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# VERIFICATION OF FINAL DECISIONS ON SCHOLARSHIPS FOR STUDENTS WITH DISABILITIES UNDER EXTRAORDINARY MODES: THE MOST COMMON REASONS FOR THEIR INITIATION

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Abstract

The article examines the verification of final scholarship decisions issued to students with disabilities as an exception to the principle of permanence of administrative decisions – which underlies legal certainty and guarantees the protection of acquired rights – in terms of typical (i.e. most common) reasons for such verification. To this end, the analysis covers the provisions of the Higher Education and Science Act, insofar as they regulate the premises for granting the benefit in question and allow for the verification of scholarship decisions. I also examine the provisions of the Code of Administrative Procedure that govern extraordinary modes of conduct: resumption of administrative proceedings, declaration of an administrative decision's invalidity, and revision of a decision based on special provisions. The article emphasises the lack of discretion in their selection and the inadmissibility of their simultaneous application. The discussion identifies the typical premises for applying these modes to decisions on material support for students with disabilities. Judicial practice relevant to the eponymous matter is also analysed.

Key words: scholarship for disabled students, scholarship proceedings in the rights of disabled students, repeal of a scholarship decision, declaration of a scholarship decision's invalidity, resumption of scholarship proceedings

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## INTRODUCTION

The academic community, with students as the most numerous group, constitutes a diverse milieu. Its members include both fully able individuals and persons with disabilities, resulting from congenital or acquired illnesses, accidents, or the ageing process. Opening the higher education system to this social group contributes to social inclusion and is to be commended. The inclusion of individuals facing the risk of exclusion, such as persons with disabilities, represents an important aspect of educational services and an attempt to ensure equal opportunities in this domain. Contemporary society devotes considerable attention to accessibility, understood as the elimination of barriers that limit the use of public goods, in order to make them available to the widest possible group of recipients. Accessibility encompasses architectural, communication, and legal solutions that enable persons experiencing various difficulties to participate in social life on equal terms. As such, it requires instruments and mechanisms that promote social solidarity between fully able individuals and persons with disabilities in the sphere of education and research. In higher education, such solutions include: guaranteeing adherence to the Act of 19 July 2019 on Accessibility for Persons with Special Needs[1] – particularly architectural, digital, and information-communication accessibility, at least as defined by the minimum requirements referred to in Article 6 of the Act; a more flexible education process allowing for individual timetables or special arrangements;[2] the introduction of teaching assistants; equipment rental services for persons with disabilities; programmes designed for students with disabilities;[3] and material support through a scholarship system.

In Poland, the legal basis for granting scholarship to students with disabilities is set out in Article 86(1)(2) of the Higher Education and Science Act (HESA)[4] and university regulations on student benefits (Article 95 HESA). Scholarship proceedings follow the Code of Administrative Procedure (CAP),[5] with a scholarship committee acting as the first instance and an appeal scholarship committee as the second. The benefits are financed through a scholarship fund referred to in Article 412(1) HESA and Article 413 HESA (for non-public universities), with the amount determined

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[1] Consolidated text, Journal of Laws of 2022, item 2240, as amended.

[2] Polish universities' statutes provide for this option either as part of generally available individual timetables (see the University of Warsaw's Study Regulations, 2019, Article 26(4)(7)) or as a separate solution (see the University of Silesia's Study Regulations, 2023, Article 16).

[3] For example, university programs such **as** the programme for persons with disabilities 'Niepełnosprawni – Pełnosprawni na studiach' (Disabled – Fully Able to Study), see http://niepelnosprawni.wsg.byd.pl/id,200/program-niepelnosprawni-pelnosprawni-na-studiach [accessed on 27 May 2025]; project 'Aktywny absolwent' (Active Graduate) by the Polish Association of the Blind (PZN), see https://pzn.org.pl/aktywny-absolwent [accessed on 27 May 2025]; programme 'Aktywny samorząd' (Active Self-Government), see https://www.pfron.org.pl/o-funduszu/programy-i-zadania-pfron/programy-i-zadania-real/aktywny-samorzad [accessed on 27 May 2025]; programme 'STUDENT II', see https://www.pfron.org.pl/o-funduszu/programy-i-zadania-pfron/programy-ktorych-reali/student-ii [accessed on 28 January 2024].

[4] The Higher Education and Science Act of 20 July 2018, Journal of Laws of 2023, item 742, as amended, hereinafter 'the HESA'.

[5] Code of Administrative Procedure of 14 June 1960, Journal of Laws of 2023, item 775, as amended, hereinafter 'the CAP'.

by the university president's instruction. Students with disabilities receive material support following scholarship proceedings, which begin after the university president files an application – typically submitted via the university's electronic student service system.[6] These proceedings conclude with an administrative decision, either positive or negative – i.e. one that grants or refuses the benefit. Once the decision becomes final, it enters legal circulation and produces legal effect. Nevertheless, following ordinary administrative verification of a scholarship decision, certain defects may become apparent, giving rise to grounds for initiating one of the extraordinary modes defined in the CAP.

Importantly, local government units may independently establish their own grant types. As such, a student with a disability may also receive this form of support – although local government funding is generally allocated to research, arts, and sports grants[7] (Article 96 HESA). In such cases, the local government unit defines the criteria and methods of awarding the grant, the maximum amount a student may apply for, and the payment conditions. A student meeting the requirements set out in the relevant resolution may receive support from both the university and the local government. However, grants funded by local government units are not always awarded by way of an administrative decision[8] – other forms, such as a commune mayor's instruction[9] or a decision, though not within the meaning of the CAP.[10] Therefore, this group of benefits falls outside the scope of this article.

## DISABILITY AS A SCHOLARSHIP PREMISE

Polish legal system does not include the term 'person with disability'. According to an opinion issued by the Polish Language Council (RJP) at the Polish Academy of Sciences (PAS) in March 2021,[11] the term 'disabled person' does not automatically stigmatise an individual. However, language constantly evolves, and the term 'person with disability' increasingly appears in texts, including official documents, as a manifestation of inclusion also in the semantic aspect.[12] The same process is taking

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[6] At some universities, students must register online and submit a printed application to the scholarship authority to initiate scholarship proceedings.

