

Marcin Dorochowicz¹

Nicolaus Copernicus University in Toruń

SCHOLARSHIPS AS A MEANS OF CULTURE DISTRIBUTION

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Summary. The purpose of the work is to examine how local government units can support culture by awarding scholarships. The decision-making bodies of these units have a wide range of freedom in regulating the conditions and procedures for granting scholarships. However, the resolutions they issue must be precise and comprehensive and regulate the amount of the scholarship.

Keywords: freedom of expression, culture, scholarships.

Stypendium jako środek wsparcia działalności kulturalnej. Celem artykułu jest zbadanie, w jaki sposób jednostki samorządu terytorialnego mogą wspierać kulturę poprzez przyznawanie stypendiów. Organy stanowiące tychże jednostek mają dużą swobodę w regulowaniu warunków i trybu przyznawania stypendiów. Jednak wydawane przez nich uchwały muszą być precyzyjne i wyczerpujące oraz regulować wysokość stypendium.

Słowa kluczowe: wolność słowa, kultura, stypendia.

One of the own tasks of local government units is to meet the collective needs of the local government community, including matters of culture and the protec-

¹ Marcin Dorochowicz –Faculty of Law and Administration, Nicolaus Copernicus University in Toruń.

tion of monuments and care over monuments (Article 7.1.9 of the Act of 8 March 1990 on communal local government, Journal of Laws of 2019, item 506, Article 4.1.7 of the Act of 5 June 1998 on local government of powiat, Journal of Laws of 2019, item 511 and Article 14.1.3 of the Act of June 5, 1998, on local government of voivodship, Journal of Laws of 2019, item 512). It is understood as 'both the entire spiritual, intellectual and material achievements created by the effort of individuals and human groups, preserved and preserved, as well as the attitude to its components'². Territorial local government units have patronage over cultural activities, consisting in supporting and promoting creativity, education and cultural education, cultural activities and initiatives, as well as care for monuments and protection of the national heritage in the Republic of Poland and abroad (Article 1.2 and 4 of the Act of October 25, 1991, on the organization and conduct of cultural activities, Journal of Laws of 2020, item 194). One of the means of popularizing culture is the granting of artistic scholarships by local government units. It consists of granting financial resources to persons implementing specific projects in the field of artistic creativity, caring for monuments or disseminating culture (Article 7b.2 of the Act on the organization and carrying out of cultural activities).

The purpose of the article is to examine how local government units can promote culture by awarding scholarships. The issue examined has not yet been extensively studied in doctrine or case law. To this end, the author will first analyze the normative state covering both local government acts and the act on the organization and conduct of cultural activities. He will then examine doctrinal and jurisprudence views on the practical aspects of this issue. Therefore, the formal and dogmatic method will be used.

It is a complex matter to answer the question of whether local government units have only the right or the obligation to grant artistic scholarships. On the one hand, art. 7b paragraph 1 of the Act provides that these units 'may grant scholarships'. However, the statutory authorization contained in art. 7b paragraph 3 of this Act is categorical, stating that the decision-making bodies of local government units 'shall determine, by resolution, the detailed conditions and procedure for granting scholarships ...'. The doctrine is derived from the fact that these units have an obligation, and not only the ability to issue the resolution; at the same time, this creates an obligation to secure appropriate funds in the entity's budget³. These resolutions should 'comprehensively and in detail regulate

² J. Pruszyński, *Dziedzictwo kultury Polski. Jego straty i ochrona prawna*, Kraków 2001, pp. 61–62.

³ A. Jakubowski, *Ustawa o organizowaniu i prowadzeniu działalności kulturalnej. Komentarz*, 2016, Legalis.

both the rules, procedure and amount of such a scholarship and do so in a manner adapted to the individual needs of a given local community⁴. This reasoning leads to the conclusion that in radical cases the failure to issue the resolution may result in supervisory measures being applied to the decision-making body of the local government unit, including its dissolution by the Sejm, and a person who would like to apply for a scholarship could file a complaint to the administrative court about the inactivity of the body acting according to art. 101a of the act on communal and parallel local government.

