

FUNCTIONS OF PROTECTING THE PRINCIPLE OF UNIVERSITY AUTONOMY

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UDK: 378.147(497.5)

342.733(497.5)

378.11(4)EU

DOI: 10.3935/zpfz.73.6.03

Pregledni znanstveni rad

Primljeno: kolovoz 2023.

This paper explores various dimensions of the legal principle of university autonomy as defined within the framework of studies conducted by the EUA. These are organisation, financial, staffing and academic autonomy. Their essential features are questioned from the angle of their formative concretisation in the legal system of the Republic of Croatia. In the context of the foundation of the EHEA, which necessarily includes the need for harmonisation of the autonomy principle as the supreme legal principle in European (national) higher education and science systems, such harmonisation, in addition to the perspective of normativism, is also discussed in the context of social objectives and functions placed before universities as a measure of accomplishment of their autonomy and public responsibility.

Keywords: system; values; standardisation / harmonisation EHEA; normative concretisation

INTRODUCTION

Every system entails a certain ranking of values. This is also true of Croatia's higher education and science system and foreign higher education systems. Values that make up the content or different dimensions of the legal principle of university autonomy are given priority – especially with regard to university systems. The establishment of the European Higher Education Area (hereinaf-

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ter: EHEA) gave and gives rise to new challenges with respect to preservation of university autonomy within the framework of national legal systems requiring a simultaneous *harmonisation* of values / dimensions of autonomy at the European level. A number of European declarations, formal and substantive European legal sources, a number of studies conducted and finally national legal systems in the part governing higher education and science system testify to this.

In the hierarchy of norms in any legal system, legal principles rank first as the highest legal norms since they express *fundamental values that a specific legal system serves* and, as such, are crucial for directing the creation, interpretation and application of all the other legal norms.¹ In that sense, of each principle it can be stated that it lays the foundation for a multitude of other norms in terms of values², and that “around each we are able to cluster some *normative generalisations*³ whose observance helps to secure the value in question”.⁴ Often, a problem arises with the attempt to determine the hierarchy of the principles, i.e. the hierarchy of fundamental values of a specific legal system that condition further normative generalisations.⁵ This should not constitute a problem in the EHEA and our higher education and science system since university autonomy is set as the supreme legal principle. However, as I will further demonstrate, the development of higher education and science system in the EHEA and in the Republic of Croatia – guided by the principle of autonomy – gave and still gives rise to a number of difficulties when it comes to application. In this paper, I will study what these values and/or dimensions contained in the legal principle of university autonomy are, and how university autonomy is defined at the European level. I will then compare the interpretations presented with the legal regulation of university autonomy in the Republic of Croatia, with the aim of determining the *functions and dysfunctions* of the application of the principle of autonomy. In doing so, I rely on the interpretation of university au-

¹ Cf. Visković, N., *Teorija države i prava*, Birotehnika CDO, Zagreb, 2001, p. 253; Pavčnik, M., *Teorija prava*, GV Založba, Ljubljana, 2011, pp. 123 ff; Guastini, R., *Sintaksa prava*, Naklada Breza, Zagreb, 2016, pp. 78 ff.

² Cf. Guastini, R., *op. cit.* in note 1, p. 78.

³ Italics by author.

⁴ MacCormick, N., *Institutions of Law: An Essay in Legal Theory*, Oxford University Press, New York, 2009, p. 54.

⁵ Fikentscher explains that the problem arises where values are called into question and where the hierarchy of values is challenged. Such ranking is nothing else but a “system”. Each system sets such an order of values. Everything depends on who imposes values on whom. This is also a political issue. Dependence of the system and time on evaluation and legitimacy of evaluation imposes the political content on legal method. For more cf. Fikentscher, W., *Methoden des Rechts in vergleichender Darstellung, Band IV, Dogmatischer Teil*, J.C.B. Mohr, Tübingen, 1977, p. 121.

tonomy as defined in one of the first declarations, *Magna Charta Universitatum* (Grand Charter of European Universities). The *first fundamental principle* stated is this: “The university is an autonomous institution at the heart of societies differently organised because of geography and historical heritage; it produces, examines, appraises and hands down culture by research and teaching. To meet the needs of the world around it, its research and teaching must be morally and intellectually independent of all political authority and economic power.”⁶ The importance of the document is confirmed by the adoption of a new *Magna Charta Universitatum* in 2020. Additionally, this document contains the following features of autonomy: “Intellectual and moral autonomy is the hallmark of any university and a precondition for the fulfilment of its responsibilities to society. That independence needs to be recognised and protected by governments and society at large, and defended vigorously by institutions themselves. To fulfil their potential, universities require a reliable social contract with civil society, one which supports pursuit of the highest possible quality of academic work, with full respect for institutional autonomy. As they create and disseminate knowledge, universities question dogmas and established doctrines and encourage critical thinking in all students and scholars. Academic freedom is their lifeblood; open enquiry and dialogue their nourishment...”⁷

1. EUA STUDIES: DIMENSIONS OF UNIVERSITY AUTONOMY

Considering the latter determination of this fundamental principle, it is no wonder that the European Commission and a significant number of European governments have recognised the need for researching, determining and strengthening university autonomy as one of the more important consequences of changing expectations related to the university’s contribution to the economy and a knowledge-based society. Over the past decades, these expectations have altered relations between states and institutions of higher learning. Consequently, in its communication entitled “Delivering on the Modernisation Agenda for Universities: Education, Research and Innovation” (May 2006), the European Commission gave priority to creating new frameworks for universities characterised by improved autonomy and accountability.⁸ A year later, the Council of

⁶ Magna Charta Universitatum: <http://www.ehea.info/cid101830/magna-charta.html>. (3.4.2023).

⁷ For more cf.: <https://www.magna-charta.org/magna-charta-universitatum/mcu2020> (23.8.2023).

⁸ Estermann, Th.; Nokkala, T., *University Autonomy in Europe I: Exploratory Study*, EUA, Brussels, 2009, p. 6, https://www.researchgate.net/publication/216508602_Univer

the European Union confirmed this approach and established an explicit link between university autonomy and its ability to respond to society's expectations. Consequently, debates on university autonomy and governance intensified in Europe (especially since the beginning of the Bologna reform and the establishment of the European Higher Education Area) in different contexts. They were a response to varied and new social challenges resulting, inter alia, in the need to develop common terminology and structures for addressing such an important topic, and increasing requirements for comparability of accomplished university autonomy in different states.⁹

The European University Association (EUA) conducted three consecutive studies on the effectiveness and enforcement of the fundamental legal principle specific to university – the principle of autonomy, more precisely, of different dimensions of university autonomy. The EUA study was based on the following hypotheses:

1. Institutional autonomy is considered an important prerequisite for modern universities enabling them to develop their institutional profiles and efficiently accomplish their missions;
2. Albeit there is broad agreement on the importance of autonomy for the achievement of the universities' missions in the 21st century, there is little specific up-to-date information enabling a comparison of national systems in Europe and what this means in practice for the universities operating in these states;
3. The diverse situations in Europe require multiple approaches and the *ongoing quest for a balance between university autonomy and its accountability to the public* in response to the demands of society and the changing understanding of public responsibility for higher education. Although many studies have identified a trend moving away from direct state control towards indirect steering mechanisms (such as financial or quality assurance mechanisms), public authorities still retain central role in the

sity_Autonomy_in_Europe_I_Exploratory_Study_(1.6.2023).

