

AUTONOMY OF INSTITUTIONS OF HIGHER EDUCATION VERSUS INTERVENTION OF SERVICES RESPONSIBLE FOR MAINTAINING PUBLIC ORDER AND SECURITY

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1. INTRODUCTION

University autonomy is discussed mainly from the point of view of constitutional law in order to present its essence, and from the perspective of the law on higher education, which is a branch of administrative law, in order to explain various aspects of its functioning in relation to external entities. So far, scientific cognition has missed the issue of the relationship between this autonomy and the scope of intervention of security and public order services, which is undoubtedly so important that it deserves an attempt to make a relatively complex presentation of the binding regulations and proposals *de lege ferenda*. The scope of such intervention, which is the research topic of the present text, is not transparent for interpretation, although it seems to be legally defined. As a result, it should be examined whether it is right to state that university autonomy limits considerably the scope of intervention of security and public order services.

According to K. Zaradkiewicz, the broadly interpreted concept of “autonomy” applies to organised groups of people that have an internal structure and their own aims, and assumes relative independence in the field of conducted activity and implemented competences from other entities, including in particular all public authority bodies. Thus, the essence of autonomy consists in the right to individually solve internal

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problems of the given group.¹ Independence is an important element, although it is not complete but relative, i.e. existing within the entitlements that the state provides for the concerned group. The instrument within which this provision takes place is the law that precisely determines the subjective and objective scope of autonomy.

University autonomy is a university's institutional right, a constitutional value. Article 70(5) of the Constitution of the Republic of Poland² stipulates that "the autonomy of the institutions of higher education shall be guaranteed in accordance with principles specified by statute". K. Zaradkiewicz believes that the organisational and functional model of the institutions of higher education used in the Polish legal system provides universities with legal personality, the possibility of enacting internal regulations, the right to appoint the university authorities and their bodies and the lack of the state's interference in the internal university matters, and the freedom of education and science. It directly refers to those aspects of autonomy within which the doctrine distinguishes, first of all, institutional and personal aspects but also educational, scientific and financial ones.³ However, the issue discussed in the present paper deals with the institutional aspect, which concerns the scope of a university's independence from external entities that are special in nature because they are responsible for security and public order. And this aspect has been typical of Polish universities since the beginning of their operation.

Founding the University of Kraków in 1364, King Casimir III the Great made all "scholars, masters, bedels and stationers" exempt from the jurisdiction of courts and subjected them to the jurisdiction of a rector. Thus, a rector was a judge in case of minor offences from pulling hair (*zawłoski*) to assault and battery up to spilled blood. Crimes like theft, lechery, adultery and murder committed by clerics were tried in a bishop's court and those committed by laymen in a crown court. A student could be arrested only with the rector's prior consent and by the authorised crown service.⁴ At present, the autonomy does not consist in the exemption from courts' jurisdiction or the police intervention but in the creation of space protected constitutionally and ensuring independence of scientific thought and research work that is an attribute of university autonomy.

2. SECURITY AND PUBLIC ORDER AT A UNIVERSITY

In accordance with the wording of Article 227(1) Act of 27 July 2005: Law on higher education (hereinafter referred to as LHE),⁵ "a rector shall take care of maintaining order and security in a university area".⁶ This statutory rector's duty results from the broader regulation of Article 66(2.5) LHE which stipulates that a rector "shall

¹ K. Zaradkiewicz, *Wolności i prawa ekonomiczne, socjalne i kulturalne*, [in:] M. Safjan, L. Bosek (ed.), *Konstytucja RP. Komentarz do art. 1–86*, Warsaw 2016, pp. 1598–1599.

² Journal of Laws [Dz.U.] of 1997, No. 78, item 483, as amended.

³ K. Zaradkiewicz, *Wolności i prawa...*, pp. 1599–1600.

⁴ F. Piekosiński, *Sądownictwo w Polsce wieków średnich*, Kraków 1898, p. 33.

⁵ Journal of Laws [Dz.U.] of 2005, No. 164, item 1365, as amended.

