

UNIVERSITY AUTONOMY AND ACADEMIC FREEDOM - MEANING AND LEGAL BASIS

Professor **Camelia Florentina STOICA**¹, Ph.D.
Associate lecturer **Marieta SAFTA**², Ph.D.

Abstract

The University autonomy and academic freedom are principles that govern higher education in Romania, and also lifelong learning. The importance of these principles for the proper functioning and development of higher education is highlighted in the national and international reference documents. Consequently, a correct definition and circumstantiation of them are essential to give support and substance to this development. Considering the importance and necessity revealed, this study aims to identify the meanings of mentioned principles by reference to the national legislation and the international developments.

Keywords: university autonomy, academic freedom, higher education

JEL Classification: K23

I. Introduction

The Romanian Constitution and the infraconstitutional legislation governing the organization of education in Romania use the concept of "*university autonomy*". In the absence of definitions at constitutional level, the significance of this concept has often been discussed, in search of coordinates, landmarks and boundaries especially in relation to the state action and the control that it has or may have on higher education.

This given that a number of international documents in the field emphasize the importance, for the proper functioning of the institutions of higher education, of the university autonomy.

Therefore, the Bologna Declaration (1999), signed by the education ministers of 30 European countries, including Romania, mainly aims to create a European Higher Education Area, with consideration and respect for university autonomy, expressly stating in this sense that "*the independence and autonomy of universities ensures the permanent adaptation of higher education and research systems to changing needs, society's demands and advances in scientific knowledge.*"

A series of subsequent releases and statements (Prague, May 19, 2001, Berlin - September 19, 2003, Bergen – 19to 20 May, 2005, London - May 19, 2007, Leuven - 28 to 29 April 2009, Budapest-Vienna - March 21, 2010) repeat and reinforce the ideas and principles enshrined in the Bologna Declaration, in achieving its objectives, highlighting the fact that academic freedom, autonomy and accountability of higher education institutions are the principles of the European Higher Education Area³.

Similarly, the European Commission and a number of European governments have recognized the need for university autonomy. In this regard, the Commission Communication of May 2006 on the Modernization Agenda for universities stipulates as priority the creation of a new framework for universities, characterized by an increased autonomy and responsibility. The university autonomy appears relevant not only for the realization of the European Higher Education Area, but it is also a key factor in achieving the European Research Area, as stated the European Commission in the Green Paper of April 2007 "*The European Research Area: New Perspectives*". The Bologna process is consistent with the objectives of Education and training programs 2020 and Europe 2020, which create a new strategic framework for European cooperation in education and

¹ Camelia Florentina Stoica - Head of Law Department, Bucharest University of Economic Studies, Romania, cameliastoica@cig.ase.ro

² Marieta Safta - Law Department, Bucharest University of Economic Studies, First assistant magistrate to the Constitutional Court of Romania, marietasafta@yahoo.com

³ http://europa.eu/legislation_summaries/education_training_youth/lifelong_learning/c11088_ro.htm

training, containing shared strategic objectives for Member States, including a set of principles to achieve these objectives and joint working methods with priority areas for each periodical working cycle.

This study illustrates how the university autonomy is regulated in Romania and interpreted in the light of the guarantees that the Romanian Constitution dedicate in this respect. We approach this concept along with the academic freedom because we believe they are indissolubly linked, the latter complementing the principle of university autonomy, including in terms of responsibility that is involved in achieving a quality education.

II. The university autonomy

1. The legal framework

According to Article 32 paragraph (6) of the Constitution, "*The university autonomy is guaranteed*" and, according to paragraph (5) of the same article, "*The education at all levels is provided in the state, private and religious units, under the law*".

National Education Law no. 1/2011 establishes in Article 3 letter k) that the university autonomy is one of the principles governing the higher education in Romania, an idea reinforced by Article 118 paragraph (1) letter a) of the same law.

Article 123 of Law no. 1/2011 provides, in paragraph (2), the rights offered by the university autonomy as it is guaranteed by the Constitution, namely, the right of the university community to establish:

- *its own mission,*
- *institutional strategy, structure, activities,*
- *its own organization and functioning;*
- *management of human and material resources*

nevertheless "*in strict compliance with legislation in force*".

