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KATARZYNA GÓRAK-SOSNOWSKA[1], EWA WIŚNIEWSKA[2]

Including Employees of Dean's Offices in the Process of Development of Normative Acts. Structural Constraints and the Ways to Overcome Them

Abstract

In 2018 Student Services Employee Association (Stowarzyszenie Forum Dziekanatów) was established. One of its aims is to get involved in a dialogue with organisations and institutions dealing with higher education, in particular with the Ministry of Science and Higher Education as the relevant public authority. In this regard the Association proposed three amendments to the Act of Higher Education and Science in terms of administrative procedure, in particular: notice on initiation of procedure, simplified procedure and silent settlement of case, which were submitted to the Ministry. As a bottom-up initiative of student services employees at HEIs, it enables them to get involved in consulting acts on higher education and proposing amendments to these regulations. This role of the Association is significant due to the fact that in many HEIs student services employees have no ability to provide feedback on the regulations that they are executing.

Keywords: dean's office, HEI, Law on Science and Higher Education, General Administrative Procedure Act, Ministry of Science and Higher Education

[1] Katarzyna Górak-Sosnowska, PhD – Warsaw School of Economics; e-mail: kgorak@sgh.waw.pl; ORCID: 0000-0002-1121-6240.

[2] Ewa Wiśniewska - MA, Kozminski University; e-mail: ewaw@kozminski.edu.pl; ORCID: 0000--0002-3572-7686.

Ministry of Science and Higher Education Republic of Poland

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In the case of HEIs, employees managing the administrative aspects of studies on the basis of existing and binding legal regulations have limited possibilities to express their opinions on such regulations in public, which prevents them from getting involved in the process of consultation of internal normative acts of their respective HEIs. HEI-specific normative acts are developed by central bodies dealing with legislation. The bodies which act as the final executors of such regulations tend to be consulted but it does not happen too often. And this is not a situation limited to HEIs only. Actually, it is typical of many public administration institutions, where communication is usually of one-way nature.[3] In this text will intend to show that including employees of dean's offices as bodies whose daily operations are based on the regulations in question can translate into a greater level of transparency and effectiveness of legal procedures.

We have written this article from a point of view based not only on our own research, conducted for over two years in dean's offices at various public and private HEIs, but also on participant observation. We are both involved in the process of subjectifying, networking, and integrating the employees of dean's offices from across the entire Poland. This process started during the first all-Poland Student Services Employee Forum taking place in December 2017 at SGH Warsaw School of Economics,[4] becoming formalised by the establishment of the Student Services Employee Association in November 2018.[5]

From a dean's office to an association

A dean's office is a faculty administrative unit, auxiliary to the operations of a HEI's bodies. As Radosław Sojak argues, "at higher education institutions specialising in a broad range of disciplines, dean's offices are a reservoir of underutilised knowledge about the functioning of the higher education institutions they are part of and, at the same time, one of the most significant drivers behind positive institu-

3 K. Serafin, *Skuteczna komunikacja w podmiotach administracji publicznej*, "Studia Ekonomiczne", 2013, 141, p. 143.

4 Learn more at http://dziekanaty.pl.

5 Learn more at http://forum-dziekanatow.pl.

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tional change."[6] The drafts of internal normative acts drawn up by HEIs are sometimes consulted with dean's office employees but the decision in this regard depends on a given HEI and its organisational culture. At big HEIs, where there are many dean's offices, it usually becomes the responsibility of the central administration unit coordinating the process of managing and dealing with the administrative aspects of studies.

The drafts of acts and secondary legislation are consulted with many bodies representing HEIs (e.g. the Conference of Rectors of Academic Schools in Poland, the General Council of Science and Higher Education). In the case of HEIs, all comments and remarks are submitted by a specialised unit (legal advice department). It would certainly be a good idea to take the feedback of the employees of stakeholder units – i.e. of those who are to become the ultimate executors of law – into consideration. It appears, however, that it happens very rarely.