⁹ Bennetot Pruvot, E.; Estermann, Th., *University Autonomy in Europe III: Country Profiles*, EUA, Brussels, 2017, p. 7, <https://eua.eu/resources/publications/350-university-autonomy%C2%A0in-europe-iii-%C2%A0the-scorecard-2017.html> (1.6.2023). To understand the constitutional guarantee of university autonomy in the Republic of Croatia, cf.: Dika, M., *Autonomija sveučilišta i judikatura Ustavnog suda Republike Hrvatske*, in: Kregar, J.; Dika, M.; Bolanča, D.; Gribišić, K.; Jernei, Ž.; Krajcar, S.; Matulović, M.; Petrak, M.; Rajčić, D.; Vašiček, V., *Upravljanje sveučilištem: Učinkovitost postojećih organizacijskih modela s obzirom na stupanj funkcionalne integriranosti pojedinog sveučilišta*, Sveučilišna tiskara, Zagreb, 2007, pp. 3-19.

regulation of the higher education system and exert direct control in a large number of states.¹⁰

Considering a wide span of provisions on autonomy, the introductory part of the first report entitled *University Autonomy in Europe I: Exploratory Study* (2009) specifies four dimensions of autonomy that are used as starting points: *academic, financial, organisational* and *staffing*. The report emphasises that individual indicators of certain dimensions of autonomy often coincide. For example, an important aspect of staffing autonomy is the scope of control the universities exert over financial issues referring to employment, such as overall salary costs and individual salary levels, which is at the same time an essential feature of financial autonomy. Furthermore, it is clear that the four dimensions do not cover all the aspects of autonomy. For example, the ability to decide on research projects, priorities, areas and objectives is an extremely important part of academic university autonomy not comprised in detail by this study.¹¹

*Organisational Autonomy*¹²

Organisational autonomy refers to the *ability of the university to freely decide on its internal organisation, institutional governance, decision-making bodies, legal entities and internal academic structures*. University governing bodies, usually consisting of committees or councils, senate or both, make decisions on long-term strategic issues, such as statute and budget, and academic affairs such as curricula, study programmes and promotion of employees. If external members are included in university governing bodies, participating thus in making fundamental institutional decisions, it is important that universities have a certain competence / influence on their appointment. The ability to establish for-profit and not-for-profit legal entities and decide on internal academic structures is directly linked to the ability of an institution to set and follow its academic and strategic orientation.

*Financial Autonomy*¹³

Financial autonomy refers to *the ability of the university to freely decide on its internal financial affairs, i.e. the ability to autonomously manage its resources in order*

¹⁰ Estermann, Th.; Nokkala, T, *op. cit.* in note 8, pp. 6-7.

¹¹ Estermann, Th.; Nokkala, T, *op. cit.* in note 8, p. 7.

¹² <https://www.university-autonomy.eu/dimensions/organisational/> (9.8.2023).

¹³ <https://www.university-autonomy.eu/dimensions/financial/> (9.8.2023).

to enable setting and achieving strategic goals. European universities get a significant part of their funding from states. The level up to which funds can be freely allocated to different budget lines and the length of funding cycle are important aspects of financial autonomy regardless of whether that funding has been ensured as a budgetary item or block grant. The ability to keep a surplus and to borrow money on the financial markets facilitates long-term financial planning and gives universities the flexibility they need to achieve their diverse missions in the most convenient manner. Similarly, the ability to own and sell buildings used by the universities enables them to determine their institutional strategies and academic profiles. The ability to collect tuition fees opens new private sources of funding, which account for a significant percentage of university budgets in some higher education systems. In these cases, the freedom to collect and set tuition fees is a key indicator in decision-making on institutional strategies.

*Staffing Autonomy*¹⁴

Staffing autonomy is the *ability of the university to freely decide on issues of management of human resources, including recruitment, salaries, dismissals and promotions.* In order to compete in the global environment of higher education, universities have to be able to employ the most suitable and qualified academic and administrative staff without external oversight, pressure or interference. The ability to set pay levels is of primary importance when attempting to attract an excellent international labour force. The civil servant status of university employees still prevents institutions in a number of European countries from setting their salaries. The ability to freely promote and dismiss employees increases institution's flexibility, ensuring it a competitive advantage with regard to staffing issues. The ability of merit-based promotion continues to be restricted in a number of EHEA universities. Alignment with positive labour legislation is not considered to be restriction of institutional autonomy.

*Academic autonomy*¹⁵

Academic autonomy is the *ability of the university to decide on various academic issues, such as student enrolment, content of programmes, quality assurance, introduction of study programmes and language of instruction.* The ability to determine the total

¹⁴ <https://www.university-autonomy.eu/dimensions/staffing/> (9.8.2023).

¹⁵ <https://www.university-autonomy.eu/dimensions/academic/> (9.8.2023).

number of students and set criteria for enrolment are basic aspects of institutional autonomy. Although the number of study places has important implications for the university profile and finances, the ability to select students significantly contributes to quality assurance and matching the students' interests with the programmes offered. The ability to introduce academic programmes without external interference and to select the language of instruction enables the university to flexibly carry out its specific mission. A free choice of the language of instruction can play an important role in the context of institutional strategies of internationalisation. The ability to design curricula (except for regulated professions) is a fundamental academic freedom. Although quality assurance mechanisms are a key tool for university responsibility, the processes related to this may be burdening and red-tape. Therefore, universities should have the freedom to choose quality assurance mechanisms as well as the service provider they see fit.

a. The first research of University Autonomy in Europe

The first EUA study on the state of institutional autonomy and governance of European universities began in late 2007. Although "institutional autonomy" largely implies constantly changing relations between the state, i.e. degree of state control, and higher education institutions depending on national context and circumstances, the objective of the study was to provide foundations for a European comparable database by analysing certain key aspects of autonomy, as well as introduce an institutional perspective (i.e. what autonomy really means in practice) into the debate on autonomy and governance reforms on the policy level.

The major basis for analysis was an online questionnaire addressed to National Rectors' Conferences (NRC), members of the EUA. It contained questions on the legal status of institutions, institutional strategies, governing structures, financial issues, students, human resources, intermediary bodies, and issues of autonomy in general. A number of telephone interviews were conducted in order to ensure clarity and comparability of the results and obtain a broader picture of national trends, the scope and limitations of institutional autonomies at universities in Europe. Data from the interviews and online questionnaires formed the basis for the first comparative analysis. Due to the number and diversity of higher education systems involved in the study (34 in total), it was necessary to design broad analytical categories, which at times included – simplifying complex situations – in order to identify overall trends.

The authors of the report highlight several major challenges and constraints in achieving the set goals of the study:

1. Monitoring all changes in national and legal frameworks in 34 states (mainly universities were included) within the study period posed an enormous challenge since reforms, either currently implemented or planned, significantly change or may change the manner and degree in which autonomy is achieved.
2. Autonomy is a concept that is understood differently in different states of Europe, which implies that terminology tends to vary significantly. This is not only caused by differing legal, but also differing historical and cultural frameworks that determine institutional autonomy in an individual state. All of this posed a major challenge for arriving at reliable and comparable autonomy indicators. Moreover, the establishment of a single set of concepts for all aspects examined proved impossible in some cases, which resulted in different variations and interpretations in responses.
3. Another challenge was the evaluation and analysis of individual elements of academic autonomy, especially the content and structure of curricula and study programmes in relation to the implementation of the basic content of the Bologna Process, national and European qualification frameworks, and quality assurance systems. All these challenges point to the need for further, wider debate and analysis of the relations between these elements.

In spite of these constraints, the authors believe that the report enabled a broad outline of the state of institutional autonomy of European universities, provided comparative data pertaining to the four fundamental dimensions of autonomy, and as such represents a starting point for follow-up and continued monitoring of the development of autonomy of European universities.¹⁶

b. The second research of University Autonomy in Europe

The first EUA report *University Autonomy in Europe I: Exploratory Study* provided a basis for developing the next project entitled the Autonomy Scorecard. *University Autonomy in Europe II: The Scorecard* was first published in 2011. In addition to updating the data collected in the 2009 report, the second one included new elements of autonomy and studied some aspects of institutional autonomy in greater detail, such as inclusion of external members in the

¹⁶ Estermann, Th.; Nokkala, T, *op. cit.* in note 8, pp. 8-9.

management of university bodies, various activities of the quality assurance system, etc. In other words, the Autonomy Scorecard contained an improved methodology in relation to the first report, which measures different levels of autonomy in the EHEA taking into consideration all the difficulties, challenges and constraints included in quantifying degrees of autonomy.¹⁷ At the same time, the Autonomy Scorecard serves multiple purposes, such as *benchmarking* national policies and raising awareness among universities, it serves as a reference for further studies providing a comparable set of data to establish relations between autonomy and other concepts, such as funding, quality, access and retention in the EHEA.

