

Ewa Gmurzyńska

**Benefits of Dispute Resolution Systems
in Organizations**

**The Example of the University of Warsaw
Conflict Resolution System**

**ENOHE
(European Network of Ombudsmen
in Higher Education)**

Occasional Paper Nr. 9



Imprint

Editor in Charge: Josef Leidenfrost, Office of the Austrian Student Ombudsman,
Federal Ministry of Science, Research and Economy, Vienna, Austria

A – 1014 Vienna, Minoritenplatz 5

Layout / Design: Lisa Mayerhofer, Vienna

Print: In-house Printing

First Edition: May 2015

The **European Network of Ombudsmen in Higher Education (ENOHE)** is an informal network of academic ombudsmen in Europe. The network consists of ombudsmen at higher education institutions and individuals affiliated with institutes of higher learning who are interested in ombuds practice (www.enohe.net).

The **Office of the Austrian Student Ombudsman (OASO)** performs the following tasks:

- it is dealing with complaints about shortcomings in the performance and services of higher education institutions
- it keeps direct communication lines with representatives of the universities, the universities of applied sciences, the teacher training colleges, and with interest groups or representative bodies such as the Austrian Union of Students or other relevant organisations and groups.
- it reports directly to the Minister and to the Parliament with an annual report.

The inquiries and complaints submitted to the OASO are examined and efforts are made, together with the respective institutions, to find solutions to problems or to remedy acute shortcomings. The OASO runs its own web site where students are informed about the most frequent topics and where a collection of internet links refers them on to other important internet sites.

Apart from students, the OASO can also be consulted by faculty members, parents and partners of students. In cases which cannot be directly settled by the institutions concerned, the OASO tries to provide assistance through mediation. Further important tasks of the OASO are to report to the Minister of Science, Research and Economy and to the parliament, and to come up with position papers and statements on draft laws on higher education.

The Office of the Austrian Student Ombudsman

Tel. (toll free) 0800-311 650 (Monday to Friday 9 a.m. to 4 p.m.)

info@hochschulombudsmann.at

info@hochschulombudsfrau.at

www.hochschulombudsmann.at

www.hochschulombudsfrau.at

Contents

1. Introduction	4
2. Reasons for Conflicts at Universities	5
A. Increased number of students	5
B. Cultural Differences	6
C. Students as Consumers	7
D. Insufficient Negotiation and Conflict Resolution Skills	7
E. Lack of Defined Norms of Behavior, Ethical Rules and Rules of Conduct	7
F. Academic Individualism	8
G. Hierarchical System at the Universities	9
4. Types of Conflicts at Universities	10
5. Why Universities Need a “System” for Conflict Resolution	11
6. Development of the System for Conflict Resolution Worldwide	12
7. The System of Dispute Resolution at the University of Warsaw	14
A. The Beginnings	14
B. The Establishment of the Center for Disputes and Conflict Resolution at the Law School	14
C. Providing Mediation	15
D. The Mediation Clinic Program at the Law School	16
E. Prevention of Conflict	16
F. The Ombudsman	17
G. Disciplinary Committee	18
8. Conclusions	19
About the Author	23
ENOHE Occasional Papers	24

1. Introduction

Universities are particular institutions with special public and educational missions to fulfill, however in a certain sense they are like every other organization. As is the case in other big institutions, conflicts at universities are inevitable but also necessary since they are a basis for dynamic change. The simple statement that conflicts are part of everyday life is also true at universities. Academic institutions consist of several groups where different needs, rights, interests, and powers are exchanged and argued¹. Although universities may be viewed by outsiders as unified communities, conflicts as in other organizations are part of the academic life. Additionally, academia has particular features and attributes which may be a reason for additional conflicts. It is a venue for exchanging point of views and investigating truth by confrontation and discourse of different ideas. Certain features of universities such as hierarchical relations, academic freedom, individualism, and the concentration in one place of students from different backgrounds may constitute additional conflict factors for academic life.

Although it was previously stated that universities are organizations in a general sense, their mission defines their main purpose, goals and activities. Universities are educational institutions whose purpose is to educate, to create knowledge, to open the minds of students to that knowledge, to enable students to take best advantage of their educational experience by clash of arguments, openness to new ideas and concepts, respect for different ideas, diversity and personal dignity, a broad approach to problem solving, and development of the capacity for cooperation regardless of political, ideological or religious differences. Their goal is to teach students techniques of communication, respect for historical and cultural identity and methods for implementing educational reform.² Reaching consensus through dialog is the ideal form for educating future citizens in the global and open world, independent of their specialization and type of education.

Most universities worldwide -- besides their main goal which is excellence in certain types of education-- assume much broader obligations to educate students in the spirit of

¹ Czapski M. Mediacja w sporach akademickich (in:) Mediacje Teoria i praktyka, I st. ed. E. Gmurzyńska, R. Morek, Woltes Kluwer, Warsaw, 2009, p. 275.