[7] See, e.g. Resolution No. LXVIII/1772/23 of the Wrocław Municipal Council of 25 May 2023 on the conditions and amounts of grants for undergraduate students and PhD students as part of the Student Grant Programme.

[8] Judgment II SA/Ol 818/21 of the Provincial Administrative Court (PAC) in Olsztyn of 10 February 2022.

[9] Resolution No. XXX/384/2018 of the Michałowice Municipality Council of 15 February 2018 on the conditions of John Paul II grants for university students.

[10] See, e.g. Resolution No. XXXVI/575/21 of the Nysa Town Council of 31 March 2021 on the conditions of student grants governed by the Nysa Mayor's Grants Program (Article 4(11)).

[11] See https://rjp.pan.pl/porady-jezykowe-main/2014-wyrazenia-osoba-niepelnosprawna-i-osoba-z-niepelnosprawnoscia-2 [accessed on 28 January 2024], opinion on 'disabled person' and 'person with disability' by Prof. Marek Łaziński, professor of the University of Warsaw, on behalf of the Polish Language Council, March 2021.

[12] For more information, see, e.g. D. Galasiński, 'Osoby niepełnosprawne czy z niepełnosprawnością?', *Niepełnosprawność – Zagadnienia, Problemy, Rozwiązania*, 2013, Vol. 9, No. IV,

place in higher education, where institutions establish support centres for persons with disabilities[13] or offices for persons with disabilities[14] rather than for disabled persons. Such actions implement the assumptions outlined in the HESA preamble, which states that the principles of higher education include co-shaping the moral standards of public life. The legislator also notes the need to unify the terminology used in normative acts, primarily in line with the Convention on the Rights of Persons with Disabilities (CRPD).[15] Article 1, sentence 2 of the Convention provides that

> 'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'

Both Article 86(1)(2) HESA, which specifies the scholarship analysed herein, and Article 89 HESA, which defines the conditions a student must meet to receive that scholarship, use the term 'disabled person' rather than 'person with disability'.

Under Article 89 HESA, a scholarship for disabled persons may be granted to a student who holds a disability certificate, a disability degree certificate, or a certificate referred to in Articles 5 and 62 of the Act of 27 August 1997 on the Social and Professional Rehabilitation and Employment of Disabled Persons.[16] According to this Act, a disabled person (a normative legal category) is: (1) a person who has a disability confirmed by a certificate in which the evaluation bodies assign one of the three degrees defined in Article 3 of the Act – namely, mild, moderate, or severe; (2) a person with a partial or total incapacity to work, as established under separate provisions; or (3) a person who has a disability certificate issued before the age of 16. Depending on the disability degree, the person in question requires permanent or long-term care and assistance to fulfil social roles due to an inability to lead an independent life (severe disability); requires temporary or partial assistance to fulfil social roles (moderate disability); or has limitations in fulfilling social roles but is able to compensate for them with orthopaedic equipment, auxiliary measures, or technical means (mild disability). Thus, the premise for granting the scholarship in question is a valid certificate confirming a severe, moderate, or mild disability degree – formerly referred to as disability group I, II, or III. The bodies

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pp. 3–6; M. Szeroczyńska, 'Niepełnosprawność i osoba niepełnosprawna', in: Fundacja Instytut Rozwoju Regionalnego, *Polska droga do Konwencji o prawach osób niepełnosprawnych ONZ*, Kraków, 2008, p. 18.

[13] See, e.g. https://wszop.edu.pl/centrum-wsparcia-osob-z-niepelnosprawnoscia, https://cwozn.ujk.edu.pl [accessed on 27 May 2025].

[14] See, e.g. https://bon.uw.edu.pl, https://www.umcs.pl/pl/zespol-ds-wsparcia-osob-z-niepelnosprawnosciami,3222.htm [accessed on 28 January 2024].

[15] Adopted in New York on 13 December 2006 (Journal of Laws of 2012, item 1169, and of 2018, item 1217). See also the review of the legal terminology for disability and its types in terms of coherence and conformity with CRPD, and suggested legal amendments to unify and adjust that terminology (*Przegląd terminologii stosowanej w różnych aktach prawnych, odnoszącej się do niepełnosprawności lub jej rodzajów, pod kątem spójności i zgodności z 'Konwencją ONZ o prawach osób niepełnosprawnych' oraz propozycje zmian aktów prawnych ujednolicające i dostosowujące tę terminologię*, Warszawa, 2022), https://www.gov.pl/attachment/a7a16a78-4da7-4e5f-b43a-501d0b624976 [accessed on 27 May 2024].

[16] Journal of Laws of 2024, item 44, as amended.

that certify disability include district/municipal (first instance) and provincial (second instance)[17] disability evaluation teams. Their certificates constitute official documents as defined in Article 76(1) CAP and serve as proof of what they officially state. Therefore, the certificates possess special probative value, which means that a body cannot disregard the existence of a fact stated in an official document unless it provides evidence to the contrary.[18] Consequently, a university president or scholarship committee must not independently determine the disability onset date when awarding a scholarship to a person with disability. Doing so would breach the subject-matter competence of the above-mentioned teams, which are responsible for indicating the onset date or period for both the disability and the disability degree. The same principle applies in cases where new evidence or documents relevant to the determination of the onset date emerge after the disability evaluation team has issued the certificate and the proceedings to determine scholarship entitlement have begun. A *novum* (new evidence) that arises at this stage of the scholarship proceedings lies beyond the competence of the university president or scholarship committee.