⁶ *Ibid.*

take care of compliance with law and the provision of security in a university area".⁷ The obligations are connected with the status of a rector as a body managing a university's operations.⁸

However, the legislator does not specify the meaning of taking care of order and security and taking care of compliance with law. According to the Polish language dictionary, "to take care" means "to look after something, pay attention to something".⁹ On the other hand, "security" should be understood as a state with no threat to whatever human right, which enables an individual to function normally in the community, especially to maintain life, health, property as well as the freedom to use all rights to which an individual is entitled.¹⁰ Apart from the obligation to ensure security, a rector has to maintain order. "Public order" *sensu largo* means actually existing social relations regulated by a set of legal norms and other socially accepted rules guaranteeing undisturbed and peaceful functioning of individuals in the community.¹¹ W. Czapiński interprets public order as an internal state consisting in the compliance with certain principles, forms and obligations, which non-compliance with in the conditions of people's collective coexistence would expose them to danger and difficulties.¹² According to T. Nowicki, maintaining order means preventing every man's conduct that makes it difficult or impossible for people to work or normally be together in a certain area and is unlawful in nature.¹³

However, looking just through the prism of the presented issue, E. Ura believes that the concept of security is analysed in the doctrine as a protected value (in this case, it is university students, doctoral students and employees' security) as well as a real state that is subject to protection, i.e. the state at a university that enables the university to function normally and achieve its aims, as well as the users to exercise their rights guaranteed by law without being exposed to damage from any source.¹⁴ Thus, the objective scope is very important, i.e. indicating the circle of entities that this security concerns. Undoubtedly, these are first of all university students, doctoral students and employees. These are also other people who are there legally, i.e. for instance candidates in the period of enrolment, invited guests, or reviewers of doctoral dissertations from other universities.

As far as a university area is concerned, in accordance with Article 227(2) LHE, a rector in agreement with a competent local self-government must determine it.¹⁵ This agreement is usually concluded with a city mayor or president, or in case of the

⁷ *Ibid.*

⁸ M. Czuryk, *Utrzymanie porządku i bezpieczeństwa na terenie uczelni*, [in:] M. Czuryk, M. Karpiuk, J. Kostrubiec (ed.), *Prawo o szkolnictwie wyższym po nowelizacji, komentarz praktyczny*, Warsaw 2015, p. 313.

⁹ *Popularny słownik języka polskiego PWN*, Warsaw 2001, p. 125.

¹⁰ A. Misiuk, *Administracja porządku i bezpieczeństwa publicznego, zagadnienia prawnoustrojowe*, Warsaw 2008, pp. 16–18.

¹¹ *Ibid.*

¹² J. Gierszewski, *Bezpieczeństwo wewnętrzne. Zarys systemu*, Warsaw 2013, p. 20.

¹³ Z.T. Nowicki, *Ochrona osób i mienia*, Toruń 1999, p. 160.

¹⁴ E. Ura, *Utrzymanie porządku i bezpieczeństwa na terenie uczelni*, [in:] W. Sanetra, M. Wierzbowski (ed.), *Prawo o szkolnictwie wyższym. Komentarz*, Warsaw 2013, pp. 515–516.

¹⁵ *Journal of Laws [Dz.U.] of 2005, No. 164, item 1365, as amended.*

area that is the property of the State Treasury, with a regional governor (*starosta*).¹⁶ It is worth drawing attention to the fact that a university area is the one that a rector must protect and the one that has been excluded from the group of places where other bodies are statutorily obliged to protect security and public order.¹⁷ In fact, the scope of autonomy depends on the actually assigned area that should be reflected in the cartographic documents. The area should be determined unambiguously in order to avoid free interpretation. It would be absolutely inappropriate to assume what a university area is, e.g. based on what the fence around the main building suggests because it may turn out that the green area in front of the fence also belongs to the legally determined university area.

Ensuring security and order in a university area as well as compliance with law must be implemented with the use of some instruments. A chancellor is often a body assisting a rector in the fulfilment of this task. This is a solution adopted at Nicolaus Copernicus University in Toruń, where pursuant to §23(5) Regulation No. 173 of the Rector of 7 December 2009 on the University Organisational Rules, the Chancellor for Administrative Matters is obliged to ensure maintenance of security in the university area with the use of internal and external security services.¹⁸ Delegation of this task to a chancellor does not make a rector exempt from the responsibility for ensuring security and order in the university area but is an attempt to optimise the efficiency of undertaken steps with the use of specialist supervision thereof.