² Mission of University of Warsaw available at: http://www.uw.edu.pl/en/strony/about_uw/mission.pdf; <http://www.admin.cam.ac.uk/univ/mission.html>; http://www.ethz.ch/about/missionstatement/index_EN; <http://www.uni-goettingen.de/en/43883.html>

humanity, freedom of thought, cooperation, problem solving, openness, dialog and tolerance for others. It seems that introducing a system for dispute resolution which educates students to respect others' views and enhances emotional intelligence and sensitivity to the problems of others, is very appropriate.

By introducing an appropriate system of conflict resolution, academic institutions may avoid financial, personal, organizational and branding costs. However, what is more important, through such a system they may accomplish their mission, which is to educate future law makers, managers, scientists, engineers and planners in the spirit of openness, dialogue, tolerance and a consensual approach to conflict resolution.

2. Reasons for Conflicts at Universities

A. Increased number of students

One of the reasons to introduce a system of dispute resolution at universities is the increased number of students in recent decades.³ For example in 2000, over 12.5 million students were studying at European universities, compared with fewer than 9 million ten years previously.⁴ This university boom is especially noticeable in countries like Poland, Hungary, the Czech Republic, and Slovenia. After the economic changes and development of a market and competitive economy, new requirements, standards and competences are expected by employers, which cause the sudden increase in the number of students.⁵ For example the number of students at the University of Warsaw in the last decade increased three times⁶. Since generally university funding and financial resources are rather scarce and most often insufficient, the increased number of students brings additional dissatisfaction on the part of students and employees until funds are raised for building new classroom space, offices, laboratories and hiring of additional academic and administrative staff to better serve the students.

³ For example there are over 3.300 higher education institutions in the European Union and 4 000 in Europe as a whole.

⁴ The Role of Universities in the Europe of Knowledge available at: http://europa.eu/legislation_summaries/education_training_youth/lifelong_learning/c11067_en.htm

⁵ Białecki I., Między autonomią a reformą (in:) Idea uniwersytetu u schyłku tysiąclecia, Warszawa 1998, p. 107.

⁶ Presently over 63.000 students study at University of Warsaw. Gmurzyńska E., Osica N., Rozwiązywanie sporów i konfliktów w środowisku akademickim, brochure published by Wolters Kluwer for the Center for Conflict and Disputes Resolution at University of Warsaw, 2009.

B. Cultural Differences

Globalization impacted many spheres of life including academic systems worldwide. Major universities in Europe offer exchange programs for students and faculty especially but not only within the framework of the Erasmus program. Each year, more than 230,000 students study abroad thanks to the Erasmus Program.⁷ The same phenomenon concerns most universities in both the Americas and Asia. For example over 8.5 per cent of American students take part in international programs every year.⁸ International student enrolment in the United States increased by five percent to 723,277 during the 2010/11 academic year. This represents a record high number of international students in the United States.⁹

Participation of international students and faculty in different programs enhances in positive ways not only the exchange of knowledge and information but also the cultural exchange, learning about different communities, traditions and values and teaches tolerance for other people who may embrace different values.¹⁰ However, cultural differences may also be a reason for some conflicts caused by differences which are additionally increased by the stress connected to moving to a new place, getting to know new people or some organizational difficulties caused by lack of knowledge about local customs.¹¹ The cultural differences are not connected exclusively to the international students and faculty. They often occur among students who move to the bigger cities from the small villages or towns. Each group may come from different backgrounds and communities which may also be reason for new conflicts.

⁷ Close to 3 million students have participated in that program since it started in 1987, as well as over 300 000 higher education teachers and other staff since 1997. The annual budget is in excess of 450 million euro; more than 4 000 higher education institutions in 33 countries participated. In 1987, when Erasmus was launched, 3 244 students spent time studying abroad in one of the 11 countries that initially participated in the program. Information available at: http://ec.europa.eu/education/lifelong-learning-programme/erasmus_en.htm

⁸ Howard Ch. L., *The Organizational Ombudsman, Origins, Roles and Operations*, A Legal Guide ABA Section of Dispute Resolution, 2010, p. 102.

⁹ Id.

¹⁰ Id.

¹¹ Information available at: <http://www.iie.org/en/Who-We-Are/News-and-Events/Press-Center/Press-Releases/2011/2011-11-14-Open-Doors-International-Students>

C. Students as Consumers

Students view themselves nowadays more and more as “consumers” and their expectations are higher toward universities.¹² Because of this approach as well as their emphasis on individual rights, they have more expectations from universities, which may bring an increased number of cases against university administrations, as well as different types of complaints. Additionally the higher expectations are coming from the fact that, although as a rule in many countries in Europe higher education is free and guaranteed by the constitutions, this situation changes gradually, since universities always are looking for new sources of money such as tuition.¹³ When students pay for their education they want to have better quality services and education. Saving the cost of formal cases brought to different types of courts and applying informal ADR procedures, may not only save costs for both parties, but also may increase the satisfaction of the “student-consumers”.