Obviously, this is one of the leading EUA tools for continuous collection and generation of information on the current state of university autonomy and reform management, since the Autonomy Scorecard enables a more successful comparison of national policies with regard to university autonomy, as well as an exchange of best practices for two reasons. First, collected data provide European institutions and policymakers with data that inform on decision-making processes and involvement in initiatives aimed at encouraging the modernisation of the EHEA. Second, it contributes to raising awareness about changes in university systems necessary for the creation of a favourable regulatory environment for strengthening university autonomy.

c. The third research of University Autonomy in Europe

The *University Autonomy in Europe III: Country Profiles*¹⁸ report, published in 2017, is based on the data collected during 2015 and 2016. This report emphasises, inter alia, that data collection gave rise to specific challenges linked to the consistency of data collected up to that time and their interpretation during a significant period of time. Namely, while the Autonomy Scorecard update sought to strike a balance between the necessity to interpret the specificities of each system and the need to preserve a level of overall comparability of different systems considered, meaning at the same time that a degree of simplification cannot be avoided in the process of doing so. In other words, a reliable comparison of “cross-border” university autonomy is very challenging. The rea-

¹⁷ Estermann, Th.; Nokkala, T.; Steinel, M., *University Autonomy in Europe II: The Scorecard*, EUA, Brussels, 2011, pp. 12-13, <https://eua.eu/downloads/publications/university%20autonomy%20in%20europe%20ii%20-%20the%20scorecard.pdf> (1.6.2023).

¹⁸ Bennetot Pruvot, E.; Estermann, Th., *op. cit.* in note 9, <https://eua.eu/resources/publications/350-university-autonomy%20in-europe-iii-%20the-scorecard-2017.html> (1.6.2023).

son for this, as stated in earlier reports, are not only different legal frameworks but also different historical and cultural circumstances that (co)determine institutional autonomy in every state, and therefore the establishment of a single set of restrictions for all indicators proved very difficult in some cases. In order to enable general comparisons, complex and diverse situations had to be simplified, which certainly resulted in the presentation of some higher education systems with somewhat fewer details than would be desirable.¹⁹

Moreover, monitoring all changes in national and legal frameworks in a large number of higher education systems within the study period posed an enormous challenge due to reforms being implemented in individual states. Minor amendments to legislation may alter the picture markedly. Conversely: large-scale reforms may not have a major impact on the Scorecard autonomy indicators. Obviously, the Scorecard assesses and analyses the relation between state and university as to how this relation is formed by special rules and regulations. These regulations also include accountability measures established in return for increased institutional autonomy. Although in this context the report clearly stresses that institutional autonomy does not mean the absence of regulations and that all higher education systems should set a regulatory framework in which their universities can operate, members of the EUA proposed a selection of indicators that should be the object of scoring and explained which regulations are perceived as restrictions of institutional autonomy. For example, quality assurance procedures are an important way of ensuring public responsibility, which then means that higher education systems need regulations for ensuring quality standards as well as regulations on public funding. However, although there should be an appropriate legal framework for the quality assurance system, certain regulations may be burdensome and restrictive. For example, one of the Scorecard indicators on whether the existing quality assurance systems – from the perspective of institutional autonomy – can be considered appropriate is the possibility of universities to independently choose mechanisms and providers/regulators of quality assurance.²⁰ With such and similar indicators, the EUA provided (national) quality assurance systems with the starting point for setting quality assurance measures that – again viewed from the perspective of institutional autonomy – can be considered appropriate, and not restrictive. Similarly, in the area of staffing autonomy: labour law regulations of a state were considered the basis for university staffing policy and only specific regulations for institutions of higher learning or civil servants were treated as restrictions.²¹

¹⁹ *Ibid.*, pp. 10-11.

²⁰ *Ibid.*, p. 13.

²¹ *Ibid.*, pp. 10-11.

According to the authors, it can be stated that this third study indisputably demonstrated that the frameworks and conditions under which European universities operate differ mainly between and sometimes also within individual states. This leads to the conclusion that there is *no ideal autonomy model, but rather a set of basic principles representing key elements of autonomy, which, when they are implemented in the context of a certain system, should support universities in the accomplishment of their increasingly complex mission.*²²

d. The fourth research of University Autonomy in Europe

The fourth study *University Autonomy in Europe IV: The Scorecard 2023* was published in 2023, which included research on the state of all four dimensions of autonomy in 35 countries in 2022. Compared to previous studies, it includes more comparative benchmarks and additionally contains information on how and to what extent academic freedom is included in national legal provisions. On this occasion, in addition to the differences observed in previous research, legal heterogeneity was also highlighted. For example, in some countries there are different legal solutions for individual universities, while in others the same legal framework applies to all universities and/or to different types of universities. This means that even within an individual state, based on the law, different levels of autonomy are achieved, which then represents an additional challenge in the final assessment of the said state.²³ Although this update of the Autonomy Scorecard does not include any conceptual changes, and thus no dimension or indicator of autonomy has been removed, the study points out that this edition has generated new contextual data that better help to understand the state of university autonomy in Europe.²⁴ At the same time, several (new) methodological and substantive challenges were highlighted. Namely, a mismatch between legal provisions and practice was observed: the data collection and validation process revealed that there were cases in which practice deviated from the law. Also, the analysis revealed that there is currently no other system among the 35 included in the study, which regulates the relationship between the state and the higher education institution in a comparable way.²⁵

²² *Ibid.*, p. 11.

²³ Bennetot Pruvot, E.; Estermann, Th.; Popkhadze, N., *University Autonomy in Europe IV: The Scorecard 2023*, EUA, Brussels, 2023, pp. 8, <https://eua.eu/downloads/publications/eua%20autonomy%20scorecard.pdf> (23.2.2024).

²⁴ *Ibid.*, pp. 13.

²⁵ *Ibid.*, pp. 13 ff.

2. APPLICATION OF THE LEGAL PRINCIPLE OF UNIVERSITY AUTONOMY

The described study findings clearly indicate, inter alia, difficulties related to a more comprehensive and uniform definition of university autonomy.²⁶ Not only does there not exist an “ideal autonomy model”, but any attempt to define it unambiguously would contradict this very principle. The highlighted four dimensions of autonomy can represent a kind of comparison measure, however, even within them it is difficult to determine common indicators. This was especially emphasized in the third survey, so it is difficult to talk about “a set of basic principles representing key elements of autonomy”.

A legal system is indeed a system of values, as stated in the introduction. However, its specifics are primarily revealed through the most complex features of normativity, which are frequently modifiable (open) due to external influence, but at the same time autonomous (closed) in order to protect the integrity and alignment of legal norms. Therefore, a legal system presupposes a hierarchical systematisation ensuring that legal principles and legal norms are not contradictory and inconsistent, but rather legal and effective. From the perspective of sociology of law, a legal system has to be – functional. The process of Europeanisation of our legal system²⁷, including the (sub)system of higher education and science, poses additional challenges in terms of an *effective* materialisation of all these features. This is visible in the previously analysed study that points to contentions related to uniform definition (at the level of the EHEA) of the legal principle of university autonomy.

With regard to the hierarchy of legal norms, it was earlier emphasised that legal principles come first since they express *fundamental values* that a legal system serves, and as such are crucial for directing the creation, interpretation and application of all the other legal norms. However, in addition to their basic character, an essential feature of legal principles – including university auto-

²⁶ For more details on the EUA study analysis cf.: Grubišić, K., *Sveučilišno pravo i pravo znanstvenih organizacija*, Sveučilište u Zagrebu Pravni fakultet, Zagreb, 2023, pp. 213 ff.

