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THE LAW NO 9741, DATED 21 MAY 2007 "ON HIGHER EDUCATION", CHANGED, AND THE REALITY OF HIGHER EDUCATION IN ALBANIA

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Abstract

Law no. 9741, dated 21.05.2007, "On the Higher Education in the Republic of Albania" aims to bring a new vision in the regulation of higher education in Albania and is based on the standards of the European Space of Higher Education. This also requires that higher education in Albania has to be of quality and contemporary so that it responds to the Albanian state's integration processes. The article aims to demonstrate the legal framework of higher education through a critical analysis that it makes provisions for higher education law.

Keywords: law, accreditation, higher education, institution, study programs.

Introduction

Building of the European Space on Higher Education (Bologna Declaration where Albania is a part of), the Stabilization and Association Agreement, which determines approximation of the Albanian legislation and of the laws in the field of higher education with *acquis* of EU dictated the need of approval of the new Law no. 9741, dated 21.05.2007 "On the Higher Education in the Republic of Albania".

The new Law on higher education in the Republic of Albania was a must for the Albanian reality of higher education. On 18 September 2003 Albania

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signed the Bologna declaration, undertaking responsibilities deriving from it and its commitment to comply with its objectives.

The Albanian universities, and particularly the University of Tirana had already started to render the Bologna Declaration objectives a reality. In July 2003, the amendment made to the Law no 8461, dated 25.02.1999 "On the Higher Education in the Republic of Albania" paved the way to the implementation of a system mainly based in two main cycles of study.

Concurrently, the post-university scientific qualification would be divided in two phases: the first phase was the diploma for the in-depth post-university studies, called MA, and the second phase related to the scientific career started with the PhD and ended with the titles of ''Professors'' or ''Research leaders''.

An important moment would be the introduction of the European Credit Transfer System, where the University of Tirana, making an important step forward to integration to the European network of universities undertook the initiative of building a credit system, which was also reflected in the ''Information Package, prepared from each faculty of this University.

Not only the Bologna Declaration, but also other international acts[1] which have now established the physiognomy of higher education in Europe, laid to the higher education institutions in Albania the indispensability of being strong, of offering a variety of options, of being sufficiently funded, autonomous and responsible. It is only in this way that they would be able to ensure:

[1] Magna Charta Universitatum "On the role to be played by the Universities in an ever international society" (Bologna, 18 September 1988).
The Lisbon Convention "On the recognition of professional qualification of higher education in the European region" compiled by CoE and UNESCO (8 -11 April 1997).
The Sorbonne declaration "Harmonization of the European higher education system architecture" Paris, Sorbonne, 25 May1998).
Salamanca Congress "Shaping the European space of Higher Education" (Salamanca, 29 - 30 March 2001).
Meeting of the European ministers of higher education in Prague ''Re-affirmation of the objective of establishment of the European Higher Education Field until 2010" (Prague, 19 May 2001).
The Berlin Conference "On Establishment of a coherent and cohesive zone of Higher education unit 2010" (Berlin 19 September 2003).

– Preparation of students for being active citizens in a democratic society;

– Preparation for their future career and more possibilities for their professional development;

– Establishment and maintenance of an advance database of knowledge and stimulation of scientific research and innovation.

1. The new Law "On the Higher Education in the Republic of Albania"

The new law "On the Higher Education in the Republic of Albania" became efficient in a very tense environment of conflicts between the institutions of higher education and the Ministry of Education and Science, a conflict that sent the newly-approved law to the Constitutional Court, with the object of: Abrogation of the third sentence of item 1 of Article 23 and items 2 and 3 of the Article 64 of the Law no 9741, dated 21.05.2007 ''On the Higher Education in the Republic of Albania'' as incompatible with the Constitution of the Republic of Albania".

The Constitutional Court, at its Judgment no 9, dated 19.03.2008 would legitimize the Conference of Rectors as the initiating the claim where the constitutional court submitted by it for consideration was connected to its interests "{...} on problems of respecting the autonomy of the higher education institutions, {...}" and in the reasoning of the judgment it said: "The Ministry of Education and Science, pursuant to item 2 of Article 64 of the Law no 9741, dated 21.05.2007, is entitled to the right of abrogating any act issued by the steering authorities or bodies of higher education system when these acts are in breach of this Law. The Constitutional Court remarks that there can be no guarantee of the autonomy of institutions of higher education in the country in case the supervision by the Ministry of Education and Science is exerted in the manner envisaged from the above provisions. This because of the fact that the abrogation of acts that are considered directly illegal from the Minister or the Ministry of Education and Science, as already stipulated in the law, puts universities under the hierarchical control of the executive power as if they were bodies under its dependence.

In this way, the law from a guarantor for respecting the constitutional principle of autonomy of institutions of high education is transformed into an instrument that infringes it through the intervention of the executive bodies".