D. Insufficient Negotiation and Conflict Resolution Skills

Students, especially freshmen and sophomores do not have skills to resolve conflicts in an amicable way due to lack of experience and knowledge.¹⁴ Very often even small issues give rise to large conflicts, which include other students and administration of the university.¹⁵ Students are often lost in their new environment because they are disconnected from their families, friends and communities, which may influence in a negative way their approach to realistic evaluation of the situation and the problem.

E. Lack of Defined Norms of Behavior, Ethical Rules and Rules of Conduct

Lack of defined norms of conduct may cause serious issues for many students. This may happen especially at those universities which do not have precise provisions concerning ethical rules or standards of conduct. In such settings students may be confused about what the standards for behavior are, especially if there are no provisions in regard to the consequences of such behavior. For example at Warsaw University there are no ethical rules

¹² Market C.E. & Vago S., Law and Dispute Processing in Academic Community, *Judicature*, 64(4) 1980, p. 168.

¹³ E.g. in Poland even at state owned universities some students have to pay tuition, although this rule does not concern those students who received high average grade at their high school.

¹⁴ See Czapski supra note 1, at 278.

¹⁵ Middleton D., Students Struggle for Words; article available at <http://humanitiesplus.byu.edu/2011/03/just-in-from-wsj-mbas-lack-effective-communication-skills.html>.

or rules of conduct for the students and the only indication of standards of conduct is the oath which all students take at the beginning of their academic career and some general rules stated in regulation of studies.¹⁶ The lack of specific rules of behavior may cause not only confusion in regard to what is ethically permitted and what is not, but also send a signal to the students that since those standards and consequences are not clearly stated there is a sort of acquiescence for certain behaviors such as cheating, signing for another students or exercising some form of plagiarism. Lack of a code of conduct or too general provisions for students may be particularly problematic since studying at universities is for many of them a first time opportunity “to be free” and grown up. Their interpretation and understanding of “academic freedom” may mean something different than freedom of expression and thoughts. They often tend to test the boundaries of that freedom and find themselves in conflicts with others or in ethically difficult situations.

F. Academic Individualism

Individualism, independence of thinking and academic freedom of the faculty are absolutely critical characteristics of all teaching faculties. It may be, however, the source of conflicts between faculty members and university administration. Formulation of subjective, independent opinions and critical statements toward works of other academics may in certain situations be an impediment to proper communication and dealing with others.¹⁷ Often the academic accomplishments are based on individual work, creating individually new ideas and theories, working alone on research and writing books. Such an individualistic approach may be the reasons for lack of skills necessary for effective communication with other members of the community.

¹⁶ Regulamin studiów at University of Warsaw available at: http://www.uw.edu.pl/o_uw/dok/rstud/rstud.html; http://www.bss.uw.edu.pl/nowa/index.php?option=com_content&task=view&id=168. The regulation of studies provides e.g. that students have to: care about good name of the University, respect the dignity of all members of the academic community, have obligation of the acquisition of knowledge and ethically obtaining credits for all classes, comply with applicable regulations at the University, respect the property of the University.

¹⁷ See Czapski, supra note 1, at 278.

G. Hierarchical System at the Universities

Many, especially well-established, universities are proud of their traditions. Although tradition in many cases is an evidence of accomplishments and prestige, often it may cause resistance toward modern changes and fitting to the requirements of the modern world. One of the examples of “preserving” a tradition at many universities is a hierarchical system, which manifests itself, for example, in developing of extended names of different academic positions; such as reader, fellow, lecturer, senior lecturer, assistant professor and professor. High level of subordination is usually assigned to each of these positions.¹⁸ Although some level of a hierarchical system may have a positive impact in the university structure, excessive hierarchy may have negative consequences for different types of relations on campus.¹⁹

Hierarchical elements are also noticeable in relations between teaching faculties and students, particularly during oral exams. According to some opinions the students are taught at universities that those who have power - professors - are always right. As one author stated “byzantine hierarchy, lack of proper organization and unpunctuality are deemed traditional, pre-war and even European academic freedoms”.²⁰ Lack of partnership between students and faculty at many universities manifests itself also by “lecturing” which is a dominant style of teaching. The main task of the professor is to “lecture” the students, and the task of the students is to “listen” to the professor, although that approach is changing gradually together with introducing modern methods of teaching and higher involvement of students in dialog and discussion.

Hierarchical relations also exist between two groups of employees at the universities: academics, who are a certain caste of people having usually a special type of contract (tenure) giving them high level of security at work, as well as special duties and obligations toward universities and administrative staff. Many of conflicts between those groups are also the result of hierarchical interdependence.²¹ Since universities have become more complicated and their modern structure includes highly trained experts, such as financial specialists,

¹⁸ The UK Academic System: hierarchy, students, grants, fellowships and all that Geoffrey J. Barton

School of Life Sciences; www.compbio.dundee.ac.uk/ftp/pdf/The_UK_Academic_system.pdf Additionally

¹⁹ Salmonowicz S., Między hierarchicznością, feudalizmem a brakiem dobrych obyczajów w nauce. (in:) Idea Uniwersytetu u schyłku tysiąclecia, Wydawnictwo Naukowe Scholar, Warszawa, 1998, p. 54.

