

**DRAFT- REPORT
ON THE LAW NO 9741, DATED
21.05.2007 “ON THE HIGHER
EDUCATION IN THE REPUBLIC OF
ALBANIA”**

October 2008

INTRODUCTION

In the framework of cooperation, European Association of Educational Law and Policy (ELA) composed by professors J. De Groof en G. Lauwers (Belgium), I. Richter (Germany), R. Kortum (USA) and P. Zoontjens (Netherlands) and a group of official representatives of the Parliament, University of Tirana and Albanian experts composed by G.Karapici, Dh.Kule, E. Demo, A. Hoxha, N. Mita, E. Haxhiymeri, and J. Latifi, have organized during period June-July 2008 in Tirana and Antwerp two conferences on the new Law of Higher Education in the Republic of Albania. This report contains critical review of the Law no 9741, dated 21.05.2007 "On the Higher Education in the Republic of Albania" and the specific recommendations.

SUMMARY

The new law of higher education of Republic of Albania is an attempt to respond to the new developments in the country, to approximate with the European standards, to assure quality in higher education and accreditation, to establish intermediate structures in Higher Education. The law contains numerous conceptual, legal, technical and implementation problems

A. Conceptual problems

- The law was conceptualized according to the state control model and the institutions of higher education are shaped more as a state than the public institutions.
- The law mixes the governance and management concepts.
- The law over estimates the role of the government; does not respect the principle of subsidiarity
- The law does not reflect clearly the principles of autonomy, academic freedom, accountability and responsibility.
- The law misuses the participation of the representatives of society in the higher education.
- It contains too many actors and bodies.

B. The law does not meet standards of national and international legal documents

- The Law breaks Constitution of Republic of Albania (Art. 23, 64 are not in line with art. 17, 18, 57 of the Constitution).
- The law goes against the international documents such as the European Convention on Human Rights, Magna Carta (art. 3, 23, 44, 45, 46, 64).
- Articles of this law go against each other (art. 14, 15, 16; 65, 66, 72, 74, 76, 77, 78, 79).
- The Law does not meet the standards of professional designing. For more, the law contains articles suitable for legal acts (art. 27, 30, 31, 32, 33, 34, 35, 50, 54).

C. The law does not meet the universally accepted principles and implemented in the education legislation of democratic countries.

- The principal of non discrimination was violated (art 23, 44, 45, 46).
- The principle of subsidiarity was not presented. The power that needs to be distributed among university entities and organisms was concentrated on the hands of Council of Ministers.(art. 33, 34, 41, 47, 51, 60, 66, 67, 72, 75) and the Minister(art. 16, 21, 22, 24, 32, 33, 34, 47, 50, 60, 64, 65, 66,

67, 75, 77, 78). The article 64 favors and gives space to Minister to abuse with his power.

- The principle of institutional autonomy was wrongly presented (art. 14, 15, 16, 18, 20, 21, 22, 23, 32, 33, 34, 45, 46, 48, 50, 63, 64, 69, 70, 71).
- The principle of financial autonomy was miss presented (chapter 13).
- The principle of participation in governing was miss presented (art 16, 21).
- The principle of division between governing and management was miss presented (art 14, 15, 16, 18).
- The principle of transparency is incomplete (art 14, 16, 18, 21).

D. The law contains technical problems

- There are overlapping and duality of competences (art. 14, 16)
- It is too detailed and overregulated. More regulated less autonomy. (art. 26, 27, 33, 34, 47)

E. Implementation problems

The main implementation problems are related to by-laws, to autonomy, structure of studies (studies framework) and financial procedures.

F. Conclusions

- The law reflects the state control model of HE system.
- Many articles of the law are not in line with the Constitution of Albania, with the principles of the ECHR, with the European Standards.
- It gives too much power to the Ministry and Council of Ministers. There is no limit to ends of the rights of Ministry.
- No guarantee for the independence of accreditation process.
- It does not contain trust building measures.
- The law implies discrimination.
- It expresses lack of trust among actors.
- The Law contains double standards that do openly infringe the principle of university autonomy and academic freedom.
- The Law infringes the principle of collegiality, on which bases the higher education institutions should function.
- The legal provisions are not coherent and create problems in their implementation.
- The legal wording used leaves space for ambiguity, misinterpretation and subjectivism.