Let us consider here the outcome of the public consultations regarding the *Law on higher education and science* of 20 July 2018 (hereinafter referred to as the LHES) as an episodic proof of the above.[7] One of the adopted standards imposes an obligation on HEIs, which will be very difficult to fulfil. This concerns Art. 7 section 2 of the act in question, which stipulates as follows: "Within 30 days of the completion of studies, the university shall award the graduate a higher education diploma and a diploma supplement, as well as two copies thereof, including – at the graduate's request – their copies translated into a foreign language." Unlike the regulations in force earlier, neither the act nor the regulation on studies include any catalogue of foreign languages. This means that in the light of the currently binding law, a student may request at any time to be given a copy of their diploma and diploma supplement translated into all possible languages of the world, and their university is legally obliged to provide them with the said documents. There are around 4 thousand languages to choose from at present. The notion of "foreign language" may be defined in even broader terms, including extinct languages (e.g. Ugaritic), artificial languages (e.g. Klingon) or non-written languages in this definition.

Despite the significance of this standard and the obvious difficulties in implementing it in practice (with the limits charted by e.g. students' creativity), no institution engaged in the said consultations raised the issue. This may be because of the fact that the matter of foreign languages was settled earlier by a relevant

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6 R. Sojak, *Dziekanat w przestrzeni instytucjonalnej uniwersytetu – w stronę komunikacji symetrycznej*, [in:] K. Górak-Sosnowska, R. Pajewska-Kwaśny (eds.), *Dziekanat w procesie zmian. Nowa rzeczywistość prawna i organizacyjna*, Warszawa 2019.

7 The Higher Education and Science Law Act of 20 July 2018 (Journal of Laws of the Republic of Poland of 2018 item 1668).

regulation. In the case of diplomas, there was a finite list of languages (diplomas could be issued in five languages), and diploma supplements could be issued only in English.[8] The argument to modify this provision was first raised only at the time of public consultations concerning the regulation on higher education studies[9] and evaluation.[10] But it was too late to change anything at that stage given the lack of delegation of legislative powers.

The quoted case of overlooking a mistake in the act is, of course, not a sufficient argument for the inclusion of dean's offices' employees into the consultation process. It is hard to say if the problem would have been noticed at the stage of the bill of the act if these employees had been engaged in the process of public consultations at their institutions. It can be also argued that every employee of a dean's office is a natural person and, as such, could have submitted their remarks. But the picture becomes fuller if we take into account the involvement of dean's offices' employees in the formulation of remarks and suggestions regarding both the bill and the regulation when such an opportunity arose in a domain beyond the university realities; then, the matter of issuing diplomas and supplements in foreign languages was one discussed most often and most heatedly.[11]

Therefore, two interconnected questions arise. The first of them is: why dean's offices' employees do not participate in the process of drawing up the drafts of normative acts at their higher education institutions more often than on a sporadic

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8 So far, diplomas have been issued in five foreign languages – English, German, French, Spanish or Russian – within 30 days of the date of request submission. Supplements have been issued translated only into English. The list of the foreign languages in which diplomas could be issued was specified in § 11 section 2 of the repealed regulation on the course of study. There was no list of foreign languages in which HEIs could issue diploma supplement copies. HEIs would issue diploma supplements in English on the grounds of the repealed regulation on the conferment of degrees to university graduates, the conditions of issuing and the essential features of diplomas of higher education and of certificate of completion of postgraduate education, and the diploma supplement template. The diploma supplement template provided as an appendix to the said regulation mentioned only a requirement according to which the conferred degree was to be written in the original language if the supplement was to be translated into English.

9 Remarks submitted by 5 entities – Organisational-Legal Department of Maria Curie-Skłodowska University, item 133, natural person no. 5, item 134, the Conference of Rectors of University Medical Schools – Medical University of Silesia in Katowice, item 137, the Conference of Rectors of University Medical Schools – Medical University of Białystok, item 138, and Jagiellonian University, item. 139. Cf. Report on the public consultations and evaluation regarding the Minister of Science and Higher Education's draft regulation on studies, MSHE, 17.09.2018.

10 CRASP, item 53 – cf. List of remarks regarding the Minister of Science and Higher Education's draft regulation on studies as submitted as part of the evaluation stage, MSHE, 17.09.2018.