²⁰ Łomnicki A., O sytuacji polskich uniwersytetów uwag kilka, (in:) Idea Uniwersytetu u schyłku tysiąclecia, p.71.

²¹ Millet J.D., The Academic Community. An Essay in Organization, New York, McGraw Hill, 1962, p. 231.

foreign cooperation specialists, fundraising staff, lawyers, managers and many other professionals in different fields, this may cause in the traditional hierarchical system many additional conflicts.²²

4. Types of Conflicts at Universities

It is correct to agree with the opinion that academic organizations, because of their special features and characteristics, are in a certain sense problematic institutions.²³ Some scholars criticize the utopian image of the universities viewed as unified communities whose main form of cooperation is collegiality.²⁴ On the contrary, universities are rather pluralistic institutions often divided among clearly defined groups and subgroups, who have different interests.²⁵ Universities are diversified organizations consisting of three clearly defined groups: students, administrative staff, and faculty. It also consists of faculty subgroups, student sub-cultures, and divisions between administrative employees and faculties.²⁶ Conflicts may appear on different levels within or between these groups in horizontal and vertical dimensions, e.g.: among the students, students and academics, academics and university administration, students and administrative staff or faculty and administrative staff. All those relations and conflicts have different characteristics and sources. For example, high hierarchical input is noticeable usually in conflicts between students and faculty, or professors and lower level academics. Conflicts between students or between two college professors and administration are usually far from the hierarchical system of university structure.

Rather than being a group of professionals who have similar approaches to the same problems, it consists of very individualistic people. Lack of integration among that group is inevitable due to lack of imposition of certain professional standards such as is the case with

²² Warters W.C., *Mediation in the Campus Community, Designing and Managing Effective Programs*, San Francisco, Jossey-Bass Publishers, 2000, p. 20. E.g. at University of Warsaw currently there are 19 faculties, and 31 other units, including the Center of New Technologies, Center for Preclinical Research and Technology and University Technology Transfer Center. The University is also a member of 70 consortiums and scientific networks. Information available at: http://www.uw.edu.pl/en/page.php/about_uw/rese.html

²³ Baldrige, J.V., Curtis D.V., Ecker G.P., Riley G.L., *Policy Making and Effective Leadership*, San Francisco, Jossey-Bass, 1978, p. 25.

²⁴ Baldrige J.V., *Power and Conflicts in the University : Research in Sociology of Complex Organizations*, New York , Wiley , 1971, p. 107.

²⁵ Id.

²⁶ Id.

lawyers and medical doctors.²⁷ Sometimes it is assumed that since professionals at the universities are well educated people, with high ethical standards, they accept the goals of the institutions without questioning them, work in good faith for the best interests of the university, and in case of conflict they will try to resolve it in consensual way.²⁸ Such an assumption is very often only wishful thinking. Conflicts on campus are not rare and are often very dynamic and may negatively influence the internal and external community if not approached properly. Many authors agree that campus structures, organizations and decision making processes are not predictable and are very fluid and that academic approaches are far from solving conflicts rationally or collectively.²⁹

Conflicts are also quite common among the students because of their diversity and the fact that they are coming from different communities and believe in different values. At university they stay together, work together, and learn together, which generates the conflicts which may need an efficient and affordable resolution.³⁰

5. Why Universities Need a “System” for Conflict Resolution

Due to the different levels of conflict at universities and parties involved, as well as various educational and social goals, establishing a system for dispute resolution seems to be quite necessary and well justified. Because of the challenges presented by the special characteristics of university politics, individualism, diversity of students, varying types of decision making process and pluralism, academic institutions undertook many initiatives during the last twenty years concerning introducing mediation or other ADR (i.e. alternative dispute resolution) methods into their systems. This idea is based on the belief that reaching consensus and approaching conflicts by discussing the underlying broad interests of the parties through problem solving is much more effective and compatible with a university's

²⁷ *Id.*

²⁸ See Warters, *supra* note 24, at 19.

²⁹ Cohen M.D., March J.G., *Leadership and Ambiguity: The American College President*, New York, McGraw, 1974, p. 45. The authors describe the university system of making decisions as organized anarchy, while Millet use less drastic description calling it organized autonomy. Millet J.D., *New Structures of Campus Power: Success and Failures of Emerging Forms of Institutional Governance*, San Francisco, Jossey Bass, 1978.

