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IMPLEMENTATION OF BELARUS ROADMAP FOR HIGHER EDUCATION REFORM

5TH MONITORING REPORT (FEBRUARY-MAY 2017)

Prepared by the Belarusian Independent Bologna Committee and
Ad Hoc Ad hoc Committee of Belarusian National Platform of the
Eastern Partnership Civil Society Forum

2017 is a crucial year for implementing the Roadmap for *Belarus' Higher Education Reform (Roadmap)* and the Belarusian government's fulfillment of obligations.

Judging by the current situation and provided that the proposed changes to the Education Code are approved by the Parliament, not more than 25-28 % of the Roadmap will be incorporated into the Belarusian legislation. This number is based on the education experts' analysis and evaluation of the state of affairs.

We conclude that the Belarusian government will not be able to fulfill its obligations within the set time period with regard to incorporating the Roadmap provisions on the social dimension and European Higher Education Area (EHEA) fundamental values into the Belarusian legislation. Based on this, we consider that it would be advisable to extend the implementation period of the Roadmap for 2-3 years while maintaining international control and support for the process during this period.

15 May 2017 sets the 2-year mark since the Yerevan Ministerial Summit decided on Belarus' accession to EHEA and the beginning of the implementation of the ***Roadmap for Belarus Higher Education Reform***. 2017 is the final year for Belarus to fulfill its obligations in the framework of the Roadmap provisions' implementation.

On 1 February 2017, the Belarusian Ministry of Education published the new Education Code (Code) edition for public discussion that should have ensured the incorporation of the Roadmap provisions into the national legislation. On 6 March 2017 the Belarusian Independent Bologna Committee and the Ad hoc Committee of the Belarusian National Platform of the Eastern Partnership Civil Society Forum (EaP CSF) prepared an 85-page long analysis "***The Roadmap Provisions Incorporation into the New Education Code Edition***" which presents detailed analysis of the new Code edition in light of Belarus obligations towards the Roadmap implementation. The document is followed by the detailed article-by-article recommendations on the incorporation of the Roadmap provisions into the Education Code. This document was sent to the Belarusian Ministry of Education and Ministry of Foreign Affairs on behalf of the EaP CSF Belarusian National Platform.

The Ministry of Education has not responded to these recommendations either publicly or privately.

We also need to underline that the academic repression against students who participated in the peaceful protests of March 2017 has intensified. These facts were registered by the human rights organizations and the EaP CSF mission on the civil society, media and human rights situation in Belarus. This inevitably causes additional concerns about the perspectives of academic values being incorporated into legislation and academic practice.

In this monitoring report, we present the analysis of the implementation of the Roadmap provisions in view of the new Education Code edition.

1. Structural reforms

A. Qualification Framework

Commit to developing a National Qualifications framework compatible with the QF-EHEA.

Commit to establishing a timetable for this work and to identifying a national steering group by the end of 2015. Commit to launching work on the NQF in the first half of 2016

As part of this work, commit to introduce the three-cycle system on the agreed Bologna model, establish a first degree of 180 - 240 ECTS credits and consequently to gradually phase out the remaining 5-year bachelor's degree, and subsequently measure students' workload in ECTS, as stipulated in the revised ECTS Users' Guide

a) National Qualification Framework

Comments

The current Education Code of the Republic of Belarus from 13 January 2011 № 243-3 does not include the term National Qualification Framework and other terms related to it.

The new Code edition still does not include the National Qualification Framework (NQF) and does not introduce other terms and definitions associated with it (qualification system, qualification, professional standards, educational level descriptors). The document does not introduce the correlation between the education system levels to the eight levels of National Qualification Framework described in the Council of Ministers' Decree №34 "On the Development Republic of the Belarusian National Qualification Framework" as of 17 January 2014. This document remains the only legal act at the state level that refers to the National Qualification Framework.

The preparation process of higher education specialists both in the current Education Code (Para. 13, Article 1) and in the new Code edition (including Bachelor and Master degrees) is implemented in accordance with the "State Classifier "Specialties and Qualifications"" (Para. 1.22, Article 1 Fundamental terms used in this Code and their definitions, Part 1. General provisions).

