



► THE REVISIONS OF THE LAW ON HIGHER EDUCATION IN MACEDONIA: A CHA(LLE)NGE IN THE EDUCATIONAL POLICY?

—

authors: Vladimir M. Petruševski / Mirjana Najčevska

INTRODUCTION

University autonomy is the cornerstone of the constitutional acts (statutes) of contemporary universities. Although it is somewhat ill-defined (and for many reasons, it is not possible to offer a definition in the Aristotelian sense of the word – meaning short enough, unambiguous, not ending in a *circulus vitiosus* and not a definition *idem per idem*), it is widely used throughout the world.¹

What is the definition of university autonomy in the Republic of Macedonia? Firstly, there is a reference to it in the Constitution², where the state guarantees autonomy to all universities. Further, regarding the Law on Higher Education³, in Article 2, one reads the following:

University autonomy covers academic freedom, independent decision making and management and inviolability of the university area.

Regarding other universities, this definition is well within the range of similar definitions. Since it is so, it is logical that whatever

¹ Terrence Karran, "Academic Freedom in Europe: Time for a *Magna Charta*?", *Higher Education Policy* 22 (2009), 163 (see also references therein).

² Constitution of the Republic of Macedonia, Article 46: The autonomy of universities is guaranteed. The conditions of establishment, performance and termination of the activities of a university are regulated by law.

³ The most recent Law on Higher Education was adopted in March 2008 (Official Gazette of the Republic of Macedonia, No. 35/2008).

changes are planned to be implemented within the Law, their effect should in no way affect (in the sense of deteriorating it) university autonomy/academic freedom. The latter is actually not only logical, but a must – a necessary precondition for a democratic society whose government and individuals respect the Constitution and adopt a coherent set of laws.

That is how things should be. Let us now face reality...

A THREAT TO UNIVERSITY AUTONOMY: THE LEGAL PERSPECTIVE VIEWPOINT

From the legal point of view, with the latest amendments to the Law on Higher Education (2011 amendments) the autonomy of the university is endangered on two grounds: on the ground of rules and procedures, and on the ground of the content of the proposed and adopted changes.

What is the justification for such a claim?

The starting point is the meaning associated with the notion of the autonomy of the university in the Republic of Macedonia. As mentioned in the Introduction, the autonomy of the university is referred to in the Constitution of the Republic of Macedonia² for a purpose. Namely, the problem with the autonomy was one of the core problems in the previous Socialist system when the university was under the strict control of the Government. This had an impact on the freedom of thought, freedom of expression and development of critical thinking as an approach in education. The lack of university autonomy was part of a wider system of restrictions which served the autocratic government and which enabled its existence. That is why, from the very beginning of the development of the new system, it was important to promote and protect this autonomy as much as possible, even by including its definition in the Constitution. It should be noted that none of the amendments to the Constitution during the past 11 years have affected the constitutional protection of the autonomy of the university.

Contrary to this, there have been numerous explanatory definitions of autonomy settled in the laws on higher education developed during the last 18 years. The last general changes of the Law on Higher Education were made in 2008 (during the rule of the VMRO-DPMNE/DUI coalition).

In the 2000 Law on Higher Education, the autonomy is described as “academic freedom, academic management and inviolability of the autonomy”. In the text of the new Law (2008), the description was changed to: “academic freedom, independent decision making and management, and inviolability of the university area”. The definition from 2008 is even more precise and descriptive than the previous one. All three parts of the definition are further explained in separate articles.⁴ In Article 13, the autonomy in managing is defined as planning and development, responsibility for the internal organisation, adoption of university

⁴ Ibid, Article 12, 13 and 14.

bylaws, selection and appointment of university bodies, management of the money and property, decisions on association and cooperation, and decisions on other issues defined with the Statute of the university.