The issue of order and security in a university area is also regulated in the internal university regulations, including various internal provisions. The Rules and Regulations of the University of Warmia and Mazury in Olsztyn introduced by Regulation No. 100/2016 of the University Rector can be an example. Paragraph 2 of the document stipulates: "In its area, the University shall have autonomy in the field of enacting internal regulations". However, para. 11 deserves special attention. It stipulates: "Regardless of bans laid down in para. 10, the provisions of the commonly binding administrative and criminal law are applicable in the University area". As it is stated in the document, the university area is protected by a security service, the employees of which are entitled to check whether people who break order in the area are entitled to be at the university facilities, request that they comply with regulations or leave the area, or they call the Municipal Police or the Police in accordance with the binding procedure.¹⁹

The above-mentioned services may operate as internal university security services or an external agency offering specialist security services. Thus, an internal university security service, which a rector is entitled to establish,²⁰ is appointed pursuant to the Act of 22 August 1997 on the protection of persons and property.²¹

¹⁶ H. Izdebski, J.M. Zieliński, *Prawo o szkolnictwie wyższym. Komentarz*, Warsaw 2015, p. 613.

¹⁷ P. Nowik, *Utrzymanie porządku i bezpieczeństwa na terenie uczelni*, [in:] M. Pyter (ed.), *Prawo o szkolnictwie wyższym*, Warsaw 2012, p. 1064.

¹⁸ http://www.umk.pl/uczelnia/dokumenty/biuletyn/prawo/?akcja=dokument&typ=Z_Rektora&nr=173&bp=0&rok=2009 [accessed on 20/12/2017].

¹⁹ <http://bip.uwm.edu.pl/files/Regulaminporzadkowy.pdf> [accessed on 18/12/2017].

²⁰ P. Nowik, *Utrzymanie porządku i bezpieczeństwa...*, p. 1065.

²¹ Journal of Laws [Dz.U.] of 1997, No. 114, item 740, as amended.

Chapter 3 of the Act deals with internal security services, which the legislator defines in Article 2(8) as “armed and uniformed teams of employees of businesses or organisational units appointed for their protection”. An internal security service constitutes an organisational unit of a university administration responsible for ensuring security in its area, especially protecting people at the university and the university property, as well as intervening if necessary. As it has been stated above, optionally, a state university (in compliance with the procurement regulations) and a private university (based on a relevant contract) may buy the service from licenced specialist entities, namely security agencies.²²

Security provided by internal services and by external security agencies undoubtedly is a solution supporting the implementation of tasks in the field of order and security. Internal security services, however, should be recognised as a better tool because it is closer to the principle of university autonomy. This is because of the fact that in accordance with Article 9 Act on the protection of persons and property, internal security services are directly subordinate to the rector,²³ while in case of services provided by external security agencies, “subordination of the officers of such services to the rector is weaker”.²⁴

A. Jakubowski does not approve of the solutions presented above. He criticizes both the idea of internal security services because their establishment depends on an administrative decision of the Chief Commander of the Voivodeship Police Forces and the services provided by external security agencies as they depend on a licence issued by the state administration. Moreover, this author says that the university guards are dependent on the state authorities since they are obliged to have a security guard licence, which is issued, suspended and withdrawn by the Chief Commander of the Voivodeship Police Forces.²⁵ It should be mentioned that on 1 January 2014 an entry onto the list of qualified security guards substituted for the licence. It seems that this author’s opinion excessively extends the concept of university autonomy because the provision of security by internal and external services is to serve as a tool of assistance in ensuring security and public order in a university area. The assistance, however, should be provided based on commonly binding legal regulations guaranteeing efficiency of methods and tools used. Departure from such a regulation would not only violate the principle of the rule of law but also might develop “security entities” deprived of professional supervision and control.