The presentations of specialists for the graduate (postgraduate) level is carried out as research oriented professional education (current Code – "Postgraduate education", Section 12) "...of specialties in accordance with the Republic of Belarus specialties nomenclature for scientists and researchers approved by the Higher Attestation Committee of the Republic of Belarus" (Article 16. Educational programmes, Para. 7, Subsection.3). Based on this, it remains unclear how educational cycles will be linked to the NQF levels.

b) Three Cycle Higher Education System

Comments

The current Education Code defines the national education system as follows: “5. Education system includes ... higher education system, postgraduate education system...” (Article 11. Education System, Article 12. General education. Subsection 2.5. Higher education, Subsection 2.6. Postgraduate education.). ‘Higher education includes two cycles....’ (Para.3. Article 202, Higher education system) where cycle 1 prepares specialists with qualification ‘specialist’ (Para.4., Article 202) and ‘Cycle 2’ (master) provides advance training for specialists awarding Master degree.’ (Para 5, Article 202). Essentially, the Belarusian higher education system is built as a two cycle education system.

The New Code edition makes an attempt to introduce a three cycle higher education model. It introduces the terms “bachelor” and “master” (Para.1.2. & 1.3. Article 1. Fundamental terms used in this Code and their definitions) but at the same time preserves the term ‘specialist’ (Para.1.30, Article 1) while Para. 3 of Article 198 “Higher Education System” states that ‘...educational programmes for bachelor degree (general higher education)’ (Subsection.2) and ‘...educational programmes for master degree (advanced higher education)’ (Subsection.3).....

The current Code does not contain the term “Doctor” (Article 30) while “Postgraduate education” (Section 12 of the current Code) is transformed into “Research oriented professional education” (Section XII Research oriented professional education; Articles 214-224), which is an equivalent of to the third cycle of education (Doctorate degree) in the Bologna higher education system.

However, at the same time, the new Code edition brings some more confusion while describing the levels of education and shows that the third education cycle ‘research oriented professional education’ is not completely integrated into the higher education system:

- Article 1, Para.1.34. “education level is a completed learning cycle of higher education program..., graduate program (postgraduate program)”;
- Article 11 of the Education System, Para.5 “Education system includes higher education system, research oriented professional education system...”;
- Article 12. In principle education consist of “...2.5. higher education; 2.6. research oriented professional education.”

Terminological ambiguity of the higher education architecture is brought by the term ‘special higher education’, which means the delivery of a ‘continuous higher education programme’ and in this Code edition is only mentioned in the context related to healthcare professionals (Article 198. Higher Education System, Para. 3, Subsection.4). The Code includes Article 14 ,where Special Education, is defined as ‘...education and training of

students with special needs through implementing special education programs at preschool and general secondary education levels' (Para. 1) and Chapter XVI Special Education that once again poses questions on to which extent the terminology is used in a correct manner and can be applied to the education system, including medical education.

A significant shortcoming of the new interpretation of the higher education architecture is that ECTS credits system are not used when defining higher education cycles (levels) despite the Roadmap requirements.

Conclusions

The new Code edition complies with the Bologna model and the Roadmap requirements in terms of introducing the three cycle higher education system. However, **its terminological and structural inconsistencies may complicate the incorporation of the Bologna architecture into Belarus' higher education system.**

Quality Assurance

- *Commit to establish, by the end of 2017, a legal basis for an independent quality assurance agency in conformity with the European Standards and Guidelines.*
- *By the end of 2015, develop a timetable for establishing this agency.*
- *Through the BFUG, invite foreign quality assurance experts to advise on the timetable and plans for establishing the agency as well as on the process leading to it being established.*

Comments

Chapter 13 "Quality Assurance Control and Self-Control" (including Articles 116 Quality assurance control and 117 Quality assurance self-control in the new Code edition) were not amended in comparison with the current version. The control function is still exclusively delegated to state agencies without mentioning any possibility to establish an independent Quality Assurance Agency.

Moreover, Article 101 of the new Code edition maintains the provision on the authority of the Ministry of Education to have the ability to proceed with the Quality Assurance Control through ministerial divisions.

Conclusions

It is clear that the new Code edition **does not provide the legal base for establishing an independent quality assurance agency envisaged by the Roadmap.**

Recognition

- *By the end of 2016, review legislation in order to identify any modifications needed to bring them into conformity with the obligations undertaken by the State of Belarus as a party to the Lisbon Recognition Convention.*
- *By the end of 2017, implement any required modifications of practice that do not require amending legislation.*
- *By the end of 2017, develop a timetable for the implementation of required legislative modifications*

Comments

Article 94 states that recognition of diplomas issued by foreign states and the determination of their equivalence to those issued by the Republic of Belarus institutions is carried out by the Ministry of Education. This process shall be conducted in accordance with Belarusian legislation including international agreements signed by Belarus and is followed by issuing a certificate on recognition unless defined otherwise by the Government.

