

Issues concerning the Funding of Public Higher Education Institutions

The legality of both the Higher Education Act and the Decree on Budgetary Financing of Higher Education Institutions and Other Institutions has been reviewed by the Constitutional Court. In Decision U-I-156/08 of 14 April 2011, the Constitutional Court of the Republic of Slovenia ruled that funding of universities under a by-law is unlawful or unconstitutional. The fourth paragraph of Article 73 of the Higher Education Act does not lay down the content-related criteria on the basis of which the Government could specify precisely the method of funding for state universities and colleges as stipulated by the Decree. For this reason, the Constitutional Court judged that the Government issued the aforementioned Decree on the basis of legal authority deriving from paragraph 4 of Article 73 but without a substantive basis. Funding of Slovene universities is thus unlawful since 1993. The executive has been deciding on the amount of funding without the consent of the legislature, i.e. National Assembly (Parliament). If the executive has the possibility of independently regulating the funding of higher education institutions, the autonomy of universities is at risk since funding can be reduced at any given time.

In theory and in practice this means that only the political will of a few individuals - the ruling elite - is taken into account. At the same time, the will and decision of the Government is not discussed as a proposal in Parliament as an institution, where the Government is trying to persuade the opposition. Representatives of voters thus did not have the opportunity to discuss the proposal and reach a decision. Every government, be it a majority or a coalition government, can push through decisions it wishes to implement. Thus, the Government would have no difficulties in adopting amendments to the Decree since the legislature's consent is not required to amend a by-law. Only in the opposite case, if the legislature's consent would be required (if funding would be regulated by law), the conditions for the exchange of interests and transparency would be satisfied. Most importantly, government monopoly over decision making could thus be broken. For this reason, Article 58 of the Constitution of the Republic of Slovenia (second paragraph) stipulates unambiguously that funding must be regulated by law. In this manner, the autonomy of state universities and colleges is guaranteed. The formalistic legal basis, which has been transferred onto the regulation, may be understood as a tendency to take control over the funding of universities. The University of Maribor and the entire Slovene academic community have been faced with these problems since 2004 when the government began to systematically reduce funding of public universities, while at the same time allocating funds to private higher education institutions on the basis of concession relationships.

The rationale behind concession relationships is inadequate since the fact that a programme has been accredited by a competent state authority (in the past the Higher Education Council, now the Slovenian Quality Assurance Agency for Higher Education (SQAA)) does not justify budgetary funding for the implementation of such programmes. It merely means that the competent accreditation body confirmed that the programme is appropriate and implemented by a relevant higher education institutions, the legal consequence being that an official document (diploma) can be issued. The decision whether or not to fund a programme is a matter of political interests rather than an automatism stemming from the accreditation. An important characteristic of concessions is the fact that financial, economic or management risks on the market are assumed by the concessionaire, which means that they are not funded by the awarding authority (concession provider). If the state allocates funding to a private-law entity in a non-transparent manner without a call for applications and selection criteria, the requirements for identifying this act as public aid are met. We still do not know why and on the basis of

Appendix 38

which criteria private higher education institutions obtain concessions. The most common populist answer - that concessions are granted in order to encourage competition - might be considered reasonable only if all institutions had the chance to compete or if private higher education institutions would be of such high quality that the majority of students would rather attend them than public ones.

In other words, the core of the problem is the unlawful funding method and not the fact that private higher education institutions should not be established. This problem paints a gloomy picture of the funding system for Slovene universities - if each government has the right to change the funding system and the amount of funding at any time and to determine the amount of concessions without relevant criteria, executive political control over both public and private institutions is established, which can be regarded as form of totalitarianism.

The autonomy of universities is at risk since directly elected representatives of voters have no influence over the funding method. Inadequate and insufficient funding has a negative impact on the student-teacher ratio (which is currently 20:1; Slovenia ranks lowest among EU member states and OECD countries)¹ and the quality of education. Slovenia thus produces less skilled graduates and is therefore less competitive in the employment market. In addition, Slovenian economy is less competitive, which means that it is gradually turning into a country in which only a few individuals aware of the fact that insufficient funding impacts the quality of education will come to the fore, while the rest will possess merely average knowledge and skills.

¹ Source: UMAR (Institute of Macroeconomic Analysis and Development), 2012 Development Report: indicators of Slovenia's development, pp. 136 -137, available at: http://www.umar.gov.si/fileadmin/user_upload/publikacije/pr/2012/apor_12.pdf (7 December 2012).