Undoubtedly, *de lege ferenda* one can propose a provision regulating the formation of university guards but it is hard to approve of A. Jakubowski’s opinion that the lack of such a regulation violates Article 70(5) of the Constitution of the Republic of Poland, which guarantees autonomy to higher education institutions.²⁶ Criticising this stand, it is necessary to mention that the already cited Act on the protection

²² P. Nowik, *Utrzymanie porządku i bezpieczeństwa...*, p. 1065.

²³ Journal of Laws [Dz.U.] of 1997, No. 114, item 740, as amended.

²⁴ A. Jakubowski, *Utrzymanie porządku i bezpieczeństwa na terenie uczelni wyższej*, [in:] J. Pakuła (ed.), *Współczesne problemy nauki i szkolnictwa wyższego. Continuum*, Toruń 2015, p. 169.

²⁵ *Ibid.*, pp. 169–170.

²⁶ *Ibid.*, p. 168.

of persons and property and the Regulation of the Minister of the Interior and Administration on internal security services ensure complex regulation of internal security services. If the idea of developing separate regulations on university guards proposed by A. Jakubowski supporting it with, *inter alia*, a need to adjust their education level “to the relations with people acquiring higher education” were recognised as justified, it would require a concept totally changing the present legal system, which, in my opinion, is not necessary for security guards’ efficient operation.

What is important, both solutions are used in practice at universities. The institutions of higher education as, e.g. the University of Gdańsk,²⁷ Cardinal Stefan Wyszyński University in Warsaw²⁸ or the University of Warmia and Mazury in Olsztyn²⁹ established their own university guards. On the other hand, an external security agency provides the service, for instance, for Poznań University of Economics and Business.³⁰

3. STATE SERVICES’ INTERVENTION IN A UNIVERSITY AREA

What is sometimes reflected in practice, it happens that the instruments a rector has cannot fully ensure security and public order, especially the obligation to comply with the law. Responding to such a possibility, the legislator provides the adequate state’s assistance in the form of state services’ intervention pursuant to Article 227(3) LHE. The provision stipulates: “(...) the state services responsible for ensuring public order and internal security may enter a university area only on a rector’s request. However, the services may enter the area on their own initiative in the event of direct threat to human life or a natural disaster, notifying a rector about the fact without delay”.³¹ Firstly, the solution ensures that a rector may rely on the support in the implementation of the obligation to provide security and order. Secondly, the university autonomy in this scope is not unconditional in nature because it cannot be. It is due to the proportion of rights: on the one hand, the university autonomy, on the other hand, human life and a natural disaster, in which the latter obviously have greater value.

The term “state services” used in the provision does not have a legal definition, which raises interpretational difficulties. As a result, there is no definite catalogue of state services responsible for ensuring public order and internal security, which may enter a university area in extraordinary situations, in accordance with the cited provision. E. Ura believes that the catalogue may include the Police, the Military Police, the Border Guard as well as the Internal Security Agency or the Central

²⁷ http://www.mpd.ug.edu.pl/pl/dz_org/prawo/zda/2011/zal_K_2_11.pdf [accessed on 20/12/2017].

²⁸ <https://monitor.uksw.edu.pl/docs/3465> [accessed on 20/12/2017].

²⁹ http://bip.uwm.edu.pl/files/Reg_str_uniw.pdf [accessed on 20/12/2017].

³⁰ http://ue.poznan.pl/pl/wspolpraca,c10/zamowienia-publiczne,c115/ogloszenia,c127/zp-025_16,a48714.html [accessed on 20/12/2017].

³¹ Journal of Laws [Dz.U.] of 2005, No. 164, item 1365, as amended.