³⁰ Weeks K.M., *Managing Campus Conflicts Through Alternative Dispute Resolution*, Nashville, College Information Center, 2002 p. 36.

mission. Rather than dealing with “symptoms” of conflicts one should focus on the underlying “cause”.³¹

Introducing alternative methods may play an important part not only in university everyday life by managing the conflicts, but also has broader goals, such as to collaborate on different issues, to bring closer a variety of perspectives and point of views, and to enhance education in universities by showing different approaches to conflicts. Creating a system for dispute resolution at academic institutions presents the benefits and positive values which may come from that approach. It shows the community that conflict may have positive dimensions. It makes people responsible for their own life, since in methods such as mediations they have to make their own decisions. It makes members of the academic community more sensitive to problems of others and to cultural diversity and teaches respect and tolerance. It proves that consensual methods are far more effective than other forms of approach to disputes.

6. Development of the System for Conflict Resolution Worldwide

Mediation programs started at American colleges and universities in the 1970s and a variety of programs were established nationwide especially in the early 1990s.³² The dispute resolution field has grown at American universities together with many changes in structure and mission of the universities, which created additional conflicts, as well the requirements for more holistic and effective approaches to conflicts.³³ For the last twenty years, a growing number of academic institutions have recognized and introduced collaborating conflict resolution processes.³⁴ Today in the US over 200 very prestigious academic institutions have introduced some type of alternative dispute resolution mainly in the form of mediation.³⁵ Although there is a variety of the programs, they usually offer the parties to conflicts a system of conflict resolution which includes some or all of the following components:

³¹ See Warters, *supra* note 24, at 4.

³² As a result of that interests the National Association for Mediation Education, Committee for Higher Education, Conflict Resolution Educational Network has been established, all institution promoting mediation in academic disputes; See Warters, *supra* note 24, at 15.

³³ Maria R. Volpe and David Chandler, Resolving Conflicts in Institutions of Higher Education: Challenges for PR academics. Article available at: <http://law.gsu.edu/cncr/pdf/papers/99-2Volpepap.pdf>

³⁵ See Warters, *supra* note 24, at XIII.

mediation in most kinds of academic disputes, introducing mediation into the grievance procedures, as one of the options before formal disciplinary steps, and creation of the office of the ombudsperson that collaborates closely with mediation centers.³⁶

Together with the development of ADR methods in different conflicts, the introduction of the EU directive **on certain aspects of mediation in civil and commercial matters**, as well as separate legislative statutes on mediation in different European countries, which give mediation a highlighted place in the legal system, a trend which has also occurred in the academic world in Europe.³⁷ A system of dispute resolution which includes institutions of mediation and an ombudsperson is gradually being introduced at European universities. However, it is still far from common approach.³⁸

The interest in good practices, as well as alternative methods for dispute resolution in academic disputes led to creation of the European Network of Ombudsmen in Higher Education (ENOHE), an informal network for academic ombudsmen from Europe, established in 2003. The main purposes of the organization is to share experience, skills and knowledge, help to implement good governance at higher education institutions and to create a more solid base for the ombudsman function in higher education.³⁹

There are many reasons for introducing amicable dispute resolution in university systems. These include: fast resolution of disputes, bringing back the stage of optimal balance, the low cost of mediation, taking into regard broad interests of the parities, helping them in emotional situations, resolving a dispute in a confidential and private atmosphere without additional stress connected to the bad publicity for the institution and the parities.⁴⁰

³⁶ Id.

³⁷ **2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. Directive available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0052:en:NOT>**; see also G.DePalo and M. Trevor ed., Oxford 2012.

³⁸ The institution of the Ombudsperson is quite common at Spanish Universities e.g.: University of the Balearic Islands, University of Cantabria, Rey Juan Carlos University of Valladolid, Universidad Polytechnic de Madrid, University Miguel Hernandez, University of Jaén, Universidad Autónoma de Madrid and Dutch universities e.g. University of Leiden, University of Professional Education Utrecht, Vrije Universiteit, Universiteit van Amsterdam. It was also introduced at University of Dundee in United Kingdom, Queensland University of Technology in Brisbane, Australia and University of South Australia;
<http://www.nfa.alfadent.pl/articles.php?id=394&page=1&PHPSESSID=9f2f24ade700f304a261f6d396e0aff0>;

³⁹ http://www.bmwf.gv.at/home/academic_mobility/enohe/about_enohe, <http://nfamob.wordpress.com/2009/05/16/the-european-network-for-ombudsmen-in-higher-education>.

⁴⁰ See Czapski, supra note 1, at 282.

These and other reasons discussed above motivated the establishment of a conflict resolution system at the University of Warsaw.

7. The System of Dispute Resolution at the University of Warsaw

A. The Beginnings

The promotion of mediation at the University of Warsaw has been connected to a growing interest in mediation in the country after the introduction of court annexed and contractual mediation provisions in the Code of the Civil Procedure in 2005.⁴¹ Although mediation had been introduced into the legal system in Poland much earlier, in 1997, by including provisions concerning mediation in criminal matters into the Code of Criminal Procedure,⁴² this recent change was important for legitimization of mediation in the legal system, and the possibility of its application in a wide range of cases such as labor, family, commercial, community disputes, etc. To a certain extent, introducing mediation in civil cases into the Code of the Civil Procedure was a necessary turning point for mediation and other ADR methods in Poland in many types of cases including academic disputes. Since mediation started to exist in the legal system, awareness of this method of dispute resolution increased also in academia, which has a special obligation to educate students in the spirit of dialogue and tolerance.