Importantly, the teams cannot arbitrarily indicate the onset date or period of the disability or its degree. Instead, they must follow a formalised procedure based on medical documentation specified by law[19] and the course of the condition. Initiation of the relevant proceedings requires an application filed by the person concerned, their statutory representative, or – with the consent of the person or representative – by a social welfare centre or social services centre. A district or provincial disability evaluation team may amend a previously issued valid disability certificate at any time, but this also requires an application from the person concerned.[20] As emphasised in judicial practice:

> 'The effects of a disability certificate stem from solidarity and relate to the social sphere, where state bodies take actions to eliminate the disproportion in the quality of life and social functioning between healthy persons and those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'[21]

## PREMISES FOR GRANTING A SCHOLARSHIP FOR DISABLED PERSONS

Under Article 86(1)(2) HESA, a student may apply for a scholarship for disabled persons. The right to receive the scholarship does not arise *ex lege* once the entitled person obtains student status. Instead, the required legal form for granting the scholarship is an administrative decision (Article 86(2) HESA). On a side note,

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[17] They also perform specialised examinations, including psychological assessments, of persons applying for a disability certificate or a disability degree certificate, based on referrals from doctors or psychologists who are members of the disability evaluation teams.

[18] Judgment I GSK 477/22 of the Supreme Administrative Court (SAC) of 24 May 2022.

[19] Judgment III SA/Łd 356/22 of the PAC in Łódź of 26 July 2022.

[20] See order III UZP 8/22 of the Supreme Court (SC) of 27 April 2023, *OSNP*, 2023/11/120.

[21] Judgment I OSK 330/20 of the SAC of 17 September 2020, Legalis.

the scholarship committee and the appeal scholarship committee allocate not only this benefit, but also financial aid, the special assistance grant, and the university president's scholarship. Most committee members are students. The committee chair either signs the scholarship administrative decision themselves or authorises the deputy chair to do so.

HESA defines both positive and negative premises for granting a scholarship for disabled persons. The positive premises include the status of a student in first-cycle, second-cycle, or long-cycle studies – an obvious requirement – and a disability certificate, a disability degree certificate, or the certificate referred to in Article 5 or Article 62. The certificate required by Article 5 is issued by a certifying doctor of the Social Insurance Institution (ZUS). The document in question: (1) states total incapacity to work and equates to a severe disability certificate; (2) states the incapacity to lead an independent life and equals a severe disability certificate; (3) states total incapacity to work and equals a moderate disability certificate; or (4) states partial incapacity to work and equals a mild disability certificate. Article 62 applies to persons classified into one of the three former disability groups[22] before the entry into force of the Act of 27 August 1997 on the Social and Professional Rehabilitation and Employment of Disabled Persons.[23] During the scholarship proceedings, the student must submit a binding certificate which states its own validity period. Moreover, since the financial support in question requires an application, one must complete the relevant form – or draft the document themselves if no form exists – and then validly submit or serve the completed application.

The negative premises for granting a scholarship for disabled persons form a triad; fulfilling any of them provides a sufficient and autonomous basis to issue a decision refusing to grant the scholarship. The first restriction prevents students from receiving the scholarship in more than one study programme. This does not exclude obtaining a different type of benefit – such as financial aid or the university president's scholarship – in another study programme, provided that the premises for granting that other benefit are fulfilled. However, one may receive a scholarship for disabled persons in only one study programme, as indicated in the application (Article 93(2) HESA). Importantly, restricting the financial support to one study programme remains in line with citizens' constitutional right to education and with the principle of equality before the law.[24]

Second, financial support is excluded after graduating from second-cycle studies. The situation of a student in their first study programme differs from that of one who has commenced another study programme after graduating with a master's degree or an equivalent degree[25] (Article 93(3)(1) HESA). The negative premise also applies when a student commences first-cycle studies again after obtaining a degree (Article 93(3)(2) HESA). Lack of such a restriction would undermine the purpose of financial support for persons with disabilities and reduce that support

[22] Disability group I equals a severe disability certificate; group II equals a moderate disability certificate; and group III equals a mild disability certificate.

[23] Consolidated text, Journal of Laws of 2024, item 44, as amended.

[24] Judgment II SA/Sz 1200/19 of the PAC in Szczecin of 10 September 2020.

[25] Ibidem.

to co-financing further education. Thus, a student may receive the scholarship in question only if their second study programme results in obtaining a master's degree or an equivalent degree for the first time.[26]

The third negative premise is the time limit. The total period of eligibility for the benefit referred to in Article 86(1)(2) equals 12 semesters, regardless of whether the student actually receives the benefit. This period may include up to nine semesters in first-cycle studies and up to seven semesters in second-cycle studies. Crucially, the periods stipulated in Article 93(4) cover all the semesters commenced in first-cycle, second-cycle, and long-cycle studies, regardless of how long the person concerned had student status in those studies – for example, throughout a month or a whole semester. Only the number of commenced semesters counts, whether completed or not. Moreover, after the amendment introduced by the Act of 17 November 2021 on amending the Higher Education and Science Act and Certain Other Acts,[27] it remains relevant whether the student actually received the scholarship during the period specified in this provision. The legislator has disconnected the benefit eligibility period from the period of actually receiving the benefit, and has conditioned eligibility solely upon the study period. In other words, the period during which the student actually received the benefit has lost relevance for determining the eligibility period.[28] Significantly, the periods stipulated in Article 93(4) HESA become two semesters longer if the student commences long-cycle studies whose legally defined duration equals 11 semesters (pharmacy) or 12 semesters (medicine). This solution allows students who take maternity leave or sick leave to remain eligible for material support. If the disability onset occurs during studies or after obtaining a university degree, this extends the eligibility period for the benefit referred to in Article 86(1)(2) by a further 12 semesters, which equals the full duration – that is, the first and second cycle – of another study programme.[29] The described rules of granting scholarships to persons with disabilities also apply to those who have studied or obtained university degrees abroad.