Anticorruption Bureau.³² Apart from the above-listed institutions, A. Jakubowski also indicates the Armed Forces, the Fire Brigade and the Prison Service. However, the Government Protection Bureau is excluded from the catalogue³³ as the state services' body responsible for ensuring security and public order in relation with the statutory obligation to protect other persons in the interest of the state or facilities and equipment of special importance.³⁴

H. Izdebski and J. Zieliński indicate that as the Act applies to the state services, the catalogue cannot include municipal police forces,³⁵ which seems not to be right if the provision *ratio legis* is taken into account. However, in accordance with its literal content, such interpretation is justified. Municipal police forces play an auxiliary role in the community fulfilling tasks in the field of public order protection, in accordance with Article 1 of the Act of 29 August 1997 on municipal police forces,³⁶ however, they do not have the status of the state institutions because these are self-government entities that commune councils can appoint. As a result, *de lege ferenda* it is necessary to propose an amendment of Article 227(3) LHE consisting in deleting the term "state services". This would let municipal police intervene in a university area, which would have a positive impact on ensuring security and public order.

The above-mentioned catalogue should include the Military Police because, in accordance with Article 4(1.2) of the Act of 24 August 2001 on the Military Police and military order bodies,³⁷ they are responsible, inter alia, for the protection of public order in public places. It should also include special services, like for instance the Internal Security Agency the tasks of which are laid down in Article 1 of the Act of 24 May 2002 on the Internal Security Agency and the Intelligence Agency,³⁸ which stipulates the service has competence in the field of protection of internal security of the state and its constitutional order. The Military Counterintelligence Service should also be taken into account. In accordance with Article 1 of the Act of 9 June 2006 on the Military Counterintelligence Service and the Military Intelligence Service,³⁹ the service has competence in matters related to the protection against internal threats to defence and security of the state.

However, the Police are the main institution responsible for ensuring public order and security. Article 1 of the Act of 6 April 1990 on the Police⁴⁰ stipulates: "the Police shall be organised as a uniformed and armed institution serving the community and destined to protect security of people and maintain security and public order". The Police, within the scope of their tasks concerning surveillance, prevention and detection of crimes and misdemeanours, perform operational-surveillance, investigative, administrative and order-related activities.

³² E. Ura, *Utrzymanie porządku i bezpieczeństwa...*, p. 515.

³³ A. Jakubowski, *Utrzymanie porządku i bezpieczeństwa na terenie uczelni...*, p. 176.

³⁴ Act of 16 March 2001 on the Government Protection Bureau, Journal of Laws [Dz.U.] of 2001, No. 27, item 298, as amended.

³⁵ H. Izdebski, J.M. Zieliński, *Prawo o szkolnictwie...*, p. 613.

³⁶ Journal of Laws [Dz.U.] of 1997, No. 123, item 779, as amended.

³⁷ Journal of Laws [Dz.U.] of 2001, No. 123, item 1353, as amended.

³⁸ Journal of Laws [Dz.U.] of 2002, No. 74, item 676, as amended.

³⁹ Journal of Laws [Dz.U.] of 2006, No. 104, item 709, as amended.

⁴⁰ W. Kotowski, *Ustawa o Policji. Komentarz*, Warsaw 2012, p. 142.

The main tasks of the Police laid down in Article 1(2) Act on the Police⁴¹ include “the protection of people’s life and health, and property against unlawful attempts to violate those rights, the protection of security and public order, initiation and organisation of activities aimed at prevention of crimes, misdemeanours and criminogenic phenomena, and cooperation with the state, self-government and social bodies in this field, and also detection of crimes and misdemeanours and pursuit of their perpetrators”. It should be emphasised that Article 227 LHE lays down only one of the Police’s duties, which is the maintenance of public order and security. Still, the legislator does not restrain the Police from performing other tasks in a university area, e.g. detection of crimes and misdemeanours and pursuit of their perpetrators.

In the context of the LHE provisions, the Police cannot be assigned an obligation to maintain public order and internal security in a university area. In practice, as P. Nowik notes, the Police have no real obligation to patrol a university area.⁴² Such obligation, however, may be imposed based on an agreement between a rector and the Police, which will be discussed below.