However, it is rightly noted that while the adoption of this resolution is compulsory, they may not be granted later⁵. Despite Antoniak-Tęskna's fears, this can be reconciled with the mandatory nature of patronage that territorial local government units are supposed to exercise because they have other means to do so: awarding prizes (Article 7a.1 of the Act), creating local government cultural institutions (Article 9.1,3 or organizational activities).

The resolution of the decision-making body of the local government unit on the scholarship for persons involved in artistic creation, dissemination of culture and protection of monuments is an act of local law. It defines the rights and obligations of entities not subordinate to this body, does not lose its force as a result of a single application, contains general and abstract norms (relating to an individually unassigned addressee and which may be implemented multiple times), and therefore is an act universally binding in a given area⁶. Therefore, it is subject to publication in the voivodship official journal. The provisions of the resolution of the decision-making body of the local government unit on the scholarship for persons involved in artistic creation, dissemination of culture and protection of monuments must comply with the standards of good legislation. Their material violation may be the basis for the annulment of the resolution⁷. The doctrine expressed the view that local government units could be modeled on a ministerial ordinance issued on the basis of the same statutory authorization⁸. Assuming that this regulation is in line with the principles of legislative art – more fully below – this view could be endorsed.

Following the provisions of art. 7b paragraph 3 of the Act on the organization and conduct of cultural activities, the decision-making bodies of local government units, by resolution, specify the detailed conditions and procedure for

⁴ P. Antoniak-Tęskna, *Ustawa o organizowaniu i prowadzeniu działalności kulturalnej. Komentarz*, 2019, Lex.

⁵ Ibidem.

⁶ Judgment of WSA in Gliwice of 25.06.2013, No. IV SA/GL 962/12.

⁷ Supervisory decision of the Lublin Voivode of 29.07.2014, No. PN-II.4131.277.2014.

⁸ R. Gola, *Podstawy prawa kultury*, Poznań 2008, p. 131–132.

granting scholarships and their amount, to support the development of artistic skills and the dissemination of culture and care of monuments. It is undeniably desirable that the draft of such an act be subject to consultations with non-governmental organizations and other entities conducting public benefit activities. The procedure of consulting NGOs with draft local law acts in the areas related to the statutory activity of these organizations is determined by art. 5 paragraph 5 of the Act on Public Benefit and Volunteer Work – by way of resolution the decision-making body of local government units.

Failure to carry out such consultations may result in the annulment of such resolution⁹. The basis for annulling an act of local law is – following art. 91 section 1 and 4 of the Act on communal and parallel local government – its significant contradiction with the law. Public administration bodies are obliged according to art. 5 paragraph 1 of the Act of On April 24, 2003, on public benefit activity and volunteering (Journal of Laws of 2019, item 688) to cooperate with NGOs conducting, as appropriate to the territorial scope of public administration bodies, public benefit activities to the extent corresponding to the tasks of these bodies. This cooperation, by art. 5 paragraph 2 point 3 of this Act, includes in particular consulting NGO draft normative acts in the areas related to the statutory activity of these organizations.

The substantive conditions for granting scholarships were partly determined at the statutory level. They can be awarded only to persons implementing specific projects in the field of artistic creativity, care for monuments or dissemination of culture. No category of these people can be omitted¹⁰. The purpose of granting scholarships was also expressed *expressis verbis* at the statutory level as ‘supporting the development of artistic skills and dissemination of culture and care of monuments’. At the same time, the legislator left the decision-making bodies of local government units quite a wide freedom in the scope of shaping the scholarship they grant¹¹. The conditions for its receipt must, however, be specified in a precise and exhaustive manner, and therefore it is unacceptable to formulate it in the form of an open catalog using the phrase ‘in particular’¹².

Determining the group of entities that can be awarded scholarships is also difficult. Local government units are obliged to meet the collective needs of residents. On the one hand, scholarships could therefore only be awarded to residents of a given unit, although Jakubowski finds this discriminatory. Another way to

⁹ Judgment of WSA in Gliwice of 25.06.2013, No. IV SA/GL 962/12.

¹⁰ A. Jakubowski, *op.cit.*

¹¹ *Ibidem.*

¹² Supervisory decision of the Lublin Voivode of 3.01.2014, No. NPII.4131.1.602.2013.

implement the commune's tasks would be to limit the grant to scholarships to projects carried out only within the unit or being relevant to its community¹³.