The Belarusian member of ENIC (European Network of Information Centres) on behalf of the Ministry of Education conducts foreign qualifications recognition procedures in Belarus. ENIC is a division of the National Institute for Higher Education (NIHE). The guidelines and procedures are available for applicants on the websites of the institute and the Ministry of Education.

Article 114 “Recognizing and determining the study duration in foreign higher education institutions” provides that higher education institutions can recognize and determine the study periods abroad. On the other hand, the new Code as well as the current Education Code fail to introduce a national recognition system based on the ECTS standard. This does not allow for potential response to the authorities’ arbitrariness in the process of recognizing the content of the courses and study duration abroad for the Belarusian students who participate in academic mobility and exchange programmes.

Article 81 Educational process refers to credits but its provisions do not provide a basis for applying those credits to recognize study abroad programs and to allow their transfer towards awarded qualification in relation to both long-term and short-term mobility programs.

The Code edition does not contain any provisions securing ECTS Users’ Guide implementation in terms of study periods and recognition of informal education results.

Article 90 , Para. 10 concludes that the document attesting the completion of the third educational cycle is the Researcher Diploma while its status is not clearly defined. On the one hand, it certifies the completion of the third education cycle however, on the other hand, the

academic degree is attested by a different document, and the rules and procedures on its awarding are set by a different authority – the Belarusian Higher Attestation Committee.

In this case, the procedure of the dissertation defense is not related to the educational process and the degree thesis defense. This certainly creates difficulties in recognizing a Belarusian third cycle degree abroad. Formally, a Researcher Diploma was meant to be equal to a Ph.D. or its equivalent. However, in the absence of a relevant recognition procedure in Belarus its recognition abroad is impossible.

Moreover, the recognition of academic degrees awarded abroad does not fall under the Ministry of Education competence, which brings additional methodological and judicial complications. The new Code edition does not mention any reference to academic degrees thus going beyond the concept of higher education qualifications. In practice, all issues related to awarding and recognizing academic degrees (Ph.D. and postdoc) are managed by the Higher Attestation Committee that does not have a mandate over the educational process for the third higher education cycle..

Conclusions

Although the new Code edition expands the authority of the higher education institutions in terms of recognizing and determining the study duration, **it still does not link this procedure to the ECTS credits. The legal basis securing the recognition of the study duration for the participants of mobility programmes is not developed.** The situation with the recognition of informal education results is not resolved. The mobility within the country is excluded from the process of recognition of the study duration. The inclusion of the third cycle into the higher education architecture **does not resolve the interdepartmental contradictions in diplomas' and academic degrees' recognition.**

Transparency instruments

- *By the end of 2015, develop a plan to implement ECTS in accordance with the revised ECTS Users' Guide by the end of 2017, with a strong focus on learning outcomes, curriculum design, delivery, as well as assessment and application to mobility programmes.*
- *By the end of 2017, develop a plan of automatic free of charge issuance of Diploma Supplement to all students in the format developed by the Council of Europe, the European Commission and UNESCO, in a widely spoken language (other than Russian).*

Comments

In comparison with the current Education Code (Article 89 “Educational process”) the new Code edition Article 81 “Educational process”, Para. 4 sets that “The academic hours system and (or) credits system (credits) could be used to determine higher education programmes

structure, graduate (post-graduate) programmes structure and its learning intensity.” In Subsection 3 of this article the definition of “credit” is set but it does not fully correspond to ECTS Users’ Guide. Belarus developed and implemented the credits calculation system before the Yerevan conference in 2015. Credits were introduced into curriculum. One credit equals approximately one lecture hour per week and a half an hour of student’s independent work. The complexity of the subject, its importance and types of educational activities are not taken into account when calculating credits for one or another course. When new ECTS Users’ Guide was adopted, Belarus did not revise its credits calculation system. There is no information available on further plans of the Belarusian Ministry of Education in this respect.

The new Code edition presents the use of the credits system as optional and not mandatory. This article defines credit as “numerical way to describe volume of students’ (participants, graduate and postgraduate students, researchers) study activities in class, during independent study and internship” without linking it to learning outcomes, what does not correspond to the Roadmap provisions. The term “learning outcomes” is not mentioned in the new Code edition.