The new Law (2008) was developed within the frames of the standards and values defined in the National Strategy on Education (2005–2015)⁵ prepared in consultation with a broad range of academics and experts. In the strategy itself, it is clearly declared that the Ministry of Education will work in cooperation with the universities for the successful accomplishment of the mission and vision of higher education and with respect for the autonomy of the university.⁶ Even more, in the strategy document it is very specifically explained that the internal control of the quality in the higher education will be the responsibility of the universities.⁷ Bearing this in mind, it is entirely inexplicable that the Ministry of Education should change the Law without the involvement or even against the will of the academic community.

The legal negation of the autonomy of the university was done through two processes.

First, there are the sixth changes proposed and adopted by Parliament in a period of less than two years from the adoption of the new Law on Higher Education.⁸ In a situation when there are no research studies or data on the practical implementation of the Law and there have been no requests for any changes from the universities or the academic community the reason for all these changes remain unclear.

Second, the use of the shortened parliamentary procedure for this law was proposed by the Minister of Education. In accordance with this procedure, the Parliament adopted the changes of the law without wider discussion. From a legal point view, such a procedure is used in the cases of small or insignificant changes without substantial impact on the regulated subject.⁹ The proposed changes, however, were neither small, nor insignificant:

⁵ National Program for the Development of Education in the Republic of Macedonia (2005–2015) http://www.see-educoop.net/education_in/pdf/mak-strategija-mk.pdf

⁶ National Program for the Development of Education in the Republic of Macedonia (2005–2015), p. 59.

⁷ National Program for the Development of Education in the Republic of Macedonia (2005–2015), p. 46.

⁸ Three changes in 2009 and one in 2010.

⁹ Art. 170–171, Rules of Procedure of the Assembly of the Republic of Macedonia: Shortened Procedure for Adoption of a Law <http://www.sobranie.mk/en/default-en.asp?ItemID=B1E2A59E1D94354F9C6B17D64F77079C>
Article 170

The initiator of a law proposal may suggest to the Assembly to examine the law proposal in shortened procedure in cases of:

- not sufficiently complex or extensive laws,
- termination of the validity of a certain law or particular provisions of a law, or
- not sufficiently complex or extensive harmonisation of a law with the European Union legislation.

Article 171

If the Assembly decides to examine the law proposal in a shortened procedure, the President of the Assembly shall immediately assign the relevant working body and the Legislative Committee to examine the law proposal.

When a law proposal is examined in a shortened procedure, there shall be no general debate.

The second and the third reading shall be held in a single session. In such a case, the second reading shall start with a debate on the law proposal in accordance with the provisions of these Rules of Procedure for the second reading.

Amendments may be submitted at the session, until the beginning of the third reading on the law proposal.

- They cannot be perceived as small as they affect $\frac{1}{4}$ of the articles in the law. The Law on Changes to the Law on Higher Education has 34 articles which change/affect a total of 170 articles of the 2008 Law.¹⁰
- Also, they cannot be considered as insignificant, as they affect the subjects of highest levels of management of the university; assessing the quality of the university; rules and procedures related to postgraduate and doctoral studies; content and structure of studies; quality of the academic staff; procedures for diploma equalization and recognition of qualifications acquired at institutions outside Macedonia. With the proposed changes, a completely new body for accreditation and evaluation is established and completely new criteria for doctoral studies are introduced.

Even more importantly, the proposed changes were not developed on the basis of data on the implementation of the 2008 Law and in cooperation with universities. In the proposal for changing the 2008 Law, it is indicated that the practice of implementing the 2008 Law highlighted certain shortcomings and vagueness of the law. However, there are no assessment studies or researches which can validate these statements (there are no such data mentioned in the proposal for changes of the law and there are no transparent or available data on the issue as far as the authors of this text are aware).

On the other hand, although the academic community expressed its willingness to explore the present situation and to be actively involved in the possible changes, the Ministry of Education rejected the idea and avoided any communication in the process of the preparation of the proposed changes.

The result was that contrary to Articles 11, 12 and 13 from the 2008 Law on Higher Education, the key issues related to intellectual freedom and the “creative nature of the educational and research process” as well as the freedom of creation and freedom of self-organisation were actually transferred from the competence of the university to the authority of the Ministry of Education.