Paragraph (3) of the same article provides that "*the fundamental aspects of university autonomy is expressed in the University Charter, approved by the university senate, in strict accordance with the legislation in force*" and in paragraph (4) that "*the university autonomy is exercised only provided that public accountability is undertaken*". The obligations of the concept of "*public accountability*" are then detailed in Article 124 of Law no.1/2011 and the sanctions for non-compliance, respectively the procedure stating their infringement, in Article 125 of the same law.

It is noted, moreover, by examining the infraconstitutional legislation that succeeded in this area, that it contains references to defining the concept of university autonomy, the legislature being concerned with establishing the meaning of this concept. The Constitutional Court finds in this regard that one of its decisions⁴ that "*The fundamental law has stated in Article 32 paragraph (6) the principle of university autonomy, but without defining this concept, and seeing the provisions of paragraph (5) of the same article, under which the education at all levels is provided in accordance with the law, it results that the constituent legislature left to the ordinary legislature the freedom to define the elements of university autonomy and the conditions under which it is exercised*".

The provisions contained by the same laws which give expression to the state control on the exercise of this autonomy have been criticized by exceptions or objections of unconstitutionality and, through settlements, the Constitutional Court has ruled on several occasions on the significance and limitations of the concept of university autonomy.

2. The significances of the concept "university autonomy"

2.1 One form of autonomy in terms of organization and functioning of higher education – the university autonomy, whether it is public or private higher education

⁴ Decision no.23/2005, published in Romanian Official Gazette, Part I, no.151 of 21 February 2005

- **Same terminology, one meaning**

The Court noted in this regard that "*the constitutional provisions establish and guarantee one form of autonomy, namely the university autonomy, whether it's public higher education or private higher education, autonomy whose content must be identical in both cases*". In essence, this consideration has substantiated the finding of unconstitutionality of Article 72 paragraph (5) of Law no.128/1997 on Teaching Staff Statute, the Court stating that it is contrary to Article 32 paragraph (6) of the Constitution, to the extent that the paragraph refers to art.116¹ paragraph (1) and Article 116² paragraph (1) of Education Law no. 84/1995, introduced by Law no. 480/2006, texts which in turn were found to be unconstitutional because, by derogation from the constitutional provisions, they enshrined a new kind of autonomy for private higher education, namely the academic autonomy⁵.

- **Same process of education, regardless of the form of property**

Developing these considerations, the Court also noted that "*it cannot be made a differentiation of legal regime applicable to the higher education based on the form of property. The quality of education act in higher education institutions cannot be achieved unless there is a uniform regulation. According to the legal provisions governing the establishment and functioning of private higher education institutions, they are organized on the principle of non -profit and operate as non-profit entities with special purpose, in accordance with the criteria and standards of academic evaluation and accreditation required by law. [...] higher education institutions, private, public and religious - all part of the national education system , which is coordinated by the ministry - must be subject to common rules established by the law, rules that provide the framework and limits of university autonomy, of educational institutions , regardless of their form of organization,[...] Therefore, the form of property, public or private, is irrelevant to determining the legal regime applicable to higher education institutions in terms of the educational process*"⁶.

- **Same purpose of establishing universities, regardless of education form, public or private**

"*The purpose of establishing a university can only be the same, regardless of education, public or private, that is, mainly the formation of capable and responsible professionals, endowed with critical thinking, with leadership skills and understanding of issues relating to economic and social progress, for a knowledge-based society. The university community plays a key role, especially teachers, who must ensure higher quality training to people who attend the courses of these universities*"⁷.