At the time the law was deposited to the Constitutional Court for its constitutionality, the Assembly of the Republic of Albania, less than five months from the entry of the law into effect decides on amending the new law by the Law no 9832, dated 12.11.2007, abrogating exactly the same third sentence of the first item of Article 23 of the existing law sanctioning: "the leading authority of a public institution of higher education that runs for a second mandate for the same function should ensure 60 percent of the valid number of votes to be proclaimed a winner".

This provision of an obvious discriminating character for the Higher Education Institutions and authorities runs contrary to the constitutional principles, infringing the principle of equality of nationals before the law and the principle of university autonomy, envisaged from Articles 18 and 57, item 7 of the Constitution. It infringed the principle of equality of votes, sanctioned in Article 45 of the Constitution as it gives a different value to the votes cast for the candidate who gets a mandate for the first time in ratio with the candidate that seeks a second mandate.

Neither the abrogation the Constitutional Court made to item 2 of Article 64, nor the law amendment, made some months ago by the Assembly of Albania abrogating the third sentence of item 1 of Article 23 helped establishing a calm climate between the public institutions of higher education and the Ministry of Education and Science.

The legal problems of the law are numerous. Referring once again to the two Constitutional Court judgments, namely Judgment no 36, dated 15.10.2007 it says: "The exertion of the decision-making right is an expression of the effectiveness of the institutional autonomy and the state intervention in this crucial aspect would bring difficulties in the implementation of the law and would breach the constitutional standards of this autonomy and of the academic freedom".

Also in the judgment no 9, dated 13.03.2008 it says "Given that higher education is a public service, by Law the executive power can be given oversight competences on universities, but these competencies shall be balanced and proportional so that their exertion does not infringe the autonomy of higher education institutions which is the key to self-governance and contribute to the positive development of common relations".

a. The analysis of same legal provisions

In a detailed analysis of legal provisions, I shall halt the attention in the problems of these provisions.

From the legal viewpoint, the higher education institution as defined in Article 4, item 2 of the Law ''On the Higher Education in the Republic of Albania'': are public of private legal persons, whose rights and obligations are determined in the acts of their establishment".

In the context of the legal person from the viewpoint of law, it should meet three conditions:

1. Property dependency,
2. An organization structure, and
3. An independent wealth responsibility.

The lawmaker, by accepting the concept of the legal person on higher education institutions has with no doubt meant even the existence of these key elements simultaneously, indispensable for their establishment and being, which should ensure to them "autonomy and academic freedom", a principle sanctioned in Article 57/7 of the Constitution of the Republic of Albania and Article 4 of the Law.

But is this autonomy of higher education institutions real? The answer that could be provided to this question is: Provisions of the law speak differently.

Let us focus on some problematic provisions of the law.

From the organizational viewpoint, the higher education institutions, namely the universities, have their steering bodies, where an important place is covered by the ‘’council of administration’’. The definition of Article 16, item 1 says: “{…}the Council of administration is a collegial decision-making body that supervises and controls the activity of the higher education institution related to its administrative, financial, economic and property management’’.

Referring to the composition of the council, apart from the persons that are members of the academic staff of the higher education units, part of it are also certain members appointed by the Minister of Education and Science and the provision goes even further by leaving the number of these members open, depending on the fact that: ‘’ {…} the number of the appointed members is less than half of the number of the administration council members.’’

The question that can be asked is why should there be such appointed members, when ‘’the Council of Administration’’ is part of the steering and administration structures of higher education, where its competence in function of enforcement of the Article 16 of the Law itself refers to only the activity of the higher education institution, and, on the other hand, item 7 of Article 16 sanctions: “the statute of the public institution of higher education, compliant to this Law defines the other rights and obligations of the administration council, the number, composition, mandate, manner of election of its members {…} as well as the council functioning”.

In the context of composition of this item, it is the statute itself the act approved by the institutions of higher education the one that should determine the organization and functioning of its bodies.

Also, if we consider that Article 64, item 1 of the Law sanctions: ‘’ The Ministry of Education and Science does periodically at least carry out once in three years the control on the implementation of lawfulness sin public institutions of higher education and at least once a year performs a financial control …’’, therefore is the Ministry controlling again?

– First, the Ministry is implicated in the decision-making in this Council.

– Second: the Ministry does again control the Council through the control, particularly the financial one exerted on the institutions of higher education.

Another provision that leaves spaces for interpretation is Article 22 of the Law, entitled ‘’Other Authorities of Public Institutions of Higher Education”.

Different standard are found within the same provision.

Item 3 of Article 22 stipulates: “the candidates for chancellors of an institution of higher education are selected from the Council of Administration and the rector submits candidates for approval to the Minister of Education and Science.