G. Recommendations

- Amendments of some Articles of the Law in the shortest possible period of time in order to make law working.
- Drafting a new Law in the near future in line with the Albanian Constitution, European Legislation on Higher Education and Western effective model.

PROBLEMS OF THE LAW

A. THE ARTICLES THAT ARE NOT IN LINE WITH THE CONSTITUTION OF THE REPUBLIC OF ALBANIA, WITH THE CIVIL LAW, WITH THE PRINCIPLES OF THE ECHR

There are numerous legal problems within the law.

Many articles are not in the line with the Constitution of the Republic of Albania (**Art. 57/7, Art. 45, Art, 102/4**), with the principles of the ECHR, with the European Standards of Bologna Process.

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 or private legal persons, whose rights and obligations are determined in the acts of their establishment".

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

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

The lawmaker, by accepting the concept of the legal person on higher education institutions has meant, without any doubt, 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 elected 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 in 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 standards 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 21** 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** 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 entitled 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 programs”.

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 programs of the second cycle” (**Article 1.2.2/ç**).

Also, on the other hand, the study programs for PhDs can be offered integrated with long-term specialized studies, as per the academic curricula and programs 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 programs 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 programs...” (**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” - KALSH. 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 programs” (**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 CHES

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 discretionary power of each institution it is entitled to issue acts¹***.

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”.

¹ The discretionary 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.

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 programs 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.

As already highlighted above, a new structure is “The Council of Higher Education and Science” - CHES. 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 CHES 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 rights², 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.

Article 67 is a flagrant violence of the institutional autonomy. It should be deleted. The right to issue the academic qualifications should be belong to the universities.

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 Science³”, proposes, appoints, orders the

²In 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”.

³ Article 6/2; Article 12 last paragraphe; 16/4-b, 5; Article 21/9; Article 22/3; Article 23/2; Article 24/2; Article 26/1.2.2 ç; 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;

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.

The last provision we 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 several⁴ and in most occasions they are orders and ordinances of the Minister, which identify the violation made to the academic autonomy and freedom. In this verge we can mention:

1. Decision of the Council of Ministers for defining standards and procedures for opening, changing and closing of the institutions of higher education.
2. Explanatory instruction for the institutions of higher education
3. Instruction for opening of public institutions of higher education and/or study programs to the component units;
4. Instruction of the Minister for deepening the study forms in the public and private institutions of higher education, the criteria to be fulfilled for application of each study form, the manner of organization of study forms;
5. Instruction on IDSL as well as (4+1).
6. Instruction on the content of the form of diploma and of the diploma supplement as well as the certificate model.
7. DCM or Instruction on the register of diplomas and certificates.
8. Instruction on allowance of transfers and admission in second branches.
9. DCM on organization of studies and structuring of the institutions of higher education.
10. DCM on division in levels within each academic personnel category and of more detailed qualification criteria for each case.

Article 65/2-dh, e; Article 66/1,2, 5, 8; Article 67/2; Article 75/2,4; Article 77/1 Article 78 first paragraphe; Article 85; Article 94; Article 96.

DCM no 864, dated 5.12.2007 “On opening of the study programs 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”.

DCM no 467, dated 18.7.2007 “On setting the criteria and procedures for the scientific and pedagogic qualification of the academic staff”.

DCM no 255, dated 27.4.2007 “On the excellence fund for financially supporting the young and excellent students and scientists.

INSTRUCTION no 14, dated 03.04.2008 “On the opening and organization of the second cycle study programs for the higher education institutions ”.

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.”