Article 202 Higher education study terms, Para. 1 of the new Code edition states that the duration of the full time higher education is between 4 and 4,5 years but still as well as in Article 200. Higher education program” it does not envisage the use of ECTS credits in defining educational programs workload. It only sets the study length calculated in years (courses, semesters).

The new Code edition also does not foresee the use of credits for developing, implementing and monitoring of educational programs, as well as for organisation of mobility programmes and study duration recognition.

Article 91 Basic requirements for education process organizations of the current Education Code mentions the ‘competences approach’ but does not clarify it further while Article 83. Basic requirements for education process organizations of the new Code edition already sets the term ‘competence’ (Para. 1.9.) as well as ‘competences approach’. Article 16. Educational programs Para. 10 states that educational programs may be delivered as modular programmes where educational module should be recognized as a part of curriculum.

Article 201 Higher education standards of the current Code as well as the new Code edition do not envisage the use of professional standards when developing educational programs.

Article 90 Educational documents Para. 15 of the new Code edition envisages the issuance of Diploma Supplement (DS): “Bachelor and Master Diplomas are issued with European format Diploma Supplements that are not valid without corresponding educational document”. The article does not state whether Diploma Supplement is issued automatically, free of charge and in a widely spoken language (other than Russian).

Based on Article 90 we can conclude that DSs are not issued to those who received higher education diplomas. DSs are issued only to those who completed continuous higher

education programs, not to all higher education diplomas holders. For example, medical graduates receive a transcript with all final marks extracted from a student's card as diploma supplement, it is not valid without an educational document.

There is also no clarity on the DS language. Article 90 Para. 16 states that "Educational documents are issued in Belarusian and Russian languages", what does not correspond to the requirements for Diploma Supplement. Para. 17 of this article envisages the DS issuance in languages other than Russian (the law allows for English, French and Spanish languages) but only to foreign students and stateless persons who temporarily live in the Republic of Belarus and who received their education in Belarus". It is unclear from this article to what extent this applies to DSs issued for Belarusian citizens or whether this only applies to DSs issued to those who graduated from higher education institutions.

Conclusions

The new Code edition **does not reflect the Belarus' commitment to incorporate credits system that corresponds to ECTS Users' Guide into its higher education system** to the full extent for the purposes of developing and delivering curricula and of academic mobility diversification and development.

The obligations in terms of Diploma Supplement issuance are not fulfilled. The new Code edition **does not guarantee an automatic and free of charge issuance of Diploma Supplement**. Besides, higher education diplomas holders are deprived of receiving a DS.

2. Academic staff and student mobility and internationalization

A. Mobility of higher education staff and students and internationalization

In autumn 2015, launch a plan to facilitate, develop and diversify the international mobility for both inbound and outbound staff and students in Belarusian higher education institutions. Such a plan would be expected to include changes to the current system of mobility permits, to allow longer periods of mobility within the EHEA for both staff and students, without ministerial approval. The plan should be completed by the end of 2016 and should outline policy measures as well as any legislative measures necessary to increase and diversify academic mobility from Belarus to its partners in the EHEA. Any required legislative measures should be introduced by mid-2017.

Comments

Our analysis of Chapter 12. International Cooperation in the Field of Education (Articles 110-115) shows that only one change has been introduced.

Article 114. Recognizing and determining study durations in foreign higher education institutions Para. 2 sets that recognising and determining study duration in foreign higher

education institutions is conducted by an educational establishment, by organizations delivering graduate (post-graduate) educational programmes when admitting applicants in accordance with the law including international agreements. Thus, the new Code edition expands the rights of educational establishments in comparison with the existing provisions where this role was assigned to the Ministry of Education.

Otherwise, the new Code edition does not include any significant amendments on international mobility development, its diversification and higher education internationalisation. Chapter 12 went through minor styling. Thus, the current Education Code limitations remain intact in the new Code edition.

Such approach significantly narrows international cooperation goals. Joint research projects, fundamental and applied research projects in the field of education and joint innovative projects (Article 110) are excluded from it.

The definition of academic mobility (Article 113) is extremely unsatisfactory thus narrowing the pool of potential participants, limiting their motivation and reducing higher education institutions leadership interests in developing academic mobility further.