Item 7 of Article 22, on the other hand, stipulates: ‘’the chancellor of the faculty or of other main units is appointed by the rector from the three candidacies proposed from the council of administration of the institution.’’

In both cases it is ‘’the Council of Administration’’ acting, whereas the appointment is different.

Also, the provision does not say what shall happen if the Minister does not agree with the candidacy selected from the council of administration, which (is a collegial body) and proposed by the rector, leaving ‘’power’’ to the executive to decide on a structure that is a component part of the steering system of the higher education institutions.

Referring to the function and position of the chancellor in the higher education institutions and in faculties or other main units, it shall be responsible for the daily administrative and financial running of the institution, for implementing the budget, for overseeing and controlling the financial actions and for implementing the lawfulness (Article 22§2) functions that shall be in coherence with other functions that the law provides for the position of the rector in Article 15, item 2/c, ç, d, dh.

Another disputable provision from the legal point of view, referring to the constitutional rights of the individual is Article 23 of the Law, which provides that: “the steering bodies and authorities in the higher education public

institutions are elected for a mandate of four years. The steering authorities cannot be elected for two consecutive mandates or the same function".

Referring to Article 45 item 1 of the Constitution: "Every citizen {…} is entitled to the right of electing and being elected''. In a literal interpretation of this Article we do not see that the Constitution puts limitations in time to be elected and to exert a function for two consecutive times, also referring to several constitutional functions envisaged by the Constitution itself.

On the other hand, considering Article 2 of the Law which determines a procedure for election of the steering bodies of the higher education institutions, this limitation is again contradictory.

Also, referring to Article 23 *et. seq* we see application of double standards again.

Therefore, according to item 2 of the same Article: ''the rector of a new public institution of higher education is appointed by the President of the Republic as per the proposal submitted by the Minister of Education and Science for a one-year mandate. This mandate can be renewed, but not more than for two consecutive times.''

In the case of appointment of a person, he is entitle to the right of re-appointment to the same position when the re-appointment depends on personal preferences, and where the intervention of the intervention is openly visible, infringing the principle of ''university autonomy'' apart from the moment of establishment of an institution of higher education.

Other problematic legal provisions are those belonging to Chapter IV of the Law "On the Organization of Studies in Institutions of Higher Education".

The principle of autonomy, sanctioned in Article 3, item 2/b and c highlights: "The autonomy of higher education institutions is expressed in:

−The right to approval and independent development of the study programs and of the research projects;

−The right to appoint the criteria of accepting students in the study programmes".

Despite of what is sanctioned in this Law, in violation to what said above, item 2 of the Article 24 ‘’the study forms’’ provides that ‘’ the application and implementation of each of the study forms is made upon the proposal of the Minister of Education and Science”, and therefore with the right received by the executive again, the Minister of Education determines by an instruction “the integrated study programmes of the second cycle” (Article 1.2.2/ç).

Also, on the other hand, the study programmes for PhDs can be offered integrated with long-term specialized studies, as per the academic curricula and programmes approved by the relevant faculties and University, after receiving the approval of the Minister of Education and Science”.

The question that might arise is: why is the approval of the executive power needed for when according to the definition of item 2 of Article 25: “The study programmes are approved by the institutions and are approved by their academic senates’’, also regarding the competencies given to the senate it sanctions that: “… assesses and approves the new academic programmes …” (Article 14, item 2/e).

Another article that leaves spaces to interpretation is Article 31, item 4, which stipulates that: “the content and the form of the diploma and of the diploma supplement are determined by the academic senates compliant to the instructions of the Ministry of Education and Science”.

In the context of the university autonomy, it should be the senates the ones to determine the basic criteria of the content and form of the diploma and of its supplement given their burdened functioned even by the law, where “the senate assesses, guarantees and is held responsible for the quality assurance of the institution compliant to the state standards” (Article 14/2/e).

Disputable is also Article 33, item 2 which sanctions: “the acceptance quotas in the public institutions of higher education for the first cycle of studies are approved by the Council of Ministers, upon the proposal of the Ministry of Education and Science. The Ministry of Education and Science formulates its proposal after consultations with the public institutions of higher education and recommendations of the Council of the Higher Education and Science”.

The clause of this Article is in flagrant breach of the principle of university autonomy, according to which the higher education institutions are entitled to: "the right to determine the criteria of acceptance of students in the study programmes" (Article 4.2/c). In the context of these criteria we should not only comprise the quality criteria, but even the quantity one, therefore even the *quotas* the higher education institutions are entitled to determine and decide upon.

But, again, it is the Ministry of Education the one that proposes, and the Minister does again double its competences as it has a determined function in the KALSH which issues recommendations for these quotas, where, according to Article 66, item 5, he heads this Council.

