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The Hurdles for the University Autonomy in Macedonia - The Case of Law on High Education

1. Background of the problem

On October 3rd 2014 the Ministry of Education of the Republic of Macedonia, for the first time, released an announcement to the press in which it spoke about the external examination (testing) of students at universities. As the news was rather shocking, it brought about immediate reactions in the public. The initial reactions were made on the very same day, most of them coming from the *academia*. Moreover, they did not diminish in the following period as well. This was a period in which the Ministry materialized the idea in a *Proposal for a Law* that was delivered to the universities, and afterwards to the Assembly, as a concrete *Law Proposal*.

This *Proposal* contained Articles related to the external examination of students (called "State Exam"), but not solely to that. It also had Articles that were related to the academic staff titles, and the election and promotion of the academic staff. Namely, the authorities had an idea to dictate the conditions for election and promotion of the academic staff. The *Proposal* was delivered to the universities, and even before they responded, to the Assembly. This meant that the Parliamentarians were to decide whether this controversial *Proposal* was to become a Law or not. Of course, the *Proposal* with just slight changes became an official *Law* on January 22, 2015.

2. Action and the rationale behind it

In the mean time on October 22, before the *Proposal* became a *Law*, the *Student Plenum* was founded. This spontaneous movement arose to be one of the greatest student movements in the history of the nation, and

Summary

University autonomy, nowadays, is emphasized as one of the most important principles in relation to the process of democratization. As an expression of the ideals of freedom and diversity, this principle ought to be guaranteed and protected in the Republic of Macedonia, a state yet striving to become a democratic one. However, the recent Law on High Education from February 2015 puts this principle in danger of being demolished. There are many provisions that, if effectuated, will annihilate the autonomy; despite its importance, and the fact that it is guaranteed with the Constitution of the Republic of Macedonia. It is, indeed, utterly positive that the public efforts so far brought about moratorium for these provisions. Now, even more efforts are needed so that the recent Law is put aside and a new one is constructed. Due to the importance of this issue, this Policy Brief has an aim to illuminate it and offer concrete solutions for its overcoming, solutions that hopefully are going to be considered by the decision-makers in the near, as well as in the distant future.



Source: lokalno.mk

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possibly, one of the greatest citizen movements as well. Aimed to protect the rights and interests of students and the university autonomy, the Plenum was perceived as an authentic self-guided movement (by the largest part of the population), which inspired other key actors to engage in various activities as well.

If the reaction was urgent then, in the second half of 2014, nowadays it is even more. Then, these Amendments were merely a *Proposal*. Now they materialized in a *Law*.² This means that in the Republic of Macedonia we now have an actual Law that puts the autonomy of universities in jeopardy. The sole reason why the autonomy is still “kept alive” is the fact that these new, problematic provisions have not yet been exercised, due to the publicly elicited moratorium (which was the only step taken by the authorities). In other words, if it was not for the public reaction (massive student protests, debates, individual actions, and letters to the authorities) the authorities would not postpone the effect of the problematic provisions. That, on the other hand, would bring about many negative consequences for the Republic of Macedonia.

The negative consequences are deriving from the important role of the autonomy. Namely, the autonomy of universities is the key prerequisite for intellectual autonomy. If universities are free to decide what to teach their students (academic freedom), they are going to contribute to the development of authentic, critical and progressive standpoints and opinions. That, on the other hand, is going to be the key element for democratization of the society. *A contrario*, if universities do not have their academic freedom they are not going to be able to contribute to the overall process of democratization. In a state where the democratization might not be the main interest of the authorities, this would most definitely be of an interest.

As it is always prudent to prevent the problem, rather than fix it afterwards, the reactions in Macedonia should be immediate. We should not wait for the autonomy to be demolished, so that we can build it over, but instead we should prevent its demolishing. That is why, the reactions should be more vivid before the moratorium passes, not after it.

3. Critics of new Amendments of Law on High Education

These latest Amendments of the Law on High Education were criticized from many aspects. The main argument was that they are contradictory to the university autonomy. Bearing in mind that the university autonomy is guaranteed with the Constitution of the Republic of Macedonia from 1991, these Amendments were unconstitutional and unacceptable for the academia, as well as for the general public in Macedonia. Furthermore, they were also contradictory to the International acts and standpoints related to this principle of university autonomy.

² Amendments on the Law of High Education (“Official Gazette of the Republic of Macedonia” no. 10/2015).

