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THE EVOLUTION OF MODERN STANDARDS OF ACADEMIC FREEDOMS IN POLAND

GENERAL REMARKS

Various bundles of specific academic freedoms are a natural and traditional part of academic life. The first manifestations of this phenomenon could be traced already in the context of ancient archetypal school institutions, and continued in the first medieval universities. Undeniably, they are also an integral feature of modern universities. For this reason, the experience of historical manifestations of academic freedom should not be overlooked or neglected. Capturing the historical context definitely broadens the research horizon and makes it possible not only to make appropriate classifications, but also to perceive potential threats—and, consequently, to avoid distortions when designing subsequent legal regulations touching upon the sphere of academic freedoms.

Various aspects of academic freedom are an integral and necessary component of the modern academic world. This does not mean, however, that they are easily

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placed in a formal, static framework as what they constitute an exceptionally subtle “system” within the organism of the modern university. Remaining in close connection with the whole of academic life, such freedom is, as it were, intrinsically subject to the same constraints and environmental pressures as the university itself. An additional difficulty in precisely defining this phenomenon stems from terminological ambiguity—or, as is the case in Poland, the lack of an actual legal definition. In the Polish legal system, both primary sources of law, i.e. the Constitution and so-called ordinary statutes, play a crucial role in this respect. This fact in a way dictates the research assumptions and structure adopted in this study. The research objective is to analyse and evaluate Polish regulations shaping the sphere of broadly understood academic freedoms with a view to presenting the manner of regulation and the legal approach to modern “academic freedom packages” in the historical perspective of their evolution, starting from the interwar period. Capturing the trends and directions of legislative changes makes it possible to define and verify the current catalogue of academic freedoms included in the so-called Act 2.0. In order to achieve the research goal, the dogmatic method, normative analysis and historical-legal method were employed.

1. THE PROBLEM OF THE CONCEPT AND SCOPE OF ACADEMIC FREEDOM

Academic freedom is a value that already at the purely intuitive level ranks high in the hierarchy of academic values. However, if it is to transcend the strictly conceptual sphere and adopt more tangible forms, it becomes necessary to delimit its scope and specify the legal instruments applicable to its effective protection and implementation. Undoubtedly, such freedom (or indeed a bundle of specific freedoms) can only be fully implemented when given a terminological context. Based on dictionary definitions, it is worth reiterating the basic meaning of “freedom”:

1. “independence of one State from other States in internal affairs and external relations”;
2. “the ability to make decisions according to one’s own will”;
3. “life outside prison, confinement”;
4. “citizens’ rights determined by the general good, national interest, and legal order”.¹

¹ *Słownik Języka Polskiego PWN*, s.v. “Wolność,” accessed December 12, 2021, <https://sjp.pwn.pl/szukaj/wolno%C5%9B%C4%87.html>.

In turn, “academic freedom” is defined as “a set of rights obtained by universities and other academic institutions during the so-called liberal university period in the 19th century”.²

However, the cited definitions can only provide a starting point when attempting to establish the terminological context, as they can hardly be considered sufficient. Unfortunately, the complexity and variability of the conditions in which higher education functions are not conducive to such a task. First of all, it should be stressed that “academic freedom” has not only institutional, but also social significance. This makes setting strict boundaries difficult to say the least, often close to impossible. Undoubtedly, it would be utopian to seek a uniform treatment of academic freedom internationally and in individual states. In addition, it is necessary to account for the historical context in which the notion of academic freedom has been shaped. A direct confrontation with the contemporary dimension of the freedom phenomenon may lead to completely different conclusions and assessments.³ Apart from this (as confirmed by the dictionary definitions cited above), “freedom” is usually treated as a “state” determined by the absence of restrictions and threats on its exercise. As a result, academic freedom is usually defined negatively i.e. through the prism of its violations.⁴ Meanwhile, given the perception of freedom as a primary value, it should be treated as a “right” that can be effectively asserted. Such an approach illustrates a much fuller picture of academic freedom and remains in coherence with the mission of the university.

Another issue is the attempt to delimit the scope of freedom. In particular (but not exclusively), it is a question of identifying the specific areas of academic life on which it has a bearing. For the sake of simplicity, at least four major spheres ought to be considered in this context:

- 1) research—in terms of the freedom to choose the subject of research and to present the results;
- 2) education—in terms of the freedom to determine the content and methods of teaching, as well as the assessment criteria;

² *Encyklopedia PWN*, s.v. “Akademicka wolność,” accessed December 12, 2021, <https://encyklopedia.pwn.pl/haslo/akademicka-wolnosc;3866752.html>.

³ Malcolm Tight, “So What is Academic Freedom?,” in *Academic Freedom and Responsibility*, ed. Malcolm Tight (Portland: SRHE & OU Press, 1988), 116–117; Conrad Russell, *Academic Freedom* (London, New York: Routledge, 1993), 1; Terence Karran, “Academic Freedom in Europe: Time for a ‘Magna Charta’?” *Higher Education Policy* 22, no. 2 (2009): 164.

⁴ William Van Alstyn, “The Specific Theory of Academic Freedom and the General Issue of Civil Liberty,” *Annals of the American Academy of Political and Social Science* 404, no. 1 (1972): 140–156; William Tierney, “Academic Freedom and Organisational Identity,” *Australian Universities Review* 44, no. 1 (2001): 8.