The formulation issued in item 2 of Article 33 can be found in the item 4 of Article 34 regarding the admissions in the second and third cycle of studies.

The control by the ''executive'' predominates again in this article.

What the law does widely present is that the validity of issued acts from the collegial bodies, is decided upon by a monocratic body, which represents the ''executive power''.

In case we do again refer to the Judgment no 9, dated 19.03.2008 of the Constitutional Court: "The respect of the principle of autonomy of institutions of higher education sanctioned by the Law 57 item 7 of the Constitution asks the Law to establish such dimensions that institutions of higher education get sufficient power to freely and independently take decisions. Self-governance, collegiality and the suitable academic leadership are fundamental elements of the real autonomy for the higher education institution."

The most typical case is the approval by the Minister of Education and Science of the amended statute by the senate of higher education institutions by not less than 2/3 of votes of its members.

Validity of an act that composes the main basis of its organization and functioning cannot be given from above, because pursuant to the discretional power of each institution it is entitled to issue acts[2].

Another striking element of the Law "On the Higher Education in the Republic of Albania'' is the presence of two new bodies in the law, namely:

– The Council of Accreditation;

– The Council of Higher Education and Science.

It can be said that these two bodies are controlled by the same person, that is the ''title holder'' of the Ministry of Education and Science**.**

Referring to the content of Article 60, item 3, paragraph 2: "the Council of Accreditation is dependent in its work and renders its decisions public, expressing its opinions against".

But the question that might rise is: how can this Council be independent when the nomination of persons there is made only upon the approval of the Minister of Education and Science, and when in its composition are again members from the Ministry appointed by the Minister.

The functions of this Council which should be a quality measuring instrument for higher education are only of a recommendation nature, and it is the consequent provision, Article 62, item 1, first paragraph, which says: "The Minister of Education and Science, pursuant to the recommendations of the accreditation council issues a final decision on the institutional accreditation of and of the programmes in the public and private education.''

Therefore, its competencies are only recommendations, despite the so-called collegial composition it represents. It has no decision-taking right.

It is this regulation that cannot escape problems that shall derive from its enforcement as the accreditation of an institution of higher education shall be an ''exclusive' competence of a sole person.

[2] The discretional power means the right of every state institution to exert public authority for realizing a lawful aim, even without an expressed authorization by the Law.

As already highlighted above, a new structure is ‘’The Council of Higher Education and Science” - KALSH. The legal provision, Article 65 of the Law is not clear in the way it is formulated as it cites that: “the Council of High Education and Science is an advisory body of the Ministry of Education and Science and of the Council of Ministers for the development policies in higher education and science”.

From the hierarchal viewpoint it is well understood that an advisory structure can function in vicinity of the Council of Ministers in the field of education and science for meeting the government objectives. But such a structure of an “advisory” nature also in the Ministry of Education and Science, which is a component part of the government structure, cannot be justifiable.

This stance is reiterated if we consider that the head of this advisory structure is the Minister of the Ministry of Education and Science.

The constitutional principle sanctioned in Article 102/4 says: ‘the Minister, within the main directions of the general state policy, leads, in his responsibility the activity exerted under his competency”, namely the education and science in Albania.

In all the content of Article 65, in no place can there be seen a line on cooperation that should be ensured between the institutions of higher education and the KALSH-it so as its advisory function is met towards the tasks it is charged with.

Another highly disputable question is the legal adjustment provided for in Article 64 of the Law “control of lawfulness”.

This legal provision, in its item 3 became an object of consideration in the Constitutional Court, where the Conference of Rectors submitted that:

“Article 64, item 3 of the Law no 9741, dated 21.05.2007 that provides for the right of the Minister of Education and Science to suspend rectors from office and to transfer of competencies of rectors to the deputy rectors is incompatible with Article 92, letter “g” of the Constitution, according to which it is the competence of the President to name the rectors of universities”.

On these grounds: "{…{ the majority required by Article 72 of the Law 8577, dated 10.02.2000 "On the organization and Functioning of the Constitutional Court of the Republic of Albania" was not reached {...}'' {...} The Constitutional Court "{...}Refused the claim for item 3, Article 64 of the Law no 9741, dated 21.05.2007 "On the Higher Education in the Republic of Albania".

Item 3 of Article 64 keeps being disputable not only with the above argument submitted by the Constitutional Court from the Conference of Rectors, but even with the interpretation that should be made to the expressions "in flagrant cases or serious violations of laws".

The reference in the principles of rights[3], according to which: "exertion of the activity within the limits of competencies issued and in conformity these competencies have been provided for renders these actions lawful", is important**.**

Item 3 of Article 64, creates a big problem in its legal interpretation, establishing the basis for subjectivism, which, in its turn, would render the amendment and a more adequate formulation of this item in the future indispensable.