The new Code edition provisions are mostly declarative. Their implementation mechanism is not clearly described. The Code provides the definition of participants in internationalisation and academic mobility (students, teaching staff, other Belarusian education system institutions, international organizations), their civil status (citizens of Belarus, foreign citizens and stateless persons living in Belarus temporary), cooperation principles (independence, equality, mutual benefit, mutual respect in accordance with laws and other), as well as procedural provisions (agreements, international and national projects and programs in the field of education). Article 113 is dedicated to academic mobility and includes a more detailed description of academic exchange procedures (parity basis, temporary nature, obligation for students and teaching staff to return to their country of origin).

The new Code edition does not introduce any significant changes into the existing system of obtaining permits to travel abroad for education purposes for students and faculty members.

Conclusions

The new Code edition **does not contain any significant changes related to diversification and international academic mobility development besides marginally expanding the higher education institutions rights to recognize study duration abroad.**

For reference

Under the 2015-2016 Roadmap provisions, Belarus should have developed a plan to support, develop and diversify students and faculty international mobility for both inbound and outbound students and faculty. The draft “Concept of developing international academic

mobility within European Higher Education Area (EHEA)” (Concept) became available in December 2016. The document does not directly refer to the Roadmap provisions but this document was evidently drafted as a response to these provisions.

The Concept provides a short analysis of academic mobility status, defines its goals and objectives, sets priorities and development ways as well as includes a list of concrete actions on supporting, developing and diversifying students and faculty international academic mobility for both inbound and outbound students and faculty. It also provides details on financial sources and their amount, formulates goals for strategic plans in this area, as well as describes quality increase in administering international exchange programs.

At the same time, the Concept does not provide a solution to the most important issue included in the Roadmap as a requirement in the field of academic mobility related to “*introducing changes into the existing permission system for students and faculty academic mobility participants to allow them to stay in the EHEA countries without obtaining the Ministry of Education permission prior to travel*”. The concept refers to the Ministry of Education Order No. 108 “On the documents for the work related travel abroad of staff of the organisations subordinated to the Ministry of Education” as of 10 February 2016 published after Belarus joined the Bologna process however this document is not available for public. Our attempts to find this order in legal databases were not successful.

The Concept also sets the goal to “develop normative legal documents regulating the academic mobility in accordance with the new Code edition terms” as a separate task.

3. Lifelong learning and the social dimension of higher education

- *By the end of 2015, develop a plan for recognition of prior learning and implement the plan by the end of 2017.*
- *By the end of 2016, review the obligation for students whose education is financed through public funds to accept work placements upon graduation with a view to limiting it to specific professions for which there is a significant unmet need in the country and taking into account the experience of other European countries.*
- *By the end of 2017, review the criteria for financial support for students in order to ensure social equity without any discrimination based on applicant’s gender, race colour, disability, language, religion, political or other opinion, national, ethnic or social origin, association with a national minority, property status, birth status or other.*

A. Revising the scheme for graduate work placement

Comments

The issue of graduate work placement and its support is covered in Articles 36, 48, 72-80 of the new Code edition.

Articles 36 “Students social security and alumni support” and 48 “Guarantees and compensations for graduates” have been amended insignificantly. In the new Code edition, a part of Article 48 is transferred to Article 36 in comparison with the existing Education Code. Graduates’ social support is available only to those who received the first work placement through the work placement system.

The following articles of the new Code edition clarify the categories of graduates subject to the work placement:

- Article 72 “Work placement for graduates”;
- Article 74” Work placement for graduates, young specialists, young workers (servants)”;
- Article 75 “Assignment of work places for graduates”;
- Article 76 “Work placement reassignment for graduates, young specialists, young workers (civil servants)”;
- Article 77 “Graduates, young specialists, young workers (civil servants) rights for self-employment”;
- Article 78 “Financial compensation of the state means spent on the education of highly qualified scientists with research oriented professional education, specialists, workers, civil servants, towards state and local budgets, to National Bank of the Republic of Belarus”;
- Article 79 “Loss of the status of young specialists, young workers (civil servants)”;
- Article 80 “Compensation of state financial means spent on tuition fees at the foreign educational establishments to obtain research oriented professional education and higher education, and on preparing specialists with research oriented professional education and higher education in foreign educational establishments”.

However, the new Code edition still does not envisage limiting the work placement for specialists to specific professions demand for which is significantly unmet in the country.

The provisions of the new Code edition introduce the change in higher education structure and research-oriented professional education as an independent level of general education when adjusting the work placement provisions and the general rules for work placements.