3) institutional and organisational self-governance—which also includes participation in decision-making within the HEI and expressing opinions on the management of the HEI; it is worth mentioning that in 1997, UNESCO issued a Recommendation (1997 UNESCO Recommendation),⁵ which recognised institutional self-governance of HEIs as “a formalised manifestation of academic freedom” without which research and teaching cannot be fully realised;⁶ and

4) personnel (human resources)—with guarantees related to the security of employment once certain conditions of work performance are met.

A characteristic feature of this subject matter is that, despite the medieval origins of the notion of academic freedom, the related debate (and, as it were, numerous controversies) is not only nowhere near being settled, but actually seems to be gaining momentum. New threats and the need to strengthen academic freedom—both in ideological and normative terms—are constantly emphasized, as is its multidimensional character and crucial role in facilitating the fulfilment of the academic mission. Thus, the broadly understood academic freedom entails a specific accumulation of HEI powers and duties, as well as the associated responsibilities. At the same time, this process should not assume ad hoc measures aimed at protecting already established academic freedoms, but instead treat the same as a catalogue of fundamental values with precisely defined scopes.⁷

⁵ ILO/UNESCO, *The ILO/UNESCO Recommendation Concerning the Status of Teachers (1966) and the UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel (1997): With a User's Guide* (Paris: United Nations Educational, Scientific and Cultural Organization, 2008).

⁶ Katrin Kinzelbach et al., *Free Universities. Putting the Academic Freedom Index into Action* (Berlin: Global Public Institute, March 2021), 17–19; Klaus Beiter, Terence Karran, and Kwadwo Appiagyei-Atua, “Yearning to Belong: Finding a ‘Home’ for the Right to Academic Freedom in the U.N. Human Rights Covenants,” *Intercultural Human Rights Law Review* 11 (2016): 121–122; Terence Karran, “Academic Freedom in Europe: Reviewing UNESCO’s ‘Recommendation’,” *British Journal of Educational Studies* 57, no. 2 (2009): 198.

⁷ Paul Bennet, *6th International Higher Education and Research Conference. Conference Report* (Malaga: Education International, November 12–14, 2007); Klaus Beiter, Terence Karran, and Kwadwo Appiagyei-Atua, “‘Measuring’ the Erosion of Academic Freedom as an International Human Right: A Report on the Legal Protection of Academic Freedom in Europe,” *Vanderbilt Journal of Transnational Law* 49, no. 3 (2016): 597–691; Talcott Parsons and Gerald Platt, *The American University* (Cambridge: Harvard University Press, 1975), 153–156; Andrzej Szostek, ed., *Program rozwoju szkolnictwa wyższego do 2020 r., cz. 2, Misja społeczna uniwersytetu w XXI wieku* (Warsaw: Fundacja Rektorów Polskich, Konferencja Rektorów Akademickich Szkół Polskich, 2015), 14.

2. CONSTITUTIONAL PROVISIONS

The first regulations at the constitutional level appeared as early as in the interwar period. The Constitution of the Republic of Poland of 17 March 1921⁸ contained provisions on the freedom of science and teaching. It was accepted that scientific research and the publication of its results were to be free. This guarantee was combined with the right of every citizen to teach, as well as to establish and manage schools or educational institutions.⁹ While the freedom of research adopted a fairly broad formula, the freedom of teaching was subject to limitations due to the extent of state supervision.¹⁰

It should also be pointed out that the freedom of scientific research was closely related to the social right to science and teaching.¹¹ It should be stressed that although the Constitutional provisions did not expressly stipulate the standard right to science (understood as a subjective right of the individual), the same could be decoded from the content of the provisions.¹² The regulations were maintained by the provisions of the April Constitution of 1935.¹³ It should be added that at the time of the March Constitution's adoption, the 1920 Act on Academic Schools had already been in force and guaranteed the freedom of learning and teaching¹⁴, a provision retained in the subsequent Academic Schools Act of 1933.¹⁵ It should be noted at this point that throughout the entire period of the Second Polish Republic, there were no direct references to the autonomy of universities at the constitutional level. This is all the more astonishing as, regardless

⁸ Act of 17 March 1921—Constitution of the Republic of Poland (Journal of Laws of 1921, No. 44, item 267, as amended) / Ustawa z dnia 17 marca 1921 r.—Konstytucja Rzeczypospolitej Polskiej (Dz. U. 1921, nr 44, poz. 267, ze zm.), hereinafter the March Constitution.

⁹ Waclaw Komarnicki, *Ustrój państwowy Polski współczesnej. Geneza i system* (Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2006), 424.

¹⁰ Art. 117 and Art. 118 of the March Constitution.

¹¹ Jacek Sobczak, "Wolność badań naukowych—standardy europejskie i rzeczywistość polska," *Nauka i Szkolnictwo Wyższe* 2, no. 37 (2007): 57.

¹² Paweł Bała, *Konstytucyjne prawo do nauki a polski system oświaty* (Warsaw: Von Borowiecky, 2009).

¹³ Art. 81.2 of the Constitution Act of 23 April 1935 (Journal of Laws of 1935, No. 30, item 227) / Ustawa Konstytucyjna z dnia 23 kwietnia 1935 r. (Dz.U. 1935, nr 30, poz. 227, hereinafter the April Constitution).

¹⁴ Art. 1 of the Act of 13 July 1920 in Academic Schools (Journal of Laws of 1920, No. 72, item 494, as amended) / Ustawa z dnia 13 lipca 1920 r. o szkołach akademickich (Dz.U. 1920, nr 72, poz. 494, ze zm.), hereinafter the 1920 Act.