B. The Establishment of the Center for Disputes and Conflict Resolution at the Law School

The Faculty of Law of the University of Warsaw was the first law faculty in Poland to offer classes in negotiation and mediation in civil disputes. This development was attributable to the understanding by the Faculty's administration of the growing importance of the problem solving approach to legal conflicts. In the fast changing world of easy communication, access to data, the world financial crisis, and a greater emphasis on

⁴¹ The law of 10 of December 2005 on some changes of the code of the civil procedure published in Official Journal Dz. U. 2005 Nr 172 item 1438

⁴² The law of 10 of January 2003 on amendments of some statutes published in Official Journal Dz. U. Nr 17, item 155

individual rights, teaching future lawyers a problem solving approach to legal conflict is an important part of legal education. The growing interest in mediation caused establishment of the Center for Disputes and Conflict Resolution at the law faculty in 2006.⁴³ The Center's main goal was to focus its efforts on popularizing and promoting mediation and other methods of amicable dispute resolution in the academic community. Drawing on the experience and knowledge of the university's academic staff and its partners, the Center engages in a number of wide-ranging activities, such as workshops, conferences, lectures, and commemoration of special events e.g. International Mediation Day at the University. Within this framework the Center fulfills educational goals by offering different lectures on topics connected to dispute resolution, provides mediation *pro bono* for low income parties, promotes mediation and other alternative dispute resolution methods among lawyers, judges and other professional groups and fosters the integration of the academic community by promoting the use of alternative dispute resolution in academic disputes. A Mediation Clinic is also part of the law school activities. The Clinic gives law students an opportunity to take a part in advanced skills classes on practical aspects of mediation, effective communication and approach to conflict resolution. The students has also an opportunity to take a part in court annexed meditation in civil and criminal matters as co-mediators, working with professional and very experienced mediators.

C. Providing Mediation

One of the main activities of the Center is offering mediation in different types of disputes. The Center, fulfilling its educational and social functions, accepts two types of mediation. First it conducts mediation in civil and criminal matters referred to it by the courts -- usually in regard to the parties who cannot afford to cover the costs of mediation. These mediations are conducted by professional mediators together with the students who have completed the Mediation Clinic at the law school, an advanced practical training. The other type of mediation which takes place in the Center is the mediation of academic disputes. So far most cases, with only a few exceptions, have concerned some type of employment issues between employees and the administration of particular faculties. Most cases are referred to the Center by the President of the University to whom traditionally all

⁴³ Information about the Center available at: <http://www.mediacje.wpia.uw.edu.pl/index.php>

serious complaints and problems had been submitted. Recently, the Center has also received cases from the newly established office of the Ombudsmen. All cases in academic disputes with participation of employees are conducted by professional mediators.

D. The Mediation Clinic Program at the Law School

This program designed for law and social science students involves a number of simulation-based workshops providing students with the opportunity to observe and subsequently co-mediate cases submitted to the Center from district courts in the Warsaw area. The workshops operate on an apprenticeship model, whereby students are coached and supervised by experienced tutors, primarily faculty from the Institute of Applied Social Sciences and the Faculty of Law and Administration. Offering students opportunities to mediate serves multiple purposes. Firstly, one of the pragmatic reasons is to prepare students to act as mediators and thereby open to them new career prospects. Secondly, students mediate on a voluntary basis and by that familiarize themselves with the idea of pro bono work. Thirdly, mediation helps students to gain a broader view on conflict, boosts their soft skills and makes them more aware of alternative dispute resolution methods. Moreover, the Program aims at promoting the idea of mediation among participants in litigation (parties, their representatives, etc.), facilitating cooperation between judicial bodies and academic circles, and conducting research in the field of mediation.

E. Prevention of Conflict

One of the major parts of the system of conflict resolution at the University of Warsaw is their prevention. The University, to accomplish that goal, provides a series of lectures, workshops, and trainings for employees and students. Those trainings concern topics such as: reasons for conflicts, amicable approaches to conflicts, tools of effective communications, assertiveness etc. Their purpose is to show students and employees how to deal with conflict in difficult situations in the workplace, place of study and at home and approaches to the conflicts, so it will lead to its resolution instead of escalation. Employees who take part in the trainings not only can deal better with their own situations but also help other people at the workplace to resolve disputes in more effective ways. Students, through a series of

workshops may not only learn how to resolve a particular problem, but most importantly how to deal with conflicts when they graduate from the University.

F. The Ombudsman

The Ombudsman is the most current element of the system. Its office was established at the University of Warsaw in 2011 as an expression of the belief of the University administration that this function will well serve the integration of the community.⁴⁴ In Poland the only other University which established so far an Ombudsman office is Nicolai Copernicus University in Toruń⁴⁵. Although the Polish Minister of Higher Education several times expressed the opinion about the high value of such initiative, so far only two Polish university follow that path⁴⁶. An Ombudsman is an independent and neutral person, to whom all employees and students may approach in matters concerning the university. All information is confidential and the students and university employees may remain anonymous if they want to. Activities of Ombudsman at the University of Warsaw are based on standards of practice and code of ethics defined by the International Ombudsman Association which acts in accordance with the principles of confidentiality, impartiality and neutrality.

