

## 5. ГІСТЬ HOMEPA.

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### LEGAL NATURE OF THE PROCEEDINGS AND THE DECISION TO GRANT A SCHOLARSHIP FOR THE PHD CANDIDATE IN POLISH LAW

**Keywords:** *decision to grant a scholarship, PhD candidate's situation in Polish law, types of financial support for PhD candidate.*

#### **Introduction**

Polish Law on Higher Education<sup>1</sup>, as a legal act shall apply to public and non-public higher education institutions (Article 1 (1) of the LoHE), also regulates issues related to the PhD candidate's situation, including the form of financial support for PhD candidates. According to Article 199 (1) of the LoHE, PhD candidate may receive financial support of the following types:

1. Maintenance grant;
2. Assistance grant;
3. Scholarship for outstanding PhD candidates;
4. Special grant for disabled persons;
5. Scholarship for outstanding achievement awarded by the minister.

To grant these benefits shall apply accordingly the provisions of financial support for students, with the exception of Article 174 (4) of the LoHE. Further provisions of the LoHE extend the catalogue referred to in Article 199 (1) of the LoHE the following forms of support:

1. Financial support of local government authorities, referred to in Article 199a of the LoHE;
2. Scholarships for academic achievement, referred to in Article 199b of the LoHE;
3. Doctoral scholarship, referred to in Article 200 of the LoHE.

In accordance with the applicable provision of Article 175 (1) of the LoHE the benefits for PhD candidates listed above (with the exception of the scholarships for outstanding achievement awarded by the minister) are granted by the council of the basic organizational unit of the university or the rector. In the case when the decision was issued by the council, a party (PhD candidate) may bring an appeal to the rector. However, if the case is resolved by the rector, a dissatisfied PhD candidate may ask the rector to review the case again.

A slightly different normative solution was adopted against the scholarship for outstanding achievement in science awarded by the minister. According to Article 199c (1) of the LoHE Minister's scholarships for outstanding achievements are awarded to PhD candidates by the minister competent for higher education at the request of the rector of the university, approved by the council of the basic organizational unit, and in the case of a university without a basic organizational unit – by the university senate. At the same time, provisions of the LoHE includes a delegation to issue a regulation as regards the detailed conditions and procedure for granting and paying the scholarship for outstanding achievement in science awarded by the minister, the number of scholarships and the maximum amount of the scholarship and the model application for the Minister's scholarship, taking into account the academic achievements and other doctoral achievements confirming their outstanding level and the manner of documenting these achievements. The statutory delegation was implemented by issuing the Ordinance of the Minister of Science and Higher Education of 17 July 2015 in the matter of minister's scholarships for outstanding achievements awarded to PhD candidates<sup>2</sup>.

#### **Law basics and legal nature of the proceedings to grant a financial support for the PhD candidate**

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<sup>1</sup> Act of 27 July 2005 Law on Higher Education (Journal of Laws of 2016, it. 1842 as amended); further referred as the LoHE.

<sup>2</sup> Journal of Laws of 2015, it. 1051.

Conclusion of the public administration body in granting or refusing the granting of benefits in the form of scholarship shall take the form of discretionary administrative decisions<sup>3</sup>. In addition, decisions on the granting of scholarship shall be bound, therefore any refusal to grant scholarship should be the result of a specific provision of law and cannot be developed with other legal solutions<sup>4</sup>. The provisions of substantive law, which form the basis for the issue of an administrative decision are the provisions of the LoHE applicable to type of the financial support. While the adoption of the above presented assumptions (settle a case by the issue of an administrative decision) effect in the form of applications in these cases the provisions of the Code of Administrative Procedure<sup>5</sup>, including guaranteed provisions of the k.p.a. opportunity to benefit from the measures of legal protection for the PhD candidate as party to proceedings.

To the above circumstances underscore requires that the proceedings on the granting of the scholarship shall be carried out taking into account the adjustment of the k.p.a.<sup>6</sup> and respect the basic foundation of the k.p.a.<sup>7</sup>. PhD candidate is a party to the proceedings within the meaning of Article 28 of the k.p.a. The public administration body issuing the administrative decision (Rector, council of the basic organizational unit or minister) has a lot of responsibilities, which should be implemented, although the minimum<sup>8</sup>. One of these is appropriate justification for the decision, especially in a situation where the decision refusing to grant scholarship.