In their entirety, the provisions of the Law "On the Higher Education in the Republic of Albania", from the quality viewpoint do frequently cite the wording "the Minister of Education and Science[4]", proposes, appoints, orders the institutions of higher education, what clearly shows that the university autonomy is infringed and in the case treated above, the infringement of this autonomy is highly evident.

[3] In the Code of Administrative Procedures, Article 9 reads: "the public administration bodies hold their activity compliant to the Constitution of the Republic of Albania, the international agreements the Republic of Albania adheres into, within the limits of competencies it has and in conformity with the aim these competencies have been granted for".

[4] Article 6/2; Article 12 last paragraph; 16/4-b, 5; Article 21/9; Article 22/3; Article 23/2; Article 24/2; Article 26/1.2.2; Article 32/1; Article 33/5; Article 37/2, 4; Article 39/2; Article 41/1 Article 44/3; Article 47/2-c, 4, 7; Article 50/4; Article 58/3, Article 60/3, 6; Article 62/1; Article 64/3, 4, 6; Article 65/2-dh, e; Article 66/1,2, 5, 8; Article 67/2; Article 75/2,4; Article 77/1 Article 78 first paragraph; Article 85; Article 94; Article 96.

The last provision I would like to treat is Article 98 of the Law, item 2, which stipulated that "within 6 months from entry of this Law into effect, the Council of Ministers and the Ministry of Education and Science shall prepare all the legal acts for implementation of this Law".

In case we consider the legal provisions, when the Ministry and the Minister of Education and Science have pledged to issue by-laws, it can be said that such cases are several[5] and in most occasions they are orders and ordinances of the Minister, which identify the violation made to the academic autonomy and freedom.

2. The higher education in fron of the phenomen of corruption

It can be said that the issue of corruption in the higher education is multidimensional and can be found in many fields.

1. The public higher education institutions especially, are characterised by the failure of the academic staffs to abide by the Code of Ethics. These staffs are continuously accused of corruption (these data are informal) and the phenomenon noticeably lowers the education quality.

The corruption of lecturers, which represents one of the weakest chains of the Albanian higher education system, is multifaceted:

This corruption is mainly related to the *control of the students' knowledge, examinations*. Many interventions occur which can also be in the form of bribe with the purpose to pass the examinations. This phenomenon

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Decion of Council of Minister no 864, dated 5.12.2007 "On opening of the study programmes of PhDs in the public institutions of higher education and on determining the conditions to be met by the student to receive the diploma for the PhD scientific degree".
Decion of Council of Minister no 467, dated 18.7.2007 "On setting the criteria and procedures for the scientific and pedagogic qualification of the academic staff".
Decion of Council of Minister no 255, dated 27.4.2007 "On the excellence fund for financially supporting the young and excellent students and scientists.
Instruction".
Instruction no15, dated 04.04.2008 "On the organization of studies for the public institutions of higher education".
instruction no 20, dated 09.05.2008 "On the activity of the academic staff in the public institutions of higher education. Model 1."

represents one of the most corruptive elements in the higher education system, noticeably lowering its quality and making especially public universities be unconsolidated and corrupted in the eyes of the public opinion.

The existence of this corruptive element is not just widely known and accepted in our universities, but students themselves list a *range of factors* the payment to pass the exam depends on.

These factors, according to a study performed by Soros Foundation in Albania[6], refer to: the difficulty of the subject, tariff set by the lecturer himself, as well as the claims for undeserved grades by the students.

The corruptive element concerning the grade, is related sometimes also with the *favours that lecturers demand* from the parents of the students who, due to their possible position in the public administration or their acquaintances, "help" the lecturers in exchange for a good grade for the son or the daughter.

The social opinion, and especially the opinion of students, is that the *low salaries of lecturers* stimulates bribing, a phenomenon which is especially common in eastern countries, more specifically for lecturers working in public universities.

The corruption of lecturers is sometimes materialized "as it can be said" indirectly, when lecturers *oblige students to purchase their own books*, relating the purchase to the final grade the student will get. Prices of books are high.

This phenomenon is currently very widespread in Albanian universities and no structure intervenes, neither the HEI steering bodies, nor the relevant

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6 Transparency assessment in high education, Soros 2005, page 13.
Listing the factors that determine the level of payment for passing an exam, 46% of the students think that the difficulty of the subject is one of the main factors that set the price for passing an exam. Moreover, 35% of the students think that the tariff is imposed the lecturer and 19% of the students claim a higher grade in exchange of the payment.
About 55% of the students in Elbasan University think the lecturer sets the tariff and this opinion can be found also in Tirana University where 37% of the students agree with it. About 64% of the students in the Polytechnic University emphasize that it is the difficulty of the subject that defines the tariff for the passing of the exam. The same opinion is shared by 57% of the students in Shkodra University. The claim for a better grade has been mentioned by 36% of students of the Arts Academy and Physical Education.

state structures, especially the Ministry of Education and Science, which have no defined policy in this frame.