The range of the problems the ombudsman is dealing with is very broad and includes e.g.: conflicts among students and faculty and administrative staff, students' issues connected to receiving grades and passing the class, employment issues such as remuneration, duties and obligations at work, and violating internal regulations. The interesting fact is that in the two first full consecutive years of its activities, the Ombudsman received the same number of cases: in 2012 a total of 114 cases were submitted and in 103 cases the Ombudsman took some kind of actions. Similarly in 2013 the number of submitted cases was 114 and in 107 cases the Ombudsman undertook some steps. Most cases - 70 per cent - are submitted by the students, 10 per cent by the academic employees and 9 percent by administrative staff.⁴⁷

⁴⁴ Information about the University of Warsaw Ombudsman available at:
http://www.uw.edu.pl/o_uw/struk/adm/ombudsman.html?media=printOThe

⁴⁵ Information about University of Torun ombudsman available at: http://www.umk.pl/uczelnia/rzecznik_akademicki/

⁴⁶ See for example:
http://wiadomosci.gazeta.pl/wiadomosci/1,114871,16802772,Promotor_nie_ukrywal_ze_uwaza_sie_za_przyjaciela_.html. http://studia.dlastudenta.pl/artukul/Rektorzy_przyjrza_sie_pracom_magisterskim,109021.html

⁴⁷ Information available at:
<https://portal.uw.edu.pl/web/ombudsman/dokumenty;jsessionid=3E696C86668DD80399385C2E0B2DDB75>

After diagnosing the problem, the Ombudsman may propose different solutions such as inform and explain certain provisions, research the approach to similar cases in the past, indicate or contact the appropriate office at the university which is authorized and obliged to take action concerning certain issue and help to prepare relevant letters. In some events, the Ombudsman recommends mediation and she contacts and acts in cooperation with the Center for Disputes and Conflict Resolution. In a certain sense, the Ombudsman is a person of first contact. All complaints and issues connected to the University are submitted to that office and then they are filtered by the Ombudsman. Only when there is inevitable conflict between the parties will the Ombudsman evaluate them as suitable for mediation and submit them to the Center. The most frequent actions undertaken by the Ombudsman at the University of Warsaw are: assisting in obtaining information and clarifying the case with the proper unit at the University (e.g. 26 cases in 2013), assisting in conflict resolution: diagnosing the problem and determining its resolution (e.g. 20 cases in 2013) and providing proper information on functioning and legal regulations applicable at the University of Warsaw (e.g. 25 cases in 2013)

So far the activities of the Ombudsman proved to be very valuable for the individual members of the academic community and for the University *per se*. She assists in conflict resolution by which the negative effects of the conflict are reduced. She supports individual students and employees in resolving problems concerning the functioning of the University. She also informs the President of the University about all necessary changes and improvements which need to be made in the system.

G. Disciplinary Committee

The legal basis for activities of the higher education institutions in Poland is provided by the Law on Higher Education and the Statute of the University of Warsaw.⁴⁸ Both regulations provide the situations when a violation of such standards and norms occurs by the faculty and students which may lead to disciplinary proceedings. According to the Law on Higher Education, students, as well as doctoral candidates and faculty are submitted to the

⁴⁸ The Law on Higher Education published in Official Journal Dz. U. Nr 164, item 1365, with further amend. Statute of the University of Warsaw; http://www.uw.edu.pl/en/strony/about_uw/Statut_UW_ANG2006.pdf

disciplinary proceedings in case of acts violating the dignity of students of the University or for acts violating the dignity and duties of the academic teacher. Although a disciplinary committee originates from “*collegiality courts*” or the “*courts of equals*”, it has nothing to do with conciliatory approach and it is almost entirely based on the criminal procedure. In fact, many provisions of the Code of the Criminal Procedure are applied to the disciplinary proceeding. The Law on Higher Education unfortunately does not provide directly any consensual, problem solving, or mediation proceedings with grievances procedures. However, the Code of Criminal Procedure, which is applied respectively to some parts of disciplinary proceedings, provides in art. 23a the possibility of directing the case to mediation. Although the Polish Law on Higher Education does not sufficiently adopt a conciliatory approach to conflicts, it gives a sufficient legal basis for including mediation in that process. This gave the impetus to the disciplinary committee at the University of Warsaw to introduce mediation provisions into grievances procedures. Although many disciplinary cases, particularly those of high caliber, may not be suitable for mediation, there are many of them, particularly with the participation of students, where mediation is the ideal form of dispute resolution and also gives a chance to educate students and change their views on particular conflicts and their approach to disputes in the future.