11. DCM on determining the level of salaries for the academic personnel of the institutions of higher education and for the ones working on contracts.
12. Instruction of the Minister on the academic staff of the public institutions of higher education and employment forms.
13. Instruction on the criteria and procedures on preparation and issuance of the student cards.
14. DCM on the category of services of the state entities – agreement with Ministries and other entities.
15. DCM on scholarships.
16. Regulation on the organization and activity of the Public Agency of Higher Education Accreditation or of Foreign Accreditation Agencies that are part of the ENQA.
17. DCM on the approval of the regulation on the organization and activity of the public activity of accreditation of higher education or of foreign agencies of accreditation that are part of the ENQA.
18. Explanatory instruction on accreditation of the public and private institutions of higher education.
19. Regulation of the Council of Higher Education and Science.
20. DCM on approval of the Rules of the Council of Higher Education and Science.
21. DCM on the special status of the professor, aspects of special treatment as well as other profits from the academic personnel.
22. DCM on determining fees in the full-time study system for three cycles and Masters.
23. Joint Instruction of the Ministry of Finance and the Ministry of Education and Science on determining fees on the distance and part-time study system.
24. Joint Instruction of the Ministry of Finance and the Ministry of Education and Science for using the budgetary transfer on investments and other big projects (unconditional grant).
25. DCM with a co-proposal with the Ministry of Economy for using in the interest of the higher education institutions the public immovable property in their administration.
26. Explanatory instruction on the private higher education institutions according to the Law.
27. Explanatory instruction on the unification, according to the law, of diplomas, received in the previous study systems.
28. Instruction on the re-organization of the staff in the public higher education institutions.
29. Funding scheme proposed by the Ministry of Education and Science and approved by the Ministry of Finance.
30. Regulation on the organization of elections for the authorities and steering bodies of the public higher education institutions.

Although the by-law framework is very broad, it can be said that a few by-laws have been approved so far, and a situation of conflict amid the structures of

higher education and of the Ministry of Education and Science is generated as a result.

We can refer here to Instruction no 20, dated 09.05.2008 “On the Activity of the Academic Staff on the Public Higher Education Institutions.”

Pursuant to the requirements of **Articles 47, item 1 and 2 and 50, item 4**, of the Law “On the Higher Education in the Republic of Albania”, the Minister of Education and Science has approved the above order, which in its content, since the beginning, runs contrary to the definition allocated by **item 1 of article 47** which sanctions: “The academic staff carries out teaching activities, scientific or applied research, services for the development of the institution, consultation and counseling for the students and administrative tasks. **The ratio between the various activities are determined in the regulations of the institutions of higher education and is part of the labor contract between parties**”.

Sentence 2 of item 1 of Article 47 has left no space to make different interpretations. It is the institutions of higher education the ones that regulate their working relations.

This principle derives even from other provisions of the Law -- that is according to **Article 5, item 3**: the university realizes the scientific and applied research and creative activities, offers services compliant to its mission, supports and realizes the training of the academic staff.

Depending on its main mission, **as defined in its status**, the university ensures a suitable ratio between teaching, scientific research and services it offers.

Another reference to this order is **Article 50, item 4**. The second sentence of **item 4 of Article 50** runs contrary to the academic freedom principle and to the institutional autonomy of institutions of higher education.

Teaching is only one part of the activity exerted by the academic staff, whereas, as the Law itself says in other provisions, namely in **Article 69, item 1**: “the higher education institutions realize basic or applied scientific research, studies and development designs, other creative activities in the manners **defined in the status of the higher education institutions according to the specific objectives of the institution in these directions**”.

On the other hand, **Article 70 item 2** sanctions: **“The themes or terms of research, teaching load is determined by the institutions of higher education themselves”**.

B. THE ARTICLES THAT ARE NOT IN LINE WITH EUROPEAN STANDARDS

Today we have a law on higher education (**article 60**) which says that the Minister of Education and Science appoints all the members of the Accreditation Council and (**Article 62**) he (the Minister of Education and Science) issues the final decision on accreditation of an institution. While the chair of the Accreditation Council is appointed and released from the Prime Minister (**Article 60**).

It was forgotten that recognition of a university or of a study program, that is accreditation, is not true, and therefore, not reliable when controlled by public authorities interested in the ownership of the university political market. An essential standard of the Bologna Process was violated by the Law.

An important aim proclaimed by the Bologna Declaration was the adaptation of a diploma or qualification system that meets two conditions - that is "easily readable" and "comparable". The system is "easily readable", as it is composed of three obvious cycles, the first cycle that ends with a 'bachelor' degree, the second cycle that ends with a "master" degree and the third cycle that ends with the "doctor" degree. The system is "comparable", as every cycle has a certain number of credits. At the end of each level you either get a diploma and you can compete in the labor market in the common European space, or it gives possibilities to study for a higher-ranking diploma not only in the same place you received the first diploma. This system was included in the Sorbonne Declaration (1998) and was consolidated in the entire so-called Bologna process (Bologna Declaration, 1999, Prague Communiqué, 2001, Berlin Communiqué, 2003, Bergen Communiqué 2005).