P. Nowik emphasises that the Police’s omission to take action in a university area, regardless of the knowledge of a crime committed and a perpetrator of the act, would result not only in disciplinary but also criminal liability of a police officer who would fail to take action aimed at detection of a crime, protection of evidence and apprehension of perpetrators.⁴³ Based on the regulation laid down in Article 9 §1 of the Criminal Procedure Code of 6 June 1997 (hereinafter CPC), a prosecution body is obliged to take action *ex officio*, on one’s own initiative, in cases prosecuted in this mode, if there is justified suspicion that a crime was committed. This obligation applies to the initiation of proceedings as well as to the performance of specified procedural activities, the need of which results from an actual situation in a given case.⁴⁴ Thus, in fact, the regulation is in conflict with the provision of Article 227(3) LHE, which admits only two situations when the state services responsible for the maintenance of public order and security may enter a university area, namely a direct threat to human life and a natural disaster.

As it has been mentioned above, in specified situations, a prosecution body is obliged to start proceedings and perform certain procedural activities. This is, e.g. the right to detain a suspect, i.e. a person who is suspected of committing a crime but who has not been charged with it yet. Suspicion should be understood as a belief based on real evidence that indicates that a given person might commit a given crime.⁴⁵ To take such action, direct contact with the detained person is necessary. Thus, there is no doubt that the LHE regulations make it impossible to perform some procedural activities in a university area because, pursuant to

⁴¹ Journal of Laws [Dz.U.] of 1990, No. 30, item 179, as amended.

⁴² P. Nowik, *Dział V, Utrzymanie porządku i bezpieczeństwa...*, p. 1064.

⁴³ *Ibid.*

⁴⁴ J. Grajewski, S. Steinborn, *Dział I, Przepisy wstępne*, [in:] L.K. Paprzycki (ed.), *Kodeks postępowania karnego. Komentarz*, Warsaw 2013, pp.75–76.

⁴⁵ A.M. Tęcza-Paciorek, *Pojęcie osoby podejrzanej i jej uprawnienia*, Prokuratura i Prawo No. 11, 2011, p. 60.

its provisions, a prosecution body cannot enter a university area in cases other than those defined in statute. In practice, it is not possible to apprehend a person suspected of committing a crime other than against life, e.g. theft.

The limitation under Article 227(3) LHE, in fact, precludes the Police from undertaking any activities in a university area without a rector's prior consent, unless these constitute a response to a threat to life or a natural disaster. Thus, one can imagine a situation in which a perpetrator commits a prohibited act penalised by criminal law in accordance with Article 278 of the Criminal Code (hereinafter CC), i.e. theft of property in a university area. A direct analysis of Article 227 LHE suggests that in such a case the intervention of the Police is not possible. The situation is especially peculiar if a perpetrator of a prohibited act formally stays in a university area but in practice he/she is in an open space, often a public place like a car park, a path or passage between buildings, a green area, a park, etc. It will be the same in case a student hostel resident possesses paedophile material, which carries a penalty under Article 202 §3 CC. The search of a student's room in accordance with Article 219 CPC requires, apart from formal conditions, a rector's consent.

This does not mean, however, what A. Jakubowski rightly highlights, that perpetrators of prohibited acts in a university area are exempt from consequences, inter alia, criminal liability. According to this author, prosecution of such persons and their apprehension becomes a rector's task but he may refrain from apprehension and prosecution of a person facing charges of a crime or committing a punishable act.⁴⁶ Therefore, until such a person remains in a university area, he/she cannot be arrested by the state services, provided there is no condition that is laid down in statute (threat to life and a natural disaster).

It should be emphasised that this "autonomous protection" covers all persons staying in a university area, regardless of whether they are affiliated with the university in any way, e.g. employees and students, or not. Thus, e.g. if a serious criminal, who is neither a student nor an employee, hid in a university area, his pursuit resulting in the Police entry into a university area would require a rector's consent.

Human life constitutes the highest value, which is reflected in its legal protection. That is why, threat to it creates special circumstances that allow undertaking steps and measures, which in typical situations (not involving a threat to life or health) would not be applicable because of, e.g. the imposed criminal and legal sanctions. As a result, the provision of Article 227(3) LHE authorising specified services to enter a university area not on a rector's request seems to be groundless because intervention in case of a direct threat to human life or a natural disaster does not require additional regulations and anybody who notices such a threat is entitled to intervene.

