

Part 6

Research Education & Research Practice

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Institutional Autonomy and Academic Freedom in the Light of National Regulatory Frameworks: Glance at Hungary and South Africa

Abstract

Having reviewed several pieces of strategy documents, policy papers, and literature, we concluded that there is no uniform definition of either institutional autonomy or academic freedom (AF). Many different points of view determine the interpretation of these terms. Furthermore, the policymakers (e.g., governments, legislators) can ignore the theories connecting to autonomy and AF and separate from them the legislation-level realization. This paper aims to overview different interpretations of autonomy and AF, highlighting the most important standpoints and presenting how autonomy and AF are realized in the national legislation. Considering the limited length of this paper, we focus on our respective countries, namely Hungary and South Africa. Our previous findings show that in many aspects, our countries face similar challenges despite the different historical antecedents. In previous research we compared the factors, which can influence research activities, however, we did not investigate the legislative framework. To that end, in this paper, we go further and look specifically at legal frameworks within our respective countries. Our results illustrate that without a homogenous content, the State may use the concepts of autonomy and AF in its legislation as it sees fit. This in turn may lead to autonomy and AF or some of their components, while being formally safeguarded, they may lose the guarantee character that corresponds to their actual content.

Keywords: institutional autonomy, academic freedom, fundamental rights, constitutional warranties

Introduction: Interpreting autonomy and academic freedom

It is our stand that institutional autonomy and academic freedom (hereinafter: AF) are neither the same concepts nor separable. However, their link depends on the interpretative space, especially the national characteristics and the historical context. This would explain why several scholars use various approaches and focus on different elements. Moreover, sometimes the same researcher concludes different results in different decades. To examine autonomy and AF, we chose the holders of

these rights as a central focus point. As evident, the uncertainty of these terms' interpretations is rooted in that the holder of autonomy and AF can be either the organization, the community of the academics, or the individuals at the theoretical and practical level. In connection with the autonomy—AF relationship, we also argue that one is a condition for the other and neither can be achieved without the other. AF is based on the self-regulation of the academic community, which must (also) be guaranteed at the institutional level. Institutional autonomy without community can only be formal since both require guarantee legislation. Therefore, the legislation can serve as an indicator for examining the application of autonomy and AF.

Exploring autonomy and AF, scholars emphasized that “the concept of ‘university autonomy’ is highly complex and multidimensional, and it covers a range of aspects related to university operations” (Matei & Iwinska, 2014, p. 18). In their approach, the term includes scientific issues, curriculum design, educational methodology, internal financial management, and strategic planning (Matei & Iwinska, 2014). Esterman and colleagues (2011), who compiled the so-called European University Autonomy Scorecard, understand organizational, financial, staffing, and academic autonomy as elements of autonomy. According to Karran (2009), teaching, research, self-governance, and tenure are considered autonomy components. The rapid change of this term's consideration is well shown if we compare what Karran and colleagues (2017) think about it. The authors consider institutional autonomy as one of the criteria for measuring AF beside freedom of teaching and research, self-governance, tenure of teachers and researchers, and the exercise of rights guaranteed by international agreements. Thus, while Karran (2009) had previously considered teaching and research part of autonomy, he later listed them all side by side as part of AF (Karran et al., 2017).

The picture is further complicated because scholars argue about the holders of autonomy. According to a theory, the source of individual (teacher, researcher) autonomy (e.g., AF) is institutional (university) autonomy, whose role is to ensure the conditions of individuals' academic freedoms and enforcing its warranties (Berdahl, 1993). Offering a different approach, Berg (1993) states that AF can be imagined only in the community of fellow scientists. The rights deriving from it can only be exercised collectively. In this context, university autonomy is the medium of interactions between individuals and the community (Deák, 2013, p. 39). In contrast to these stands, Kocsis (2011) argues that autonomy is not the source but the result of the individuals' AF, and also provides a framework for AF.

The relationship between autonomy and AF is an important part within international documents regarding HE. Both the Magna Charta Universitatum (1988) and the Bologna declaration underline that teaching and research are inseparable. They also declare that freedom to perform these academic activities is an essential principle of HEI's life and a fundamental requirement for fulfilling their mission. Ensuring free teaching and research is the responsibility of both States and HEIs. More than two decades later, the Magna Charta Universitatum 2.0 (2020) confirmed the previous declaration and highlighted three key elements:

- the intellectual and moral independence of every political influence and financial interest;

- the duty of the governments, the societies, and the HEIs itself to save this independency rigorously;
- the importance of critical thinking.