- **Same manner of expression of the university community, regardless of the education form, state or private**

The Court ruled in this regard when it had examined the provisions relating to the appointment of the rector, and in relation to the complaint that the founders of private universities would have a special right to do so. The Court considered that the appointment of the rector "*is an operation that depends, essentially, on the manner the university autonomy is ensured. Education Law no. 1/2011 provides, alternatively, two ways of appointing the rector, regardless of the category of higher education institution, public or private. Once appointed, the rector is coordinating the university community which has appointed him/her. [...]* The fact that the founders are not involved in the appointment of the rector of a private university is not likely to violate Article 32 paragraph (6) on university autonomy, but, on the contrary, to strengthen this autonomy which allows the university community to express [...]. Also, the fact that the election of the rector of a higher education institution is decided following the universal suffrage, direct and secret ballot of all tenured teachers and researchers within the university and student representatives in the senate and faculties councils, it respects the rules of democracy in which the university community,

⁵ Decision no.731/2009, published in Romanian Official Gazette, Part I, no.395 of 11 June 2009 and no.732/2009, published in Romanian Official Gazette, Part I, no.398 of 11 June 2009

⁶ Decision no.1090/2011, published in Romanian Official Gazette, Part I, no.807 of 15 November 2011

⁷ Decision no.1569/2011, published in Romanian Official Gazette, Part I, no. 139 of 1 March 2012

as the main actor of university life, is called to express itself. The regulation thus appears to be consistent, regarding both public and private education, because the government is not involved in the appointment of rectors of state universities either. Therefore, it cannot be stated the violation of Article 16 of the Constitution, in the light of this criticism, **the academic community has the right to express itself in the same way, regardless of education form in which it perform its activity**"⁸.

Referring also to the right of founders of private universities, in a context in which the situation of heritage of private universities was discussed, the Court considered that *"the founders of private universities (which are, according to Article 227 paragraph (1) letter a) of National Education Law no. 1/2011, foundations or associations, a religious cult or another education provider, recognized as such according to the law) contribute with an initial patrimony to their establishment, but after obtaining the legal personality, they manage, according to Article 122 paragraph (1) of National Education Law no. 1/2011, its own patrimony, formed of the initial patrimony of the founders and of the patrimony acquired during the existence of private universities by amounts deposited by the founders, tuition fees and other related fees, receiving sponsorships, donations, grants and credits based on competition and exploitation of research results, development, innovation and other legal sources"* (Article 231 of Law). In fact, Article 229 paragraph (1) of Law provides that *"The patrimony of private and private confessional higher education institutions consists of the initial patrimony of founders, plus the patrimony acquired thereafter"*. Therefore, the patrimony established under the above conditions belongs only to established private universities. This does not mean however that the founders are not entitled to a refund of the initial patrimony if the private university is dissolved"⁹.

2.2 Limits and legal coordinates of university autonomy

- **The university autonomy does not mean the independence of higher education institutions**

The Court noted in this regard that *"the university autonomy does not mean the independence of higher education institutions nor implies the regulatory and decision autonomy outside the legal framework, which is generally mandatory"*¹⁰

It is a conclusion substantiated also on the analysis of the situation at European level, which shows that there can be no equal sign between autonomy and independence - *"the State or local public administration has/have enough competencies that enable them to ensure that universities meet the quality standards required for the realization of the European Higher Education"*¹¹.

- **The university autonomy is not an absolute right**

The Court noted regarding the procedures stipulated by the law in this matter that *"all of these procedures are an expression of a university autonomy which, not being an absolute right, requires certain limits"*¹².

These limits are designed to achieve a quality education to meet the same minimum legal standards and the same criteria and the general conditions for teaching positions respectively for admission of students.

- **Legal standards of quality in education**

The State control aims at providing a quality education to the standards and commitments made at the European level.

The Constitutional Court noted in this regard that **the university autonomy means "legal standards of quality, and not own standards"**, stating that *"nothing prevents institutions providing*

⁸ Decision no.1646/2010, published in Romanian Official Gazette, Part I, no.119 of 16 February 2011

⁹ Decision no.1569/2011, published in Romanian Official Gazette, Part I, no.139 of 1 March 2012

¹⁰ Decision no.23/1995, published in Romanian Official Gazette, Part I, no. 151 of 21 February 2005

¹¹ Decision no.2/2011, published in Romanian Official Gazette, Part I, no.136 of 23 February 2011

¹² Decision no.1646/2010, published in Romanian Official Gazette, Part I, no. 119 of 16 February 2011

education, under the law, to diversify their specialisations or educational offer and to establish their own standards of a quality superior to those legal, without breaching them"¹³.