Doubts are also raised by the relationship between artistic scholarships and scholarships awarded based on the following acts: Educational Law and the Law on Higher Education and Science. The regulation contained in the second of these laws is extremely laconic. It provides art. 96 section 1 that the scholarship may be granted to a student by a local government unit, and in art. 96 section 2, guidelines are included as to the content of the relevant resolution of the decision-making body of the local government unit. Therefore, it is not known whether it would be a social, motivational or mixed scholarship and whether it would only take into account scientific or artistic achievements. However, the granting of artistic scholarships seems to be a more specific situation, so you may be inclined to apply the *lex specialis* principle. The consequence of treating these provisions as referring to separate forms of motivational material assistance is the conclusion in the doctrine of the just conclusion that granting a scholarship to a student based on educational provisions, and a student - based on higher education provisions cannot be a condition excluding granting them a scholarship people involved in artistic creation, dissemination of culture and protection of monuments¹⁴.

As a consequence, the jurisprudence allowed the decision-making body of local government units to restrict the number of people who could receive the scholarship to students¹⁵, although the doctrine rightly pointed out that the intention of the legislator would not be fulfilled at that time, because artistic creation, dissemination of culture and protection of monuments are mainly dealt with mature people¹⁶. However, it was postulated to distinguish individual categories of scholarships, including the category created only for pupils or students. These categories can also be divided by subject, e.g. scholarship for artistic creation, separately for disseminating culture and separately for the protection of monuments¹⁷.

The amount of the scholarship analyzed was left to be determined by the decision-making body of the local government unit, which should take into account the state of finances at its disposal. Both the case law and the doctrine rightly indicate that the number of scholarships that will be awarded by the local government unit must be specified in a specific way, and thus in a quantitative manner,

¹³ A. Jakubowski, op.cit.

¹⁴ Supervisory decision of the Gdańsk Voivode of 11.08.2016, No. PN-II.4131.81.2016.JB.

¹⁵ Judgment of WSA in Gliwice of 25.06.2013, No. IV SA/GL 962/12.

¹⁶ A. Jakubowski, op.cit.

¹⁷ Ibidem.

and it is not correct to indicate the amount of the scholarship by specifying the minimum or maximum amount of delegating the scholarship amount to an entity other than the decision-making body¹⁸. The number of scholarships, however, can be varied for individual types of scholarship awarded by this unit, awarded to people working in the sphere of culture¹⁹. It cannot be overlooked that the ordinance issued – as outlined above – on the basis of the same authorization on the detailed conditions and procedure for granting scholarships to persons dealing with artistic creativity, dissemination of culture and the care of monuments, and the amount of these scholarships – only sets the upper limit scholarship amount²⁰. Therefore, direct modeling by local government bodies on this regulation is not advisable, since it is clearly contrary to statutory authorization.

It should be noted, however, that determining the value of the scholarship in a symbolic, marginal amount will constitute a circumvention of the law resulting in the invalidity of the resolution in connection with its non-compliance with art. 7b paragraph 3 of the Act on organizing and conducting cultural activities²¹.

The scholarship award procedure specified in the resolution may only be of an administrative and legal nature, or - as in the case of a ministerial scholarship - mixed, consisting of an administrative and then civil law stage. In each case, however, the authority must decide who to grant the scholarship, which as a unilateral, individual, imperious act, based on the norms of administrative substantive law and issued about an entity not subordinated to the service or organization, constitutes an administrative decision within the meaning of Art. 107 of the Code of Administrative Procedure²².

Since the granting or refusal of a scholarship is made using an administrative decision, its justification must satisfy the requirements specified in art. 107 § 4 of the Code of Administrative Procedure. The factual justification should therefore include, in particular, an indication of the facts which the authority considered proven, the evidence on which it relied, and the reasons for which it refused credibility and probative value, while the legal justification – an explanation of the legal basis of the decision, citing the law²³. Jakubowski argues that the justification of the decision should be reflected in careful consideration and assessment by the body of the applicant's cultural heritage through the prism of the

¹⁸ Supervisory decision of the Gdańsk Voivode of 11.08.2016, No. PN-II.4131.81.2016.JB.