²⁷ There is a large amount of professional and scientific literature on the concept of Europeanization. In general, this term describes the various effects of the European Union on the member states. With regard to the topic of this paper, the interpretation of Europeanization that includes both indirect and direct influence of European Union institutions, political processes and policies on national-level institutions, political processes and policies, as well as non-state actors is authoritative. For more cf. in: Trnski, M., *Prilog pojmovnom određenju europeizacije*, Međunarodne studije, vol. XV, no. 4, 2015, pp. 9-11.

nomy – is indefiniteness.²⁸ Indefiniteness is manifested in that legal principles “only” communicate the criterion of value, focusing on the content of legal rules and legal norms, their interpretation and application. In other words, legal principles are always subject to further interpretation and *normative concretisation*. Their usability is greater if they are prescribed by law and if they have met with an active response in legal theory and practice, if they are applied and this applicability has a reliable basis in legal rules, institutions and their mutual connections.²⁹

However, normative concretisation does not mean that it suffices for legal principles to be made concrete through regulations only. This is something that the EUA study showed inter alia, especially in the parts explaining individual challenges that hinder or make the definition of the principle of autonomy impossible, a definition that would be universally accepted. This is all the more so since in all the EHEA member states university autonomy has been prescribed as a legal principle in their laws or constitutions. However, even as such, it is just part of that which is prescribed by legal norm, since in its application it is determined by different (national) historical circumstances, those conditioned by culture and/or jurisprudence. Precisely such external circumstances and different legal viewpoints exert important influence on its definition, its effectiveness, and to a certain extent to the binding nature of the application of (individual aspects of) the principle of autonomy.

a. Legality

Consequently, one of the ensuing problems is laying down clear criteria to apply the principle. Namely, individual criteria arise from national legal systems and, depending on the degree in which individual dimensions of university autonomy are achieved, they indicate at the same time the effectiveness of a specific legal system in the part relating to higher education and science system. Equally so, individual criteria are contained in individual European declarations and European legal sources and as such represent the European criteria for the establishment and standardisation of national university systems that belong to the EHEA.

²⁸ Cf. Guastini, R., *op. cit.* in note 1, pp. 77 f. This indefiniteness is also emphasised by Dworkin who states that with legal rules it is a matter of “all or nothing”, whereas even those principles that are most similar to legal rules do not automatically produce legal consequences. Cf. Dworkin, R., *Shvaćanje prava ozbiljno*, KruZak, Zagreb, 2003, pp. 36-38.

²⁹ Pavčnik, M., *op. cit.* in note 1, pp. 122–124.

The hierarchical systematisation of the legal system, which, as previously mentioned, is the basis for achieving legality and effectiveness of law is best interpreted through normative and dogmatic positivism. Normative positivism interprets law as a hierarchically structured system of norms with *legality* being the only relevant value. Legality implies, inter alia, acting in line with the legal norm as well as alignment of lower level norms with higher level ones. This is a *formal principle of value* which – due to the very feature of its formality – does *not* directly concern social relations, but demonstrates what the hierarchical relation between legal norms governing certain social relations should look like.³⁰ For this reason, the definition of formal sources of law implies not only their specification, but also their hierarchical definition. The specificity of Croatia's system of higher education and science is that such definition is *primarily* conditioned by the *constitutional guarantee of autonomy*. Autonomy, as a constitutional principle, entitles universities to independently regulate individual areas of activity through norms, which then has direct consequences for the establishment of a hierarchical system of formal sources of law in this part of our legal system. Moreover, both the first and in particular the second version of *Magna Charta Unviersitatum* of 2020 confirm, inter alia, that the principle of autonomy is not, like the principle of legality, only a formal principle of value. The 2020 version repeatedly emphasises the significance of institutional autonomy and academic freedom but also contains new provisions that are a direct consequence of the need for normative alignment with new social circumstances driven by new technologies, teaching and research methods, increase in the number and diversity of students and universities, etc.³¹

Moreover, the application and observance of the principle of autonomy and other principles directly linked to it (such as public responsibility, academic freedoms) *essentially condition* the methods and possibilities of alignment of fundamental social goals and values of the EHEA at the European and national levels through their application in national legislations. For example, the findings of the studies conducted contribute to such understanding. Furthermore, one should consider that the process of Europeanisation of the system of higher education and science evolves as a *continuous* process of *voluntary harmonisation, standardisation, alignment*, which, as such, proves to be irrelevant in many important aspects from the perspective of normativist interpretation. It suffices to underline that individual goals, values and principles contained in European declarations have no explicit compulsory features, but depend on them being

³⁰ Visković, N., *Pojam prava*, Pravni fakultet u Splitu, Split, 1985, p. 129.

³¹ For more cf.: <http://www.magna-charta.org/magna-charta-unviersitatum/mcu-2020> (22.8.2023).

accepted by member states. Nevertheless, in many of them, one of the set objectives is harmonisation with national legislations. The means of their translation into legal norms and legal relations, i.e. formal alignment of national legislation with the European Union *acquis* to the greatest extent – even if not completely – takes place through direct application of regulations and/or transposition of new directives.

What I would like to emphasise here is that these formal legal procedures certainly do not comprise all the influences of the process of *harmonisation*, *standardisation* of the EHEA or national legislations in general, including the system of higher education and science. This therefore means that a normativist interpretation of the application of the principle of legality in this context proves to be necessary, though insufficient. One of the reasons is that it does not exhaust all the ways in which social goals, values and interests influence how legal norms are modified and interpreted, since this is not the object of this method. The other is that issues related to the goals of norm-makers (legislators) are lacking.³²

b. Effectiveness

Within the framework of the dogmatic method, the meaning of the norm is not interpreted through the relationship between higher and lower norms, but also considered are *goals* that the norm-maker, i.e. legislator had in mind at the moment of their creation. This will of the legislator or norm-maker is the will of the one who wields social power³³, which in the system of higher education and science is not only national, but recognised, and is demonstrated beyond any doubt by previous deliberations at the European level too. Again, one should consider that different subjects appear as the holders of this will in this part of the legal system (in addition to national legislative bodies and universities, faculties) at different political and social levels of power, largely as a direct consequence of the application of the principle of autonomy. It is justified to assume that this is one of the major reasons that research on the methods of application and effectiveness of this principle in different national legislations is at the heart of interest of policies that should lead to *harmonisation* and *standardisation* of the EHEA.

Be it as it may and based on all of the above, it is obvious that the issue of determining the will of those who hold social power poses several dilemmas.

³² For more on this cf.: Grubišić, K., *op. cit.* in note 26, pp. 245 ff.

³³ More cf. in: Visković, N., *op. cit.* in note 1, p. 218.

The first is to determine who is the norm-maker in the system of higher education and science. And why is this question at all relevant? In complex institutional orders of democratic states, there is no single psychological will, but this will is a matter of pure copying in the context of non-contradictory political action and non-contradictory interpretation of law, rendering any explanation of such will without any added value.³⁴ The second issue is which (social) goals does one want to achieve by applying a certain legal norm or through normative concretisation of a certain legal principle (such as the principle of university autonomy)?

Legal effectiveness is the embodiment of influence that a legal norm exerts, and is linked to different (social) factors, and that does not just include connection between norm and behaviour, but also a network of other relations that should be taken into account if we want norms to be effective. This explanation demonstrates at the same time that it is not easy to ponder upon legal and social effectiveness separately, since their meanings partially overlap. Namely, if legal effectiveness is primarily linked to the ability of a legal norm to achieve the goals for which it was originally adopted, then in terms of social effectiveness one could state that it is measurable through the determination of functions and roles (of part) of legal system, i.e. of individual legal principles in society.