¹⁵ Art. 1.1 of the Act of 15 March 1933 on Academic Schools, consolidated text (Journal of Laws of 1938, No. 1, item 6) / Ustawa z dnia 15 marca 1933 r. o szkołach akademickich (Dz.U. 1938, nr 1, poz. 6), hereinafter the 1933 Act on Academic Schools.

of the various understandings of the concept of academic freedom, autonomy usually constitutes a fundamental element in the package of these values. Moreover, a certain peculiarity of the legal system in the Second Polish Republic was that the above-mentioned 1920 Act on Academic Schools introduced the concept of academic autonomy (understood as institutional and organisational freedom), yet the subsequent March Constitution (adopted one year later) completely failed to recognise this form of academic freedom.

In the period of the Polish People's Republic, similarly to the Second Republic, there were no constitutional level regulations pertaining to university autonomy or academic self-government. In addition, even the earlier achievements of the twentieth century were significantly marginalised. The 1952 Constitution of the Polish People's Republic¹⁶ stipulated that citizens of the Republic had the right to free education, including higher education.¹⁷ However, the constitutional provisions referred to the issues of science and teaching only declaratively and indirectly, in effect significantly narrowing such freedoms to the scope of serving "the interests of the nation". It was declared that the state cared for the employees of scientific institutions and "the comprehensive development of science rooted in the achievements of leading human thought and progressive Polish thought—science in the service of the nation. However, not only was the constitutional formulation vague and open to multiple interpretations, but in the prevailing political conditions, it also rendered all the guarantees stipulated therein decidedly superficial and ostensible, rather than practically applicable. The provisions of the 1952 Constitution of the Polish People's Republic, despite the context of changes taking place at the level of statutory regulations, remained in force until the adoption of the Constitution of the Republic of Poland on 2 April 1997.¹⁸

The new Constitution of the Republic of Poland of 1997 was the first to evoke the autonomy of higher education institutions. It explicitly stipulated that higher education institutions are autonomous, subject to the rules laid down in the acts.¹⁹ Thus, it was decided that the essence and scope of autonomy (as the basic facet of academic freedom) would be determined through lower tier sources of law—i.e. regular Acts. In addition, the Constitution of the Republic of Poland contains

¹⁶ Constitution of the Polish People's Republic of 22 July 1952 (Journal of Laws of 1976, No. 7, item 36, as amended) / Konstytucja Polskiej Rzeczypospolitej Ludowej z dnia 22 lipca 1952 r. (Dz.U. 1976, nr 7, poz. 36 ze zm.), hereinafter the PPR Constitution of 1952.

¹⁷ Art. 72.2.1) of the PPR Constitution of 1952.

¹⁸ Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483) / Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. 1997, nr 78, poz. 483), hereinafter the RP Constitution.

¹⁹ Art. 70.5 of the RP Constitution.

provisions regarding the right to education, i.e. it encompasses both the right to learn, to receive education, and the right to education. The Constitution of the Republic of Poland refers to the freedom of scientific research (supplemented by the freedom to publish research results) and the freedom of teaching, collectively referred to as the freedom of science, which can only be fully exercised by autonomous entities²⁰. It is worth adding that a different approach to the freedom of science can also be observed in the doctrine, with the element of teaching singled out therefrom. The provisions of the Constitution of the Republic of Poland also lead to certain misconceptions due to the erroneous equation of scientific freedom and HEI autonomy.²¹

3. STATUTORY PROVISIONS

3.1. THE INTERWAR PERIOD

Various standards of academic freedom are also introduced at the level of ordinary laws. During the inter-war period, this process was initiated by the Act of 13 July 1920 on Academic Schools. Top tier higher education institutions (whose task was to nurture and spread knowledge) were referred to as academic schools and included universities, main schools, polytechnics, and academies. Their purpose was to pursue the truth in all areas of human knowledge. Furthermore, they were to pass this learning to academic youth, and through them, to the entire Polish nation.

In light of the aforementioned tasks, the appropriate scope of applicable academic freedoms was defined. Statutory freedom was the first to be indicated. The organisation of academic schools was governed by uniform principles that granted them the right to self-govern and to adopt their own charters. The same were to introduce specific provisions elaborating on and without prejudice to those of statutory laws. A charter of every academic school was subject to approval by the Minister of Religion and Public Enlightenment, who exercised supreme governmental authority over academic schools.

²⁰ Art. 73 of the RP Constitution.

²¹ Michel Pâques, "La liberté Académique et La Cour d'arbitrage," in *Liber amicorum Paul Martens, L'humanisme dans la résolution des conflits. Utopie ou réalité?*, eds. Benoît Dejemeppe et al. (Bruxelles: Larcier, 2007), 399–418; Monika Stachowiak-Kudła, „Konstytucyjna zasada autonomii uniwersytetów na przykładzie Hiszpanii,” *Nauka i Szkolnictwo Wyższe* 1, no. 37 (2011): 151.

Statutory freedom was closely correlated with organisational freedom. The authorities of academic self-government included: 1) the general assembly of professors (if established by the given school's charter); 2) the senate (in schools consisting of more than one faculty); 3) the rector; 4) the faculty councils; and 5) deans. A charter was adopted by the general assembly of professors. The charters of private academic schools were subject to approval by the Minister of Religious Denominations and Public Enlightenment after hearing the opinions of the general assemblies (or senates) of all state schools and already recognised public schools of the same type. At the same time, pursuant to the Act, private academic schools could be granted some or all of the rights of public higher education schools only by a separate Act, at the request of the competent Minister. Minutes were prepared from each general assembly and submitted to the minister's attention. The same obligation applied to minutes from faculty council meetings. In schools where general assemblies of professors were not held, the senate served as the highest self-government authority. It was composed of the rector, the vice-rector, and the deans. Specific charters may have also included vice-deans and faculty council delegates, as well as—where applicable—magistrates in the senate's composition. The rector held the most senior position in an academic school, chaired the institution's senate and general assembly of professors, oversaw the due course of affairs falling within the scope of the authorities' authority, and was responsible for the compliance with laws and governmental regulations. In justified cases, he had the authority to suspend the execution of a resolution of the senate. It is worth adding that a clear manifestation of the discussed organisational freedom was the establishment of the Congress of Rectors of Academic Schools, a representative institution at the university level.