8. Conclusions

Creating a system of dispute resolution at the university is not free from many challenges. One of the first is to convince the university administration that the system is not another level of academic bureaucracy but it is necessary and important for university integration. Very often when a university administration is faced with the proposal for creating the system or forming the office of ombudsman, hearing the word “conflicts” asks “what conflicts”? It is obvious that such a question is not an expression of the naive believe that there are no conflicts at the universities. It is an expression of fear that by forming the system, those conflicts will be more visible and they need to be dealt with. In a traditional approach university administration needs to worry only about those disputes which eventually come to the administration of the university in the form of a formal claim.

Additionally, the administration of the university besides making decisions about creation of an ombudsman office and/or a mediation center, has to get involved actively in prevention of conflict resolution at the university through the system of training and workshops for employees and for the heads of the departments. The training for employees may include subjects such as sources of conflicts, assertiveness or effective communication skills. Different sets of workshops may be considered for the heads of the departments in order to help them to resolve conflicts they deal with every day at the work place, e.g. facilitation of meetings, mediation as an effective tool for dispute resolution and effective communication skills. This also requires a long term commitment from of the University administration and finding financial resources to cover the costs of such trainings.

Another challenge which may be faced in forming a system of conflict resolution is the cooperation between all entities which need to be involved in the system, such as: President of the university, Ombudsman office, mediation center, disciplinary committee, student affairs office, antidiscrimination committee as well administration of particular faculties and other institutions at the university. The first step is identifying all key players and discussing with them the benefits of the system and their active involvement through designating one or two members of that faculty (academics and administrative staff) who will be liaisons for connection with the university administration. Especially in bigger universities the cooperation between these institutions may be difficult, from an organizational point of view and require skillful organization and model. Another barrier coming from the highly recognized independence of the individual faculties may be an obstacle to form such a system, to get actively involved or recognize it. This requires an involvement and commitment of the highest level of university administration involving its authority and persuasive skills.

The proper network of information and collaboration has to be created to include all interested groups. Additionally the university officials have to decide what groups need to be focused on – students, employees, heads of departments and what conflicts are going to be considered. This decision is especially difficult at the beginning of creation of the system when financial resources are quite scarce.

About the Author

Ewa Gmurzyńska, Ph.D., associate professor at University of Warsaw Faculty of Law and Administration and staff attorney at the University of Florida, Levin College of Law; director of the Center for American Studies at the University of Warsaw; mediator in academic, civil and commercial disputes; coordinator of Mediation Clinic at the Faculty of Law and Administration of Warsaw University, director of LL.M program in negotiation, mediation and other ADR at the University of Warsaw; author of: *Mediation in American Legal System*, editor and co-author of: *Theory and Practice of Mediation and Role of Lawyers in ADR* (2014).

Ewa Gmurzyńska
Centrum Prawa Amerykańskiego
WPiA UW
ul. Lipowa 4
PL 00-316 Warszawa
tel. +48-22-552 59 20
gmurzynska@law.ufl.edu



ENOHE Occasional Papers

The ENOHE Occasional Papers are a series of publications intended to inform its readers about current trends, recent developments, and scenarios for the future in the development of academic ombudsmen within European and international higher education.

ENOHE Occasional Paper Nr. 1: Kristl Holtrop/Josef Leidenfrost (eds.)

Student – Institutional Relationships in Times of New University Management:
Academic Ombudsmen in European Higher Education

ENOHE Occasional Paper Nr. 2: Josef Leidenfrost (ed.)

Change Management and New Governance in European Higher Education:
Ombudsing as a Contribution to Quality Assurance

ENOHE Occasional Paper Nr. 3: Hans M. Eppenberger/Markus Kägi/Josef Leidenfrost/Eugen Teuwsen (eds.)

Complications Arising from Interpersonal Dependency - The Ombudsman's Role in
Avoiding and Solving Upcoming Problems and Conflicts in Institutions of Higher Education

ENOHE Occasional Paper Nr. 4: Patrick Cras/Josef Leidenfrost (eds.)

Ombudsmen in Higher Education: Counsellor, Student Advocate, Watchdog?

ENOHE Occasional Paper Nr. 5: Michael Reddy/Josef Leidenfrost (eds.)

Universities, Students and Justice

ENOHE Occasional Paper Nr. 6: Ulrike Beisiegel/Josef Leidenfrost (eds.)

Lost in Transition? Defining the Role of Ombudsmen in the Developing Bologna World

ENOHE Occasional Paper Nr. 7: Martine Conway/Josef Leidenfrost (eds.)

Common Objectives, Different Pathways: Embedding Ombudsman Principles and Practices
into Higher Education Institutions

ENOHE Occasional Paper Nr. 8: Gerlinde Sponholz/Josef Leidenfrost (eds.)

Curriculum “Good Scientific Practice“

ENOHE Occasional Paper Nr. 9: Ewa Gmurzyńska

Benefits of Dispute Resolution Systems in Organizations; The Example of the University of
Warsaw Conflict Resolution System