Continuing this reasoning, the Court stated in another decision that the determination through the criticized text of the minimum /maximum number of students that may be part of the formations of the study (study group, subgroup of studies for applications and practical works) is not contrary to the principle of university autonomy. It is true that the principle of university autonomy entitles the university community to establish its own mission, institutional strategy, structure, activities, own organization and operation, management of human and material resources, "but all these must be done in strict compliance with legislation in force, within the limits and conditions imposed by them"¹⁴.

Additionally, regarding the curricula, the Court stated also that "the objectives of Bologna Program was accompanied in most European countries by establishment of local or regional agencies external to universities in order to ensure the quality of curricula of these universities. Also, in most cases, the introduction of new programs requires approval by a minister or other public authorities, following an accreditation process"¹⁵.

● **Establishment by law of the conditions for occupying teaching positions**

*"Establishing the conditions of the contest for the positions of assistant professor or professor is made by the legislature, under the principle of university autonomy, without any stipulation contrary to it being contained by the criticized provisions. In this sense, the competition commission, made up of university lecturers, respectively professors, is approved by the senate, at the proposal of the faculty council. Also, the faculty council approves the result of the contest by nominal open vote, and the faculty council's decision is presented by the dean or a representative thereof and it is submitted by the rector for validation of the university senate"*¹⁶.

● **Establishment by law of general criteria for candidates' admission to studies**

*The necessity to establish "criteria for students' admission" results logically from the fact that all education units and institutions are part of a "national education system" (Article 15 paragraph (1) of the law) and also from the common purpose of the whole education system (Article 4 of the law) Finally, the provisions in question of Article 92 paragraph (2) are related to that of Article 1 of the law, which establishes "the principles of democratic education" and "equal access to all levels and forms of education" for all citizens. Having as first reference the provisions of Article 16 of the Constitution, which enshrines equal rights "without privileges or discrimination," the general criteria for admission of candidates to studies can only be consistent, the same in all education units and for all candidates. Setting different criteria to some education units or some candidates, not only would contravene the constitutional principle of equal rights, but also some of the provisions of the Convention against discrimination in education, resulting in "impairing equality of treatment in regard to education "(Article 1 point 1 of the Convention), alteration of "equality of opportunities and treatment in education" (Article 4 of the Convention). The university autonomy cannot be left outside such system of requirements"*¹⁷.

● **Confirmation of the rector of higher education institution by the relevant minister**

The Court noted that "the functioning of an educational institution without a rector confirmed by the minister of education, research and innovation cannot be considered integrated in the general frame of education organization. All these procedures reflect a university autonomy which, because it is not an absolute right, involves a certain limits, sense in which, according to Article 93 paragraph (2) the second part of the Education Law, "the Rector is elected by the Senate and confirmed by order of the minister of education, research and youth"¹⁸.

¹³ Decision no.1646/2010, published in Romanian Official Gazette, Part I, no.119 of 16 February 2011

¹⁴ Decision no.1340/2011, published in Romanian Official Gazette, Part I, no.895 of 16 December 2011

¹⁵ Decision no.2/2011, published in Romanian Official Gazette, Part I, no.136 of 23 February 2011

¹⁶ Decision no.719/2008, publicată în Monitorul Oficial al României, Part I, no.588 of 5 August 2008

¹⁷ Decision no.72/1995, published in Romanian Official Gazette, Part I, no. 167 of 31 July 1995, see also Decision no.730/2009, published in Romanian Official Gazette, Part I, no. 465 of 6 July 2009

¹⁸ Decision no.1646/2010, published in Romanian Official Gazette, Part I, no. 119 of 16 February 2011

- **Possibility to suspend the rector of the higher education institution by the relevant minister**