There is no uniform interpretation of AF. However, recently, Kováts and Rónay (2022) have attempted to summarize the concept's key elements. Based on the UNESCO (1997) and AAUP (1940) resolutions, the authors found that these elements are:

- the right to teach;
- the right to research;
- the right to disseminate knowledge;
- the right to participate in shaping the academic community.

Finally, it is necessary to mention the UNESCO statements (1997) referring to unity of autonomy and AF:

17. The proper enjoyment of academic freedom and compliance with the duties and responsibilities listed below require the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision making by institutions of higher education regarding their academic work...

18. Autonomy is the institutional form of academic freedom and a necessary precondition to guarantee the proper fulfilment of the functions entrusted to higher-education teaching personnel and institutions.

(UNESCO, 1997, chapter V, subchapter A, points 17-18)

Discussing the relationship of autonomy and AF, Matei and Iwinska (2018, p. 349) expound that the two terms “are not binary, yes-or-no variables. They are not one-dimensional either”. Contrary to the requirements clearly stated by UNESCO (1997), AF can be and often is limited in practice at the expense of autonomy. In addition, increasing autonomy does not in itself necessarily increase AF, and in some cases leads to a reduction of AF. Kováts (2013) illustrated this with four models, which exist only in theory. The models demonstrate clearly that a low level of AF can be imaginable at a HEI with almost full autonomy. The following are the Kováts' models (2013, p. 53):

- both autonomy and AF are low by the *Napoleon* model;
- autonomy is low but AF is high by the *Humboldt* model;
- autonomy is high but AF is low by the *Corporate* model;
- both autonomy and AF are high by the *Balancing* model.

While the restrictive efforts from the political side tend to lead to solutions reminiscent of the Napoleonic model, the rise of managerialism has increasingly led to the corporate model. Without sufficient guarantees or if the guarantees are not applied correctly, this often poses a real threat to AF. Indeed, if legal safeguards are limited to institutional autonomy, institutional management is not adequately constrained in its actions against AF (Kováts & Rónay, 2022).

Legal frameworks

Hungary

In the constitutions of EU states, the guarantee of autonomy also appears in most cases alongside AF. At the level of international documents, AF is addressed in

HEIs, but also through them to teachers, in terms of freedom of research, teaching, and training whose freedom must be guaranteed (MCU, 1988).

In the Hungarian constitution (the Fundamental Law of Hungary), certain elements of AF are only partially and unevenly reflected, while institutional autonomy is essentially unmentioned. Both right to teach and the right to research are guaranteed only in general terms. Neither right has a holder, so it is impossible to determine whether it is the institution, the individual (scientist), or the community. The exclusive right to evaluate scientific research belongs to those who carry out scientific research and is therefore addressed to the individual and the community. However, both the Fundamental Law and the Higher Education Act grant autonomy in the content and methods of research and teaching only for HEIs (there is no mention of research institutes not operating in HEIs). Individual right to teach for HEI lecturers is only guaranteed by the Higher Education Act and only in respect of teaching according to a world view and values. The Higher Education Act also does not mention the right to research of HEI lecturers. Finally, there are no legal warranties either in the Fundamental Law or the HE Act for the right to disseminate knowledge and participate in shaping the academic community.

Regarding the fact that Fundamental Law ensured the autonomy in teaching and research by choosing subjects and methods only for the institutions, it makes it possible to decrease the AF of lecturers and researchers. This legal environment provides the basis for running either the Napoleonic or the corporate model. Hungary is currently undergoing a so-called model change, in which almost all former state HEIs are being privatized. As a result of this process, each HEI will be run by its own foundation, governed by a board of trustees (BoT) consisting of life-long government appointees. Increasing institutional autonomy has been one of the watchwords of this process, but it also carries the danger of serious erosion of AF.

Since the fourth element of AF, the right to participate in shaping the academic community, is not guaranteed, it is also not guaranteed that the institution is led by a person authorized by the community or by its representative body (i.e., Senate). If the institution is the holder in terms of the content and methods of research and teaching, then who represents it is of particular importance. The BoTs of the institutions privatized in the so-called model change have been given the absolute right to remove essentially any Senate powers. They can thus select the rector, handpick any other academic leader, remove existing management powers, and establish all internal rules, including those that affect teaching and research.