In line with the provisions of the Constitution, the 1920 Act stipulated freedom of learning and teaching. Under the Act, every academic professor had the right to impart knowledge according to his scientific conviction and had full freedom in choosing the methods of conducting lectures and exercises.

In terms of personal (staff) freedom, it is worth emphasising that full and associate professors were appointed by state authorities based on nominations from relevant faculty councils. Such a nomination had to be approved by the general assembly of professors (or the senate) and submitted to the relevant minister for approval. Every proposed nomination was supported by a report prepared by a committee appointed by the Faculty Council with the specific task of evaluating candidates. Before preparing its report, a committee sought the opinion of all the professors teaching the given subject. If, for some reason, the minister refused the request of the Faculty Council, the council had the right to renew the same until

such time that a mutual agreement was reached. No appointment could take place against the will of the council and without its prior request. As for the administrative staff of a university, employment (appointment) was overseen by the senate. However, in the case of the secretary, chief librarian, bursar, treasurer, accountant, and professionally qualified library officials, appointments were made (on the senate's request) by the competent minister.

The Act also stipulated certain freedoms in terms of finance and property. Under the model of financing from the state budget, academic schools were endowed with the attribute of legal personality. They had the right to dispose of the funds allocated to them within the framework of a budget approved by the Minister, and to use the state buildings and attached infrastructure placed at their disposal. They could also accept legacies and donations and independently manage their own property. Each faculty managed its own assets, subject to the minister's supervision. At the end of the financial year, the head of the faculty submitted a report to the Faculty Council and the Senate on the use of funds (grants) together with a breakdown of purchases and property losses. If the senate had reservations about accepting the report of the faculty head, it could request an explanation from the faculty council and demand that the perceived irregularities be rectified. In extreme cases, the senate could suspend the manager from the management of the establishment and refer the matter for resolution by the minister.

During the discussed period, the scope of academic schools' freedom was not characterised by stability. While in the initial wording of the Act on Academic Schools, a relatively broad framework of academic freedom was introduced, subsequent statutory amendments tended to limit the same. Such was the nature of e.g. the provisions of the Decree of the President of the Republic of Poland of 27 December 1924 on ensuring state control over management and estates of state academic schools, scientific institutes and other higher academic institutions²², which restricted the administration of the property of academic schools. Pursuant to the aforementioned Decree, the competent minister gained the power to oversee the manner in which the property of academic schools was administered. The minister was competent to issue regulations and instructions on the rational organisation of economic administration and accounting at academic schools.

²² Decree of the President of the Republic of Poland of 27 December 1924 on ensuring state control over management and estates of state academic schools, scientific institutes and other higher academic institutions, consolidated text (Journal of Laws of 1924, No. 114, item 1016) / Rozporządzenie Prezydenta Rzeczypospolitej z dnia 27 grudnia 1924 r. o zapewnieniu władzom państwowym kontroli nad gospodarką w majątkach państwowych szkół akademickich, instytutów naukowych i innych wyższych zakładów naukowych (Dz.U. 1924, nr 114, poz. 1016)].

The Act of 15 March 1933 on academic schools was a particular manifestation of the tendency to limit the self-governmental capacity of academic schools. It was even referred to as the “muzzle law.”²³ Notably, it no longer contained provisions on academic self-governance, although it still guaranteed (at least in formal legal terms) freedom of teaching and learning. It also no longer explicitly mentioned the individual freedom of academic teachers as regards the content and methods of teaching. Academic schools retained their existing attribute of legal personality. The structure of academic bodies as such was slightly modified, although its general framework remained unchanged.

3.2. THE PERIOD OF THE POLISH PEOPLE’S REPUBLIC

The tendency towards limiting academic freedom was further exacerbated after the Second World War. First of all, two basic spheres were systematically restricted: freedom of research and teaching and institutional freedom. The unfavourable changes were envisaged as early as in 1945 in the Decree of the Council of Ministers of 16 November 1945 on amending the regulations concerning academic schools and the service relation of professors and auxiliary scientific staff of these schools.²⁴ A number of changes were introduced that strongly restricted the sphere of personnel freedom—in terms of the free implementation of HR policies. In addition, as part of the amendment to the 1933 Act on Academic Schools, certain provisions were changed and “deputy professors” were introduced within the framework of faculty councils at academic schools. They were considered independent academic teachers, which undoubtedly might have raised justified concerns as to the level of their academic qualifications, since they were not required to hold any doctoral or postdoctoral degree.²⁵ The area of educational freedom has also been significantly interfered with.

²³ Jarosław Jastrzębski, “Reforma szkolnictwa akademickiego z 1933 roku. Zmiany w organizacji uczelni,” *Wschodni Rocznik Humanistyczny* 7 (2010–2011): 255; Iwo Pollo, *Nauka i szkolnictwo wyższe w Polsce a odzyskanie niepodległości w 1918 roku* (Lublin: Wydawnictwa Uczelniane Politechniki Lubelskiej, 1990), 65.