3.1. Definition of university autonomy

In order to explain how the new Law is contradictory to the principle of university autonomy, we firstly have to define the principle itself. Autonomy is a characteristic of the decision-making process. Each university must make its own decisions on matters related to knowledge, research and teaching, and place its own coherent strategy on the continuum of axes which are defined by polarities: small dimensions and large ones, general education and specialization, different levels of professionalism and formalism, research and teaching, tradition and innovation, openness and confinement, orthodoxy and a critical attitude.³ Autonomy means independence. It means that neither the state, nor any political or other influential body can interfere with university operations. Universities have an institutional right to fully exercise their academic freedom and self-government regarding their affairs.⁴ A more systematic definition of the principle would be the one given by the European University Association, which defines the university autonomy through four (4) dimensions:⁵

- Academic freedom
 - o Academic autonomy refers to a university’s ability to decide on various academic issues, such as student admissions, academic content, quality assurance, the introduction of degree programs and the language of instruction.
- Financial autonomy
 - o Financial autonomy refers to a university’s ability to decide freely on its internal financial affairs. The ability to manage its funds independently enables an institution to set and realize its strategic aims.
- Staffing autonomy
 - o Staffing autonomy refers to a university’s ability to decide freely on issues related to human resources management, including recruitments, salaries, dismissals and promotions.
- organizational autonomy
 - o Organizational autonomy refers to a university’s ability to decide freely on its internal organization, such as the executive leadership, decision-making bodies, legal entities and internal academic structures.

3.2. Problematic provisions in the latest Amendments

Bearing in mind the definition of the principle, it is evident that the new Law on High Education contains

³ UNESCO European Centre for Higher Education (CEPES), *Academic Freedom and University Autonomy* - Proceedings of the International Conference, 5 – 7 May 1992, Sinaia, Romania, pg. 36.

⁴ UNESCO European Centre for Higher Education (CEPES), *Academic Freedom and University Autonomy* - Proceedings of the International Conference, 5 – 7 May 1992, Sinaia, Romania, pg. 40.

⁵ European University Association definition of University Autonomy, more available at: <http://www.university-autonomy.eu/>

multiple articles that are contradictory to it. One of them is, most definitely, the new Article 69-a containing the provisions for the “State Exam” for students, as a quality assurance mechanism.

This Article provides that each student, on bachelor or master studies, shall take a state exam at two occasions - during his/her studies, and at the end of his/her studies. This state exam is going to include the entire corpus of subjects (classes) that the student has had during his bachelor or master studies. The state exam is going to be enforced by the Board for Accreditation and Evaluation, while the special conditions for its enforcement are going to be prescribed by the Minister of Education and Science. Finally, the Law stipulates that if the student does not pass the state exam, he/she will not be able to receive university diploma (graduate).

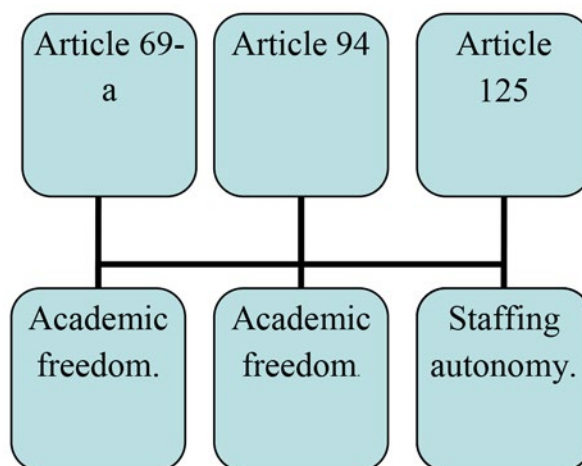
From the summarized text of this Article it can be concluded that the Article is problematic in various aspects. *Firstly*, the state exam is deemed as a quality assurance mechanism. The academic freedom as a part of the autonomy principle means that the universities shall decide on quality assurance mechanisms, and not the state, wherefore this provision is not in line with the university autonomy. *Secondly*, the universities are the ones which should decide on who deserves to graduate, and who does not. With this solution it becomes irrelevant whether the student has fulfilled the university criteria for graduation, since without the state exam he/she cannot graduate, anyhow. *Thirdly* the Law does not provide any provisions regarding the material on which students are going to be tested. This means that it is up to the Board and the Minister to decide on this matter. And, since the students cannot graduate without a passed state exam it is evident that the material for the exam is going to be the one they focus on more. What the professors teach becomes insignificant. *Lastly*, it is illogical to think that the talent of musicians, artists, painters and various other professions can be evaluated through a state exam (that has questions with multiple-choice answers). Of course, there are many more arguments opposing this Article, however, these are the most substantial ones.

