

THE FUTURE OF ACADEMIC AUTHORITY IN SLOVAKIA, OR *CETERUM AUTEM CENSEO...*

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Abstract

Our contribution is focused on approaching the current situation in the field of academic autonomy in the conditions of the Slovak Republic. The paper contains a legal analysis and considerations on the self-government of higher education institutions against the background of an amendment to the Higher Education Act.

Key words: *academic autonomy, higher education institution, autonomy*

IN LIEU OF AN INTRODUCTION

The Roman senator Cato the Elder entered history with his stubborn persistence of the idea of the destruction of Carthage. Every senate speech of his (regardless of the discussion topic) was concluded by a clause „Ceterum autem censeo Carthaginem esse delendam!“ – freely translated as: furthermore, I consider that Carthage must be destroyed. His dream came true in the Third Punic War, however, the pathetic parole took its own journey throughout history, and nowadays, it is interpreted as a strong and penetrative request or call. This article represents a reaction towards the running battle for sustainment and the form of academic autonomy in the area of higher education in the Slovak Republic.

1. AUTONOMY AND SELF-GOVERNMENT IN THE HISTORICAL CONTEXT

One of the achievements of the events symbolically initiated in the Aula of Comenius University in Bratislava at the end of November 1989¹ was, inter alia, the provision of true freedom to higher education institutions. Freedom in a number of meanings, from the freedom to express opinions through the essential freedom of scientific research to the opportunity of self-management of the issues. The Greek root of the word autonomy, i.e. *auto* and *nomos*, thus means the possibility to introduce your own „laws“ or wider normative acts governing the internal environment of higher education institutions.

As for the conditions in the Slovak Republic, the year 1989 is inherently connected with the development of a new form of public administration within which the state administration was extended by including the self-government. „In an advanced society, while pertaining human rights and freedoms, every such community has the right to administer its own matters, thus, to make independent decisions on social matters. In other words, the community is entitled to its self-government and it is the state’s duty to respect this right“ [Vrabko et al. 2012]. The principle upon which the self-government is created (local or interest based) is the criterion of its categorisation. In the case of higher education institutions, there is an unambiguous application of the interest based principle, and thus a systematic possibility of public administration management in higher education institutions executed via bodies designated and created by a respective higher education institution is defined as an interest-based self-government. At least, it can be perceived as this at first sight. However, the legal nature of the higher education institutions in the SR requires more consistent legal analysis.

2. LEGAL STATUS OF THE PUBLIC HIGHER EDUCATION INSTITUTIONS

The Law No. 131/2002 Coll. on Higher Education and on changes and supplements to some laws (hereinafter known as „the Law on Higher Education“), defining higher

¹ Velvet Revolution in November 1989 resulting in the fall of the communist regime in Czechoslovakia was initiated by a students’ protest demonstration.

education institutions as legal entities fully disposing of legal personality, is a crucial regulation for conducting an analysis of the legal status of higher education institutions. After the legal modifications made in 2002, higher education institutions became legal entities only as units while before this date, they had been organisations financed by the state and had an independent legal personality, but managed the funds of the state. Faculties, as parts of higher education institutions, lost their legal personalities acknowledged by § 5 of Law No. 172/1990 Coll. on Higher Education. They became parts of higher education institutions and were entitled to act on behalf of them in selected matters within the scope of their self-government authority, and thus: to decide on admissions for study programmes of the particular Faculty, to create new study programmes, to decide on academic rights and obligations of their students, to undertake, to modify, conclude and dissolve employment relationships, or to cooperate with other education institutions, however, only upon respecting the internal rules of the higher education institution.² In the frame of performance of the measures mentioned above, the Dean was directly accountable to the Rector of a higher education institution, even in the case of Faculty management matters.