¹⁹ A. Jakubowski, *op.cit.*; P. Antoniuk-Tęskan, *op.cit.*

²⁰ Judgment of WSA in Gliwice of 25.06.2013 r., No. IV SA/GL 962/12, supervisory decision of the Gdańsk Voivode of 11.08.2016, No. PN-II.4131.81.2016.JB.

²¹ A. Jakubowski, *op.cit.*

²² *Ibidem*.

²³ Supervisory decision of the Lublin Voivode of 16.04.2012, No. NK-II.4131.105.2012.

criteria adopted in the resolution or the competition regulations. In other words, the authority cannot – according to the cited author – limit itself to indicating the amount of points scored by a given element of the application, but must also explain exactly why it adopted such and not another grade. The need for particularly comprehensive justification of the decision occurs when the number of applicants for the scholarship exceeds the allocated pool of funds at the disposal of the authority. In such cases, there is a so-called competitive participation, requiring the authority to evaluate each application against the others²⁴. Decisions on the analyzed scholarship are, as a rule, discretionary, which is demonstrated by the use of the phrase ‘may grant’ and not – ‘grant’²⁵. This does not quite correspond to reality, because decisions taking into account the entire demand of the parties, therefore, among others decision to grant a scholarship in the amount requested – by art. 107 § 4 K.p.a. – does not require justification.

There is no doubt that the procedure for granting the scholarship may be conducted by a specially appointed committee that will formulate a ranking with an assessment of the applications submitted, because the phrase ‘conditions and procedure for granting scholarships’ used in the Act includes the competence of the decision-making body of the local government unit to decide on all conditions (on which the payment of the scholarship depends), as well as on the overall procedure for awarding the scholarship. However, the doctrine indicates that such a commission must be indicated in a resolution which must define its composition and the procedure for appointing its members²⁶. In the author’s opinion, this view is too far-reaching. Since according to art. 268a K. bye, a public administration body may authorize, in writing, employees servicing this body to settle matters on its behalf in a given scope, and in particular to issue administrative decisions, it can authorize the commission it appoints to do so and does not need for this authorization from the decision making body. On the other hand, the granting of scholarships ‘outside ‘ an executive body would conflict with its statutory powers.

The doctrine also notes that the detailed conditions and procedure for awarding scholarships also includes specifying the template for the scholarship application²⁷. However, it should be emphasized that it may be exemplary only, the applicant cannot be obliged to use it. Due to the nature of this design, it can also be determined by the executive body.

²⁴ Judgement of WSA of Warsaw of 5.11.2013, No. II SA/Wa 1086/13.

²⁵ A. Jakubowski, *op.cit.*

²⁶ *Ibidem.*

²⁷ Supervisory decision of the Wrocław Voivode of 2.08.2012, No. NK-N3.4131.365.2012.

Unless there is any doubt as to the inadmissibility of the regulation in the resolution to withdraw the scholarship awarded, since this issue does not fall within the scope of statutory delegation²⁸, the view was expressed that it is permissible to regulate the conditions for suspending the payment of the scholarship awarded²⁹. In the author's opinion, this view is not correct. When the legislator wants a given scholarship to be subject to withdrawal, it explicitly provides for it, as e.g. in art. 96 section 3 of the Act – Law on Higher Education and Science or art. 31 section 3 of the Sporting Act³⁰.

In conclusion, the constitutive bodies of these units have a wide range of freedom in regulating the conditions and procedures for granting scholarships. Although the mere adoption of a resolution on the conditions and procedure for granting scholarships is obligatory, you do not need to award them later. However, the resolutions they issue must be precise and comprehensive and regulate the amount of the scholarship, which cannot be only symbolic. Within the scope of the freedom of bodies constituting local government units, there is a distinction of the category of scholarships, including the category created only for pupils or students. The scholarship award procedure ends with an administrative decision that can be issued by a specially appointed committee. A positive decision does not require justification. In the opinion of the author, these bodies should be very cautious in imitating the ordinance of the minister, since it determines the amount of the scholarship in a way that in local government units is rightly treated as a material breach of law.

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²⁸ A. Jakubowski, op.cit.

²⁹ J. Przybylska, *Bezpośrednie finansowanie działalności kulturalnej ze środków publicznych*, [in:] *Samorząd terytorialny 2004* (9), p. 27.

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