During the investigation proceedings to determine the fulfilment of the scholarship granting premises, an important role belongs to POL-on – an integrated information system for higher education and science, referred to in Article 342 HESA. The system contains a database of students, including: the type of granted benefits referred to in Article 86(1)(1)–(4) HESA; the number of the diploma confirming graduation from a study programme, cycle, and profile; the study commencement date; and the graduation date with the obtained degree or the disenrolment date (Article 344 HESA). Therefore, the system permits tracing each student's education, in particular the commenced semesters – especially for studies at various universities. Nonetheless, when basing their decision on the POL-on data,

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[26] Cf. judgment I OSK 1724/12 of the SAC of 31 October 2012, Legalis.

[27] Journal of Laws of 2021, item 2232, as amended.

[28] See judgment III SA/Gl 31/23 of the PAC in Gliwice of 28 February 2023; judgment III SA/Gd 110/23 of the PAC in Gdańsk of 15 June 2023; judgment III SA/Lu 134/23 of the PAC in Lublin of 29 June 2023.

[29] See the justification of the government's bill amending the Higher Education and Science Act and Certain Other Acts, form No. 1569.

the scholarship granting bodies must indicate the date of downloading the data for use in the proceedings, and when the student questions the data's correctness, the bodies must clarify the circumstances highlighted by the student. Only in this way can the supplemented evidence 'permit an unambiguous assessment whether the student meets the scholarship eligibility criteria'.[30] During the investigation proceedings, the student must also submit statements which assert that the student has not obtained a university degree, receives no scholarship for disabled persons at another study programme or university, and does not have the status of a career soldier or a career soldier candidate, as explained below. The statements must contain a clause of criminal responsibility for providing untrue data, based on Article 233(1) of the Act of 6 June 1997 – Criminal Code (CC).[31]

Internal regulations of certain universities extend the statutory list of negative premises, refusing to grant the scholarship for disabled persons to the following students: career soldiers or career soldier candidates who have commenced studies upon referral by a competent military body and have received education support under the provisions on career soldiers' military service; and state service officers or candidates for such officers who have commenced studies upon referral or with the consent of a competent superior and have received education support under the provisions on career soldiers' military service.[32] POL-on does not store data on career soldier students.

## EXTRAORDINARY MODES OF VERIFYING FINAL SCHOLARSHIP DECISIONS ISSUED TO STUDENTS WITH DISABILITIES

The competent bodies responsible for conducting scholarship granting proceedings regarding persons with disabilities may initiate an extraordinary mode of proceedings governed by Chapters 12 and 13 CAP – either *ex officio* or upon application. This constitutes an exception to the procedural principle of administrative decisions permanence, which means that a final decision remains in force until repealed or amended by a new decision based on a relevant provision of law. The principle safeguards important values such as legal certainty, trust in the state, and protection of acquired rights. Therefore, using these modes requires a material defect present either in the decision or in the activities preceding the decision, or one that stems from a *lex specialis*. When initiating any of the modes, the body must clearly state the grounds for challenging the final decision and indicate the specific

[30] Judgment II SA/Sz 466/23 of the PAC in Szczecin of 3 August 2023.

[31] Journal of Laws of 2024, item 17, as amended.

[32] See, e.g. Article 4(5) of the Student Benefit Regulations of 19 September 2023 of the University of Rzeszów, https://www.ur.edu.pl/pl/student/stypendia-zapomogi-kredyty-ubezpieczenia/stypendia/regulamin-swiadczen-wnioski; Article 4(10) of the Student Benefit Regulations of 30 September 2022 of the Pomerania University of Humanities in Chojnice, http://www.pomeraniachojnice.edu.pl/653-2; Article 2(2) of the Student Benefit Regulations of 25 September 2023 of the University of Linguistics and Technology in Przasnysz, https://ult.edu.pl/wp-content/uploads/2023/12/Zalacznik-nr-31-REGULAMIN-SWIADCZEN-DLA-STUDENTOW-ULT-w-PRZASNYSZU.pdf [accessed on 28 January 2024].

provisions applicable to the relevant mode. Extraordinary proceedings may concern both positive and negative final decisions – that is, those which either grant or refuse to grant a scholarship.

## REPEAL OR AMENDMENT OF A DECISION WHICH GRANTED THE RIGHT UNDER *LEX SPECIALIS*

Under Article 86(4) HESA, the university president must issue an administrative decision to repeal an unlawful decision by the scholarship committee or the appeal scholarship committee. The president may exercise this right *ex officio* in respect of both a non-final (first-instance) decision and a final decision. The latter includes a first-instance decision after its appeal deadline has expired and a second-instance decision issued by the appeal committee. The president's right in this regard is a non-code form of eliminating the scholarship committee's decision and stems from Article 86(4) HESA as a substantive law provision.[33] This mode ends with a remand decision – namely, one which does not rule on the merits of the case but refers the case back to the committee which issued the non-final decision. The basis for final scholarship decisions includes Article 86(4) HESA and Article 163 CAP, which permits the amendment or repeal of a right-granting decision in cases and on grounds other than those stipulated in CAP. However, Article 163 CAP is a cross-referencing provision and thus cannot serve as the sole basis for repealing or amending a final decision.[34] As highlighted in judicial practice, the application of Article 163 CAP 'together with the relevant provisions of substantive law proves unnecessary and bears no significance for the decision recipient's rights or responsibilities. The validity and application of provisions separate from the code does not require signalling or citing a provision whose function remains informational or cognitive, and hence non-normative'.[35] Challenging a non-final decision in this mode would breach the principle of two instances. Instead, it is necessary to establish that the committee issued the decision in question unlawfully, namely by violating substantive law – for instance, the HESA or the scholarship granting regulations (Article 95 HESA);[36] or by violating procedural law – for instance, by acting in the absence of a certificate issued by a competent body,[37] or by failing to exhaustively gather and consider evidence. To challenge a scholarship decision under the above provisions, one must determine that the decision creates acquired rights for its parties – that is, grants a scholarship. Importantly, 'acquiring a right under a decision equals the legal benefit that the party concerned derives from settling the matter via an administrative decision. Thus, to

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[33] Cf. judgment II SA/Po 412/22 of the PAC in Poznań of 29 September 2022.