²⁴ Decree of the Council of Ministers of 16 November 1945 on amending the regulations concerning academic schools and the service relation of professors and auxiliary scientific staff of these schools (Journal of Laws of 1945, No. 56, item 313) [Dekret z dnia 16 listopada 1945 r. o zmianie przepisów dotyczących szkół akademickich i stosunku służbowego profesorów i pomocniczych sił naukowych tych szkół (Dz.U. 1945, nr 56, poz. 313)], hereinafter the 1945 Decree.

²⁵ Art. 16.1 of the Act of 1933.

The subsequent decree of 28 October 1947 on the organisation of science and higher education²⁶ continued the policy of limiting the institutional self-governance of HEIs. Above all, this entailed: central appointment university authorities (instead of election), delays in drafting HEI charters leading to adoption of provisional regulations, followed by a ministerially prepared “model charter”, and, finally, top-down imposition of organisational structures. Some of the powers of HEIs were transferred to a new body, the Council of Higher Education Schools, which was to operate under the regulations until 31 December 1947.²⁷ The decree also restricted the freedom to establish new higher education institutions. They could be established only within the framework of a network plan of higher education institutions which specified the type and character as well as location of particular schools. The draft plan of the network of higher education institutions was developed by the General Council, and approved by the Council of Ministers at the request of the Minister of Education. In addition, higher education institutions did not have a statutory legal personality. Pursuant to the Decree, the Council of Ministers could grant legal personality to a school by way of regulation. In addition, higher education institutions lost their statutory freedom as university charters were imposed by the Council of Ministers. At the same time, the structure of university bodies was reformed to weaken their intra-organisational position. A majority of decisions that had previously been within the competence of HEI internal bodies, were either entirely excluded or subject to approval or verification by organisational bodies outside the structure of the institution itself (the General Council for Science and Higher Education and the Minister of Education). Although the decree stated that the freedom of scientific research was preserved, it lacked any reference to the prototypes of academicism in Poland or the principles of academic self-government.

Successive legal changes consistently perpetuated the strong dependence of the university system on the state authorities and included: 1) the Act of 15 December 1951 on Higher Education and Science Employees,²⁸ and 2) the Act of 5

²⁶ Decree of 28 October 1947 on the organisation of science and higher education (Journal of Laws of 1947, No. 66, item 415) / Dekret z dnia 28 października 1947 r. o organizacji nauki i szkolnictwa wyższego (Dz.U. 1947, nr 66, poz. 415), hereinafter the 1947 Decree.

²⁷ Act of 23 September 1946 on the establishment of the Council of Higher Education Schools (Journal of Laws of 1946, No. 49, item 277) / Ustawa z dnia 23 września 1946 r. o utworzeniu Rady Szkół Wyższych (Dz.U. 1946, nr 49, poz. 277).

²⁸ Act of 15 December 1951 on Higher Education and Science Employees, consolidated text (Journal of Laws of 1956, No. 45, item 205) / Ustawa z dnia 15 grudnia 1951 r. o szkolnictwie wyższym i o pracownikach nauki (Dz.U. 1956, nr 45, poz. 205), hereinafter the 1951 Act on Higher Education.

November 1958 on Higher Education.²⁹ It was characteristic that the moral norms of morality that had previously existed in academic teaching were replaced by norms resulting from numerous ministerial executive regulations—usually supplemented by the decision-making practice of the authorities. The overdeveloped normative system pertinent to higher education was characterised by a high degree of changeability, overgrown bureaucracy, and consequently systemic instability. Universities were expected to educate human resources to meet the needs of the national economy. It was a completely top-down system, programmed and controlled at the ministerial level³⁰. Under the new law, the principle of freedom of research and science no longer applied. There was no guarantee of self-government of higher education institutions. HEIs were established by a resolution of the Council of Ministers (and not by law) after consultation with the General Council for Higher Education. The same applied to any transformation, liquidation or relocation thereof. The Act granted higher education schools legal personality. The detailed internal organisation of a higher education institution was specified in its charter which was, however, provided to it by the minister upon a motion from the school's senate, represented by the rector. A “model charter” adopted at the level of the Council of Ministers was used. The management of higher education institutions was taken over by the Minister of Higher Education.

Restrictions could also be seen in terms of personnel policies. The numbers of teaching hours compulsory for respective academic staff members were determined by the competent minister. Moreover, in order for an employee to carry out other permanent professional activities in addition to his/her teaching obligations, he/she had to obtain a permission granted, in the case of an independent scientific staff member, by the competent minister after consulting the rector. Soviet employee nomenclature was also introduced. All matters that were related to the titles of independent academic staff and scientific degrees were transferred to the competence of the Central Qualification Commission. An employee could be transferred to another university or scientific institute at his own request or “ex officio”. The employment relationship with an independent science employee at a higher education institution could be terminated by the minister after consulting school authorities. The right of all academic schools to confer degrees was abol-

²⁹ Act of 5 November 1958 on Higher Education, consolidated text (Journal of Laws of 1973, no. 32, item 191) / Ustawa z dnia 5 listopada 1958 r. o szkolnictwie wyższym (Dz.U. 1973, nr 32, poz. 191), hereinafter the 1958 Act on Higher Education.

³⁰ Piotr Hübner, “Polityka naukowa i struktury organizacyjne nauki w latach 1944–1989,” in *Historia nauki polskiej*, vol. 10, 1944–1989, part 2, *Instytucje*, ed. Leszek Zasztowt and Joanna Schiller-Walicka (Warsaw: Polska Akademia Nauk, 2015), 115–116.

ished, and limited solely to higher education institutions, scientific institutes, and other scientific institutions specifically listed by the Council of Ministers.