11 E.g. here: Invitation to a seminar on the practice of dean's offices in the context of Law 2.0., Kraków 25–26.03.2019, http://forum-dziekanatow.pl/index.php/zaproszenie-na-seminarium-poswiecone-pracy-dziekanatow- w-kontekscie-ustawy-2-0-krakow-25-26-03-2019/.

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basis? It seems that the answer to this question lies in the structure of HEIs. Dean's offices are intermediate bodies in the domain of HEI administration. On the one hand, they are central units of their respective organisational units; on the other, they are subordinate to central administration units. The latter shape their mutual relations, but also determine the tasks and procedure at the general university level. As R. Sojak argues, there exist certain fundamental barriers between central administration and dean's offices. These are: (a) subordination of dean's offices to central administration units, (b) asymmetrical communication involving a dominance of central administration 'making the rules', and (c) organisational incompatibility – dean's offices are 'multi-taskers', while central administration units are narrowly specialized.[12]

It seems that the last of these barriers is especially significant when it comes to the possibility of engaging dean's offices' employees in the design of normative acts which serve as the basis for their ongoing management of administrative aspects of university education. The need to keep up to date with the most recent legislation seems to be outside the multifaceted scope of operations of dean's offices, and central administration units, specialising in the field of law, appear to have just the right knowledge and competence. Furthermore, there may be several dean's offices functioning at a given HEI, which means that consulting each one of them may produce a number of mutually exclusive opinions. It is necessary to bear in mind that while the heads of different administrative units know each other because of e.g. their involvement in the operations of university-level strategic groups (discipline councils, programme boards, rector's committees, etc.), the heads of dean's offices (not to mention the entire teams) work rather independently of each other even though they work at the same HEIs, have the same range of duties to fulfil, and are bound the same regulations.[13]

The second question, related to the first one, is: why are dean's offices' employees as members of the Association involved in the process of consulting legal acts outside their HEIs? It seems to us that it is the way for them to overcome the abovementioned structural barrier. Plus, they are too familiar with the consequences of

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12 R. Sojak, op. cit.

13 An anecdote that could be quoted here is that the process of institutionalisation of collaboration between the dean's offices of Warsaw University of Technology was initiated 2 years ago. A similar initiative was taken at Adam Mickiewicz University in Poznań a few months ago. Nicolaus Copernicus University in Toruń has joined the movement only recently. In both cases the impetus behind this collaboration was the first all-Poland Student Services Employee Forum. More on the subject – cf. A. Stoczkiewicz, L. Szypulska-Czkwianianc, *Zasady współpracy administracji centralnej z dziekanatami na przykładzie Politechniki Warszawskiej*, [in:] K. Górak-Sosnowska, R. Pajewska-Kwaśny (eds.), op. cit., Warszawa 2019, and J. Grądziel-Wójcik, *Dziekanat a jakość kształcenia. Dobre praktyki Wydziału Filologii Polskiej i Klasycznej UAM*, [in:] ibidem.

implementing either internal or generally applicable legal regulations as they have to apply them in their daily practice. It happens frequently that dean's offices' employees have to decide how to interpret such regulations, which leads to different decisions regarding similar matters even at the same HEI. The Student Services Employee Association has turned out to work well as an institutionalised channel that lets them express their concerns and suggestions.

The objective of our Association is to integrate the administrative staff of HEIs and act as a platform that lets them exchange their experience, improve their everyday practice at work, and make an impact on their professional environments by becoming a significant stakeholder in the discussion on higher education, especially when it comes to issues concerning managing the administrative aspects of studies. At present, the Association brings together 123 members working at more than 40 public and private HEIs.

When we were establishing the Association, we assumed that its second objective – taking a stand on matters concerning the functioning of dean's offices – would be particularly difficult to pursue, and so we treated it as a long-term goal. But it soon appeared that there were both formal and informal channels to express our demands. One such channel is the said public consultations in which we can take part as an association. So far, we have submitted our remarks concerning one regulation – the one concerning studies. Another opportunity for us to voice our concerns has been our collaboration with the Department of Higher Education at the Ministry of Science and Higher Education (hereinafter referred to as the MSHE), which has borne fruit in the form of a seminar for dean's offices' employees on the new regulations governing higher education, having taken place in March 2019. The agenda of the seminar was developed based on the questions and demands put forward by dean's offices' employees and by other persons dealing with the management of the administrative aspects of studies – not just by our association but also by members of a closed Facebook group named "Forum Dziekanatów", with a current member count of over 0.7 thousand.