“The minister of education may suspend, for justified reasons, the rector of the higher education institution, possibility which may not be considered as a prerogative likely to diminish the university autonomy, since the suspended may address the court and, according to Article 93 paragraph (2) of the law, the rector may be revoked from the position only by the university senate, through the same procedure used to appointment. [...] The overall organization of education, with the consequences resulting from it and which practically affect its beneficiaries (namely students), must be respected by all institutions providing education in order to ensure an equitable basis applicable to all. We cannot talk about all these, to the extent that an educational institution does not comply with the procedures necessary to ensure the leadership by a rector confirmed by order of the minister of education, research and innovation, under the law, or does not respect for law specialization the obligation to study a period of four years, according to the legal provisions. Therefore, issues concerning the organization, efficiency and stability must be interrelated so that the legitimate expectations of all potential beneficiaries of the educational process should not be ignored”¹⁹.

- **The revocation procedure of the rector of the higher education institution**

“Dismissal of the rector is not done arbitrarily by the minister of education, youth and sports, but only upon the proposal of Council for ethic and academic management, with the consultation of the university senate. Members in this council are representatives of the scientific and academic environment, as well as other professionals of university life. These elements offer sufficient guarantees regarding the procedure of dismissal of the rector of a university”. Besides, “the rector dismissal is done in most cases by the body which made the appointment, but there are exceptions: in Hungary, Poland, Portugal, Sweden and Turkey, the dismissal process of a rector can be triggered by a high authority, usually the minister of education when his/her conduct is inconsistent with academic standards”²⁰.

The Court has also emphasized that *“regarding the staff policy of universities in countries such as Bulgaria, France, Poland, Slovakia, some German Länder (see, in this sense, report prepared in 2008 by T. Esterman and T. Nokkala - University Autonomy in Europe. Exploratory Study, report prepared under the auspices of the European University Association) the appointment of certain staff (usually teachers) is subject to confirmation by the relevant public authority in this area (minister of education or president of the country); so, for example, in Poland the title of professor is conferred by the President of the Republic”.*

- **Control on the manner the universities exercise the university autonomy**

Ruling on an *a priori* control over National Education Law, the Court held that *“the fact that the Ministry of Education, Youth and Sports controls how universities exercise their autonomy, the fact that it proposes to the Government to initiate a law project of reorganization or dissolution of the higher education institution concerned and the fact that the basic document of a university – the university charter - can be adopted only with the approval of the minister of education or that the Government, at the proposal of the Ministry of Education, Youth and Sports, may establish faculties within public universities in consultation with the university senate are nothing but guarantees that the Romanian higher education is performed based on the quality standards defined at national and European level. Such legislation is absolutely essential in conditions of an unprecedented proliferation of state and private universities, universities which have not had the time to become known at national or international level”²¹.*

¹⁹ Decision no.1646/2010, published in Romanian Official Gazette, Part I, no. 119 of 16 February 2011

²⁰ Decision no. 2/2011, published in Romanian Official Gazette, Part I, no. 136 of 23 February 2011

²¹ Decision no.2/2011, published in Romanian Official Gazette, Part I, no.136 of 23 February 2011

III. Academic freedom²² – regulation and significance

The Romanian Constitution does not expressly mention this concept but Education Law no. 1/2011 establishes in Article 3 letter l) that academic freedom is one of the principles governing the higher education in Romania, and in Article 118 paragraph (1) letter b) of the same law mentions this principle after the university autonomy principle, in consideration of its importance. According to Article 123 paragraph (1) of the Law no.1/2011, "*The university autonomy is guaranteed by the Constitution. The academic freedom is guaranteed by law. The higher education institutions are organized and function independently of any ideological, political or religious*".

The academic freedom is therefore addressed in the same context with academic autonomy and assumes the right of any member of the academic community to express openly their scientific and professional opinions, even if this involves a critical approach. Given the close interdependence of the two notions to which we have referred, we consider also that the academic freedom must be understood not as an absolute right and not as independence of the teacher. This time, we speak of a right that is subject to the general rules relating to the organization of education, as well as those adopted by universities, which respect the university autonomy. In a decision the Constitutional Court states in this regard that "*within the university autonomy, guaranteed by Article 32 paragraph (6) of the Constitution, private education institutions have the interest and the power conferred by law and by contract they conclude with the teacher to monitor closely all the obligations incumbent on the teacher as well as the educational and scientific level of the lessons taught by him/her, removing any abusive exercise of the teaching profession*"²³.