Since 1998 or even a bit latter that the year of the Bologna Declaration, year 1999, all the included countries that aspired to become part of the European space of higher education started to get rid of unnecessary qualification forms and diplomas of higher education, a heritage of their past that did not comply with the Bologna system. This is what France, Belgium, Holland, Check Republic, Bulgaria, Romania, Hungary, Germany and other countries did. But Albanian did the contrary – it did not simplify, but instead it complicated its qualification structure, objecting the Bologna system, and this stance of ours did greatly surprise everyone. **Article 26** of the Law on Higher Education represented a complicated structure of studies. But, still this is not the real absurdity. It in fact starts appearing when the article lists the diplomas issued for every cycle. Without mentioning the first cycle, this incredible article says that a second cycle diploma is issued in the second cycle, an integrated diploma of the second cycle and a Master diploma of the first level. The doctor, specialist, magister, master of the second level are issued in the third cycle. Imagine seven diplomas only in the second and the third cycle, while in the system recommended in the common

European space there are only two diplomas, respectively the Master and Doctor degree. Furthermore, some diplomas do not lead to a higher level, obliging the holder to interrupt studies. With an awkward education system, Albanian does surprisingly represent itself with a complicated education system that diverges with and is distant from the Bologna process. The Albanian system is neither “easily readable” nor “comparable”. A system that is comparable to no other system in the European space, and which, for the same reason, cannot be part of this space.

According to **Article 26** of the Law on Higher Education in the Republic of Albania, titled “Cycles and titles of the university studies” and by-laws in the interpretation of this Article, Decision of the Council of Ministers no 864, dated 5.12.2007 “On opening of the PhD program studies in the Public Institutions of Higher Education and Determining Conditions that should be met by students to get the “Doctor” degree”, Instruction of the Minister of Education and Science, no 4, dated 22/1/2008 “On Opening, Closing of Masters Programs of First and Second Levels”, Instruction of the Minister of Education no 5, dated 22/1/2008 “On Setting Standards for Opening, Closing and Re-organization of the Study Programs of the Second Cycle in the Public Institutions of Higher Education”, Instruction no15, dated 04.04.2008 “On Organization of Studies in the Public Institutions of Higher Education”, the scheme of university studies is as follows:

First cycle

First Level Diploma FLD	3 years
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Second Cycle

Second Level Diploma SLD	2 years
Second Level Integrated Diploma SLID	5 years
<i>Master of First Level MFL</i>	1 year

Third cycle

<i>Master of Second Level MSL</i>	1-2 year
Long-term specialized studies	2-4 years
PhD studies	3 years

Problems are mainly caused from the inclusion in the study structure of the second cycle of the *Second Level Diploma*, from the inclusion in the third cycle of the *Masters of the Second Level* – that is from the deformation of the Bologna model in the second and in the third model, and from the favor **Article 5, letter b** makes to the private universities.

1. This scheme is very expensive to be applied in Albania, and at the same time it is very non-realistic.

- a. The government should carry a considerable burden of the study cost, given the prolongation of the time for higher studies.

- b. The high study cost shall be a burden to the household budgets due to the prolongation of studies compared to the previous system and the Bologna model.
- c. The youth, instead of starting work earlier, as the aim of Bologna is, should study for longer years.
- d. Implementation of this study scheme requires recruitment of a great number of professors and researches.
- e. This study scheme requires great and immediate investments for new additions to buildings, libraries, laboratories and other material resources, which for the moment and for a short term period are impossible.
- f. Higher education in Albania is faced with challenges for venues and funds for accommodation of students. Building of the student campuses seems impossible for the moment and the addition of the number of students requires great investments for dormitories, study venues, recreational spaces, and services of various kinds.
- g. The product of this study model, particularly emerging from the first cycle of studies, is not suitable for the labor market in Albania, because this market is not highly differentiated and there are no interim jobs, and there is no request for this kind of product.
- h. Implementation of the first cycle of studies was not proceeded by a preliminary study of the labor market, and in general the programmes did not envisage for the employment possibilities. For this reason, the students that will get this year the First Level Diploma do not have an answer to the question: What are the employment possibilities the diploma they got provides to them?

2. In its entirety, the study model represented by the Law on Higher Education is not properly coordinated with the models of Europe and of the other part of the world, which leads to non-compliance to other systems and leads to the isolation of higher education, thing, which again hinders the development and internationalization of Albanian higher education.