[34] See also K. Kotarba, 'Przesłanki uzasadniające odwołalność decyzji administracyjnych na podstawie art. 163 k.p.a.', *Przegląd Prawa Publicznego*, 2009, No. 1, p. 43.

[35] Judgment I GSK 2764/18 of the SAC of 29 July 2022.

[36] Both public and private universities have to draft regulations. They do so by exercising their institutional authority and their autonomy, in consultation with the student self-government. Article 95 HESA defines the subject matter scope of such regulations.

[37] See, e.g. judgment II SA/Wa 1127/20 of the PAC in Warsaw of 13 January 2021.

establish that the decision creates acquired rights, one must: (1) examine the decision content or determine that the decision content allows the parties to derive legal benefits, derive rights, or specify the responsibilities of other subjects of law which correlate with their own rights';[38] (2) determine that separate provisions apply and directly permit challenging the decision (Article 86(4) HESA); and (3) decide whether the existing factual and legal situation permits an extraordinary mode of challenging the decision because grounds exist for applying separate provisions.[39] Applying the mode in question undoubtedly deviates from the fundamental principles of the rule of law: the protection of validly acquired rights, which concerns the substantive sphere; and the principle of permanence of final decisions (Article 16(1) CAP), which concerns the formal and procedural sphere. Here, Article 163 CAP plays the role of 'a mere connection between the procedural institution of repealing a decision and the substantive institution of withdrawing a right, following which the right-granting decision loses its legal existence'.[40] As highlighted in judicial practice:

> 'The exercise of a right acquired under a decision causes its expiration, and the lack of an administrative law relationship arising under the constitutive decision results in lack of legal grounds for amending or repealing the decision which shaped that relationship, based on Article 163 of the Code of Administrative Procedure, which makes the proceedings in this mode groundless.'[41]

To verify a final scholarship decision, the body must choose the correct mode of proceedings. First and foremost, it needs to assess whether the special provision referred to in Article 163 CAP permits the repeal or amendment of the decision based on the premises specified in that provision. If the non-code provisions do not permit elimination of a defective scholarship decision in such a mode, one must establish whether grounds exist to declare the decision invalid (Article 156 CAP) or to resume the proceedings (Articles 145, 145a, 145aa, 145b CAP). The indicated provisions point to qualified defects, which justify either procedure.[42] If the invalidity premises and the resumption premises coincide, priority belongs to the former mode, as it produces the most profound effects.

## DECLARING A SCHOLARSHIP DECISION INVALID

If a scholarship decision contains substantively qualified defects,[43] one conducts invalidity proceedings (Article 156 et seq. CAP). The defects in question concern the legal relationship's subject or object, the legal basis, or other faults stemming from

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[38] Judgment I OSK 1574/10 of the SAC of 27 January 2011; see also A. Ziółkowska, 'Zmiana i uchylenie decyzji administracyjnej na podstawie art. 154 i 155 k.p.a.', in: Niczyporuk J. (ed.), *Kodyfikacja postępowania administracyjnego na 50-lecie K.P.A.*, Lublin, 2010, p. 961.

[39] Judgment II GSK 1237/13 of the SAC of 24 September 2014.

[40] Judgment II SA/Wa 1531/10 of the PAC in Warsaw of 4 March 2011.

[41] Judgment II SA/Op 57/08 of the PAC in Opole of 22 April 2008.

[42] Judgment IV SA/Gl 680/08 of the PAC in Gliwice of 18 November 2008.

[43] Cf., e.g. M. Kamiński, *Nieważność decyzji administracyjnej. Studium teoretyczne*, Kraków, 2006, p. 46.

special provisions. When determining decision invalidity, a public administration body authoritatively identifies a severe defect which has existed in the decision since its issue date, and issues a remand declarative decision with *ex tunc*[44] effect. The invalidity mode usually applies to cases where a scholarship decision was issued with a flagrant violation of law, concerned a scholarship case previously settled via another final decision, or was addressed to a student other than the party to the proceedings; in such cases, Article 156 CAP applies to the final decision. In the first substantive defect indicated above, one must determine whether the violation of law is evident, which means an indisputable, obvious,[45] and immediately visible contradiction between the decision's content and the provision of law forming the legal basis for that decision. In other words, one simply needs to compare the decision's content with the applied provision of law, thus obtaining evident inconsistency. A flagrant violation of law occurs when the application of a substantive legal provision forming the decision's legal basis produces a legal effect which could not have occurred under that provision.[46] For scholarship decisions, the legal basis consists of Article 86(1)(2) HESA and internal university regulations, including the student benefit regulations referred to in Article 95 HESA. However, 'a flagrant violation concerns only provisions which one can apply directly, that is, which do not require interpretation of the law',[47] because they are clear and understandable. Consequently, a decision stemming from a different interpretation of a legal norm cannot constitute a flagrant violation of law. Before the 2021 amendment mentioned above, the interpretation of Article 93(4) HESA often led students to cite a flagrant violation of law as a defect justifying a declaration of invalidity. However, an interpretation of the phrase 'flagrant violation of law' should take into account the violation's effects, scope, and type.[48] Thus, the discussed invalidity premise additionally requires the occurrence of decision effects that are impossible to accept from the perspective of the rule of law.[49]

To declare a scholarship decision invalid due to a previous settlement of the same case via a decision (*res iudicata*), the two cases must be identical in terms of their subject, object, and matter of fact and law – that is, the same legal situation and unchanged facts. The identity of a case therefore exists when the same parties are involved, the case concerns the same subject matter and the same legal status, while the factual circumstances remain unchanged.

Article 156(1)(4) CAP stipulates another premise for decision invalidity: addressing the decision to a person other than the party to the proceedings.

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[44] Even though the decision contains constitutive elements; see J. Borkowski, in: Adamiak B., Borkowski J., *KPA. Komentarz*, Warszawa, 2004, p. 746.