Corruption in higher education is also stimulated by the students themselves. Public and private HEI regulations state that the students' evaluation system is closely related to the *mandatory attendance of students in lecture and seminar classes.*

The low number of students attending classes represents a common phenomenon in the Albanian universities, which would make their participation in exams impossible.

However, the reality is different. There are ways to clear the number of absences in cases when the attendance of a student is lower than the one envisaged in the regulation. In these cases, the lecturer accepts the bribe and clears the number of absences enabling the student's participation in the exam.

There are also cases of double collaboration between the administrative chains (secretary office) and the lecturer and in these cases the student is allowed to participate in the exams[7].

2. The rapid increase of the number of private higher education institutions in Albania (according to official data[8] there are 27 private higher education institutions and 11 public ones out of which only a small number is accredited[9]) has been accompanied by concerns over their quality.

In the majority of cases, the quality of private higher education institutions is low and such a phenomenon is the result of several factors.

In the striking majority of cases, students accepted in these institutions have a *very low grade average in the A-level test*, which is not enough to enter public higher education institutions or to win the course they prefer.

This category represents the main student bulk of private HEI which directly influences the control of their knowledge, which is superficial and is

7 Transparency assessment in high education , quoted study.
8 Public Accreditation Agency for High Education (PAAHE), www.apaal.edu.al.
9 The number of HEI accredited by PAAHE is nine.

often ordered by the owners of these institutions who in this way deliberately infringe the academic freedom of lecturers.

Private HEI are registered as commercial companies according to their organizational structures and activity, basing on Law No 9901 of 14 April 2008 "On Traders and Commercial Companies" (often as Limited Companies,) which does not comply to the object and purpose for which they operate.

Currently, there is still no proper legal framework which regulates their organization and functioning.

The law on higher education offers a very wide concept of private HEI: *Private higher education institutions are created and operate according to this law… A private higher education institution can be created through demand of a domestic or foreign juridical subject. The juridical subject is responsible for the entire activity, administration, and financing of the institution established through his request (article 43).*

The absence of a clearly defined legal framework on private HEI prevents them from meeting the institutional standards concerning the organization and activity.

The noticeable absence of internal academic staffs represents one of their weak points, failing to create the base-departments units and making the performance of a proper education and scientific activity impossible.

Article 12(3) on HEI states that*: "The department encourages, converges, and administrates the teaching activities and scientific or artistic research activities, respecting the academic freedoms of the academic personnel and its right to exploit material and financial resources at the disposal of the department. The department shall include at least 7 members effective as academic personnel out of whom at least three shall have ranks and degrees."*

In this frame, private HEI departments are inexistent not only by composition but also by activity.

Even the so called existing departments are made of external lecturers coming from academic staffs of public institutions.

The absence of a proper organization noticeably lowers their quality and makes them be not credible in the eyes of the student community.

Another element absent in private HEI is the existence of collegial bodies, even though their existence is stipulated by the law on higher education[10], such as the Academic Senate, Administration Council, Faculty Council, as well as the Department Council. In the majority of private HEI these bodies do not exist *de facto*.

I emphasize "*de facto,"* since their existence *de jure* is included just in the internal statutes and regulations, but in fact they do not operate since everything is decided by the owner or owners.

These institutions also leave much to be desired in relation to the means of the incomes declaration. There is no taxation or fiscal supervisory body database on the tariffs for the registration of every student, clear declaration of these tariffs, expenditures which should be invested on their infrastructure, as well as there is no clear declaration of the lecturers and administrative personnel salaries due to reasons related to social and health insurance.

Two months ago, the Albanian Parliament amended the law "On Value Added Tax (VAT)"[11], removing VAT on students registering in private HEI (the latter were included in the VAT scheme due to their categorization as commercial company).

This amendment was commented by the government as an encouragement to higher education in Albania with the purpose to increase its variety and develop private HEI.

Despite the declarations of the government, the public opinion is sceptical over the usage of the money remaining by the VAT removal for investments in the infrastructure of private HEI, scientific research improvement, distribution of scholarships, etc.

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10 Quoted law, articles 14, 16, 17,18.

11 Law No 10215 of 21 January 2010 "On some changes and additions on Law No 7928 of 27 April 1995 "On Value Added Tax," as amended.

The fiscal evasion they have generated up to date represents a threat for the society and the state, showing the incapability of the latter to fight corruption in this frame.

3. The procedures on external quality assurance in the higher education[12], are inefficient and do not comply with the recent developments in Europe.

Albania is facing an important challenge related to the establishment of effective external quality assurance systems at a national level[13].