At the same time, it is necessary to highlight that in accordance with Article 3 of the Act of 18 April 2002 on the state of natural disasters,⁴⁷ a natural disaster "shall be understood as a natural catastrophe or a technical failure the results of which pose

⁴⁶ A. Jakubowski, *Utrzymanie porządku i bezpieczeństwa na terenie uczelni...*, p. 177.

⁴⁷ Journal of Laws [Dz.U.] of 2002, No. 62, item 558, as amended.

a threat to life and health of a great number of people, a big amount of property or the environment in extensive areas, and assistance and protection may be efficient only if undertaken with the use of extraordinary measures, in cooperation with different bodies and institutions and specialist services and entities operating under a single integrated control”.

In the discussed situation, the Law on higher education also determines a requirement to notify without delay a rector of the fact of the services’ entry into a university area.⁴⁸ The term “without delay” means immediately, without undue postponement. An example of the specification of notification without delay is laid down in the agreement between the Rector of the Jagiellonian University and the Chief Commander of the City Police Force in Kraków on the prevention of drug addiction and terrorist threats, and the procedures in case the Police are called and enter the area of the Jagiellonian University.⁴⁹ Paragraph 3(2) of this agreement stipulates: “(...) in conditions laid down in §3(1) herein, the Chief Commander of the City Police Force in Kraków or a person authorised by him is obliged to notify without delay the Rector, and in case of his absence the Chancellor, about the entry into the University area via a telephone or electronic mail and additionally in a written form within 24 hours (on non-working days, not later than within 48 hours) and indicate at least the reason for the entry and undertaken steps”.

However, a direct threat to life and a natural disaster do not constitute the only circumstances that entitle some services to enter a university area. In Article 227(4) LHE, the legislator authorises a rector to enter into agreements with specified bodies and determine other circumstances connected with the maintenance of order and security in which the adequate services’ entry into a university area is admissible. Such an agreement constitutes a type of non-authoritative administrative action. A rector and competent bodies of the state services, based on a concluded agreement, determine its aim, form of implementation, conditions and circumstances of the services, stay in a university area and the time limit for the agreement.⁵⁰ A. Jakubowski is right to propose *de lege ferenda* that an agreement should be approved of by a university senate in a specified time in the form of a resolution, which would guarantee, in the author’s opinion, appropriate quality of agreements entered into.⁵¹ The conclusion of such an agreement constitutes a typical form of additional assistance to a rector in the field of security and order maintenance, and compliance with the law in a university area.

For example, pursuant to the above-mentioned agreement, the Rector of the Jagiellonian University is required to give consent to the Police officers to enter the university area when they are not called to come only in case: “there is a direct threat to human life or health or a natural disaster, in order to take urgent action aimed at apprehension of a perpetrator of a crime, to undertake necessary steps ordered by

⁴⁸ Journal of Laws [Dz.U.] of 2005 No. 164, item 1365, as amended.

⁴⁹ Porozumienie w sprawie przeciwdziałania narkomanii i zagrożeniom terrorystycznym oraz zasad postępowania w przypadku wezwania i wkroczenia Policji na teren Uniwersytetu Jagiellońskiego, www.uj.edu.pl, Kraków 2012, pp. 2–3 [accessed on 02/12/2016].

⁵⁰ E. Ura, *Utrzymanie porządku i bezpieczeństwa...*, pp. 516–517.

⁵¹ A. Jakubowski, *Utrzymanie porządku i bezpieczeństwa na terenie uczelni...*, p. 180.

a court, a prosecutor or public administration in writing, there is justified suspicion that there is a person possessing narcotic drugs, trafficking in drugs, providing other people with drugs or inducing others to use them, there is a facility used to produce narcotic drugs or equipment prepared to produce drugs, there are substances that may be used to produce drugs, there is a person or persons acting in the way that indicates terrorist activities".⁵²

A. Jakubowski rightly emphasises that definiteness of the regulations laid down in such agreements must match the standard of enacting criminal law provisions. That is why, in this author's opinion, it is inadmissible to determine cases (Article 227(4) LHE) in the way that is "too general, imprecise (unclear), requiring complicated interpretation or making references".⁵³ Therefore, it seems necessary to additionally determine cases mainly in order to avoid the possibility of conflicting interpretation of various potential situations justifying intervention of the state services responsible for security and public order.

