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University Corporate Governance

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Derek Bok states:

»Once the public begins to lose confidence in the objectivity of professors, the consequences extend far beyond the academic community«. Any damage to the reputation of universities »weakens not only the academy but the functioning of our democratic, self-governing society.«

The fundamental importance of university autonomy

For universities, the adaptability and flexibility required to respond to a changing society and to changing demands relies above all on **increased autonomy** and **adequate funding**, giving them the space in which to find their place.

Autonomy implies control of major assets such as estates, and of staff; it also implies a readiness to be accountable both to the internal university community – both staff and students – and to society as a whole.

The principles of university autonomy

must accommodate diverse institutional missions and include:

- **academic** autonomy (curricula and research),
- **financial** autonomy,
- **organisational** autonomy (the structure of the university) and
- **staffing** autonomy (responsibility for recruitment, salaries and promotion).

Accountability and autonomy

- How to balance the **autonomy** needed by public universities with the **accountability** required by the state.
- If a university system is given autonomy to respond to national policy goals there is a high expectation that that the chosen path would include different ways of reaching the same goal and that some will be more innovative than others.
- Being centrally directed, this variety would have been unlikely.
- It is a matter of **trust to the academic community** to perform its' mission to the benefit of society, not only to the benefit of its own interests.
- It has to do with the **credibility of the academics** to follow their own principles of academic ethics and professionalism.
- On the other hand an **internal check and balance system** have to be introduced within the academic decision making institutions.

The problem to grant greater autonomy to a university system lies in the fear in government accompanied by popular believes that universities are not competent to exercise the powers effectively.

- Academic sphere is considered not being managerially skilled. It means that greater freedom comprises more complex supervisory and reporting regimes.
- In order to change this perspective, partnership and trust has to overcome fear and outside control.
- To achieve university system flexibility financial relations have to be based on contractual and partnership principles, (contracts or agreements) rather than on the administrative subordination.

Basis:

- The Magna Charta Universitatum states that „ The university is an **autonomous institution** at the heart of societies“.
- Academic freedom is an integral part of an autonomous university:
„**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**“.
- The legal aspect of the institutional autonomy is only a partial description of reality. **Autonomy may be described as the overall ability of the institution to act by its own choices in pursuit of its mission.**



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The Proposal of the new Slovenian University Law

- **The Slovenian Rectors' Conference launched the initiative to prepare a new draft law on universities.**
- We believe, that **universities themselves are responsible to create the proper legal framework for their autonomous academic performance.**
- Universities need greater autonomy, while the wider environment also expects greater responsibility and higher quality from them.

The text of the draft law also deals with the issues of corporate governance of the universities, as follows:

- the relationship between the government as a founder of the university and the university bodies,
- the relationship among the governing and academic organs and bodies of the university,
- the position of the faculties as members of the university, towards the university,
- the issue of the student' participation in the university governance.

The new University Law (in preparation):

- differs between university and other higher education,
- introduces partnership rather than public administrative relations between public universities and the government as its founder,
- introduces new concepts of corporate governance based upon the principle of self regulation of internal organization and management of the university, following contemporary developments in this field,
- clear distinction between academic and business function of the university and separation of managing bodies from supervisory ones.

Academic, managerial and supervisory function

- clear distinction of competences between supervisory and other (academic and management) competences and responsibilities is basic;
- the relationship between the universities' organs and bodies have to be transparent and sharp, as follows:
 - the academic issues have to be left to the senate and the rector (president) or similar professional organ,
 - managerial matters are the responsibility of the rector and the secretary (provost) of the university and to the university board.

- **The organ that represents the interests of the founder (state, region or municipality), such as university council, or university board, board of trustees, etc.:**
 - is not entitled to academic and managerial competences,
 - shall not have executive or business conduct competences, but only supervisory (non executive); the members are not employed at the university and accordingly can not devote themselves to day to day business,
 - shall have purely supervisory competences over the financial matters, including auditing and matters related to book keeping and annual reporting.

- **The question, that has different answers in different countries, is, does the organ, that represents interests of the founder nominate the rector, or not.**
 - In the cases when this body is not entitled to nominate the rector, this decision is left to the academic community directly on general elections or to the senate of the university as the body that represents the academic community.
 - General elections of the rector is by no means the most democratic solution, but it is not without problems.
 - Namely the question to whom the rector is responsible and how he or she can be removed from his or her position, in such a case, remains open.