Understanding the former (legal effectiveness) presupposes understanding the will of the norm-maker – legislative, judicial, university, national, European. Although it can appear to be more demanding, all of them are more or less definable from the perspective of formal law. However, the will interpreted as voluntary, “like voluntary harmonisation of the goals, values and principles of the EHEA”, is what constitutes a problem and what is one of the essential starting assumptions for the emergence and creation of the EHEA. Consequently, this is a mode of operation that (in terms of formal law) cannot be unequivocally and clearly defined. Therefore, *functionalism* can serve as an appropriate theoretical framework for additional understanding of social effectiveness in the application of the principle of autonomy, which, although recognised in sociological theories, is acknowledged by individual legal theoreticians. In theory of law, R. Ihering introduced a prominent concept that questioning social un(desired) causes and effects of law – *functions and dysfunctions* – is an inseparable part of understanding law, since law ensures society’s living conditions in a way that it directs the most significant interpersonal relations in society. Considering that at the European level the principle of autonomy was (re)defined several times under the influence of social changes and further development of the EHEA, in the final part of the paper I will analyse how the Constitution of the Republic

³⁴ More cf. in: MacCormick, G., *op. cit.* in note 4, p. 331.

of Croatia, laws and dissenting opinions of judges of Croatia's Constitutional Court (hereinafter: CC) define the principle of autonomy in the context of four highlighted dimensions of autonomy, as well as fundamental *social* goals and functions of the EHEA.

3. NORMATIVE CONCRETISATION OF THE PRINCIPLE OF AUTONOMY IN THE REPUBLIC OF CROATIA

a. Constitution

Art. 68 of the Constitution of the Republic of Croatia provides for the principle of academic self-governance and university autonomy:

The autonomy of universities shall be guaranteed.

Universities shall independently decide on their organisation and operation, in compliance with law.

Moreover, Art. 69 of the Constitution guarantees, inter alia, freedom of scientific, cultural and artistic creativity. The full wording of the article is:

The freedom of scientific, cultural and artistic creativity shall be guaranteed.

The state shall encourage and support the development of science, culture and the arts.

The state shall protect scientific, cultural and artistic assets as national spiritual values.

The protection of moral and material rights deriving from scientific, cultural, artistic, intellectual and other creative efforts shall be guaranteed.

The state shall encourage and support care for physical culture and sports.

b. Laws

In the Higher Education and Scientific Activity Act (Narodne novine, no. 119/22; hereinafter: HESAA), Art. 4 provides for academic self-governance and university autonomy. Paragraphs 1-4 of the article read:

(1) In the Republic of Croatia, higher education is based on academic self-governance of higher education institutions and university autonomy in compliance with the Constitution, international treaties and this Act.

(2) Academic self-governance comprises:

1. Setting rules for studies and student enrolment

2. *Nominating and electing leaders and selecting academic staff*
3. *Managing financial and other resources in compliance with the principle of public responsibility, this Act and other regulations.*

(3) University autonomy comprises:

1. *Defining internal structure in compliance with this Act*
2. *Defining educational, scientific, artistic and professional programmes*
3. *Deciding on approval of projects and international cooperation*
4. *Financial autonomy within the framework of programme contract in compliance with this Act*
5. *Other forms of autonomy in compliance with this Act.*

(4) University autonomy constitutes an institutional framework whose purpose is to protect academic rights and freedoms of members of the academic community and intellectual independence of the university from all political pressure and economic power. University autonomy includes responsibility towards the social community.

In addition to HESAA, individual dimensions of university autonomy are partly prescribed by explicit legal norms in other acts. For example, I would like to mention Art. 2 of the Act on Ratification of the Global Convention on the Recognition of Qualifications concerning Higher Education (Narodne novine – Međunarodni ugovori (Official Gazette – International Treaties series), no. 7/21) governing the objectives of the Convention and prescribing, inter alia, respect for and protection of autonomy and diversity of the system of higher education and institutions of higher learning.

On the basis of the quoted articles of the Constitution and Art. 4 of HESAA, I will now select individual provisions of HESAA that point to a normative concretisation of four previously highlighted dimensions of autonomy namely: organisational, financial, staffing and academic autonomy.

1. Organisational Autonomy

Art. 10 Para. 6 provides that the internal structure of the university and its constituents is governed by “the university statute in compliance with this Act”;

Art. 11 Para. 5 provides that in accordance with its statute, the university can establish an economic council and other supervisory, professional and advisory bodies;

Art. 12 Para. 1 and 3 provide for the statute of the university that governs “the composition, election of senate members and their terms of office” and prescribes competences of the senate such as making decisions on academic, scientific, artistic and professional matters, adoption of strategic documents, laying down criteria for promotion of academic staff, appointment of academic staff, etc.;

Art. 14 and 21 provide for the statute of the university, i.e. the statute of the faculty / art academy that contains provisions on the procedure and criteria for the election as well as the procedure for dismissal of the rector, i.e. dean;

Art. 15 Para. 1 provides that the university elects one half of the university council members;

Art. 17 Para. 2 provides that the statute of faculty or art academy governs “the internal structure of the faculty or art academy”;

Art. 18 Para. 2 provides that a faculty or art academy may have other supervisory, professional and advisory bodies in compliance with its statute;

Art. 19 Para. 1 and 3 provide that the statute of faculty or art academy governs the composition, election of members and term of office of the faculty or academy council, defines the competences of the faculty council or academy council such as deciding on academic, scientific, artistic and professional issues, adoption of strategic documents, laying down criteria for the promotion of academic staff, appointment of academic staff, etc.

2. Financial Autonomy

Art. 12 Para. 3 provides that the senate adopts a programme contract and enacts a university financial plan;

Art. 13 Para. 2 defines the rector’s responsibilities in drafting programme contract, managing financial plan, assets;

Art. 9 Para. 3 provides that faculty council or academy council of an art academy adopts a proposal for part of the programme contract and adopts the financial plan referring to the faculty or art academy respectively;

Art. 20 Para. 2 governs responsibilities of the dean of faculty or art academy in drafting part of the programme contract referring to the faculty or art academy respectively, managing the financial plan and assets of the faculty or art academy respectively.

Art. 96 Para. 3 provides for ring-fenced revenues of higher education institutions including tuition fee revenues;

Art. 97 Para. 5 provides that the manner in which a public higher education institution or public research institute disposes of its own revenues is governed by its internal act.

3. Staffing Autonomy

Art. 12 Para. 3 provides the responsibilities of the senate related to the appointment of academic staff and laying down additional promotion criteria;

Art. 19 Para. 3 provides for the responsibilities of the faculty council or academy council in the appointment of academic staff and laying down additional promotion criteria;

Art. 39 provides that the internal act of a higher education institution (in this context: university, faculty, art academy) lays down additional criteria for the appointment to teaching positions;

Art. 45 provides that a higher education institution defines the procedure for assessing the work of associates in its internal act;

Art. 50 Para. 1 provides that the internal act of a higher education institution (in this context: university, faculty, art academy) lays down criteria for the appointment to the position of a Croatian or foreign language instructor;

Art. 54 provides for the procedure of conferral of honorary title of *professor emeritus* in compliance with university, faculty or art academy statute:

Art. 71 Para. 9 governs a decision that may be adopted by the senate, faculty council or academy council to permit a prominent foreign professor (visiting professor) to teach.

Concerning essential features of staffing autonomy as described at the EUA level, it should be noted that public universities and public university institutions of higher learning independently make decisions on recruitment, however they have no ability to independently set the salaries of academic and administrative staff.

4. Academic Autonomy

Art. 19 Para. 3 provides that faculty council or academy council lays down the number of enrolment places in individual courses of study;

Arts. 58-62 provide that a higher education institution, i.e. university, faculty or art academy, lays down enrolment criteria for individual types of study;

Art. 62 Para. 2 provides that the procedure of application, evaluation and defence of a doctoral thesis or creation, performance and presentation of a work of art is governed by statute or internal act;

Art. 67 Para. 3 and Art. 71 Para. 6 provide that criteria and conditions for the recognition and transfer of ECTS credits between different courses of study and rules on exams are prescribed by higher education institutions (university, faculty or art academy) in their internal acts.

