing post

²² Ibidem.

²³ R. Jastrzębski, op. cit., p. 2.

²⁴ J. Guliński, op. cit., p. 284.

²⁵ J. Korczak, *Statut szkoły wyższej w świetle nowych uregulowań prawnych* [in:] A. Szadok-Bratuń (ed.), *Nowe prawo o szkolnictwie wyższym a podmiotowość studenta*, Wrocław 2007, p. 56.

graduate studies and included into the Integrated System of Qualifications of the qualifications granted after completing post graduate studies and other forms of education - in accordance with the act dated 22 December 2015 on the Integrated System of Qualification (Vol. of Laws from 2017, item 986 and 1475 and from 2018 item 650) (art. 28 par. 1 item 2),3),10),11),12),13),15) of the Act 2.0). According to the regulation in art. 202 par. 2 of the act, senate may also determine rules of a contest to PhD school.

The legislator has also made a differentiation of activities that is not understandable in terms of legal language as quoted in art. 28 par. 1 item 1), 2) and 3, which mention “passing (of a decision)”, whereas items 10), 11) and 12) or art. 202 par. 2 mention “arrangements”. However, according to the definition contained in the Dictionary of the Polish Language “passing (of a bill)” as a noun form of the verb “to pass” means “to decide something as a result of discussing it by a competent gathering”²⁶, and “arrangements are what has been agreed - decisions, guidelines, etc. as well as what has been established after prior examination”²⁷ that although similar in lexical meaning, are semantically different, which makes them not clear for the act’s recipients. Taking into account the mode of passing resolutions by a senate at sessions in the presence of at least half of all statutory members as resulting from the regulation of art. 31 par. 2, implementation of the senate’s tasks, both statutory and resulting from school’s statute, always takes place in the form of resolutions.

Moreover, a senate pursuant to art. 152 of the Act passes regulations concerning managing of copyrights, relevant rights, rights of industrial ownership, rights of commercialization as well as the regulation governing using research infrastructure and division of financial means in that respect.

The constitutive function of a school senate has not been known so far to the Polish legislation. It consists in conferring scientific degrees and degrees of art (art. 28 par. 1 item 8 of the Act 2.0). So far such competences have belonged to the tasks of councils of basic organizational units - faculty’s councils. Members of faculty councils in Polish school of higher education are representatives of all social groups making up academic community of that faculty, i.e. independent scholars, not independent scholars, administrative workers, representatives of trade unions, PhD students and other students, whereas the right to take resolutions on conferring or refusing to confer scientific degrees belongs only to independent scholars from a specific faculty council. The justification for such practice that is actually deeply rooted in the career path and promotion opportunities were the circumstances that every faculty council consisted of specialists only from one specific discipline. As J. Szymanek points out in the case of centralizing competences to grant scientific degrees and transfer them to a senate of a state school of higher education “it may turn out that senate’s content will not include specialists from that discipline that the scientific degrees are awarded, which, actually only confirms a formal character of a senate in this respect. Consequently, a minimum requirement should be the statutory provision

²⁶ *Słownik Języka Polskiego*, <https://sjp.pwn.pl/szukaj/uchwalenie.html>, [13.08.2018].

²⁷ *Słownik Języka Polskiego*, <https://sjp.pwn.pl/sjp/ustalenie;2533577.html>, [13.08.2018].

that every senate should consist of at least one independent scholar representing a discipline from which such senate is entitled to grant scientific degrees. It is hard to imagine a situation when an entity granting scientific degrees does not have in its resources a person being a specialist in a discipline of granting such degree"²⁸. The legislator trying to address such potential doubts and remarks arisen over the issue, states in art. 28 par. 4 that conferring scientific degrees may be performed by another organ as mentioned in a school's statute, however, the statute may prescribe only one such body as regards every discipline or in the cases described in the act as regards a specific area of science. Such remarks should also be made as regards senate's competences in determining syllabuses of regular studies, post-graduate studies and specialist education. Specialists in specific areas of science who are responsible at faculties for didactic matters should be granted prerogatives in this respect as before. New statutes of state schools of higher education will also determine competences of faculty councils. A proposal, following the pattern of many non-state schools in Poland, that faculty councils should be granted rights to express their opinions and afterwards a senate should start discussing studies syllabus is also worth considering. In spite of no direct solution being contained in the Act in this respect, it would be possible to grant such competence to a senate pursuant to art. 29 par. 1 item 16) of the Act 2.0. Also awarding the title of *doctor honoris causa* is a competence that so far has been reserved only for that organ and that has a few hundred years of tradition in Polish academic life.