As far as freedom of education is concerned, it should be added that there was a rule that a university student candidate should demonstrate proper “moral and civil behaviour”. The general rule was that only a secondary school graduate could be admitted as a student. However, the Minister could authorise the admission of a person who did not meet this criterion. In terms of disciplinary responsibility, certain prerogatives of the rector were now also vested in the minister. In the case of particularly socially detrimental offences or acts infringing on the public order or the interests of the Polish People’s Republic—the rector of a school could strike a person off the list of students even without instituting disciplinary proceedings. The minister also had this power. During this period, universities not only lost their independence in the institutional and organisational sense, but also in the areas of freedom of education and personnel policy.

Another important period in the shaping of academic freedom in Poland was initiated by the Act of 4 May 1982 on Higher Education.³¹ The authors of the Act aimed to implement broad institutional and legislative changes that would reform the academic structures.³² HEIs became state organisational units, appointed to conduct jointly: scientific research, education and (still socialist) upbringing of students in accordance with the Constitution of the Polish People’s Republic. It was assumed that, in accordance with the principles of freedom of science and art, higher education institutions should develop a multiplicity of scientific and artistic faculties while respecting worldview differences. Higher education institutions also retained the status of legal personality. Importantly, their independence was restored. The Act explicitly stated that higher education institutions were self-governing communities of academic staff, students and other school employees, managed by the entire school community, as well as by one-person and collegiate bodies. The school was to ensure the freedom of its staff and students to express their views freely and to associate and hold assemblies in accordance with the principles laid down by law, while competent state authorities could interfere with the activities of schools only in cases provided for in statutory provisions. Thus, the basic elements of academic self-governance were restored: legal and organisational autonomy (an attribute of legal personality) and a self-governing academic community that participates in the election of university bodies and enjoys

³¹ Act of 4 May 1982 on Higher Education, consolidated text (Journal of Laws of 1985, No. 42, item 201, as amended) / Ustawa z dnia 4 maja 1982 r. o szkolnictwie wyższym (Dz.U. 1985, nr 42, poz. 201, ze zm.), hereinafter the 1982 Act on Higher Education.

³² Henryk Rot, “Wokół ustawy o szkolnictwie wyższym,” *Życie Szkoły Wyższej* 9 (1982): 27.

the freedom of research and science.³³ Academic bodies regained their suitable internal prominence, although a political factor was still present in the structures. Higher education institutions were guaranteed the right to implement independent personnel policies and influence the educational process.

The Act indicated that schools were to independently manage their finances (under the principles of self-governance) on the basis of funds received as subsidies from the central budget. Importantly, any funds unused in a given budget year remained at the school's disposal. The school could also accept donations, bequests and inheritances of both domestic and foreign origin. Furthermore, schools independently adopted their material and financial plans dividing respective tasks and resources between their particular types of activity and organizational units. The plan was prepared by the Rector after consultation with the Senate³⁴.

Unfortunately, however, statutory freedom continued to be limited. The minister still provided a model charter for a higher education institution, to be adopted by its senate after consulting the collegial bodies of the school's organisational units and the political and social organisations operating at the school. The rector then presented the charter to the competent minister within one month of its adoption. The competent minister, within three months of receiving the school's charter, approved the statutes, after verifying its compliance with the law and the principles laid down in the model charter.

3.3. THE PERIOD OF 1990–2018

Many of the solutions originally introduced in the Act were further developed after the political and social changes of 1989–1990. It seems that the 1982 Act on Higher Education may have served as a kind of a harbinger for the forthcoming in-depth reform of the higher education system. The directions first introduced in 1982 were carried over to the Act of September 12 1990 on Higher Education.³⁵

³³ Stanisław Waltoś, "Korzenie współczesnego szkolnictwa wyższego," in *Szkolnictwo wyższe w Polsce. Ustrój—Prawo—Organizacja*, ed. Stanisław Waltoś and Andrzej Rozmus (Warsaw: Wolters Kluwer, 2016), 51.

³⁴ See the 1982 Act on Higher Education and the Council of Ministers Regulation of 2 April 1983 on the detailed principles of financial management of public higher education schools, consolidated text (Journal of Laws of 1988, No. 22, item 163) / Ustawa z dnia 4 maja 1982 r. o szkolnictwie wyższym (Dz.U. 1985, nr 42, poz. 201 ze zm. oraz rozporządzenie Rady Ministrów z dnia 25 kwietnia 1983 r. w sprawie szczegółowych zasad gospodarki finansowej państwowych szkół wyższych (Dz.U. 1988, nr 22, poz. 163).

³⁵ Act of 12 September 1990 on Higher Education (Journal of Laws of 1990, No. 65, item 385) / Ustawa z dnia 12 września 1990 r. o szkolnictwie wyższym (Dz.U. 1990, nr 65, poz. 385).

The new Act aimed to adopt principles appropriate for a democratic state.³⁶ Universities were to be characterised by self-governance and freedom of scientific research, artistic creativity and teaching.³⁷ The community dimension was also maintained in the activities of the university. Academic teachers, students and non-academic staff of the university formed a self-governing academic community, which was to participate in the management of the university through elected collegiate and one-person organs. Government administration bodies or local self-government units could make decisions concerning the higher education institution only in cases provided for in Acts of Parliament. The legal and organisational distinctiveness of a higher education institution was underlined by the attribute of legal personality conferred upon it by statute. The establishment, transformation, and liquidation of a public higher education institution, as well as any merger with another public higher education institution, could be effected only by way of an Act. The detailed organisation of the institution and other matters related to its operation and not regulated in the Act were governed by its charter.