Although managing bodies of universities and higher education institutions within universities make decisions on “academic, research, art and professional issues” in line with Art. 12 Para. 3 and Art. 19 Para. 3 of HESAA, and at the same time “freedom of scientific and artistic creativity” is guaranteed based on constitutional provisions and in line with Art. 2 Para. 5 of HESAA, universities and university higher education institutions are not completely autonomous with regard to the introduction of study programmes and quality assurance procedures. Namely, Art. 66 Para. 3 of HESAA provides that decisions on study programmes are adopted by higher education institutions (university, faculty or art academy) “in compliance with this Act and regulations governing quality assurance in higher education and science”. According to provisions of the Act on Quality Assurance in Higher Education and Science (Narodne novine, no. 151/22), the procedure of approval and evaluation of study programmes is only partially carried out at the university level. Additional criteria for the procedure and quality standards are defined by the Agency for Science and Higher Education (ASHE). Universities and institutions within their framework cannot independently select quality assurance mechanisms and the regulatory (European) agency, which is one of the important indicators of academic autonomy at the EUA level. This is understandable because European quality assurance standards are recognised as the basic indicator of achievement of university autonomy and responsibility.³⁵ In other words, although the cited Art. 4. Para. 3. of HESAA expressly prescribes different forms of autonomy that fully coincide with the four dimensions of autonomy described in the EU research, this does not mean their effective implementation at the same time. In addition to the described example with study programs, the same can be shown for financial autonomy, which is determined “within the framework of programme contract in compliance with this Act”. We will see how this provision will be applied. But the norm, which prescribes that an act of the executive power will prescribe the terms of negotiations in more detail, does not favor respect for the financial autonomy of universities.

³⁵ Cf. p. 1100.

c. Positions of the Constitutional Court on University Autonomy

In a period of over two decades, CC assessed compliance of individual provisions (mostly of laws) with the constitutional guarantee of university autonomy in 19 cases.³⁶ If the essence of the function of a certain system or a certain norm is measured by its effects³⁷, this data already speaks of the existence of obvious dysfunctions in the system of higher education and science as a consequence of non-compliance with this fundamental principle. Basically, in doing so, CC also presented some *principled* positions. In the following text I shall present some of them, as well as certain explanations that contribute to understanding and/or having insight in (dis)respect for (individual) dimensions of university autonomy.³⁸

³⁶ Here are Decisions (Odluka) and Rulings (Rješenje) of the Constitutional Court of the Republic of Croatia (USRH) with an indication of the number of official gazette (Narodne novine = NN) issues and dates of publication: Odluka i Rješenje USRH, br: U-I-902/1999 od 13. rujna 2000., NN, br. 14/00, 26/00 – corrigendum 67/00; Odluka USRH, br: U-I-843/2000 od 13. rujna 2000., NN, br. 94/00; Rješenje USRH, br: U-I-1441/2001 od 23. listopada 2003., NN, br. 177/03; Odluka USRH, br: U-I-1707/2006 od 20. prosinca 2006., NN, br. 2/07; Odluka USRH, br: U-I-4585/2005, U-I-4799/2005, U-I-2446/2006 i U-I-3502/2006 od 20. prosinca 2006., NN, br. 2/07; Rješenje USRH broj: U-I-2720/2007 od 19. studenoga 2008., NN, br. 138/08; Odluka USRH, br: U-II-1304/2013 od 16. srpnja 2013., NN, br. 99/13; Odluka i Rješenje USRH, br: U-I-5578/2013 i U-I-3633/2014 od 18. srpnja 2014., NN, br. 101/14; Odluka USRH broj: U-I-7431/2014 i U-II-7432/2014 od 13. svibnja 2015., NN, br. 60/15; Odluka USRH, br: U-I-351/2016 od 20. travnja 2016., NN, br. 41/16; Odluka USRH, br: U-II-6251/2016 od 25. travnja 2017., NN, br. 46/17; Rješenje USRH br. U-I-1102/2009 od 21. studenoga 2017., <https://sljeme.usud.hr/usud/praksaw.nsf/vSignaturaPoGodiniRije.xsp>; Rješenje USRH br. U-I-3416/2007 od 19. prosinca 2017., <https://sljeme.usud.hr/usud/praksaw.nsf/vSignaturaPoGodiniRije.xsp>; Rješenje USRH br. U-I-4613/2015 od 30. siječnja 2018., <https://sljeme.usud.hr/usud/praksaw.nsf/vSignaturaPoGodiniRije.xsp>; Rješenje Ustavnog suda Republike Hrvatske br. U-I-4981/2013 i U-I-1454/2014 od 9. listopada 2018.; Rješenje USRH br. U-I-2446/2016 od 4. veljače 2020., <https://sljeme.usud.hr/usud/praksaw.nsf/fOdluka.xsp?action=openDocument&documentId=C-12570D30061CE54C1258505004037D7>; Rješenje USRH br. U-I-4146/2017 i U-I-4684/2017 od 4. veljače 2020., <https://sljeme.usud.hr/usud/praksaw.nsf/vSignaturaPoGodiniRije.xsp>; Odluka USRH, br: U-I-2854/2018 i U-I-2855/2018 od 10. ožujka 2020. i tri izdvojena mišljenja sudaca, NN, br. 47/20; Rješenje USRH br. U-I-1298/2021 dated 13 July 2021.

³⁷ For more cf. in: Kuvačić, I., *Funkcionalizam u sociologiji*, Naprijed, Zagreb, 1990., p. 20.

³⁸ For more about the presentation and analysis of constitutional judicial practice cf. in: Lauc, Z., *Načelo autonomije (sveučilišta) i načelo supsidijarnosti*, in: Kačer, H.;

1. Organisational Autonomy

In its *Decision and Ruling no.: U-I-902/1999 dated 26 January 2000*, point II, the Constitutional Court adopted a *principled* position on the constitutional guarantee of autonomy, which it evoked in its subsequent decisions on multiple occasions (e.g. in its *Decision no.: U-I-1707/2006 dated 20 December 2006*). It is a Decision that contains the most comprehensive interpretation of autonomy, especially in relation to the organization and management of universities. It is interesting that in its interpretation CC starts from the meaning of the university, which highlights its *specific* social role/function as an institution “that creates new scientific knowledge and introduces students to science”. Precisely for this reason, it can exist only to the extent in which it autonomously governs its structure and operation, i.e. “if it is organizationally and functionally independent of other bodies that have authority or other power to influence the organisation of the university structure and operation”. However, today (taking into account that more than twenty years have passed since this decision of CC) certain professional, market roles are increasingly being imposed on universities, so it is an open question whether it is even possible to preserve organizational and especially functional independence.³⁹ All the more so since these new roles or functions of the university are only the cause of the constant effort of the state authorities to exercise control over the universities.⁴⁰

Basically, that Decision interpreted:

- a. coverage of the concept of autonomy in such a way that “...autonomy comprises the university and other higher education institution within the university system, as well as the autonomy of each individual member of the university, i.e. each individual faculty or other organisational

Momčinović, H.; Žuvela, M. (eds.), *Liber amicorum in honorem Jadranko Crnić*, Novi informator, Zagreb, 2009, pp. 101-138; Dika, M., *O autonomiji sveučilišta prema judikaturi Ustavnog suda Republike Hrvatske*, Zagreb, 2007, dostupno na: https://projek-tintegracija.pravo.hr/_download/repository/IntegSveuciliste.pdf; Staničić, F., *Mane i nedostaci Zakona o znanstvenoj djelatnosti i visokom obrazovanju - kako ih popraviti*, in: Barbić, J. (ed.), *Istine i zablude o reformi znanosti i visokog obrazovanja*, HAZU, Zagreb, 2019, pp. 81 ff.; Grubišić, K., *Kriterij određivanja i sistematizacija pravnih načela u visokom obrazovanju i znanosti*, Zbornik Pravnog fakulteta u Zagrebu, vol. 69, no. 4, 2019, pp. 521-552; Obadić, I., *Akademске slobode u prijedlozima novih zakona*, Sveučilište u Zagrebu, Zagreb, 2022., pp. 35-40.