[45] Cf. J. Jendrośka, B. Adamiak, 'Zagadnienie rażącego naruszenia prawa w postępowaniu administracyjnym', *Państwo i Prawo*, 1986, No. 1, p. 69.

[46] Cf. judgment II OSK 1029/19 of the SAC of 6 April 2022.

[47] Judgment III OSK 421/22 of the SAC of 7 July 2023.

[48] See A. Sieniuć, 'Rażące naruszenie prawa w rozumieniu Kodeksu postępowania administracyjnego', in: Niczyporuk J. (ed.), *Kodyfikacja postępowania administracyjnego na 50-lecie K.P.A.*, Lublin, 2010, p. 709; A. Zieliński, 'O „rażącym" naruszeniu prawa w rozumieniu art. 156 k.p.a.', *Państwo i Prawo*, 1986, No. 2, p. 104.

[49] Cf. judgment II SA/Op 249/22 of the PAC in Opole of 30 December 2022.

However, in such a case, an incorrect indication of the party through an erroneous spelling of the name or surname is insufficient. Instead, the decision in question must shape the legal situation of subjects who should not have received that decision,[50] because they have no legal interest in, or obligation pertaining to, the case[51] – for example, a student who did not apply for a scholarship for disabled persons, or a student who does not meet the substantive premises stemming from HESA, and thus cannot exercise the rights granted. An incomplete indication of the student as a party to the scholarship proceedings does not render a decision invalid. However, the competent body may declare invalid a decision issued for a deceased person.[52] Such a decision bears an invalidity defect and should be removed from legal circulation.[53] Importantly, issuing a decision for a person other than the party to the proceedings differs from serving a decision on such other person. Serving documents is simply a procedural and technical activity through which the body conducting the proceedings fulfils its obligation. Therefore, a person served a decision does not become that decision's addressee.

The negative premises for determining decision invalidity stipulated in Article 156(2) CAP include two further factors: statute of limitations and irreversibility of legal effects. Regarding the statute of limitations, one cannot declare a decision invalid for the reasons listed in Article 156(1) CAP if ten years have passed since the decision's serving or publication. The statute of limitations for declaring invalidity is a substantive feature and therefore cannot be reinstated. The irreversibility of a decision's legal effects means that one cannot reverse, abolish, or retract those effects through actions for which the public administration body concerned has a statutory authorisation. In other words, the body cannot resolve the case via an individual administrative act or administrative proceedings.[54] The two premises serve to protect the rights acquired after issuing the invalid decision.

The entity competent to declare a decision invalid is a higher-level body – the university president. The proceedings for determining the invalidity of a scholarship decision begin at a party's request or *ex officio*. Apart from the party to the ordinary proceedings which ended in the challenged decision, the new parties include all other persons whose legal interests or obligations may be affected by the effects of the decision's invalidity. If the competent body declares the decision invalid, the case is remanded to the main proceedings, depending on whether the document in question is a first- or second-instance decision. However, if thirty years have passed since the serving or publication of the decision referred to in Article 156(2) CAP, the body does not initiate invalidity proceedings. In turn, when the public administration

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[50] Judgment I SA/Po 327/22 of the PAC in Poznań of 25 October 2022.

[51] Cf. A. Matan, in: Łaszczyca G., Martysz C., Matan A., *Kodeks postępowania administracyjnego. Komentarz*, Vol. 2, Warszawa, 2007, p. 332.

[52] See, e.g. judgment I OSK 621/20 of the SAC of 6 July 2023.

[53] See judgment II SA/Gl 1604/21 of the PAC in Gliwice of 24 March 2022.

[54] See judgment IV SA/Wa 1990/06 of the PAC in Warsaw of 2 February 2007. L. Bosek offers a different interpretation of irreversible legal effects. In his view, the legal impossibility of restoring a legal situation should not depend solely on the competence of the authority. See L. Bosek, 'Glosa do uchwały SN z dnia 8 listopada 2002 r., III CZP 73/02', *Orzecznictwo Sądów Polskich*, 2003, No. 9.

body cannot declare the decision invalid based on the circumstances referred to in Article 156(2) CAP, the body merely determines that the challenged decision was issued in violation of law and indicates the circumstances which prevented the declaration of invalidity. The resulting document should mention the existence of a positive premise for the challenged decision's invalidity (Article 156(1) CAP), declare that a negative premise has arisen (Article 156(2) CAP), and state that the challenged decision was issued in violation of law (Article 158(2) in connection with Article 156(2) CAP).

A decision which declares invalidity and one which states a violation of law produce different legal effects. The former eliminates the defective decision from legal circulation and abolishes its legal effects, thus restoring the previous legal situation. The latter retains the scholarship decision in legal circulation[55] together with its legal effects despite the existing defect, and restoration of the previous legal situation remains impossible.

## RESUMING SCHOLARSHIP PROCEEDINGS

A formal defectiveness in the proceedings to grant a scholarship for a person with disability requires examining whether premises exist to justify a resumption of the proceedings (Article 145 et seq. CAP). The most common reasons for this extraordinary mode include grounding a final scholarship decision on evidence which served as the basis for determining material factual circumstances and was later proven false (Article 145(1)(1) CAP), and the emergence of new material factual circumstances or evidence which existed on the decision issue date but remained unknown to the issuing body (Article 145(1)(5) CAP).

The falsity premise encompasses any type of evidence that may arise during the investigation proceedings for granting a scholarship to a person with disability. One cannot limit this premise to documentary evidence such as a statement, even though this remains the most frequent type used during proceedings in chambers. In particular, falsity may occur in witness testimonies,[56] party statements, party testimonies given during an interrogation, expert opinions, or document translations. The last example is especially relevant in the cases of persons who studied or obtained university degrees abroad, as parties must submit evidence either drafted in Polish or translated into Polish. Document falsity may be formal or intellectual. Formal falsity entails forgery, where one creates a fake document that appears to have been drafted by the actual issuer; and alteration, where one changes the document's original content.[57] Intellectual falsity equals attestation of an untruth – for example, a statement referring to factual circumstances or a legal situation which never existed – even though the document's form remains authentic and raises no reservations. Determining the falsity of evidence falls outside the competence of

[55] Cf., e.g. judgment IV CSK 575/17 of the SC of 14 February 2019.