The Law on Higher Education defines a higher education institution as a top education, scientific and artistic institution.³ The notion of establishment can be derived from the English term to *institute*. The notions of an institution and establishment with the qualifier of „public“ belong to the area of administrative law defining them as public administration entities, while the notion of establishment is mainly connected with nationwide institutions active in the areas of science, education and culture [Vrabko et al. 2012]. Despite the fact that the Law on Higher Education uses the term of establishment in the definition of higher education institutions, the explanation mentioned above allows us to talk about higher education institutions as public institutions, and thus public administration entities. However, the Law on Higher Education also uses the notion of a public institution in concrete terms, and thus in the case of public higher education institution (hereinafter as „PHEI“).

In par. 1 Art. 60 of the SR Constitution, within the definition of the scope of the Supreme Audit Office, we come across the notion of a public institution. However, the article does not contain any definition of a public institution, it only defines the possibility of an audit of its property disposal. In the SR conditions, public institutions started their activities in 1990, in this period they were administering state assets and later gained possession of them. In the case of a PHIE, these acquired the majority of their assets as of 1 January 2003.⁴

The public institutions find their legal definition in the Act No. 176/2004 on the disposal of the property of public institutions (hereinafter as „Act on PI“) with § 1 de-

² § 23 of Law No. 131/2002 Coll. on Higher education as amended

³ § 1(1) of Law No. 131/2002 Coll. on Higher education as amended

⁴ Explanatory memorandum to Law No. 176/2004 Coll. on disposal of property of public institutions and amending the Law of National Council of the Slovak Republic No. 259/1993 Coll. on Slovak forest chamber Slovenskej lesnickej komore as amended by Law No. 464/2002 Coll.

fining entities established under law and entities established by law as public institutions or authorities. An institution established under law directly refers to a PHIE in the meaning of § 5 of Law on Higher Education.

According to the theoretical definition of the notion of a public institution describing it as „an administering entity of public administration partially separated from the state and established by law for the purpose of securing needs of the public, and thus pursuing public interest by performing organizational activities, providing public services and creating pecuniary conditions in order to achieve desired status of the public administration object“ [Vrabko et al. 2012], we can define its key cumulative features, and thus:

- separated from the state
- an administering entity
- established by law
- ensuring public needs.

Within a comprehensive analysis of the classification of higher education institutions in the area of public administration, we distinguish also public corporations as „public administration entities organised by their members“ [Vrabko et al. 2012] integrating both the state and local government entities. In this case, the determining element of an entity classified as a public corporation is its internally organised membership principle with a decisive role for its personnel substrate. The persons creating the personal substrate of a higher education institution are represented by its students and teachers [Prusák 2006]. This characteristics is only one of a number of possible interpretations differing due to the absence of a legal definition of the notion of a public corporation. The grammar interpretation of the notion of a corporation derives from the Latin word of *corpus* – a unit, body, person. According to some authors, the notion of a public corporation has been replaced by the notion of a public institution, and thus as such, it does not exist in the legal system anymore [Prusák 2006]. The common features of public corporations would be defined as follows:

- They are established by law or under law, or by a contract
- They pursue public interest
- They dispose of public authority
- They are based on personal substrate
- They dispose of their own enforcement bodies
- They have their own set of internal rules
- Their property qualifications are defined by specific regulation
- In some cases, their activities are limited to a certain territory [Prusák 2006].

While one of the interpretations distinguishes and factually subsumes the notion of a corporation under the notion of an institution, the administration law science also provides us with different opinions considering the notions of an institution and a corporation as the same [Škultéty et al. 2006]. We, personally, are in favour of the opinion distinguishing the notions of a corporation and an institution, since even the

grammar explanation of the notions is showing these differences. The notion of a corporation as an entity organised by members, fulfilling the above mentioned features also incorporating the state, is, according to our view, a wider notion compared to a public institution that can include an entity designated so in law. As for the issues of legal status and the authority of public institutions, we consider their absence in a separate law as a shortcoming.

From the view of classification of higher education institutions in the system of public administration, we can refer to them as its further executors. However, alongside with its activities, a higher education institution also executes an extensive scope of authority through its academic self-government.