The Public Accreditation Agency for Higher Education (PAAHE), due to its minor size, cannot manage to deal with a series of issues related to the external quality assurance, including the organization of independent analyses, unaffected by different factors such as certain political elements or acquaintances and reciprocal influences.

In the majority of cases, private higher education institutions have been recommended for accreditation by the Accreditation Council (decision making body of PAAHE), despite their deficiencies and weaknesses.

Moreover, even those higher education institutions whose quality is questionable are granted a "conditioned accreditation," which is a standard set by article 62 (2) of the Law "On higher education," due to the interests of certain politic forces.

It is worth mentioning a very meaningful fact: during the general elections campaign of 2009, the auditoriums of universities, especially private ones, became arenas for the presentation of political programmes of the main politic parties in the country.

Referring to these quality assurance mechanisms, it can be said that they are not transparent when doing assessment or accreditation. Furthermore, even in cases when their recommendation is negative or conditioned, the Minister of Education and Science has the right to change it. This competence of the

12 National Strategy for Development and Integration 2007-2013.
13 From Fragmentation to Cooperation, quoted material, page 46.

Minister derives from the article 62 of the Law "On higher education in the Republic of Albania," which states that: *"The Minister of Education and Science, basing on the recommendations of the Accreditation council, produces the final decision concerning the institutional accreditation and the accreditation of public and private higher education programmes."*

Even in the legal definition, the Accreditation Council has the right only to *"recommend"* and not to decide, giving it a freehand also to produce inadequate and non-transparent recommendations, which can only be considered as "recommendations" despite the actual quality of the institutions.

Moreover, there is no accurate mechanism on how this body should be formed. The law provides a very wide formula[14]. The Minister of MoES is again in charge of appointing the members of this collegial body.

These mechanisms including the Accreditation Agency and the Accreditation Council have not managed to enable high quality in the institutions.

The absence of a legal framework represents one of their weak points. This framework should be adopted according to the new law on higher education but it has become a "hostage" of the politics and is still to be framed.

The perspective for its adoption is unknown despite the fact that it is one of the preconditions included in the Higher Education Strategy (2008-2013) for the adherence of PAAHE in the European Quality Assurance Register (EQAR).

4. The lack of real and efficient functioning of the internal quality assurance system of HEI[15] has a noticeable negative impact on the higher education quality.

Even though Albania is a member of the Bologna Process, it has not rigorously implemented the principals of this process. The Berlin Communiqué, which was adopted in the meeting of Ministers of the participating in Bologna

[14] Above quoted law, Article 60 (3) states: "The Minister of Education and Science appoints the members of the accreditation council out of the candidates proposed by the represented parties."

[15] National Strategy for Development and Integration 2007-2013.

Process in 2003[16], emphasizes that the universities themselves should be the main responsible for the assurance of quality.

On the other hand, MoES which is the main responsible body for higher education has not paid the proper attention to the creation of healthy internal quality assurance mechanisms in higher education institutions.

This structure, which is very necessary for Albanian universities, does not operate in the majority of cases.

In the case of private universities, this structure is a "tool" in the hand of the owner/owners and the assessment produced by it must be in line with their interests. Thus, the "Internal Quality Assessment Reports" prepared by them, are often biased and not objective.

The same phenomenon is found at public universities where these structures are inactive and inefficient.

No informative debate has been held at the premises of universities concerning the equilibrium of internal and external quality assurance mechanisms. This is a result of the lack of proper knowledge over these mechanisms and the role they have in the higher education quality and progress.

5. Albanian universities currently have an institutional structure which prevents them from creating an identity and a main mission through which they can plan their development, work for comparative advantages, and set their resources.

There is a high rate of uniformity in the majority of universities which opens the way to corruption which is materialized in several ways:

- Universities which cannot offer flexible, advanced, and student-oriented courses.
- Universities which cannot manage to focus their few resources in research activities where they can have a comparative advantage, including strategic alliances with other institutions of the South-eastern Europe region and beyond.

[16] Berlin Conference "For the development of a coherent and cohesive European Higher Education Area by 2010" (Berlin 19 September 2003).

• Universities which lack effective public accountability mechanisms, which means that there is no framework for the quality and efficiency improvement of these institutions.

The adoption of Law No 9741 of 21 May 2007, as amended "On higher education in the Republic of Albania," has not produced an integration of higher education institutions. The compromises which were made during its adoption and later on, have damaged the efforts on the undertaking of the reform and the important changes have not been rapid. The reform process, which was drafted as a step-by-step approach, is not producing the expected results and has not managed to create fully integrated institutions[17] up to date.

Steering bodies, especially monocratic ones in public HEI, continue to be led by old policies and mentalities. Their leaders, Rectors, Deans, and Chiefs of Departments do not implement the principles of collegiality and transparency. In the majority of cases, their decision-making is led by personal interests in this way seriously infringing the integrity and transparency of the institutions they lead.