From this perspective and scope of all regulations adopted in the field both at national and European level, namely that of ensuring a high-quality education, it is vital the support of universities of the development of high academic programs, able to lead to the evolution of knowledge, to training leading specialists and to growing prestige in research. In other words, the academic freedom means responsibility of each member of the academic community for the quality of education and of each university within the exercise of the university autonomy which the Constitution guarantees, because "*the higher education involves study at a different level and much higher quality standards. Standards reached through the efforts of the university community*"²⁴.

IV. Conclusions

The variety of situations in Europe reflects a number of approaches on university autonomy, the central authorities still holding an important role in regulating the higher education system. Moreover, the European rule is that the education is a task of the state, with the possibility of setting up private institutions, a system different from the one in the United States of America, where the principle is the non-intervention of the state in education, with the possibility of creating public education institutions²⁵.

In general, in Europe, the university autonomy is linked to the capacity of higher education institutions to decide on their organization, financial issues, personnel policy and curricular policy, but the degree of freedom of universities varies greatly from country to country. It is noted that the Romanian legislator, addressing the issue of university autonomy and academic freedom, preserves an important role of central authorities in achieving the desired quality education, regardless of the higher education institution or whether it is part of the public or private sector.

It is indisputable that in Romania as well the way it is understood the university autonomy has generated debates, especially regarding economic issues, existing distinctions in this regard

²² For an in extenso approach of the concept, see L. Andreescu, *Libertatea academică, între teorie și politicile universitare*, European Institute, 2010

²³ Decision no. 114/1994, published in Romanian Official Gazette, Part I, no. 354 of 21 December 1994

²⁴ Decision no.1569/2011, published in Romanian Official Gazette, Part I, no.139 of 1 March 2012

²⁵ I. Muraru, E.S. Tănăsescu (coord.), *Constituția României – comentariu pe articole*, C.H. Beck Publishing House, Bucharest, 2008, p. 308

between public and private education, and the appointment of the management of universities. From this perspective, the regulations set forth and the considerations developing them are important to correct understanding and definition of the university autonomy and academic freedom, support for discussions and future developments of related regulations in the field.

Bibliography

1. L. Andreescu, *Libertatea academică, între teorie și politicile universitare*, European Institute, 2010
2. I. Muraru, E.S. Tănăsescu (coord.), *Constitutia României – comentariu pe articole*, C.H. Beck Publishing House, Bucharest, 2008,
3. http://europa.eu/legislation_summaries/education_training_youth/lifelong_learning/c11088_ro.htm
4. Decision no. 114 of 15 November 1994, published in Romanian Official Gazette, Part I, no. 354 of 21 December 1994
5. Decision no.23/2005, published in Romanian Official Gazette, Part I, no.151 of 21 February 2005
6. Decision no.72/1995, published in Romanian Official Gazette, Part I, no. 167 of 31 July 1995
7. Decision no.719/2008, published in Romanian Official Gazette, Part I, no.588 of 5 August 2008
8. Decision no.730/2009, published in Romanian Official Gazette, Part I, no. 465 of 6 July 2009
9. Decision no.731/2009, published in Romanian Official Gazette, Part I, no.395 of 11 June 2009
10. Decision no.732/2009, published in Romanian Official Gazette, Part I, no.398 of 11 June 2009
11. Decision no.1090/2011, published in Romanian Official Gazette, Part I, no.807 of 15 November 2011
12. Decision no.1569/2011, published in Romanian Official Gazette, Part I, no. 139 of 1 March 2012
13. Decision no.1646/2010, published in Romanian Official Gazette, Part I, no.119 of 16 February 2011
14. Decision no.2/2011, published in Romanian Official Gazette, Part I, no.136 of 23 February 2011
15. Decision no.1340/2011, published in Romanian Official Gazette, Part I, no.895 of 16 December 2011¹