Although we focus further in the text on one specific example of our activity – on calling for amendments to the Code of Civil Procedure act (hereinafter referred to as the CAP), it is important to mention here that it is not the only area of our overall activity. In the summer of 2019, together with the USOS Commission, functioning within the structure of the Interuniversity Center for IT, we launched a project aimed at developing an electronic student file,[14] we react on an ongoing

[14] MSHE's regulation on studies of 28.09.2018 as amended (Journal of Laws of the Republic of Poland of 2018, item 1861) makes it acceptable to keep student records in electronic form – cf. § 15 and § 19. More on the initiative – cf. K. Górak-Sosnowska, *Urealniamy e-teczkę – rozpoczynamy współpracę*

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basis to any changes in the regulations that affect our work or ask the MSHE for an interpretation of the relevant legislation in force.[15]

The Code of Administrative Procedure from a dean's office's point of view

Based on our experience gained in the field of managing the administrative aspects of higher education, we formulated three demands for amendments to the LHES act, which would make it possible to simplify the administrative procedure, and thus de-bureaucratise the operations of dean's offices and improve the quality of student service.[16] The demands were formulated and submitted to the MSHE by our Association[13] as a grassroots initiative, being a way to get involved in the process of consulting the law on higher education – otherwise inaccessible to dean's offices' employees.

The recent changes to the legal provisions of both the Code of Administrative Procedure act and the LHES act have not fully helped dean's offices de-bureaucratise their operations. The CAP provisions do not fully take the specific nature of HEIs' functioning into consideration, and the LHES provisions applicable in the areas defined below do not specify or determine the issues connected with administrative procedure. According to the principle of effectiveness, conducting an administrative procedure should involve as little nuisance to both parties as possible while maintaining the minimum procedural requirements ensuring that individuals' rights are protected.[17] One of the fundamental expectations of contemporary administration – and of a contemporary dean's office – is that all matters be handled as quickly as possible. The duration of an administrative procedure in

z MUCI, Student Services Employee Association's blog, 11.07.2019, http://forum-dziekanatow.pl/index.php/urealniamy-e-teczke-rozpoczynamy-wspolprace-z-muci/.

15 The two examples include: 1) the matter of keeping records of holograms certifying the validity of student cards, which – thanks to our involvement – has been corrected by the MSHE; and: 2) MSHE's opinion on HEIs' requirement of returning the student card after the thesis defence (which stems from university-internal regulations, not from the commonly applicable legislation). More on the subject – cf. E. Wiśniewska, *Sprostowanie MNiSW w sprawie rejestru hologramów*, Student Services Employee Association's blog, 23.09.2019, http://forum-dziekanatow.pl/index.php/sprostowanie-mnisw-w-sprawie-rejestru-hologramow/; eadem, *Legitymacja może być pamiątką po studiach*, Student Services Employee Association's blog, 18.09.2019, http://forum-dziekanatow.pl/index.php/zwrot-legitymacji-moze-byc-przeszloscia/.

16 More on the administrative procedure adopted for handling student affairs – cf. P. Dańczak, *Decyzja administracyjna w indywidualnych sprawach studentów i doktorantów*, Warszawa 2015 (chapters II–IV).

17 The demands were described from the factual point of view by Ewa Wiśniewska in her letter to the MSHE.

individual student cases could be substantially shorter if there was a possibility to make small amendments to the provisions of the LHES act, specifying and adopting solutions permitted under the provisions of the CAP. Such cases concern in particular:

1. Notice of initiation of a procedure;
2. Simplified procedures;
3. Tacit settlement of a case.

The demands and the suggested solutions have been formulated from the point of view of the everyday practice of dean's offices' employees, taking the binding regulations into account. From the perspective of a university as a whole, they may seem of lesser importance – if the bodies in charge of them do handle them. But if it was possible to realise them, it could translate into a better quality of the service provided by dean's offices and of the working environment their employees function in. The final outcome would be a higher level of student service quality, which would benefit entire HEIs.