The statutes of universities (including public ones), are drafted according to the interests of the leaders giving them full power while seriously infringing the principle of collegiality.

The most meaningful case was the failure of the Tirana University Statute to enter into power (Tirana University is the major public university in Albania). For a period of two years, since the latest elections of the steering bodies of this university (end 2007) until September 2010, its Statute experienced a long to-and-fro, University-Ministry and *vice versa.*

After controlling its compliance with the law[18], the Minister of MoES observed that many provisions included in it were against the law on higher education and other legal provisions.

6. The majority of the private higher education academic staff is made of full time lecturers in public institutions. Their employment in

[17] From Fragmentation to Cooperation, quoted material, page 29.
[18]. Quoted law, article 39.

public universities calls for the abiding by the rules stated in the Law on higher education[19] as well as in the Code of Labour in the Republic of Albania.

These lecturers are obliged to work at private universities due to their low salaries, but this employment has turned into an abuse in the current Albanian reality since in many cases these lecturers abandon the lectures or seminars in the auditoriums of public universities. The reason why this happens is simple, private universities pay good salaries especially to lecturers holding scientific ranks and degrees.

Normally, this double employment should abide by the rules. It cannot keep noticeably lowering quality especially in the case of public higher education where the major part of the Albanian youth studies.

The Albanian legislation acknowledges and regulates double employment[20], but the double employment of the academic staff should be made within a clearly defined framework, without resulting in the abuse towards the public higher education, while ***welcoming*** the fact that this phenomenon would increase the incomes of Albanian lecturers.

MoES should implement a unified policy in this frame, setting a norm to lecturers of the public universities concerning their work in private universities. This can be achieved through the drafting and adoption of proper bylaws as well as through putting the control mechanisms into action.

RECOMMENDATION

These issues call for a solution and it is right to ask: What should be done?

First: The adoption of a proper legal framework, lacking political interests, which should serve to all players interested in the process for the reformation of Albania's higher education.

This legal framework is the document which would give the real rights to Albanian universities resulting in the organisational restructuration, especially

19 Quoted law, article 50- Employment in higher education institutions.
20 Code of Labour of the Republic of Albania, article 14.

in public universities, where every structure should take its responsibilities in function of academic freedom and autonomy as one of the main principles stated in article 3 of the Law on Higher Education.

Second: The adoption of a legal framework which should clearly define the means of creation and the organisation of private institutions' activity not as a commercial company (this would cure the high informality rate existing currently), with the purpose to make them competitive and capable to meet the needs of the country.

The creation of this legal framework calls for tangible actions to be undertaken in order to give a solution to the above mentioned issues, implying:

- Existing structures which practice their competences and not structures existing only in paper.
- Transparent decision-making by the steering bodies without the intervention of the owners.
- Establishment and functioning of collegial bodies.
- Academic freedom of lecturers without interventions.

The control of the state on them should be continuous both on their academic standards as well as on their economic activity.

Internal assessment structures in private HEI should be established and should operate permanently basing on professionalism, impartiality, and transparency. They cannot and must not be 'tools' in the hands of the owner/owners, but they should eye the perspective of integration processes which are aimed by the private higher education in Albania.

Third: The restructuring of the role and functions that external quality assessment mechanisms should play. The Public Agency for Accreditation of Higher Education and the Accreditation Council should operate basing on professionalism, transparency, and accountability, while being detached from any political influence or from interventions from outside the system.

The assessment and accreditation process should be based on the standards of the European Network for Quality Assurance in Higher Education (ENQA), in which the Albanian agency should participate.

The Accreditation Council should operate according to a clear legal framework and its proposals should not serve as recommendations, but as decisions. This would prevent Ministers, whose decisions may also be driven by political reasons, from having a decision-making power. An intervention in the law is required to achieve this.

Moreover, the Albanian higher education legislation on accreditation should be amended also in that point where it allows the conditioned accreditation, since the accreditation decision should be simply positive or negative just like the consolidated experience of the countries of the European Union.

The real experience has shown that higher education institutions which have been conditionally accredited do not meet institutional and academic standards. The diplomas offered by them are unreliable and create inflation in the labour market.

Fourth: The public financing system[21] should rightfully act for public universities and should offer incentives for these institutions so they can fulfil their respective missions in order to increase their competitive ability and social cohesion. The universities themselves should play the main role for the assurance of public financing by presenting ambitious projects as a result of the collaboration of all component structures and not just steering bodies as it commonly occurs in Albania where everything is decided by the Rector or the Rectorship.

[21] National Strategy for Development and Integration 2007-2013.

Özet

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Anahtar kelimeler: kanun, akreditasyon, yüksek öğrenim, kurumlar, eğitim programları.