The question to what extent we consider a higher education institution to be an self-government entity within the public administration organisation, is a subject for discussion. Even in this point, the views of theoreticians differ in the issue of the classification of higher education institutions into a group of entities. In some cases, a higher education institution is referred to even as an entity of mixed self-government authority [Sládeček 2005]. We agree with this view, since we consider the academic self-government to be a part of an extensive interpretation of the notion of self-government, however, its structure does not fit in the distinction of self-government into interest based and territorial based.

3. CAN HIGHER EDUCATION INSTITUTIONS ADMINISTER THEMSELVES?

Since November 1989, higher education institutions have been almost constantly facing criticism that they do not „deserve“ such an opportunity, that they misspend their budget and behave like a little child losing its toy when these freedoms are endangered. The de-autonomisation efforts of higher education institutions are coming in new waves all the time and currently, they are facing one of these waves taking the form of legislative efforts by the Ministry of Education, Science, Research and Sport of the Slovak Republic. The Ministry have drafted a major amendment of the law on higher education currently being circulated in academia.

We perceive the newly to be created Administrative Councils as the major intervention to the existence and functioning of the academic self-government (in the scope of the submitted draft act). An Administrative Council in which 4 out of 8 members will be appointed directly by the Minister of Education, is referred to as „a special university body“ in the respective draft, in contrast with the group of bodies explicitly referred to as authorities.⁵ Despite this categorisation, the legal nature of the Administrative Councils is determined clearly by their competencies including budget approval, elec-

⁵ § 7 The bodies of a public university are divided into: a) the bodies of academic self-government covering: - an academic senate of a public university, - a Rector, - a scientific council of a public university, an artistic council of a public university or a scientific and artistic council of a public university (hereinafter as „a scientific council of a public university“), - a disciplinary commission of a public university for students (hereinafter as „a disciplinary commission of a public university“), b) other university bodies - a Quaestor, - an administrative council of a public university, - bodies established to fulfil the tasks complying with an internal quality system of ensuring university education, if established.

tion of a Rector candidate, or granting prior consent to the selected legal acts. Making decisions on key issues of the functioning of a higher education institution, including the election of a statutory body, cannot be entrusted to a body directly influenced by a political power personalised by the Minister of Education.

The issues of the autonomy and self-government of the university is *conditio sine qua non* in relation to the culture of the society if we perceive it (*largo sensu*) as a tradition of reasonable progress, humanism and dignity of a human irrespective of the dread of external circumstances.

And the argument stating that higher education institutions are not able to „rule“ themselves? Well, the biggest argument indicating the opposite is the pandemic situation that hit the entire world- the academic one as well. Universities´ conduct has been diametrically different from the conduct of state authorities. They have been acting reasonably, with foresight, consistently and always sufficiently clearly and have been communicating their steps in advance. Thus, they have been (together with some of the local authorities) a perfect example of how the pandemic crisis should be managed. The self-government, whether local, interest based or the academic one, simply proved the effectiveness of their management mechanisms, and other public (mainly state) authorities have often been *ex-post* inspired by our conduct⁶. Is this not a sufficient proof of authority and a justification of self-government management principles? We do not deny that it is necessary to re-evaluate some of the legally conferred competencies of the academic authority bodies. Finetuning the competencies of the respective bodies, streamlining management by introducing reasonable managerial principles, or rationalising the internal mechanisms of property disposal will undoubtedly be beneficial for higher education. However, it cannot be achieved without a dialogue, open communication and a normal „partnership“. What are we witnessing these days? Making decisions about us without us, because a kind of an ephemeral social requirement is ruling to dictate to the „incapable“ academics how to manage their higher education institutions.

4. HIGHER EDUCATION INSTITUTIONS VS. SOCIAL ORDER

The most frequent criticism of higher education institutions relates to the alleged ineffective utilisation of public finances. Why on earth would we need andragogists, aestheticians or classical philologists, paleontologists or theoretical physicists in the period of the roistering fourth industrial revolution?