³⁹ For more about the social role of universities today cf. in: Moscardini, A.; Strachan, R.; Vlasova, T., *The role of universities in modern society*, Studies in Higher Education, vol. 47, no. 2, 2020, pp. 1-19.

⁴⁰ For more cf. in: Staničić, F., *op. cit.* in note 38, pp. 81 ff.

units within an individual university, and the autonomy of all employees in a specific branch of science within the overall university and/or scientific system in the Republic of Croatia. Therefore, it should be considered that the single concept of ‘university autonomy’ comprises all the aforementioned subjects.”

- b. the basic content of academic self-governance, i.e. the content of university autonomy “which may not be restricted by statutory provisions or by founders, supporters or those under whose professional supervision universities work”. These are:
 - *freedom of scientific, artistic and technological research and creativity,*
 - *defining educational, scientific, artistic and professional programmes,*
 - *election of academic staff and leaders,*
 - *decision-making on enrolment criteria,*
 - *establishing internal structure.*”
- c. powers that do not represent the original powers of the university covered by academic self-governance and which must be prescribed by law.

Compared to the previous interpretations, it is obvious that the powers that “represent the basic content of university autonomy” simultaneously encompass all four of its prominent dimensions at the EUA level. In addition to the fact that the highlighted powers “represent the basic content of university autonomy”, they also include all four of its prominent dimensions. In this sense, “establishing internal structure” is an indicator of the organizational dimension of autonomy, which the CC in the same Decision in point III. interpreted the reasoning in the following way: “The right to autonomous decisions on internal structure of university constitutes the fundamental content of academic self-governance, which may not be restricted by prescribing genuine or control authorities of the state with regard to these issues, in spite of the fact that the state may be the founder, supporter and supervisor of the university’s professional activity. Furthermore, issues concerning the university’s structure and activity, which do not represent the university’s original authorities included in academic self-governance, must be prescribed by law and cannot be transferred to bodies of the state’s executive power.”⁴¹ Excerpts from the practice of the CC

⁴¹ The Constitutional Court repeated a similar interpretation in its subsequent decisions, such as for example in point 8 of its Decision no.: U-I-1707/2006 dated 20 December 2006. The Constitutional Court ruled that “university autonomy, guaranteed by Art. 67 of the Constitution, includes university autonomy from extra-university institutions and other bodies that regulate the university structure

on other powers that represent the basic content of academic self-governance, and which at the same time point to the (dis)respect of certain dimensions of autonomy, follow below.

2. Academic Autonomy

The freedom of scientific, artistic and technological research and creativity, the defining educational, scientific, artistic and professional programmes and decision-making on enrolment criteria are primarily academic dimensions of autonomy, also interpreted additionally due to repeated disrespect of the constitutional guarantee of autonomy. Namely, in the same Decision, the Constitutional Court repealed the provision of Art. 132 Para. 2 Subpara. 3 of the Act on Higher Education Institutions that was in force at the time (hereinafter: AHEI), which provided that the National Council on Higher Education gives an opinion to the university's professional council on the implementation and organisation of post-graduate scientific studies. CC initiated a procedure for assessing the compliance of this provision with the Constitution holding (in point 3.3 of the Decision) "that the existing restriction, i.e. the university's obligation to seek opinion from the National Council on Higher Education on the implementation and organisation of post-graduate scientific studies, is contrary to the purpose of university autonomy and freedom of scientific creativity as defined in Art. 67 and 68 Para. 1 of the Constitution."

Equally, in the same Decision CC repealed Art. 59 Para. 2 AHEI on the basis of which the relevant ministry gave approval to the capacities of a higher education institution. In point III of the reasons, CC stated that part of the aforementioned provision is not compatible with the relevant articles of the Constitution. It is namely an indisputable right of an institution of higher learning to autonomously define its capacity, and with respect to this part, the latter provision of the article of the AHEI is in compliance with the constitutional guarantee of university autonomy. However, giving a body of public administration (Ministry of Science and Technology) the authority to approve an act laying down the capacity of each individual institution of higher learning, represents an essential restriction of the university's right to autonomous decisions on its operation.

and operation or may influence them (e.g., state authorities or other persons of public law and /less frequently/ private law that may assume the role of university founder or university supporters)..."

In this context, it is important to point out that *the determination of educational, scientific, artistic and professional programs* – as one of the fundamental characteristics of academic self-governance, but also a paradigmatic example of academic autonomy – is *seriously violated* by the provisions of the recently passed Act on Quality Assurance in Higher Education and Science.⁴² For example, in contrast to the previous Act on Quality Assurance in Science and Higher Education, based on which the university independently carried out the procedure of initial accreditation of study programs, it has already been pointed out that, according to the provisions of the current Act, this procedure is now mostly under the competence of the Agency.⁴³ At the same time, also unlike previous legal solutions, the appointment of agency bodies is exclusively within the competence of the executive power (Government of the Republic of Croatia), while this power was previously shared between the founder (Croatian Parliament) and the executive power.⁴⁴

3. Staffing Autonomy

Of the five highlighted responsibilities, the remaining one was the “election of academic staff and leaders” as an indicator of the staffing dimension of autonomy, due to the non-implementation of which the USRH also abolished certain legal provisions. *In its Decision and Ruling no. U-I-902/1999 dated 26 January 2000*, CC repealed Art. 99 Para. 4 – 6 of AHE. These paragraphs provided that one half of the members of scientific area councils are appointed by the Rectors’ Conference and the other half and the chairs by the minister. In point III 2.3. CC ruled that “university autonomy is impaired by the system of scientific area councils in which one half of their members and their chairs are appointed by the head of a body of public administration (minister), who

⁴² Official gazette, no. 151/22. See Art. 15, entitled “Initial accreditation for the execution of the study program”.

⁴³ Official gazette, no. 45/09. Art. 20, entitled “Initial accreditation for the execution of the study program” in paragraph 1. prescribed: “(1) Requests for the execution of the new study program are submitted by private universities, public high schools and polytechnics. The request is submitted to the Ministry at least one year before the beginning of the academic year in which the study program will begin.” In other words, public universities and public university colleges that independently implemented the highlighted procedure were exempted from this provision.

⁴⁴ Based on the provisions of Art. 34 of the current Act, the majority of the members of the administrative council are elected and dismissed by the Government of the Republic of Croatia, while based on the provisions of Art. 8 of the Act from 2009, the majority of members were elected by the Croatian Parliament.

is at the same time a member of the highest body of the executive power (Government of the Republic of Croatia), since appointments that are under the minister's authority, by their very nature, are not primarily directed towards representation and protection of interests of universities and scientific community at large. Therefore, the composition of scientific area councils, as provided for by Art. 99 Para. 4 AHEI, contravenes the principle of constitutionally guaranteed university autonomy aiming at ensuring that exclusively scientific benchmarks count when deciding whether a candidate for university academic staff possesses certain scientific qualifications.”

Furthermore, in its *Ruling no. U-I-4981/2017 and U-I-1454/2017 dated 4 February 2020* CC did not accept a motion for initiating proceedings to assess compliance with the Constitution of individual provisions of ASAHE. The motion for initiating proceedings stated, inter alia, that Art. 32 Para. 4, 7, 8 and Art. 41 Para. 3, 4, 5 and 6 of ASAHE provide that conditions for appointment to a higher position or grade are met after having spent five years in a certain lower position or grade, and such formal prescription of years spent in a certain position or grade as a prerequisite for higher grade “can be considered restriction of freedom of scientific creativity and recognition of achievements based on merits, since scientific work and its results cannot be temporally limited”. In point 15.2 of its Ruling, CC declared such allegations to be unfounded since ASAHE also provided for the possibility of promotion even before the expiry of the five-year period as defined in the aforementioned articles, should statutory conditions for this be met. However, connecting the aforementioned constitutional court position with the “new” provisions of HESAA, based on which it is expressly prescribed that five years have been formally spent in a certain position as a condition for election to a higher position – without exception (Art. 41, Para. 1. of HESAA), it is justified to conclude that in this sense, the current legal solution violates the staffing dimension of university autonomy.