The Act defined in detail the forms of supervision applicable to higher education institutions. It was to pertain to higher education institutions' compliance with statutory regulations and charter provisions, and was to be exercised by the competent minister. In the event of non-compliance with statutory laws or HEI charter, the minister could, within one month, overrule a resolution of the senate or a decision of the rector of the institution.

In a subsequent Act of 2005³⁸ attention was drawn to the necessity of increasing managerial flexibility, not only in the area of organisation, but also in the area of HR and financial policies. As a consequence, the significance of the charter as a source of internal rules regulating the activities of the HEI was significantly bolstered. The charter was to determine the individual profile of the HEI both in organisational and staffing terms. The permissible scope of state interventionism was clarified by defining the framework of supervision exercised by the competent minister, specifically in terms of legal supervision and within the limits of the Act and without prejudice to HEI autonomy. A number of key aspects ought to be highlighted in this context:

³⁶ Jerzy Woźnicki, "Sto lat działalności ustawodawczej w szkolnictwie wyższym w Polsce, ze szczególnym uwzględnieniem okresu trzydziestolecia transformacji," in *Transformacja Akademickiego Szkolnictwa Wyższego w Polsce w okresie 30-lecia 1989–2019*, ed. Jerzy Woźnicki (Warsaw: Fundacja Rektorów Polskich, 2019), 24.

³⁷ Agnieszka Dziedziczak-Foltyn, "O reformowaniu szkolnictwa wyższego w Polsce w latach 1989–2009 i towarzyszącej temu debacie publicznej," *Przegląd Socjologiczny* 58, no. 3 (2009): 54.

³⁸ Act of 27 July 2005—Law on Higher Education, consolidated text (Journal of Laws of 2017, item 2183, as amended) / Ustawa z dnia 27 lipca 2005 r.—Prawo o szkolnictwie wyższym (Dz.U. 2017, poz. 2183, ze zm.), hereinafter the LHE.

1) the establishment and liquidation of a public university, as well as any merger with another public higher education institution could only be effected by an Act, without prejudice to the provision that the incorporation of a public non-university HEI into a public university could be effected by a decision of the competent minister at the request of the rectors of the interested institutions after consulting their respective senates;

2) for the first time, the Act explicitly ensured the autonomy of higher education institutions; higher education institutions were to be guided by the principles of freedom of teaching, scientific research and artistic creativity. All matters related to the functioning of HEIs not regulated by the Act were to be governed by their respective charters whose significance was thus considerably increased;

3) the scope of state-level supervision was statutorily defined. The competent minister was authorised to supervise HEI compliance with laws and statutes, as well as correct spending of the public funds awarded and implementation of the teaching process; it should be emphasised that in terms of their organisational structure, HEIs were allowed to freely shape their internal governance;

4) the Act introduced extensive freedom in terms of developing academic curricula; the senate of a higher education institution determines the relevant fields of study and levels of education, within the areas of education and fields of study corresponding to those in which the institution is authorised to confer the academic degree of *doktor habilitowany* [a post-doctoral degree];

5) public authorities were obliged to provide necessary funding; while HEIs were allowed to generate their own revenues and manage the same on separate bank accounts, subsidies from the state budget remained their primary source of financing.

A significant breakthrough came with the passing of a new law in 2018.³⁹ It should be emphasised that the Constitution of the Republic of Poland stipulates that “the autonomy of higher education institutions shall be ensured on the principles laid down by law”. In contrast, under the provisions of the new 2018 Act,⁴⁰ “the university is autonomous under the terms of the Act”. The wording of the statutory regulation is thus essentially a reflection of the provision of the Constitution of the Republic of Poland. Incidentally, it should be noted that the first part of the provision contains a formulation which differs slightly from the constitutional wording. The legislator states that “a higher education institution shall be

³⁹ Act of 20 July 2018 – Law on Higher Education and Science, consolidated text (Journal of Laws of 2021, item 478, as amended) / Ustawa z dnia 20 lipca 2018 r. – Prawo o szkolnictwie wyższym i nauce (Dz.U. 2021, poz. 478, ze zm.), hereinafter the LHES.

⁴⁰ Art. 9.2 of the LHES.

autonomous”, and in a way emphasises that autonomy is its statutory, inalienable attribute outside the influence of other bodies. The regulation on autonomy was already introduced *expressis verbis* in the Polish Constitution, which, while emphasising the multidimensional nature of the manifestations of autonomy, indicated that “a higher education institution shall be autonomous in all areas of its activity”. In other respects it corresponded to the content of the current regulation. The LHES, despite the lack of emphasis on the entirety of a higher education institution’s activity as the scope of the autonomy, seems to fully reflect the previous regulation. This is all the more important given the fact that academic autonomy must indeed be regarded as the most important and integral aspect of academic freedom. Giving it such a high (constitutional) rank, somehow automatically elevates other manifestations of academic freedom to equally high levels. This sentiment was practically reflected in the content of LHES. First of all, greater importance was given to the university charters, which became autonomous and fundamental acts governing their operation. The broad organisational and institutional freedom inherent in HEI charters was statutorily guaranteed. Already in the Preamble of the Act, it was emphasised that the functional rules governing higher education and scientific activity were constructed on the premise of the public authorities’ obligation to create proper conditions for freedom of scientific research and artistic creativity, freedom of teaching and autonomy of academic community. The freedom of teaching, artistic creativity, scientific research and the publication of their results, as well as the autonomy of higher education institutions were considered to be the basis of the system of higher education and science. At the same time, considerable freedom was also left in the context of personnel policies. This is closely related to the new system of university financing which increases the flexibility in their management of public funds. Apart from the historically well-established subsidies, a new financing instrument in the form of subventions was introduced.