- The autonomy of the university is reflected by the fact, that academic decisions are left to the academic community and its' organs and bodies and not to the organs and bodies, that represent the founder of the university.
- On the other side the autonomy of the university is reflected by the fact, how the organ, that represents the founder is composed and structured. The question is:

whether the organ that represents the founder acts as an disinterested body, following exclusively professional criteria, or on the other hand representing the founder, purely follows the founders instructions and advices.

- Supervisory function which belongs to the organ representing the founder, but in the case that this organ is entitled to nominate the rector:
 - that could easily damage the principle of autonomy
 - harm the nomination by the influence of the existing composition of the founders board (in the case of public university the actual political coalition of the government).
- That is why the reference for the majority of the council or board members should be nothing but **professional experience and knowledge** and not political or other interest' background.
- For this reason, the majority of the members of the university council or university board should be from **outside the founders institutions** (in the case of public university outside the state, region or municipality officials) and also **outside the university employees and students.**

- The more democratically the rector is elected, with the voting rights of the whole academic community, the more responsibility she or he has towards the academic community and the more autonomy is left to the university.
- On the other side: if the rector is only nominated by the organ which represents the founder, in which case he or she would be responsible primary to satisfy the interest of the founder (in the case of public university the state, region or municipality), it is hard to estimate high level of autonomy of such university.

Civil rather than administrative law relationship

The relationship between the state as a founder and the public university as an autonomous institution should be based on equal partnership with clear defined role per each side.

- The legal tool that regulates the relationship between the both partners: state as a founder and the public university as an autonomous institution based on equal partnership, can only be a contract between the two of them.
- University is in a contractual relationship in the position of a partner, rather than the object of legal regulation, subordinated to the authorities.
- In legal language, the relationship between the founder have to be regulated by civil law, significant for equality of partners, instead of administrative law which is significant for subordination to the authorities.

The regulation of legal status of university units (faculties, colleges, schools) differs from university to university and from state to state.

- Two opposite concepts:
 - the law recognizes a unit having the status of a corporation – a legal entity,
 - the university unit is defined as a university department or organizational unit as a part of university as a legal entity.
- In practise, both aspects have serious implications on university governance consistency which includes:
 - unloyal competition among legal entities for funding,
 - counterproductive measures as internal duplication of educational activities,
 - low internal cooperation and integration, etc.
- This issue has in addition to do with the theoretical model of the university as a composed organization; we can distinguish **centralized (integrated)** from **decentralized (disintegrated) university**.

Is university composed or even constituted of its' units (faculties) as its' members?

Is university a federation of its faculties, as self standing entities bearing their own legal personality?

- **Practical consequences:**

- The senate and other academic bodies (comities for study issue, for research issues, for nominations of professors, etc.) should be composed of the representatives of faculties rather than representatives of university academic community as a whole;
- The concept of university as a federation of faculties affects the overall decision making process on the level of university, which is supposed to be bottom up rather than top down designed; and that includes the decision making on nomination of university leaders, rector, and others;
- The bottom-up decision making is very demanding and may not be efficient enough.

Efficiency in governance must never mean that students are excluded in favor of corporate steering models for universities

- Student involvement in governance plays an important role in the formulation of higher education aims:
 - the evaluation of curricula and teaching practices through the identification and
 - correction of weaknesses in programmes and overall education process.
- Student involvement should not be restricted only to questions concerning academic issues but also included in the process related to managerial issues of the institution.

Students are the mirror of the academic performance, which has to be posted daily to each of the professors and their assistants.

- The fine tuning of the student-professors relationship is to what extent should students participate in academic and managerial decision of the university (in what fields and also the number of students' participants in the university organs and bodies).
- One of the questions is whether students should participate and vote in the academic body which is entitled to judge and make decision on the references of professors.
- Or another dilemma; shall the students representatives participate in the bodies that are responsible for financial and investment issues?

The Council of the European Union reaffirmed its position in its resolution from November 2007 and stated:

“The need for universities to have sufficient autonomy, better governance and accountability in their structures to face new societal needs and to enable them to increase and diversify their sources of public and private funding in order to reduce the funding gap with the European Union’s main competitors.”



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Thank you for your attention!

HVALA.