Notice of initiation of a procedure (Art. 108.3 of LHES)

Art. 108 section 3 of LHES imposes an obligation upon university bodies to expel students by way of an administrative decision governed by the provisions of the CAP. Taking into account mainly the specific nature of the relationship between a student and a university as well as the workload involved in generating notices of initiation of procedures – which would not be a legitimate argument in itself, it seems reasonable to consider adopting some simplifications in the domain in question[14]. We do realise that the CAP provisions concerning administrative decisions have been formulated they way they are to e.g. let the stakeholder parties react accordingly to the developments of the procedure they are involved in. We do believe, however, taking the specific nature of HEIs and of the decisions issued by their authorities in individual student cases, that the process in question could be made simpler. There are many arguments speaking in favour of it,[18] determining the differences in the relationships between a university and a party to a procedure (in this case: a student, not an anonymous applicant) and a public administration body:

[18] More on the subject in: E. Wiśniewska, K. Górak-Sosnowska, *Dylematy postępowania administracyjnego w szkołach wyższych na gruncie obowiązujących przepisów prawnych*, [in:] K. Górak-Sosnowska, R. Pajewska-Kwaśny (eds.), op. cit.

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- the nature of the relationship is different – a student is a member of an academic community, studying at their university for some time already, having a specific dean's office employee assigned to handle their affairs,[19] quite often known by their name and surname. Such a student is thus not anonymous like e.g. an applicant addressing a city/district administration office, who is a rather infrequent visitor there, and whose only contact details known by such a city/district administration office are their address of residence;
- at most universities, students receive individual e-mail accounts they are obliged to use on a regular basis when they contact their university;
- a student may address the head of an administrative unit directly or submit an appropriate application/request at a dean's office;
- the grounds for expulsion are defined in detail in study regulations, the academic year calendar, with deadlines of tuition fee payment or thesis submission known and clearly determined. Students are obliged to make themselves familiar with this information, which usually follows from study regulations.

Although the CAP makes it acceptable to send notices by e-mail, the IT systems used at many universities do not meet the requirements that could make a notice be deemed to have been served effectively.[20] This means that the available option left is to serve the notice by traditional means, i.e. by a registered letter with a return receipt requested. The process is ineffective,[21] relatively costly (considering the

19 K. Górak-Sosnowska, J. Brdulak, M. Matusewicz, I. Senator, *Dziekanaty na wyższych uczelniach. Funkcjonowanie – wyzwania – dobre praktyki*, Warszawa 2018.

20 According to our observation, most HEIs follow the full administrative procedure by sending notices in traditional form. If some HEIs do not do so (deciding to send such notices by means of university e-mail system), it is usually so not because they have the right IT resources at their disposal but because they consider a different criterion: they compare the cost of potential proceedings on the grounds of failure to comply with the relevant procedures to the cost of administrative management of dispatch of notices. In the case of the latter, legal advisers fear the measures that can be taken against HEIs by supervision and control authorities, which is why the opt for the full procedure.

21 In situations of expulsion on the grounds of failure to pay the tuition fees in particular, students often do not react to the received notices of initiation of the expulsion procedure and decide to pay the outstanding fees only after being served a notice of expulsion, lodging appeals with a request for the revocation of the decision on expulsion. De *lege lata* if it appears as a result of serving a notice of initiation of a procedure that there are no grounds to expel the student because they e.g. have made the necessary payment, then according to the CAP, the university should issue a decision on discontinuation of the procedure pursuant to Art. 105 of the CAP, which leads, in turn, to more bureaucracy, a necessity to serve further decisions, and generation of additional costs.

scale of procedures, especially cases of expulsion),[22] but mainly labour-intensive and time-consuming, and sometimes internally contradictory.[23]

The time running from the moment of dispatch of a notice of initiation of a procedure until the moment when the decision on expulsion becomes final is two months, and the employees of a dean's office: fill out the return receipts two times and follow a range of relevant dates, i.e. the date of receipt of notice and the possibility of a student to take a stance on the case, the possible date of issuing the relevant decision, the date of receipt of the decision, the deadline for filing an appeal, until the moment when the decision becomes final.