FINAL REMARKS

There is no doubt that the autonomy of HEIs constitutes a fundamental value in the catalogue of broadly understood academic freedoms. For the sake of simplicity, the other spheres of academic freedom may be considered as complementary to this fundamental attribute. The conducted analysis of the Polish regulations leads to several detailed conclusions.

Firstly, in the current legal state, a high level of legal regulation of the basic package of academic freedoms has been adopted. Their most important source is the Constitution of the Republic of Poland. This deserves to be emphasised in the light of historical regulations where those freedoms were never previously ensured at such high (constitutional) level. This fact alone suggests superiority of the current legal status in this respect.

Secondly, the analysis of the earlier solutions reveals a wide range of historical fluctuations in this respect. The original statutory solutions of the inter-war period clearly shaped good standards in terms of statutory, organisational and institutional freedom, research, education, personnel and financial policy, or self-governance. Unfortunately, a tendency to restrict these freedoms became apparent relatively quickly in the same period. Academic freedoms became depreciated to the extreme under the socialist regime. It was not until the beginning of the period of political transformation in Poland that the first heralds of a real improvement in this area could be observed. In terms of formal and legal criteria one must acknowledge that both the current formulation of academic freedoms and their adopted framework can be considered satisfactory. Of course, an assessment of their practical implementation and directions of their further evolution remains a separate issue. It will likely only be possible from a time perspective far broader than the three years that have passed since the adoption of the LHES.

Thirdly, one may notice, on the one hand, a clear deficit in the conceptual scope, i.e. legal definition of particular (indicated) areas of academic freedom throughout the analysed period. The deficiencies are noticeable both at the constitutional level and in ordinary laws. This hinders not only the precise definition of the framework of academic freedom, but also its actual realisation and the possible assertion of the resulting rights of universities. Moreover, the same areas of freedom were referred to by different names, e.g. in the interwar period there was a reference to the freedom of science and teaching, which nowadays is referred to as the freedom of research and education.

Fourthly, one should note that the scope of the package of academic freedoms was freely shaped. Depending on the period, the relevant legal acts referred either to autonomy or self-governance or omitted those fundamental values of academic freedom altogether. The current regulation should be regarded as exemplary in this respect.

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THE EVOLUTION OF MODERN STANDARDS OF ACADEMIC FREEDOM IN POLAND

S u m m a r y

The various forms of academic freedom are an integral and necessary component of modern academia. This does not mean, however, that they can be easily framed in static terms. Being closely connected with all academic life, those forms, as it were, are intrinsically subject to the same constraints and the pressures of the environment as the university itself. Another difficulty in precisely defining this phenomenon stems from terminological ambiguity. Additionally, both levels of the primary sources of the law are crucial here, i.e. the Constitution in the first place and the so-called "ordinary" laws as secondary sources. This fact dictates the research assumptions and structure of this study. The objective is to analyse and evaluate the Polish regulations shaping the sphere of broadly-understood academic freedom with a view to presenting the manner of regulation and the legal approach to modern "academic freedom packages" in the historical perspective of their evolution, starting with the interwar period. Capturing the trends and directions of legislative changes makes it possible to define and verify the current catalogue of academic freedoms included in the so-called Act 2.0. In order to achieve this research goal, dogmatic, normative and historical-legal methods are employed.

Keywords: academic freedoms; modern university; university autonomy; academic self-government; Act 2.0.

EWOLUCJA NOWOŻYTNYCH STANDARDÓW
WOLNOŚCI AKADEMICKICH W POLSCE

Streszczenie

Różnorodne formy wolności akademickiej są integralnym i niezbędnym składnikiem nowożytnego świata akademickiego. Nie oznacza to jednak, że łatwo je ująć w statyczne ramy. Pozostając w ścisłym związku z całością życia akademickiego niejako ze swej istoty podlegają takim samym ograniczeniom i presji otoczenia jak i sama uczelnia. Dodatkowym utrudnieniem w precyzyjnym ujęciu tego zjawiska jest niejednoznaczność terminologiczna. Poza tym decydujące znaczenie posiadają w tym zakresie oba poziomy źródła prawa. Pierwszy to Konstytucja, a wtórnie dopiero to tzw. ustawy zwykłe. Taki stan wpływa na założenia badawcze i strukturę niniejszego opracowania. Celem badawczym jest analiza i ocena polskich regulacji kształtujących sferę szeroko rozumianych wolności akademickich. Chodzi o ukazanie sposobu regulacji oraz ujęcia prawnego nowożytnych „pakietów wolności akademickich” w historycznej perspektywie ich ewolucji, počawszy od okresu dwudziestolecia międzywojennego. Uchwycenie trendów i kierunków zmian legislacyjnych pozwala określić i zweryfikować aktualny katalog wolności akademickich ujętych w tzw. ustawie 2.0. Dla osiągnięcia zamierzenia badawczego posłużono się metodą dogmatyczną, analizą normatywną i historycznoprawną.

Słowa kluczowe: wolności akademickie; uniwersytet nowożytny; autonomia uniwersytecka; samorządność akademicka; ustawa 2.0.