THE ESSENTIAL PROBLEM: ENDANGERED ACADEMIC FREEDOM

Among the good ideas that were at first proposed in the draft version of the Law (and one that, alas, did not survive) was the reintroduction of the institution President of the University Senate. There is no explanation why this institution was abolished in 2008, and what was the motivation for its reintroduction in 2011. After all, these are the actions of practically the same Government! Of course, we have no doubts that having a President of the Senate has a positive overall impact. Namely, some necessary control-balance over the university, that is now largely governed by the rector, could be re-established, but for the two opposing moves (first to cancel it, then to reintroduce it) there must be (at least an attempt for) a sound explanation. Unfortunately, not only was such an explanation lacking, but

¹⁰ <http://www.sobranie.mk/ext/materialdetails.aspx?Id=6c04efda-2eeb-4e4c-a87d-23cd2d784a99>

very soon after it was announced, the Government (the Minister) changed their mind and this desirable change – disappeared.

A less desirable change (in that it threatens university autonomy) that did survive in the Law is to replace the existing Accreditation Board and Commission for Evaluation with a new Accreditation & Evaluation Board. While it is arguable whether this is necessary or not, the way this new body is appointed warrants serious attention: 7 out of 19 members are appointed by the Government; 8 are chosen as delegates of ALL universities (both public and private); of the remaining 4, 2 are chosen among the members of the Macedonian Academy of Sciences and Arts, 1 is a student and 1 comes from the business sector. Bearing in mind the influence Government has over certain subjects, one could safely conclude that the Government has a guaranteed majority on this Board. Isn't this a threat for the university autonomy, first of all from the viewpoint of the self-managing? It definitely is.

Many other changes survived, although some of these are in sharp discrepancy with the Constitution. For the sake of illustration, several of them will be mentioned here.

Consider, for example, Article 7 of the revision of the Law. It covers a number of aspects regarding the supervisor of a Ph. D. candidate (such as the number of published papers in international journals – it also attempts to give a definition, as to what is an international journal!), the way the doctoral committee is elected, the number of candidates per supervisor, and even the number of Ph. D. programs per field! This is, of course, in marked discrepancy with the content of Article 12 of the Law.

Another “improvement” has been offered in Article 13, where the Government decides to restrict the number of courses (taught by an individual per semester and *per university*) to four! However, as individuals are not restricted to teaching at more than one university, it follows that an individual could teach even 16 courses (at four different universities) per semester, which is truly impossible!

One more example will be mentioned, regarding the criteria for the election and promotion of staff. The Law states that all staff, from all universities within the Republic of Macedonia, should conform to a single set of criteria! How could anybody imagine that all universities are equal, knowing that no two persons are?

The latter three examples are clearly in disagreement with the Constitution, but even more than that (or, worst of all!), they make the existing Law controversial: what has been guaranteed by Article 12 is clearly denied by Articles 7, 13 and 14 of the revisions (2011 Law)! How can it be possible that a rightist Government (whose motto is “Law and order!”) is not aware of this controversy? Or, perhaps it is?

Most members of the Senate of the Ss Cyril and Methodius University in Skopje have thoroughly reviewed the proposed text of the Law. Their opinion has varied between disbelief and anger on one hand, to mainly apathy on the other (“If they have decided to vote for it in Parliament, that’s how they will vote!”). On several

occasions invitations were sent to Mr. Todorov, the Minister of Education and Science, to participate in the work of the Senate or in some alternative round-table discussion organized by him or by the Senate – such an event never took place, so it was not possible to point to the articles violating the Constitution (at least not in a formal way) – and finally, the Law was voted in a “shortened” procedure, followed by a disproportionately short debate in Parliament.

While most members of the Senate reviewed the proposed text of the Law, it should be noted that all professors (i.e. the university staff) were aware of the serious faults in the Law, but on the other hand none of the students were! The students, actually, gave full support to the Minister, declaring that “...they approve of each article in the Law, because it is for the benefit of the entire community”. Very soon, it appeared that they have but a vague idea what certain articles really say¹¹, so a question crops up naturally: where, when and why did the students lose trust in their professors, substituting it with unconditional trust in the Minister and the Government? Or, perhaps it is merely the Presidency of the Student Union and not the entire student population? In any case, the students and the professors are now partly confronted – a rather sad consequence of a non-critical support for a law that, at least in the eyes of the students’ leaders, offers a number of opportunities (see below).