The effects of the extended process of expulsion have a direct impact not only on the workflow of dean's offices (and universities) but also on students, including both those subject to the procedure and those who have fulfilled all their student obligations and are not subject to the procedure in question. In the case of students subject to the expulsion procedure:

- students retain the student status until the administrative procedure conducted in their case ends. On the one hand, this leads to a situation where fees are charged during the procedure (in the case of paid studies or additional education services – e.g. fees for repeating a course or a semester) even though the reason for expulsion is arrears resulting from the student being in a difficult financial situation. On the other hand, the student is entitled to receive scholarships/grants, which may lead to abuse;
- it is a long-term process – it takes one and a half month at best from the moment of initiation of a procedure until the moment when the student receives the decision on expulsion.

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22 Sending an economy-class registered letter with a return receipt requested costs PLN 8.50. In the case of a notice of initiation of a procedure and sending a relevant decision, the cost is PLN 17 per each expelled student.

23 This concerns usually obligatory grounds for expulsion. For instance: a student has failed to submit their thesis on time, and the study regulations do not provide for an option to extend the deadline. The student is therefore notified of initiation of an expulsion procedure and called to provide an explanation. However, notwithstanding this explanation, the grounds for expulsion remain as they have been initially given. If a student has chosen not to continue their studies and the semester has finished, they should be expelled from the university as well – regardless of the reasons. In such events, providing any kind of explanations will not affect the outcome of the case. Calling a student to provide explanations (pursuant to the CAP) leads sometimes to unpleasant situations – the student believes that they may change their situation by providing explanations while the call to provide such explanations is just a formality, one that does not change anything. The situation is different in the case of non-obligatory grounds for expulsion, such as failure to pay the tuition fees, where the university may but does not have to expel the defaulting student, and the provision of explanations (and making the required payment) may change the outcome of the case. Students should be therefore notified accordingly in such situations.

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- registered letter may be received by a third party (a household member entitled to receive post), which may lead to misunderstandings between students and their parents.

Since the expulsion procedure is both time-consuming and labour-intensive, this is unfavourable to other students as the employees of dean's offices are too busy to handle their cases.

The above arguments prove that it is reasonable to discuss the idea of simplifying the procedure of dispatch of notices of initiation of expulsion procedure in a way to reduce the level of bureaucracy involved in the process. It would be therefore good to consider an option of notifying students by e-mail sent to their individual accounts assigned by their HEIs (meaning adopting a policy of no obligatory confirmation of receipt).

When sending a notice of initiation of a procedure by e-mail, we will certainly not restrict the student's rights. Even if there is a case examined incorrectly and the student has not received a notice of initiation of a procedure, they still have the right to defend themselves by appealing against the issued decision. There are no negative consequences for the student – they still retain their rights until the decision becomes final (after the deadlines for serving and appealing against the decision expire).

Based on our experience, if a letter sent by traditional mail is received, it does not necessarily mean it has been served to the addressee – or read for that matter. Return receipts are prove only that a letter has been delivered to a given address. As we work with students, we see that e-mail has become a more effective form of communication – and serving important messages – because it guarantees that a message has been delivered to a specific addressee. The matter of such a message being read is different in the two cases, though.

A possibility to send notices by e-mail would greatly improve the workflow of dean's offices and eliminate the bottlenecks caused by the prolonged nature of the entire expulsion procedure. Moreover, it could have a range of positive effects from a student's point of view. These would be:

- no need to receive post sent in traditional form (postman, postal service, advice note);
- the system being adapted to the needs of increasingly mobile students, who use modern technology more and more often;
- elimination of the risk that the post is received by a third party;
- more effective management of student affairs.