Control competences of a senate at state school of higher education

Pursuant to the provisions of the act of Law on Schools of Higher Education that has been in force since 1 October 2011, schools of higher education within their autonomy were granted the possibility of adopting certain model of managing their schools either by dominant position of collegial organs or based on managerial self-government (with a dominant role of a rector-manager)²⁹. A widely accepted model is the one that has been applied in practice for many years and its amendment from 2011 has not achieved a desirable effect. It was not therefore a surprise when actually all of the three proposed projects of assumptions for the reform of science and higher education in Poland as obtained through a contest, spresented different models of managing higher schools, which in combination with public financing should strengthen the position of Polish schools of higher education outside Poland and would result in the increase of their competitiveness.

In view of the adopted centrally-oriented model of school management in the Constitution for Science that was passed on 20 July 2018 with a strong position of a rector cooperating with a collegial organ of competences so far mostly reserved

²⁸ J. Szymanek, op. cit., p. 10.

²⁹ Raport końcowy „Modele zarządzania uczelniami w Polsce” Umowa nr 224/DS/2010 z dnia 17 listopada 2010 r., Uniwersytet Jagielloński Centrum Badań nad Szkolnictwem Wyższym, Kraków 2011, p. 8.

for school's senates, i.e. faculty councils, it may be claimed that senate's tasks as prescribed by the legislator from the point of view of the control function seem to be of only window-dressing character. Pursuant to art. 28 par. 1 item 3 of the Act 2.0, senate approves a report on the completion by a rector of a school's strategy that had been passed by such organ and supported by faculty council's opinion before. The senate, moreover, carries out evaluation of school's functioning in accordance with provisions of art. 28 par. 1 item 6) of the Act. The content of art. 18 par. 5 of the Act say that a school's council submits to a rector an annual report on its activities. However the legislator, diminishing senate's role did not grant this organ competences as regards approving or rejecting such report and indicating consequences of taking a resolution not agreeing with the school's council's proposal. Only from the content of art. 28 par. 1 item 7) of the Act results that senate makes recommendations for school's council as regards tasks performed by them. The members of the Crisis Committee of Polish Humanities drew attention to the threats resulting from the marginalization of a senate as a collegial organ (which apparently has been permanently rooted in the academic tradition) for the sake of a body consisting in half of persons from outside academic community and headed by a person not formally connected with the school³⁰. A group of experts pointed out to the phenomenon of oligarchization of academic community. Establishing of school's councils was described as "the most significant breach of good practices of school's democracy and a threat to school's autonomy in their external dimension"³¹, leading ultimately to resignation from conducting research in social sciences due to their low profitability but requiring considerable financial spending³².

Competences of expressing opinion and creating of state school's senate

Basic tasks as regards the function of expressing opinions and creating of a senate of state school of higher education include, pursuant to art. 28 par. 1 item 4) and 5) - nominating and withdrawing of school's council's members as well as expressing opinions on candidates for a rector and subsequently proposed by such school's council. Moreover, a senate conducts evaluation of school's functioning as well as formulates recommendations for school's council and a rector as regards tasks performed by them (art. 28 par. 1 item 7) of the Act). Creative function includes indicating by a senate of a state school of candidates to representative bodies of academic and scientific community (art.28 par.1 item 14) of the Act 2.0.

³⁰ Komitet Kryzysowy Humanistyki Polskiej, *Opinia dotycząca ustawy 2.0 – prawo o szkolnictwie wyższym i nauce (Konstytucja dla Nauki)*, <http://www.sejm.gov.pl/sejm8.nsf/opinieBAS.xsp?nr=2446>, p. 18 i n., [13.08.2018].

³¹ Ibidem.

³² Ibidem, p. 20.