At the end of the analysis of the normative assumptions of the (in)functionality and in(effectiveness) of certain dimensions of autonomy recognized in the laws and practice of the Constitutional Court, it is important to highlight some of the results for Croatia available in the fourth study *University Autonomy in Europe IV: The Scorecard 2023*. As a reminder, 35 countries were included in that comparative research study. Each restriction on university autonomy is assigned a deduction value based on how restrictive a particular rule or regulation is seen to be. A score of 100 % indicates full institutional autonomy; a score of 0 % means that an issue is entirely regulated by an external authority.⁴⁵

⁴⁵ Bennetot Pruvot, E.; Estermann, Th.; Popkhadze, N., *op. cit.* in note 23, p. 12, <https://eua.eu/downloads/publications/eua%20autonomy%20scorecard.pdf> (23.2.2024).

According to the published results, organizational autonomy has been achieved to some extent in Croatia: it is in the 20th place, and with 62 % achieved, it is the last in the medium-high cluster.⁴⁶ In the assessment of respect for financial and academic autonomy, Croatia with 46 % in both dimensions belongs to the third, medium-low cluster, which includes systems with scores between 41 % and 60 %. With regard to the realization of financial autonomy, it is ranked 26th, and in the assessment of academic autonomy it is ranked in the 29th-31st place (shares the same percentage with the Netherlands and Turkey).⁴⁷ The devastating data refer to personnel autonomy, where Croatia, with 12 %, is in the last place as the lowest-ranked country. As a possible explanation, the study states that since 2016 employment and promotion were subject to stricter restrictions.⁴⁸

4. CONCLUDING DELIBERATIONS

As demonstrated by the EUA studies, the application of the principle of autonomy depends to the largest extent on national legislations thereby ensuring at the level of individual members of the EHEA, legality and/or constitutionality of an individual higher education and science system. Simultaneously, an attempt is made at the EHEA level – primarily by means of quality assurance systems – to achieve the previously mentioned standardisation of individual, nationally different features of university autonomy, which thereby represents the benchmark of effectiveness in the application of the principle of autonomy at the national level: legal effectiveness to the extent this is “allowed” by national legislations, and social effectiveness vis-à-vis goals and functions that universities should achieve. And they are competently defined – exclusively – at the EHEA level.

This brings us to an apparent paradox. Namely, autonomy on the one hand, as defined in both versions of the *Magna Charta Universitatum*, means independence of social power, political will, consequently foreign influence. On the other hand, the need for standardisation and therewith (re)definition of the legal principle of university autonomy at the EHEA level is underscored primarily because of ever more numerous and complex social roles and functions that universities should have in society. And which are in large part the result of various external – European – influences and manifestations of power. Therefore, the question arises, what are the functions of protecting the principle of university autonomy?

⁴⁶ *Ibid.*, pp. 55-56.

⁴⁷ *Ibid.*, pp. 59, 67.

⁴⁸ *Ibid.*, p. 63.

The EHEA was founded in order to achieve a number of concrete goals such as Diploma supplement, ECTS, Employability Future of the EHEA consultations, Learning and Teaching, Lifelong Learning, Mobility, New Goals, Qualification Frameworks, Quality Assurance, Recognition, Research and Innovation, Social Dimension, Three–Cycle system. The basis for achieving them is to *align* certain (European) quality assurance standards guided by *highest values* – the legal principle of university autonomy and the university’s public responsibility towards society related to it.

It is precisely in these processes, which have been going on for three decades (since the establishment of the EHEA), that the answer to the question about the functions of protecting the principle of autonomy can be found. They are manifested through *various* effects and ways of achieving “new”, *common* goals, which are the result of direct (legal) and indirect (social) European and national influences. In this context, one should also understand the purpose of the EUA research, which sought to find some common characteristics of autonomy or at least common reliable indicators of its realization. However, without too much success.

One of the reasons for this is that freedom of teaching, scientific, artistic and professional work and creativity, as well as freedom of organization and choice of teachers, is certainly a civilizational, but also a national cultural and legal value. Therefore, if one considers the aforementioned feature of indefiniteness of legal principles, the principle of university autonomy can be said to be sufficiently determinable. And not only through the constitution and/or law, but also through constitutional judicial practice. For example, the paper showed how CC interpreted the important meanings of certain dimensions of university autonomy before the Republic of Croatia joined the EHEA, i.e. before the beginning of the Bologna reform in the Republic of Croatia. However, regardless of the existing and previous legal normative solutions on autonomy and academic self-governance, European research and presented constitutional judicial practice clearly indicate certain dysfunctions in the application of the principle of autonomy, and therefore in the system of higher education and science, which are the result of repeated attempts to directly influence the body executive authorities on fundamental academic freedoms. The continuation of such attempts in the Republic of Croatia, in addition to the frequent constitutional court practice that resulted in a series of repealed provisions, is also evidenced by the acts passed to achieve certain European goals, such as the qualification framework and the quality assurance system. The additional importance of these acts is that they regulate completely new social relations that should outline the new social functions of (European) universities. However,

both acts contain a number of provisions that seriously call into question the organizational and functional independence of the university in achieving the basic features of academic self-government and all dimensions of autonomy in the way that they are normatively determined by the Constitution and HESAA. In this regard, certain provisions of HESAA highlighted in the fourth chapter seem to have only a declarative meaning.

On the basis of the above, two important *effects* of protecting university autonomy arise. The first is the frequent changes to the “fundamental” law governing the system of higher education and science, which then, among other things, undermine the legal security and development possibilities of the universities themselves and the entire system. The second directly follows from the interpretation of CC that powers that do *not* represent the original powers of universities covered by academic self-governance must be prescribed by law. In the context of the previously mentioned laws that regulate completely new social relations, it is highly questionable whether these laws limit the original powers of the university, that is, the fundamental content of academic self-government guaranteed by them.

Basically, all the forthcoming challenges in terms of further definition of and compliance with the principle of autonomy to a great extent will depend on a future normative concretisation of social objectives and functions of European universities at the national level. In this process, of course, a number of questions about legality will be raised. However, for the understanding of the way to standardize and realize these university functions, which presupposes a more complete understanding of all problems and challenges in the application of the principle of autonomy and *the evaluation of the effects of that principle*, the formal legal perspective – mostly due to various indirect influences – proves to be insufficient.

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Sažetak

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FUNKCIJE ZAŠTITE NAČELA AUTONOMIJE SVEUČILIŠTA

Rad istražuje različite dimenzije pravnog načela autonomije sveučilišta određene u okviru istraživanja koje je provodila EUA. To su organizacijska, financijska, kadrovska i akademska autonomija. Njihova bitna obilježja propituju se iz perspektive njihove normativne konkretizacije u pravnom sustavu u Republici Hrvatskoj. Ujedno se, u kontekstu procesa stvaranja EHEA koji nužno uključuje i potrebu usuglašavanja načela autonomije kao najvišega pravnog načela u europskim (nacionalnim) sustavima visokog obrazovanja i znanosti, takvo usuglašavanje, osim iz normativističke perspektive, problematizira u kontekstu društvenih ciljeva i funkcija koji se postavljaju sveučilištima kao mjera ostvarivanja njihove autonomije i javne odgovornosti.

Ključne riječi: sustav, vrijednosti, ujednačavanje / harmoniziranje EHEA, normativna konkretizacija

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