- a. The new scheme of studies contained in this Law distorts the Bologna model for the second and third cycle of studies. The Master studies cannot be mixed with the PhD studies. They compose separate cycles that offer various competencies, different diplomas and are put in a hierarchical order. The Albanian model has mainly been based on the Italian model, but has again distorted it. Highlighting that the Italian model is the option of the previous models in such countries as France, Belgium, which have years ago used it, have now replaced it with the Bologna model to ensure the harmonization of their systems with the European and the world systems.
- b. The system of study cycles is not suitable because it creates obstacles for the mobility of students and recognition of the second level diplomas and of the Master diplomas, because the second level diploma is not a suitable

- model of the world and European system, and the Masters diploma is issued in the second cycle of studies.
- c. This model does not enable cooperation between the public and private universities in Albania in cases when the private universities do not follow the scheme provided for in the Law, as **Article 45, item b** of the law "On Higher Education in the Republic of Albania, says "organization of the study programs in the private institutions of higher education is made according to another model, when it is offered by an institution that offers a diploma of a foreign or similar institution."
 - d. The model of studies according to **Article 26** does not establish good possibilities for joint, interdisciplinary and multi-disciplinary programs, such as for the programs of teaching, of European studies, of genders studies, environmental studies and others.
 - e. Inclusion of the programs of Masters of Second Level in the third level of studies does not comply with the International Standard Classification of Education (I S C E D) and with the levels of description of competencies.
 - f. The model is rigid. For instance, it does not create possibilities of approximation from one cycle to the other and within the cycle. Whoever has received a master diploma of the first level should attain a diploma of Masters of a Second Level or a Master of Second Level to be eligible for studying for the PhD.

The national system of education could not act as if being an isolated island.

For more information on cycles of studies in the EU countries and other countries of the world, see table attached at the end of the paper.

3. Model of studies according to Article 26 is discriminatory.

- a. Students that have a First Level Diploma are discriminated against the students that have a diploma of an old system, who have all the privileges of further studies. The ones graduated with a FLD, should possess of a SLD (5 years) or plus a MSL (1 year) in order to be able to pass into doctoral studies, while the persons that received an old 4 (year) diploma can directly be enrolled for a MSL or a PhD.
- b. The students that own Masters Diplomas from foreign universities shall have difficulties in recognition of diplomas, because the Albanian scheme of offering of Masters in two cycles is not a joint model.

c. The public universities are discriminated compared to the private universities, because to the latter, **Article 45** gives the right to apply other models out of the scheme represented in **Article 26**.

Such a scheme of non-harmonized, non-realistic, expensive and discriminatory studies imposes serious problems to the higher education in Albania.

Article 67 “The Academic Qualification Commission” that gives rights to the Council of Ministers and Minister of Education and Science to act on academic titles is a flagrant violation of the international standards and the autonomy of HEI.

C. IMPLEMENTATION PROBLEMS

The new law “On the Higher Education in the Republic of Albania” was approved 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”**.

CONCLUSIONS

- The law reflects the state control model of HE system.
- Many articles of the law are not in line with the Constitution of Albania, with the principles of the ECHR, with the European Standards.
- It gives too much power to the Ministry and Council of Ministers. Unlimited power is granted to Ministry.
- No guarantee for the independence of accreditation process is given.
- The law does not contain trust building measures.
- The law shows discrimination.
- It expresses lack of trust among actors.
- The Law contains double standards that do openly infringe the principle of university autonomy and academic freedom.
- The Law infringes the principle of collegiality, on which bases the higher education institutions should function.
- The legal provisions are not coherent and create problems in their implementation.
- The legal wording used leaves space for ambiguity, misinterpretation and subjectivism.

RECOMMENDATIONS

1. SPECIFIC RECOMMENDATIONS

Admission criteria

The Law should at least contain general criteria concerning the admission of students (**art. 33 and 34**). The competence to set the criteria and procedures for the admission quotas should not solely be laid in the hands of the Minister of Education. The fundamental right of access to education is at stake. Therefore, the limitations of this right should be laid down in the Law. The necessary criteria should be enumerated in the Law in a general, transparent and objective manner, so that the direction of the ministerial competence should be clear and abuse of power can be avoided on beforehand. It is obvious that these criteria only can apply to public institutions.