The Article regulating the state exam for students is, however, not the solely problematic one. There are numerous other Articles as well. In that sense, one of the most controversial is the current Article 125 where the criteria for election and promotion of academic staff is stipulated. In this Article, the provisions provide rather odd criteria for election and promotion of academic staff, such as publishing papers in the *Web of Science Network*. Not just that the state breaches the staffing autonomy of universities, but it also puts merely one scientific network in a favorable position. So, besides the university autonomy, another question that arises is – is this not a legal discrimination?

Another rather unusual Article is Article 94, where it is provided that every bachelor programs at any university

in the Republic of Macedonia should be 80% matching with the programs of the universities that are the highest ranked ones, under the *Shanghai list*.⁶ If the universities are obliged to prepare their programs in a defined way, how can one speak about their autonomy?

These problematic provisions are merely used as an illustration. The Law, however, contains many more provisions of such kind, wherefore it is evident that the autonomy of the universities is in serious jeopardy. Therefore, the public has to react, bearing in mind the above-explained serious consequences from a demolished autonomy.



*Grafic illustration of the Articles and the segments of autonomy they contradict to.

4. Recommendations

The critics of the latest Amendments of the Law on High Education and the large scale protests against them resulted with a moratorium for them, along with consent of the authorities to work on an integrally new Law on High Education. Namely, the current Law on High Education, even before the latest Amendments, was highly problematic. Now, it became even more unacceptable and unreasonable. Therefore, the authorities along with the experts from the University of Ss. Cyril and Methodius (the largest University in the country) and the representatives of the student movement *Student Plenum* began their work on a new Law.

The new Law would have to regulate university autonomy in a better and more stable way, and would have to introduce remedies for its protection. All of the four dimensions of university autonomy, provided by the European University Association have to be implemented as much as possible within the text of the new Law. Only if the autonomy is regulated in the broadest way possible, one could expect that the quality of high education in the Republic of Macedonia is going to increase.

⁶ Ranking-list prepared by the Center for World Class Universities within the Shanghai University Giao Thong.

Important to note is that the problem is not the lack of regulation, but instead, the overregulation of the high education. As evident from the explained Articles, the Law contains too many provisions, regulating many aspects that should be regulated by the universities themselves. Therefore, the new Law on High Education should:

- have as little number of Articles as possible. When the Law is too descriptive, it over regulates the respective field, and it becomes invasive. Therefore, merely the most important issues should be stipulated in the Law. The lower-level issues should be regulated with the internal acts of the universities;
- have no provisions neither for a State Exam, nor any other type of external examination of students. The examination of students should be done solely by the professors. This should also be provided in a special provision;
- have a concrete provision stating that the criteria for the academic staff are going to be prescribed by the universities themselves;
- have no provisions regarding the programs, except the one providing that the programs are going to be decided upon at the university.
- be adequate for a state that orients itself towards the western world, and strives to integrate in it.

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Prof. Ana Pavlovska-Daneva is the author of more than 67 scientific papers published in various scientific reviews in Macedonia and abroad. She is a co-author of five college textbooks: "Administrative Law" 2008(2011), "Public Administration" 2008(2011), "Administrative Contracts" 2009, "Law and Public Health" 2009, "The Right to Free Access to Public Information" 2010, "Civil Service System" (2012), „Administrative, Judicial and Criminal Law Enforcement of Intellectual Property" (Macedonian and English) 2012, "Science of Public Administration" (published in Serbia) 2012 and "Theories of Governance" (2013) co-author of several monographs: "Gauging Success: Performance Measurement in South Eastern Europe", "Comments on the Law on Free Access to public Information (version in Macedonian and English)" 2006(2011) and "Draft Policy for training of civil servants from the central administration in the Republic of Macedonia "2008. During the period 2011-2014 she was member of parliament at the Assembly of the Republic of Macedonia.

All her papers mainly cover the fields of administrative law, showing particular interest to: administrative procedures and judicial control over administration.

She is a rather active person, and with her activism she is constantly delivering excellence in the public domain in the Republic of Macedonia.