[56] See, e.g. Z. Kukuła, 'Wpływ przestępstwa na akty administracyjne', *Samorząd Terytorialny*, 2013, No. 1–2, p. 141.

[57] Judgment III OSK 4317/21 of the SAC of 5 November 2021.

the body conducting the scholarship proceedings. Resuming proceedings due to evidence falsity becomes possible only after a court or another competent body[58] has issued a ruling stating the evidence's falsity and has sentenced a public officer for attesting an untruth in a document, or sentenced any other person for altering or forging a document for use as an authentic one. Article 145(2–3) CAP permits an exception: one can resume proceedings even before a determination of falsity provided that the falsity is obvious and that resumption is necessary to avoid danger to human life or health, or serious damage to the public interest; importantly, both premises must be met. Obviousness applies to the external features of falsity and occurs when the falsity is indisputable and certain. The damage that may arise must be serious, as evaluated by the body; another situation includes the impossibility of initiating proceedings before a court or another body due to the passage of time or for other reasons specified in law. A mere belief or presumption of falsity is insufficient.[59] Thus, resuming scholarship proceedings under Article 145(1)(1) CAP requires the fulfilment of three conditions: the party used falsified evidence during the evidentiary hearing, a final ruling by a court or another competent body has confirmed the falsity, and the false evidence served as the basis for determining material factual circumstances.[60]

A student must return the benefit for a person with disability if it was granted on the basis of untrue data or the student's false statement. Moreover, the submission of untrue data or false statements to the scholarship body may form grounds for initiating disciplinary proceedings by the student disciplinary committee. This does not preclude responsibility under other provisions, namely the Criminal Code.

The second most frequent premise for resuming the scholarship proceedings is Article 145(1)(5) CAP. This provision may form the basis for examining a scholarship case and settling it via a final decision, provided that the evidence or factual circumstances presented by the party – independently or jointly[61] – meet three conditions: (1) they are new and remained unknown to the body examining the case in the ordinary proceedings; (2) they are material to the case owing to their law-shaping potential from the perspective of the substantive law provision applicable to the case – that is, they affect the manner of applying a norm of substantive administrative law; in other words, they influence the shape of the party's scholarship rights in the final decision and are subject to the body's evaluation in this respect; (3) they existed on the day of issuing the decision to which the resumption demand relates.[62] Importantly, new circumstances exclude information that the scholarship body could have accessed during the ordinary proceedings – for example, data available in POL-on.

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[58] See, e.g. judgment I SA/Po 280/22 of the PAC in Poznań of 14 December 2022, and G. Krawiec, 'Stwierdzenie sfałszowania dowodu (popełnienia przestępstwa) jako warunek wznowienia postępowania administracyjnego na podstawie art. 145 § 1 pkt. 1 i 2 k.p.a.', *Przegląd Prawa Publicznego*, 2008, No. 7–8, pp. 89–96.

[59] See judgment VII SA/Wa 1721/19 of the PAC in Warsaw of 29 January 2020.

[60] Judgment II OSK 3096/19 of the SAC of 5 October 2022.

[61] See more in A. Ziółkowska, 'Kontrowersje w orzecznictwie sądowym i doktrynie na tle art. 145 § 1 pkt 5 k.p.a.', *Samorząd Terytorialny*, 2008, No. 5; A. Ziółkowska, *Nowe okoliczności i nowe dowody jako podstawa wznowienia ogólnego postępowania administracyjnego*, Sosnowiec, 2008.

[62] Cf., e.g. judgment II SA/Bk 583/21 of the PAC in Białystok of 18 January 2022.

A changed evaluation, or omission, of evidence already existing in the case file cannot justify resuming proceedings. The *novum* as the basis for resumption must refer to personal or physical evidence. The feature of novelty does not apply to evidence – or circumstances presenting the factual and legal situation – that the party already knew and could have used in the scholarship proceedings. As highlighted in judicial practice, 'one cannot exclude a factual and legal situation where a circumstance or evidence obviously – that is, without a detailed examination – meets the premises stipulated in Article 145(1)(5) CAP and entails violation of law.'[63]

The indicated grounds for resuming the scholarship proceedings apply to an untrue or incomplete picture of reality as determined by the body in a situation where the proceedings leading to the decision bore a qualified procedural defect. Faults in the evidentiary hearing – one of the most important phases of the proceedings[64] – also affect the decision, which thus bears a qualified defect and would probably have read differently if the body had relied on non-falsified evidence or a full range of evidence. Otherwise, the body cannot fully implement the principle of objective truth (Article 7 CAP), which demands careful clarification of the factual situation and exhaustive examination of the entire evidence.

The negative premises for resuming proceedings include the statute of limitations, which means that one cannot repeal a decision for the reasons stipulated in Article 145(1)(1) and 145(1)(2) if ten years have passed since the decision's service or publication, or for the reasons stipulated in Article 145(1)(3–8) and Articles 145a–145b if five years have passed since the decision's service or publication; the above deadlines are substantive and therefore impossible to reinstate. Another negative premise involves a situation where the resumed proceedings would necessarily end with a decision whose essence corresponds to that of the existing decision (Article 146 CAP). In other words, the procedural defect did not affect the correct application of substantive law provisions to the case, and its removal in the resumed proceedings would lead to a conclusion that the decision's content complies with the law and should remain unchanged. Therefore, the indicated premises limit the possibility of deciding on the merits of the case in the resumed proceedings.