The position of the Rector

The Rector of the university personifies the fundamental value of autonomy of the institution. This is common sense in all European countries. Therefore, his position needs to be independent from the State, especially from the Minister. We see problems from the point of view of legality in **art. 64, par. 3**. The problem is that the Law does not contain any clear, objective and fair criteria for suspension. In this case, the Minister of Education has free competence to interpret in the individual situation what is a heavy and flagrant violation of the laws and regulations. As this point is not in line with the Albanian Constitution, we advise to amend the Law in such manner that abuse of power can be avoided on beforehand or to reformulate this article in the different way in the new law.

Accreditation

Accreditation Agencies must be independent, not only from the institutions but also from the Ministry.

Management and administration of the public HEI

Representation of the HEI

As it is understood from **art. 4, par. 2**, public HEI are 'legal entities, whose rights and obligations are established and provided for in their foundation act'. As a first remark, it is strange that this also counts for the private HEI, because you should expect that they have legal personality according to general private law and therefore do not need a foundation act.

However, we would like to point out another matter. If all HEI have legal entity, be it just to a certain extent, they have the capacity to act independently and to maintain external relations of a factual and juridical nature. ***The Law should therefore contain a provision that renders competence to one of the bodies to represent the institution in external relations. This is a matter of public order.***

Relationship between Senate, Rectorate and Administration Council

The established balance of powers between the three bodies in the HEI presented in **articles 14, 15 and 16** of the Law, is not totally clear in its effects. In the translated version of the Law, the Senate has the competence to ‘approve’ the allocation of financial resources, the Rectorate to ‘formulate’ the allocation-criteria and the Administration Council to ‘approve’ these criteria. Who decides on allocation then? The Law should give different competencies to different bodies.

From the regulations in the Law it is created the impression that there is no single, general governing body of the HEI. In many cases decisions can only be made by the joint co-operation of Senate, the Administration Council and to a certain extent the Rectorate. ***It is obvious that this structure will tend to inwards-oriented, heavy politicized and bureaucratic decision making, which is not in the interest of the HEI to respond quickly and flexibly on the ever changing demands of (inter)national HE-policy. This would also be contrary to the trend of institutional organisation in other ‘Bologna’-countries. We therefore would like to give advice to reconsider this structure based on separate functions of governance and management.***

The Council of HE and Science

The most important advisory body for the minister is the Council of HE and Science. The Law presents it as an ‘intermediate structure’ between government and the field of HE. This is however not the case, as far as the minister is chairman of this Council. In many other countries this type of advisory body has an independent status, often realised by organizing it as an agency with legal personality. We have the impression that the design of the Council in the Law is based on two separate principles, that are hard to combine: (a) being a body of representation of the HE-field towards government on the one hand, and (b) being a qualified adviser of government on the other hand. In an arrangement according to principle (a), there is no objection against chairmanship of the Minister. According to principle (b), the Council should be independent from the Ministry and the HEI. ***We would advise to reconsider the design of the Council of HE and Science and to choose for an arrangement according to principle (b).***

Non-discrimination in higher education

Taken in account the non-discrimination principle of the ECHR, which also applies in the educational field, the law should include the non-discrimination principle. The law contains discriminations (**art 23, .45/b**) concerning structure of studies and the admission of students. It is advisable to implement and elaborate this principle in the specific law.

2. THE NECESSARY AMENDMENTS OF SOME ARTICLES OF THE LAW IN THE SHORTEST POSSIBLE PERIOD OF TIME

Article 3/2/c: *the right to determine student eligibility to various education programs.*

Article 4/3: after words “*offer accredited*” add “*or not accredited*”.

Article 12/3: “*a five year*” to be replaced by “*1 year*”.

Article 26: is proposed to be formulated as follows:

1. Programs of higher education studies are organized in three subsequent cycles.

2. First cycle of studies

The first cycle of studies includes: a) basic academic studies and b) basic professional studies.

The basic academic studies are intended to make students pass on to the work and to the master studies.

The basic professional studies are intended to immediately enter the labor market.

Studies in this cycle last for three to four years, depending on the field of study.

The term of studies for the same program is similar, no matter if it offered by the public or private universities.

The study program of the first cycle offer 180 and 240 credits.

To pass from the basic professional studies into basic academic studies, there are bridging programs with 45 to 60 credits.

A university diploma is issued at the end of the first cycle studies.

3. The second cycle of studies

The second cycle of studies includes: a) academic master programs b) professional master programs and c) specialization programs.

The duration of studies for the second cycle is 1- 2 years.