### **The decision concerning the granting of the financial support**

The decision concerning the granting of the scholarship is the administrative decision referred to in Article 104 of the k.p.a. The essential elements of this decision indicates the provision of Article 107 of the k.p.a.

In accordance with Article 104 of the k.p.a. public administration body shall settle a case by the issue of a decision, unless the provisions of the Code (k.p.a.) provide otherwise. Decisions shall settle a case in its essential aspect either totally or partially or close the case at that instance by some other means (Article 104 § 2 of the k.p.a.). An administrative decision, as a form of public administration actions, like other forms always are based on legislation<sup>9</sup>. In addition, in the case-law indicates that the administrative decision issued in the case, for which the law does not provide for the settlement in the form of a decision, it is a faulty decision-issued without legal basis<sup>10</sup>. So the administrative decision is an act of law which aims directly to invoke the legal consequences<sup>11</sup>, issued as a result of the application of the substantive norms of administrative law in a particular situation, to the individual recipient, leading to the instantiation of specific rights or obligations<sup>12</sup>.

In accordance with Article 110 of the k.p.a. the public administration body issuing the decision shall be bound by it from the time of its service or publication, unless the Code provides otherwise. The public administration body after the date of service (publication) decision to parties to the proceedings can not make arbitrary and without the knowledge of the parties to the proceedings, changes in the decision or set aside such a decision and replace its another one<sup>13</sup>.

### **Summary and conclusions**

Conclusion of the public administration body in granting or refusing the granting of benefits in the form of scholarship shall take the form of discretionary administrative decisions. Settle a PhD candidate's case in terms of financial support regulated provisions of the LoHE by the issue of an administrative decision results in the application of the provisions of the k.p.a. Public administration bodies shall uphold the rule of law during proceedings and shall take all necessary steps to clarify the facts of a case and to resolve it, having regard to the public interest and the legitimate interests of members of the public. PhD candidate as party to proceedings is entitled to the protection provided for in the provisions of the k.p.a.

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<sup>4</sup> Judgment of Wojewódzki Sąd Administracyjny in Bydgoszcz of 4 June 2008, the REF: II SA/Bd 241/08, LEX No 506188.

<sup>5</sup> Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, it. 1257 as amended); further referred as the k.p.a.

<sup>6</sup> Judgment of Wojewódzki Sąd Administracyjny in Olsztyn of 5 April 2012, the REF: II SA/OI 129/12, LEX No 1138653.

<sup>7</sup> Judgment of Wojewódzki Sąd Administracyjny in Opole of 4 September 2008, the REF: II SA/Op 154/08, LEX No 518037.

<sup>8</sup> Judgment of Wojewódzki Sąd Administracyjny in Warszawa of 4 November 2014, the REF: I OSK 1665/14, LEX No 1532720.

<sup>9</sup> K. Majewski, *Trwałość decyzji administracyjnej na tle orzecznictwa sądowego* (w): D. Fleszer, A. Rogacka-Lukasik (red.), *Studia administracyjne i cywilne. Księga jubileuszowa dedykowana Profesorowi Stanisławowi Malarskiemu w 85. rocznicę urodzin*, Sosnowiec 2016, p. 165.

<sup>10</sup> Judgment of Wojewódzki Sąd Administracyjny in Łódź of 27 June 2017, the REF: II SA/Ld 204/17, LEX No 2320961.

<sup>11</sup> Judgment of Naczelny Sąd Administracyjny of 3 November 2016, the REF: II OSK 172/15, LEX No 2256232.

<sup>12</sup> Judgment of Wojewódzki Sąd Administracyjny in Gdańsk of 27 April 2017, the REF: III SA/Gd 176/17, LEX No 2297021.

<sup>13</sup> Judgment of Wojewódzki Sąd Administracyjny in Gdańsk of 7 December 2016, the REF: I SA/Gd 1239/16, LEX No 2172889.

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