In this way, neither collective rights nor collective self-regulation is enforced. All this is burdened with the absence of guarantee rules, which shows that the increase in university autonomy during the model change is not obvious. Namely, it is not institutional autonomy that has increased, but it was a decentralization of the powers of the maintenance authority, giving it to the BoT appointed by the State. Although BoT has no legal responsibility, it has the empowerment to take off the right of self-regulation of the academic community. Therefore, there is an additional twist in the Hungarian regulation, making the new model seem to align with the corporate model. While, according to the government, institutional autonomy increased in the new model, indeed the strengthened power is ensured for the maintaining foundation's boards of trustees and not directly for the HEI management. In other words, the broad powers have not been given to the HEIs but

have been transferred to the body stepped in the state's place, i.e., a supreme body, by reducing their existing rights.

South Africa

As already indicated earlier, academic freedom can be viewed as autonomy without external interference to academic activities such as teaching and research. In South Africa, AF and autonomy of scientific research are explicitly embedded in the Constitution under the freedom of expression. However,

there is a debate whether there is a threat to the constitutionally guaranteed academic freedom in South Africa. This comes from the background that universities often function as centres of political and intellectual dissent, and regimes are thus reluctant to allow institutions the freedom and autonomy that may contribute to instability. (Kori, 2016, p. 45)

As described in scholarly literature (Kori, 2016) post-apartheid South African constitution and thus the State assured academic freedom and implemented framework based on cooperative governance. The new democratic nation embraced the framework where both the State and the HEIs were supportive of each other collaborating towards a common vision. However, within a short timeframe this framework was subverted and increased influence was shifted to the State allowing its interference in academic decision-making and as a result in AF.

The adjustments were implemented to the Higher Education Act of 1997 due to declared mismanagement and misuse of the institutional autonomy. The changes were implemented maximizing Minister power to establish, combine, and close public HEIs in consultation with the Council on Higher Education (Kori, 2016). As Kori further explains, the Higher Education Act also mandated that up to five council members of each institution be ministerial appointees, which granted the State an additional level of control. As claimed by the past Minister of Education, Naledi Pandor, the institutional autonomy cannot be unrestricted and must be linked to public accountability (Habib et al., 2008). One could argue that intellectually free HEIs where AF in teaching and research is respected are better positioned to fulfil their accountability to society. Yet, we need to be mindful that individual AF to teach and research is affected by HEIs, which provide institutional support and funding.

Another wave of changes came with new ground rules for funding and power allocated to the Minister to intervene in institutional activities including

... a new enrolment planning framework, new quality assurance and accreditation requirements, control over an institution's programme and qualification mix, restructuring through mergers and incorporations and a proposed central applications process. (Kori, 2016, pp. 50-51)

Since HEIs are dependent on government funding, the State has undeniable power to influence institutional activities and make decisions based on a political agenda.

In 2010, the Academy of Sciences of South Africa (ASSAf) brought forward concerns regarding the interference of the State in AF through government policies, leverage of private sponsors with own agenda, and the observed obstruction of freedom of speech within some HEIs. As evident from the ASSAf (2010) statement:

... these concerns suggest that the values entrenched in the constitution and in education practice are being eroded by government policy, funding agencies, sponsors and donors, and by institutional management... Furthermore, ASSAf believes that researchers and teachers within higher education and the research community at large should be free to follow their own ideas, arguments, insights and findings, conditional only on the avoidance of scholarly misconduct such as plagiarism, falsification of data and unethical research practice.

Ten years later, the situation did not improve, making the statement as valid. In fact, further political interferences and even attacks were recorded during the pandemic, especially towards freedom of scientific enquiry (ASSAf, 2020).

Conclusion

As evident from the findings, AF is not based on actual facts or definitions but rather on the desired interpretations. Both contexts showcase that autonomy is not a value in itself; it can only be understood in conjunction with AF. AF is only fulfilled if the scientific community has the right to self-regulation, which is not a case in both countries under investigation.

Although the international documents express the unity of autonomy and AF as a requirement, the Hungarian constitutional legislation separates them. In essence, it speaks only of certain elements of AF, guaranteeing only the research part of it in full and relegating the educational part to the level of the law, thus opening up the possibility of further restrictions. The freedom of education is interpreted narrowly in the Fundamental Law, which only defines the institution as the holder of the content and methods of research and teaching, without granting even the narrowly interpreted right to the individuals (lecturers, researchers).

In case of South Africa, AF has been gradually decreasing and State control systematically increasing. From the original framework of partnership designed by the new democratised nation in 1994 to gradual lesser position of a partner and a greater position of a subject to the State. The observed tendencies suggest that by putting in place different strategies and structures, the State decides on the curriculum, research projects and programmes to be funded, as well as academic free speech, just to mention a few. The legal framework shifts reported in both contexts may represent broader global changes worth exploring.

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