The programs of studies of the second cycle are realized with 60, 90 and 120 credits.

The professional master programs are realized with 60 credits. To pass to the academic master programs, approximation programs of 30 - 45 60 credits are offered.

The specialization programs can be realized with 60 to 180 credits depending on the field of study.

At the end of studies of the second cycle, the following diplomas are issued: an academic master (Master of Arts, Master of Science, and Master of Research), a professional master, and a specialization certificate.

4. The third cycle of studies

The third cycle of studies includes the PhD studies.

The PhD studies last 3 – 4 years.

The first year of study can be organized as a study course. This is determined depending on the field and the program.

The “Doctor” diploma is issued at the end of studies.

5. After the doctoral studies can be offered postdoctoral studies.

Article 47/2/c, 47/3, 47/7: “*by the Decision of the Council of Ministers, based on the proposal from the Minister of Education and Science*” should be replaced by “*decision of the ranks is up to the body of the university*”.

Article 59/1: “*all*” in the last sentence should be replaced by “*relevant*”.

Article 59/3: The sentence “*Institutions of Higher Education make public the results of their evaluation process*” should be replaced by “*The internal evaluation report of the Institution of Higher Education will be used as a source for the external evaluation*”.

Article 59/5: after the words “*consist of*” should be added “*independent local and 1/3 foreign experts, including students*”.

Article 60/2: after “*the Higher Education Public Agency*” should be added “*that is an independent institution*”

Article 60/2: The words “*The Council of Ministers*” should be replaced by “*The National Council of Higher Education and Science*”.

Article 60/3: The paragraph “*The Ministry of Education and Science, The Council of Higher Education and Science, the Accreditation Agency and Institutions of Higher Education, experts in certain fields as well as a student representative are represented in balance in the Accreditation Council. The Minister of Education and Science nominates the members of the Council choosing from the candidates as proposed by the involved parties.*” should be replaced by “*The composition of the Accreditation The Accreditation Council should be composed by 9 people: 3 from public universities nominated by the public universities through the Chamber of the Public Universities of the Conference of Rectors, 1 from the private*”

universities nominated by the private universities through the Chamber of the Private Universities of the Conference of Rectors, 1 students nominated by the Council of Students, 2 people from abroad nominated by the National Council of Higher Education and Science after the consultation with ENQA, 2 from socio cultural environment (1 from the Academy of Science and 1 from the Chamber of Trade). The members of the Council of Accreditation should be fulfill the following criteria: credibility, integrity, independency, experience, interest. National Council of Higher Education opens the application and is responsible for the constitution of this body.”

Article 61/1: The word *institution* should be deleted.

Article 61/2: After word **“and Science”** should be added **“based on international standards”**; word **“directions”** should be replaced by **“guidelines”**.

Article 62/1: The words **“Relying on the assessment and recommendations of the Accreditation Council, the Minister of Education and Science”** should be replaced by **“Accreditation Council is the body that makes...”**

Article 62/1: The sentence **“The Minister comments within a month from the date of the submission of the report, otherwise, the Accreditation Council announces its decision as final.”** should be replaced by the sentence: **“Within 30 days the institution which is negatively evaluated, can take the initiative to ask the Accreditation Council to reconsider the negative decision”**.

Article 62/2: The sentence **“In case of negative decision, the institution or the education programs are not officially recognized in the Republic of Albania.”** should be replaced by **“In case of negative decision, the programs will not be officially recognized and the institutions can not deliver diploma. The institutions must fulfill the requirements within 2 years”**.

Article 62/8: Add: **All existed programs of the public universities are recognized, but all new programs will be accredited before 2011. The programs of the new universities should be accredited.**

Article 63/1, 4: Should be deleted.

Article 63/5: After the word **“the Ministry”** should be added **“must”**.

Article 66/5: The last part of the sentence **“is the Minister of Education and Science”** should be replaced by **“should be elected”**.

Article 67 should be deleted. The right for the academic titles should be given to the senate of HEI.

Article 68/1 should be added “**The Conference of Rectors is composed by two chambers: chamber of the public universities and chamber of the private universities.**”

3. DRAFTING A NEW LAW IN THE NEAR FUTURE IN LINE WITH THE ALBANIAN CONSTITUTION, EUROPEAN LEGISLATION ON HIGHER EDUCATION AND WESTERN EFFECTIVE MODEL.