As for public opinion, there are some “mixed feelings” although the majority of the population gives strong support to the Law (according to an opinion poll in February 2011, as much as ≈ 80 % of the sample). Such a high percentage points, in our opinion, to two main reasons:

- The majority of the citizens in the Republic of Macedonia are not familiar with the subtleties of the Law on Higher Education (neither with those subtleties of the existing 2008 Law, nor with those of its 7th revision adopted in 2011). On the other hand, university professors in Macedonia are less than 0.5 % of the total population and it is they that are fully qualified to discuss the issues of higher education and the subtleties of the Law. Their opinion, however, was not solicited.
- The continuous and intense campaign of the Government in promoting the Law (including several meetings of the Minister with students’ representatives and continuous advertisement on the Law in the media, implying its definitive implementation, despite that at the moment it was not adopted) has a very strong influence on the public opinion. In principle, no person is immune to such an intense brainwashing that paints the world (in this case the Law) in the vivid colours of universal benefit. Macedonian citizens are no exception to this general rule, especially when ‘bombarded’ with assertions about “bettering the Law”, “improving higher education”, “enforcing the law”, “re-implementing order in the universities”, “forcing professors to deliver lectures again” etc., etc.

¹¹ “Od naš agol”, Macedonian Broadcast Service, January 26, 2011 (a TV debate).

Apart from the rector and many individuals from the Ss Cyril and Methodius University (the oldest university in the Republic of Macedonia) who stated repeatedly and very clearly that there are serious problems with the draft of the Law, the representatives of most of the other universities (established quite recently and highly dependent on the decisions of the Government regarding their further existence) were at first critically oriented. However, the critics ceased with time, to end up in full support for the Government and the Law, without offering any explanation for such a sharp change of their attitude! Again, it is sad to see this abandoning of their dignity. One can only imagine what kind of pressure they feel for their position/existence to eventually withdraw from the discussions/polemics. Many of these are newly formed universities and, as such, they are much more vulnerable in every respect.

Now that the Law has passed through Parliament, the only hope for defending university autonomy is the Constitutional Court of the Republic of Macedonia. An initiative by the Senate is being prepared and it is expected that it will be submitted in early March. Needless to say, we expect the autonomy to be defended.

CONCLUSIONS

Endangering the autonomy of the university should be seen as a part of the wider threat to the democracy in general. From the legal perspective, this is the question of respect for the Constitution and basic rights and freedoms protected with it, as well as a matter of rule of law and complying with democratic procedures. The lack of public discussion, the insensibility of the Government for the opinion of the academic community and the promotion of absolute control over the decision-making process (with the adjustment of the process to its own wishes) send out a very dangerous message. The meaning is that the will of Government can be conducted even if it means disrespect for the Constitution and the law.

Acknowledgements: We are indebted to Mr. Saško Todorovski and Ms. Ilina Todorovska for the suggestions they made and for a critical reading of the manuscript.

Key words: educational policy, university autonomy, academic freedom, suspension of, Law on Higher Education, control over the universities

РЕЗИМЕ

Шестата измена на постојниот Закон за високо образование во Република Македонија е усвоена од Парламентот. Во неа има неколку добри идеи што заслужуваат внимание. За жал, има и повеќе од неколку „решенија“ што сериозно ја загрозуваат автономијата на универзитетот (односно академската слобода). Многу се опасни, на пример, тенденциите на Владата да ги контролира универзитетите преку новите стандарди за составот на Одборот за акредитација и евалуација, како и решенијата со кои со Законот се пропишуваат критериуми за избор на универзитетски професори! По усвојувањето од Парламентот, со право се поставува прашањето: дали Законот претставува своевиден предизвик или е, едноставно, нагла промена на образовната политика која во период од дваесетина години се потпираше врз претпоставката за постоење на универзитетска автономија?