Simplified procedures (Art. 163b–163g of the CAP)

Pursuant to Art. 163b, a simplified procedure may be conducted only in a situation where the provisions of the specific act providing the normative grounds for case settlement include a provision that allow for adopting a simplified procedure in a given case. Pursuant to Art. 108 section 3 of the LHES act, expulsion of a student takes the form of an administrative decision, which means that administrative decisions issued based on Art. 108 section 1 and 2 should be governed by the CAP provisions applied directly – and not "accordingly", like so far.[24]

Taking the specific nature of the relationship between students and their universities (see above), but also the specific nature of the conducted student cases and the student affairs managed by dean's offices, applying the CAP directly could mean in extreme situations that students have no application letter templates at their disposal and universities conduct extensive evidentiary hearings,[25] which would involve a significant prolongation of the entire procedure and nuisance for both students and dean's offices. It would be therefore reasonable to make Art. 108 section 3 more specific by adding the following wording: "CAP provisions governing simplified procedures shall apply to proceedings referred to in Art. 108 section 3."[26]

It needs to be stressed that while the provisions of this act do not make it possible to apply simplified procedures, universities still tend to turn to this model at least partially given the specific nature of the handled cases. Student cases are usually settled in a standard, conventional way. Students submit their cases using standard forms available at university websites or by means of electronic mail. There is no extensive evidentiary hearing involved because most of the relevant evidence is at the university's disposal already (students may provide only additional documentation). All this calls for conducting university-specific administrative procedures in the form of simplified procedures, and making the relevant provisions more specific would "legitimise" this model.

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24 More on the subject – cf. M. Hauser, *Odpowiednie stosowanie przepisów prawa. Uwagi porządkujące*, "Przegląd Prawa i Administracji", 2005, 45.

25 We have come across such an interpretation in our practice in at least one dean's office, whose employees wondered how to give students the opportunity to participate in the conducted proceedings and invite them to appear (how?) at a specific time in the office and become familiar with the submitted evidence.

26 Adopting the simplified procedure model under the CAP would be useful not only in cases of expulsion but also in all cases where administrative decisions are issued, e.g. rejection of admission (Art. 72 section 3 of LHES) or exemption of a foreigner from payment (Art. 324 section 1 of LHES).

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Tacit settlement of a case (Art. 122a–122g)

An alternative to the traditional model of closing a procedure with a decision is the tacit settlement of a case as referred to in chapter 8a of the CAP and in the provisions on simplified procedures. "Tacit settlement" means here that the body examining a given case may decide that the submission should be accepted in full, and not take any further steps. No steps taken by the body examining a case means that the case has been settled in accordance with the applicant's claims. If a tacit settlement takes place, the body examining the case does not issue a decision but draws up a note featuring the content of the settlement and the legal basis, which is then included in the case files.

We do realise that if a student resigns from their studies, the claim may be not fully clear: there are arguments speaking in favour of accepting tacit settlements for resignation from studies (tacit settlement as a measure aimed at causing certain specific substantive effects, here: termination of an administration-legal relationship;[27] tacit settlement of a case is an alternative to the standard model of closing an administrative procedure with a decision[28]) and against such a solution (tacit settlement may not be applied to every type of case;[29] tacit settlement of a case may

[27] According to published views of legal academics and commentators, "(...) in the light of substantive law, if the body examining a case opts for a tacit settlement, it is clearly permitted to do so under the law in force, and such a solution aims at creating, transforming or eliminating fundamental material-legal relationships" (K. Sobieralski, *Milczenie jako prawna forma niedziałania administracji – konsekwencje procesowe*, [in:] J. Korczak (ed.), *Cywilizacja administracji publicznej*, Wrocław 2018, p. 450). Viewed as above, tacit settlement aims at causing certain specific substantive effects, and one of such effects can be the elimination (termination) of an administrative relationship. This is supported by the wording of Art. 1 item 1 of the CAP, according to which the CAP regulates the proceedings taking place before public administration authorities in individual cases falling within the jurisdiction of these authorities, settled in the form of administrative decisions or by way of tacit settlement. This means that the legislator has provided for two equivalent ways to settle individual cases. Thus, there are no contraindications for one's decision to resign from studies to take the form of a case settled by means of tacit settlement.

[28] In this case, we can refer to the justification of the draft amendment to the CAP, which has resulted in the standardisation of the CAP in *Part II. Chapter 8a. Tacit settlement of a case*. The drafter has shown that: first, the institution of tacit settlement of a case aims at accelerating and simplifying administrative procedures as well as at improving the efficiency and reducing the costs of functioning of administration in general. Second, it acts as an alternative to the standard model of closing an administrative procedure with a decision (Government's bill amending the Code of Administrative Procedure act and some other acts. Paper no. 1183, p. 45). This means that where a decision is to be issued, it can be replaced by the tacit settlement institution – provided that there is a normative basis that allows it in the relevant specific legislation.