Conclusion

Long awaited by the whole academic community reform of schools of higher education has come into being. The Act 2.0 contains many new and desirable legislative solutions, however, the construction of some institutions as introduced by the reform raises doubts among law doctrine and practice representatives. Such doubts include such issues as, for example, rules of financing science, obeying rules of higher school's autonomy, the position of the new collegial body such as a faculty's council in schools, marginalization of senate's tasks, optional character of establishing faculties or a new model of managing schools³³. The reform will be introduced gradually - in the years 2018-2022. It cannot be excluded that the legislator's rational intention will be reduced by introducing following changes in the Constitution for Science. The legislator's attempt to reform so many areas of schools of higher education and science at the same time seemed hardly possible, although proved feasible. However, in our point of view one important aspect has been overlooked in the attempt by the legislator of the reform in meeting its aims and following the example of foreign, prestigious universities, especially as regards increasing research and science spending or school management. Learning at foreign state schools of higher education in most cases is paid at relatively higher level than at Polish extra-mural studies in state schools or in state schools in general. It may only be hoped that respecting the rules of equality, freedom and autonomy of academic community will remain the most important values.

Bibliography

- Brzeziński T., *Ustrój szkolnictwa wyższego w Polsce*, Toruń 2010.
- Budnik A., *Państwo a szkolnictwo wyższe w Anglii i w Polsce*, Białystok 2016.
- Guliński J., *Od reformy do reformy*, „Nauka i Szkolnictwo Wyższe” 2017, nr 2.
- Izdebski H., Zieliński J., *Prawo o szkolnictwie wyższym. Ustawa o stopniach i tytule naukowym. Komentarz do nowelizacji*, Warszawa 2011.
- Jajszczyk A., *Szkolnictwo wyższe - potrzeba całościowej reformy*, „Nauka i Szkolnictwo Wyższe” 2017, nr 2.
- Jastrzębski R., *Opinia prawna dotycząca rządowego projektu ustawy – Prawo o szkolnictwie wyższym i nauce (druk nr 2446) oraz rządowego projektu ustawy – Przepisy wprowadzające ustawę – Prawo o szkolnictwie wyższym i nauce (druk nr 2447)*, <http://www.sejm.gov.pl/sejm8.nsf/opinieBAS.xsp?nr=2446>.
- Karoński M., *Polska nauka czy nauka w Polsce?*, „Nauka” 2015, nr 3.
- Komitet Kryzysowy Humanistyki Polskiej, *Opinia dotycząca ustawy 2.0 – prawo o szkolnictwie wyższym i nauce (Konstytucja dla Nauki)*, <http://www.sejm.gov.pl/sejm8.nsf/opinieBAS.xsp?nr=2446>.

³³ On models of managing state schools of higher education, among others in P. Raźny, *Rola rektora uczelni publicznej w świetle przepisów znowelizowanego Prawa o szkolnictwie wyższym*, [in:] J. Pakuła (edit.), *Prawo o szkolnictwie wyższym. Nowe prawo - aktualne problemy*, Toruń 2012, p. 119.

- Kwiek M., *Transformacje uniwersytetu. Zmiany instytucjonalne i ewolucje polityki edukacyjnej w Europie*, Poznań 2010.
- Pakuła J. (ed.), *Prawo o szkolnictwie wyższym. Nowe prawo - aktualne problemy*, Toruń 2012.
- Radwan A. (ed.), *Plus ratio quam vis consuetudinis. Reforma nauki i akademii w Ustawie 2.0. Projekt założeń do ustawy Prawo o szkolnictwie wyższym*, Kraków 2017.
- *Raport końcowy „Modele zarządzania uczelniami w Polsce” Umowa nr 224/DS/2010 z dnia 17 listopada 2010 r.*, Uniwersytet Jagielloński Centrum Badań nad Szkolnictwem Wyższym, Kraków 2011.
- *Słownik Języka Polskiego*, <https://sjp.pwn.pl>.
- Szadok-Bratuń A. (ed.), *Nowe prawo o szkolnictwie wyższym a podmiotowość studenta*, Wrocław 2007.
- *Szkoły wyższe i ich finanse w 2016 r.*, Główny Urząd Statystyczny, Warszawa 2017.
- Szymanek J., *Opinia merytoryczna o rządowym projekcie ustawy Prawo o szkolnictwie wyższym i nauce (druk nr 2446) oraz o rządowym projekcie ustawy Przepisy wprowadzające ustawę Prawo o szkolnictwie wyższym i nauce (druk nr 2447)*, <http://www.sejm.gov.pl/sejm8.nsf/opinieBAS.xsp?nr=2446>.
- Tomala L., *QS World University Ranking: debiut 5 polskich uczelni; awans UW do 4. setki*, <http://naukawpolsce.pap.pl/aktualnosci/news%2C29821%2Cqs-world-university-ranking-debiut-5-polskich-uczelni-awans-uw-do-4-setki>