Appropriate services may also enter a university area on a rector's request. It should be assumed that, in each case of suspicion that a crime has been committed in a university area, a rector will report it to the appropriate services so that they can take necessary steps within their competence.

4. CONCLUSIONS

According to A. Jakubowski, Article 227(3) LHE constitutes *lex specialis* in relation to the Criminal Procedure Code and legal acts regulating the operation of particular services responsible for the maintenance of public order and security.⁵⁴ P. Nowik refers to the issue, but his opinion is totally different. He emphasises that autonomy of a university area cannot be interpreted extensively, regardless of the legal regulations that constitute the legal order in the state.⁵⁵ The tradition of university autonomy started in the 14th century should not be treated in the same way as at the time of its introduction. In the course of time, bodies specialising in ensuring an appropriate level of security and public order were established, also in the field of specific areas such as universities.

Nevertheless, the linguistic interpretation of the provisions of Article 227 LHE unambiguously indicates considerable limitations with regard to intervention of services responsible for the maintenance of security and public order in a university area. However, interpreting the aim of the provision, one should state that apart from ensuring the constitutional right to university autonomy, the legislator mainly seeks the maintenance of order and security in a university area. Paradoxically, the idea of autonomy hampers it.

De lege ferenda one may propose such changes in the legislation that will possibly best rationalise the system of security and public order in a university area with

⁵² Porozumienie w sprawie ..., pp. 2-3.

⁵³ A. Jakubowski, *Utrzymanie porządku i bezpieczeństwa na terenie uczelni...*, p. 181.

⁵⁴ *Ibid.*, p. 177.

⁵⁵ P. Nowik, *Utrzymanie porządku i bezpieczeństwa...*, p. 1063.

the use of specialist state bodies. The introduction of more detailed provisions in LHE, e.g. in the way adopted in the above-mentioned agreement, might create such an opportunity. Such a solution would not only be in compliance with commonly binding law concerning the state services responsible for the maintenance of broadly understood security and public order but would also follow the multi-century tradition of university autonomy, which must be, however, understood adequately to the current circumstances. These are changing and bringing new threats, as a result of which autonomy cannot be a value more important than those which are subject to protection by the law, including security and public order. Whatever intervention of services responsible for ensuring them it cannot reduce autonomy even if a rector has been informed about it *post factum*. The areas of institutions of higher education should not be enclaves limiting and hampering the application of law.

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AUTONOMY OF INSTITUTIONS OF HIGHER EDUCATION
VERSUS INTERVENTION OF SERVICES RESPONSIBLE
FOR MAINTAINING PUBLIC ORDER AND SECURITY

Summary

The autonomy of institutions of higher education, especially in its territorial aspect, to some extent limits intervention of services responsible for ensuring security and public order. This results from the provisions of the Law on higher education which limit the services' activity. It is in conflict with the real need for such activities performed by those services and, as a consequence, legal regulations in this area should be changed so that, without affecting university autonomy, it would be possible to extend the sphere of required intervention.

Keywords: autonomy, university, public security, public order

AUTONOMIA SZKÓŁ WYŻSZYCH A INTERWENCJA
SŁUŻB ODPOWIEDZIALNYCH ZA UTRZYMANIE BEZPIECZEŃSTWA
I PORZĄDKU PUBLICZNEGO

Streszczenie

Autonomia szkół wyższych, zwłaszcza w jej wymiarze terytorialnym, w pewnym zakresie ogranicza interwencje służb odpowiedzialnych za zapewnianie bezpieczeństwa i porządku publicznego. Wynika to z przepisów Prawa o szkolnictwie wyższym, które ograniczają taką ich aktywność. Stoi to w pewnej opozycji do realnych potrzeb działalności analizowanych służb, a w konsekwencji regulacje prawne w tym zakresie powinny być zmienione, aby bez wpływania na autonomię uczelni, zwiększyć pole wymaganych interwencji.

Słowa kluczowe: autonomia, uczelnia, bezpieczeństwo publiczne, porządek publiczny

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