We do not affirm that the system is not showing any shortcomings, but let us think on why do higher education institutions nowadays admit (almost) every passer-by, and why does a person who objectively does not measure up to the university diploma crave for one? We do not claim any comprehensiveness of the answer, but almost surely, it would oscilate around the crisis of social authorities, the sociologic scrutiny

⁶ On 8 March 2020, Comenius University on its own initiative and without prior instructions transferred to the distant education method, and thus directly contributed to containing the effects of the first pandemic wave.

of the X, Z generations, the millenials and others, and also around the methodology of the allocation of grants for higher education institutions⁷. If one of the key criterion is a number of students studying in a particular field of study, a study programme or in a faculty or university, we will not achieve real selection in the course of the admission of study applicants.⁸ And if there is no selection and everyone is admitted, the education loses its value. If we do not have to try hard to achieve something, we take it for granted and it is hard to create quality on the output when there is no quality in the input. Not necessarily, but hard.

Society should become aware of the fact that the purpose of higher education institutions and universities is not to produce a cheap (or even expensive) labour force for the national economy. And this is the basis of the necessity to maintain the principles of autonomy and self-governrment of the higher education environment.

Industry, economics, and the national economy are directly dependent on the political impetus. The politicians make decisions (indirectly, even if we accept the „invisible hand of the market“ with the related development conditioned corrections) on which segment will be supported, funded and which segment will be granted tax reductions etc. If we provide the politicians with the power to make decisions concerning the internal administration of the higher education institutions, we will resign once and for all to the progress in thinking, education and training of future generations in the spirit of the described principles and thus to the mission of higher education institutions standing for the education and training of people based on critical thinking principles. Higher education should provide society with a human who is value-anchored, large-minded, erudite, able to distinguish and weigh up at least within his or her expertise (or wider in an ideal case).

Consequently, such education would enhance the graduates' ability to adapt themselves to the continually changing world, because the times when it was sufficient for a human to use his or her knowledge gained in the studies throughout the entire lifetime are long gone (if ever they existed). Such education teaches a human to raise a voice against injustice, to fight because he or she understands that, besides the power of economics and money, there is the power of ideals and values. That is the role of education which should be valued by society. Problems in society arise just when it sells short on the understanding, and allows education to be dictated only through the prism of economics or politics. These are being modified every single moment, however, it cannot happen to the values and principles and they cannot be subject to short-term waves of preferences.

⁷ Ministry of Education, Science, Research and Sport of the SR acting as the central state administration authority in the area of education administration ensures the activities of the universities via an annual funding provided from the state budget. The funding provided on a contractual basis is bound into the performance of accredited study programmes, into research, development or artistic activities, the development of a university or students' social support. The statutory allocation of the funding provision purpose is, at the same time, a formal distribution of the Methodology of the funding schedule of the state budget for public universities drafted by the Ministry.

⁸ There is a long-term issue on allocation of the public funding based on quantitative indicators.

In the field of science as the second pillar of university essence, the core should be represented by free fundamental research inspired by one of the most human of human qualities which is curiosity. The origins of this kind of thinking dates back in general to the sixth century BC to the period titled by Jaspers as „axial“. Thales of Miletus, Anaximandros or Anaximenes, Herakleitos or Parmenides were simply curious. Did anyone order Descart or Leibniz, Newton or Kant on the subject of thinking? The absurdity of the answer is hidden behind the absurdity of the question.

Where would human progress be without science? A politician, even the most enlightened one, is not able to anticipate the outcome of particular scientific research. Did anyone have a clue as to the impact of the special theory of relativity without which you would not probably have read this text on a tablet or a smartphone? A number of the most useful inventions came into existence without being planned. A number of scientists faced jeers for the „uselessness“ of their study subject- only to be proved by history that they were true geniuses (eg. Gottlob Frege in the field of logic, or Joseph Thomson and the electron discovery). The history of science is full of such stories. Curiosity and imagination are qualities not always corresponding with the economic and political criteria of the „benefit“. The research in the field of logopedics, archeology or literature cannot be, as a rule, measured in investment returns but our language, our history and our stories create the basics of our identity.