[29] The drafter, by specifying the *ratio legis* behind adopting the instrument of tacit settlement of cases, stresses that it is a universal institution, one that is not suitable for every type of case (Government's bill amending the Code of Administrative Procedure act and some other acts. Paper no. 1183, p. 46).

be applied in cases initiated at a party's request provided that its outcome is an entitlement or a benefit[30])[31].

We believe it is still worth considering if the instrument of tacit settlement of a case may be applied in cases of resignation from studies if a HEI body examining the case accepts the student's request in full. The acceptability of application of the instrument of tacit settlement of a case requires an appropriate specific provision to be included in the LHES act.

The arguments we have presented here to justify the need to amend the LHES act in the context of application of the CAP provisions are only an exemplification of a broader issue, which is about giving the executors of legislation an opportunity to provide feedback, make demands and suggestions, or expressing their opinions on the legislation they are to enforce.

Establishing an association bringing together the employees of dean's offices of various HEIs closes the existing information flow loop. The law on higher education is shaped at the state level and consulted with HEIs and their organisations. The provided feedback is often incomplete because it does not include the opinions of dean's offices' employees, who are, in fact, the target audience of the regulations established at HEIs. They function at the lowest rank of the HEI hierarchy, acting as both administrative and customer service units of their institutions. Furthermore, the provisions of the established law are consulted with specialised university-level central administration departments, which may – but do not have to – consult other administration units, managing different fields of study offered and taught at a given university. Also, the number of administrative units functioning at a given HEI and dealing with the management of the administrative aspects of studies combined with their dispersion makes them operate largely autarchically and independently of each other – after all, each one of them is subordinate to their

30 According to published views of legal academics and commentators, the instrument of tacit settlement of cases "(...) is applied only in cases initiated at a party's request (Art. 122a § 2 item 1) or in cases initiated by a substantive action of an individual, such as a report or a notice, taken with a view to satisfy one's legal interest, and, in consequence, to have the demands inspiring the act in question fulfilled (Art. 122a § 2 item 2). In each of these cases, the idea is to establish an entitlement, meaning to include an individual and specific standard into the legal framework, resulting in some kind of benefit to be gained by the standard's stakeholder (their gaining a benefit in the legal sense)" (W. Chrościelewski, Z. Kmieciak (eds.), *Kodeks postępowania administracyjnego. Komentarz*, Lex 2019). Therefore, following the said view, we should rule out the application of tacit settlement of cases regarding resignation from studies since the act of resignation is not an action that establishes an entitlement and/or grants a benefit in the legal sense to the party taking this action.

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respective administrative unit. If central administration opted for such a solution, it would significantly complicate the process of acquiring information.

We believe that establishing a channel to exchange such information would be favourable to both the employees of dean's offices as well as to students and HEIs. The Student Services Employee Association is such a channel – it operates as an independent entity able to establish relationships with both HEIs and organisations bringing HEIs together, or with state institutions (including the MSHE in particular). This new framework provides dean's offices' employees with an opportunity to have a say in matters that directly affect their practice, following a partnership-based model, where both parties of the process – the sender and the recipient – are equal. Quite paradoxically, the voluntary sector with its entire range of tools facilitating the involvement in the process of the establishment of law has become the plane offering the said parties the opportunity to express their opinions and concerns. Both parties may thus break the wall of the hierarchical system of relations functioning at most HEIs, and the employees of dean's offices gain the subjective capacity which they often simply do not have as administrative employees (i.e. non-academic staff[32]).

[32] This is how the LHES act and other HEI-internal acts define administrative and technical staff. There is an awareness of the fact that this makes it possible to categorise all HEI employees in a comprehensive manner (all of them fall either into the category of academic staff or the auxiliary category of non-academic staff), but the exclusion-based categorisation of the employees who rank lower in the university hierarchy anyway intensifies the difference (and sometimes the gap) existing between the two worlds – i.e. between the world of academic employees and the world of administrative employees.