Resumption of proceedings takes place at the party's request or *ex officio*. However, resumption for the reasons stipulated in Article 145(1)(4) and Articles 145a–145b takes place solely at the party's request. The party must submit a resumption application to the body that issued the decision in the first instance. The submission deadline is one month from the day the party became aware of the circumstance providing the basis for resumption. The competent body to conduct the resumption proceedings is the body that issued the decision in the last instance.

After resuming the administrative proceedings which ended in a final administrative decision, the body should examine the case within the boundaries stipulated by the established grounds for resumption.[65] The resulting decision either refuses to repeal the existing decision if the body determines a lack of grounds for repeal under

[63] Judgment II OSK 276/21 of the SAC of 26 October 2023.

[64] See more in: A. Ziółkowska, 'Formy wadliwości postępowania wyjaśniającego w ogólnym postępowaniu administracyjnym', *Samorząd Terytorialny*, 2009, No. 9.

[65] Judgment II OSK 586/22 of the SAC of 21 June 2023.

Article 145(1), Article 145a, Article 145aa, or Article 145b; or repeals the existing decision if the body determines the existence of grounds for repeal under the indicated provisions. In the latter case, the body issues a new decision which settles the merits of the case. If negative premises prevent the decision repeal following the resumed proceedings, the body only states that the challenged decision was issued in violation of the law, and indicates the circumstances which prevent the repeal. Such a decision allows the party to file a claim for damages,[66] but the challenged final decision remains in legal circulation and continues to shape the legal relationship.[67] To issue such a decision, the body must first conduct proceedings examining the resumption grounds and settle the merits of the case. If the body finds that the resumed proceedings are objectless, it shall discontinue those proceedings by issuing a decision.

## CONCLUSION

Scholarship for persons with disabilities ranges from PLN 500[68] to 3,000[69] per month depending on the disability degree. The benefit amount can also be fixed regardless of the disability degree.[70] Such figures may indeed provide real support to students with disabilities, although scholarship obviously cannot in any way compensate for disability. Financial aid serves as a manifestation of social solidarity in education and science. Therefore, the possibility to repeal or amend a decision which granted the scholarship right should be clearly defined in law and remain extraordinary.

Final administrative decisions, including those which grant scholarships to students with disabilities, are presumed valid and legal. At the same time, the principle of permanence of final decisions, which stems from Article 16(1), first sentence of the CAP, determines their boundaries because permanence fulfils its role only for defect-free decisions.[71] The principle in question contributes to legal security and certainty, builds trust in the state and the law, and protects acquired rights – in accordance with the need to ensure stability and certainty of administrative legal relationships over time.[72] However, this principle is not absolute. Article 16(1), second sentence of the CAP provides exceptions which stipulate that one may repeal or amend a final decision, declare it invalid, or resume the proceedings only in the cases defined in the Code or specific acts; as such, the exceptions require a strict, narrowing interpretation.[73]

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[66] See more, e.g. in: A. Ziółkowska, *Nowe okoliczności*…, op. cit., p.172.

[67] Judgment I GSK 14/22 of the SAC of 25 August 2022.

[68] See https://stypendia.uj.edu.pl/aktualnosci/-/journal_content/56_INSTANCE_y6768Q8EMW3g/141626430/154602413 [accessed on 28 January 2024].

[69] See https://wsb.edu.pl/student/stypendia [accessed on 28 January 2024].

[70] See, e.g. https://www.ue.katowice.pl/jednostki/centrum-dostepnosci/swiadczenia-socjalne/stypendium-dla-osob-z-niepelnosprawnoscia.html [accessed on 28 January 2024].

[71] B. Jaworska-Dembska, 'O podstawach do wznowienia postępowania administracyjnego', *Zeszyty Naukowe Uniwersytetu Łódzkiego*, 1974, Issue 106, p. 83.

[72] Judgment II SA/Łd 886/23 of the PAC in Łódź of 10 January 2024.

[73] See, e.g. B. Adamiak, 'Koncepcja nadzwyczajnych trybów postępowania administracyjnego', *Acta Universitatis Wratislaviensis. Prawo CXII*, 1985, Vol. 112, No. 648, p. 93; G. Krawiec, *Wznowienie ogólnego postępowania administracyjnego*, Sosnowiec, 2007, pp. 70–71.

Verification of a scholarship decision via extraordinary proceedings means controlling the correctness of the decision issued in the first and second instances of ordinary proceedings. However, the extraordinary procedure for verifying a scholarship decision granting a benefit to a person with a disability is not an arbitrary measure: neither the university president nor the student can freely choose this procedure. Instead, to initiate any extraordinary mode, the law requires the positive premises indicated *expressis verbis* in CAP. In turn, repealing the decision following the proceedings equals the simultaneous absence of negative premises.

Multiple defects of various types may complicate the selection of the appropriate extraordinary mode to verify a scholarship decision. According to judicial practice, if a collision occurs:

> 'Between the Code modes for eliminating final decisions from legal circulation – that is, resumption of proceedings, declaring a decision invalid, amending or repealing a decision, or expiration of a decision – and the modes defined in the special provisions to which Article 163 CAP refers, the Code's provisions shall prevail. However, the above principle does not apply to a decision issued based on a special provision to which Article 163 CAP refers if that decision bears no legal defect. In the absence of a legal defect, the special provision to which Article 163 CAP refers shall prevail over the Code modes in accordance with the *lex specialis derogat legi generali* principle.'[74]

Moreover, in practice, one cannot *a priori* exclude a situation where one scholarship decision bears multiple defects which provide the basis for both resuming the proceedings and declaring the decision invalid. Although the Code lacks a clear regulation in this scope, one should then prioritise the mode which produces the most profound effects – that is, initiate the invalidity proceedings, which allows for restoration of the situation that preceded the issued decision.

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[74] Judgment VI SA/Wa 2614/10 of the PAC in Warsaw of 4 February 2011; W. Chróścielewski, A. Korzeniowska, 'Glosa do wyroku NSA z dnia 31 lipca 2002 r., II SA/Gd 441/00', *Orzecznictwo Sądów Polskich*, 2004, No. 2, item 1.

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