Of course, *mutatis mutandis*, the above mentioned also refer to applied research linked directly to practice.

Therefore, we are at the crossroads: do we want our higher education institutions to produce people afflicted with „branch-idiotism“? Do we produce trained personnel for an industry while its existence depends on political decisions that may shift „support“ to a different one? Will we feel distressed at every election about which political party will be taking over the Ministry of Education and whether they will shape universities in their own image? Or do we want an independent, autonomous and responsible higher education system (even with its shortcomings) able to train an educated person capable of thinking and using it as a tool to saturate his/her curiosity?

We will always be defending the second raised thesis. Even with shortcomings (though, every human makes mistakes), it still remains the best and historically proven model that has not been allowed to be overruled by actual political power, and while (almost) always being independent, it has been progressing, and society, states, and people have been progressing as well. We call it progress. On the other hand, where political power interferes with the autonomy and self-government of universities, we can barely speak about progress. In the case of Slovakia, this happened twice: in 1938 for the first time, in relation to the gradual formation of a fascist dictatorship, and in 1948 for the second time upon the formation of the communist (or people’s democratic at the beginning, if we choose) dictatorship.

5. WHAT IS THE LINK BETWEEN POLITICS AND AUTONOMY AND THE SELF-GOVERNMENT OF HIGHER EDUCATION INSTITUTIONS?

Even from the view of etymology, the fundamental basis of autonomy should be the possibility to use internal rules to adjust the internal matters of an entity, i.e. academic matters ruled independently by higher education institutions in this case. The academics, in the form of representative democracy or in a direct manner, should be the decisive element of the internal academic matters, because they are the best equipped to assess all the nuances of the complicated and comprehensive mechanisms being undoubtedly connected with a higher education institution. The question whether the academics should act directly or via their elected representatives in the academic senates does not make a major impact on the legitimacy of these processes. The answer obviously depends on a number of factors, such as the size of the particular higher education institution, its tradition or internal organisation. The key prerogative of a university community (as the first medieval universities were established and titled as *universitās*, i.e. free communities of educators and students having a strong internal jurisdiction over their members) is the right to vote for their representatives, Rectors, Deans or otherwise titled officers among their number based upon their particular historical tradition. The current model of Administrative Councils preferred by the Minister of Education has nothing to do with self-government and thus neither with the autonomy of higher education institutions. The construction in which an Administrative Council consists of half of its members nominated by the Minister of Education and at the same time, it is entitled to elect university representatives, to approve university budgets and to have the final word in property disposition, cannot be labelled otherwise than academics politicisation. The nominees of the Ministry of Education (however „good“ and „enlightened“, though the future may bring even less flattering adjectives) are, whether we want it or not, political nominations, moreover with a preferred affiliation to the external environment, be it business, territorial authority or employers' unions. As a rule, these people have no idea about internal relations and links at universities, about research, financial flows, let alone education. We are still not talking about the most important argument, about the legitimacy derived from having been the source of power for a long time, and the trust given by the academic environment. The introduction of such management mechanisms would widely lead to the replacement of the legitimacy and trust of the academic environment for political trust.

If, according to the actual proposal, the Faculty Senates cease to exist and the prerogative of the universities to vote for their representatives (who (inter alia) negotiate with the government and industry representatives) is removed, it will mean the end of the principles being the only guarantee of research freedom. If the officials and university representatives are directly appointed by the actual political establishment, they will only be puppets and figurines in the hands of the mighty ones. The true freedom will cease to exist in the place where (perhaps in these one and only type of institution) it was (in a certain form and extent, but yet) always present, despite any

external circumstances. And the institutions are the most essential elements of democracy: strong, independent and autonomous. And universities should be the leaders. It is the duty of us, their temporary representatives, to fight for these principles, to protect and promote them.

And therefore, we are (moreover) of a view that a university Rector should be elected by a Senate (*Ceterum autem censeo rectorem universitatis a senatu eligendum esse*).

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