The new Code edition introduces Article 79 “Loss of the status of young specialists, young workers (civil servants)”. In accordance with Para. 1 of this Article: “Young specialists’, the status of young workers (civil servants) is awarded for the period of compulsory work placement obtained through the work placement system, employment at work places previously reserved by others, work places redistribution, work assignment and reassignment”. The new edition also assigns the status of “young specialist” to those graduates who studied on a tuition fee basis or received scholarships from legal entities and entrepreneurs if they expressed their wish to receive the work placement and provided that such places are available. **Previously, this category of students was not awarded the young specialist status even if they accepted the offer for work placement provided by the higher education institution.**

Nevertheless, the graduates who studied on a tuition fee basis and found their employment by themselves do not enjoy the same rights as their peers. They do not fall under the young specialist category not allowing them to be entitled to respective guarantees and benefits.

The new Code edition introduces Article 80 “Compensation of financial means spent on education at foreign educational establishments to obtain research-oriented professional education and higher education and supported from public funds (state budget), and on preparing specialists with research oriented professional education and higher education in foreign states educational establishments”. Para. 2,3,4 of this Article state the obligations for students, faculty members and others going to study abroad to return to Belarus and complete their compulsory work placement in the country. The duration of compulsory work placement is stated in the contract signed with the graduate and cannot be shorter than the duration for those who received similar education in Belarus, otherwise the cost of the study at a foreign educational establishment has to be compensated to the state budget. This rule applies even in case when the education is not completed or interrupted.

Such provision limits graduates’ rights even further, as well as undermines conditions for academic mobility.

The obligation of graduates to accept a compulsory work placement or as an alternative compensate the expenses spent on their tuition by the state is not in any way counterbalanced by a respective state obligation to guarantee them a work placement or fund their retraining. At the same time, in the conditions of labor market limitations and unavailability of jobs for graduates, there is information about the absence of demand for specialists in different fields. Therefore, graduates have to look for potential employers themselves and submit official requests to be placed to work there. This means that university leadership creates the illusion of obligation in case of graduate’s work placement for those who have to follow the procedure by law.

European countries' practices related to providing graduates with a first work experience were neither taken into account when developing the new Code edition, nor they were put in practice by the higher education institutions.

The new Code edition have not introduced any significant changes in the work placement system for graduates. The work placement system has not been eliminated, on the contrary, it was reinforced also with other legislative acts adopted prior to the public discussion of the new Code edition.

Conclusions

The Roadmap requirement to review the obligation for students whose tuition fees are covered by public funds to accept work placement upon graduation with a view to limiting the procedure to certain professions, **has not been met in the new Code edition.**

B. Obligation to review the criteria for financial support to students, with a view to ensuring social equality

Comments

Article 31 "Fundamental students' rights" states the right of students:

1.12. to receive stipend and other financial benefits;

1.13. to receive accommodation for the entire study duration;

1.14. to receive a compensation of their accommodation costs in case they are not living in the university student dormitory;

1.15. to receive student loan to finance his/her first higher education on preferential terms.

In reality, the new Code edition limits these rights. In comparison to the existing provisions, the new Code edition does not introduce significant changes in terms of providing more social equality in terms of student's financial support.

The only exception is the extension of the right to be granted the "President of the Republic of Belarus" grant to all students of higher education institutions (Article 42 "Grants, financial aid and other financial benefits", Para. 6). In the past, the right to apply for this grants was given only to students of Belarusian Higher Education State Institutions and Higher Education Institutions of Consumer Cooperatives. However, the extension of this financial aid to other student categories will not bring significant changes to the general situation students' financial support. At present, the number of Presidential Grant holders is 184 and a monthly grant is 40 EUR in total. The grant allocation for all student categories is set within the approved quotas of 200 grants a year and provided under the Presidential Decree No. 398 "On social support for students" as of 6 September 2011.

The new Code edition again provides for grant allocation to those whose tuition fees are covered from public funds (state and local budgets). Thus, this rule does not cover those who pay tuition fees on their own (Article 42, Para. 2).

Financial aid from public funds – state and local budgets- can only be provided to students whose education is financed from public funds or from the Republic of Belarus National Bank fund. (Article 42, Para. 12).

Grants for foreign citizens or stateless persons can be provided only if it is envisaged by the international agreements according to which these persons are admitted to higher education institutions in the Republic of Belarus (Article 42, Para. 14).

The law provisions regulating students' preferential loans for financing their first higher education degree has not been changed (Article 46 “Students preferential loan to finance the first higher education degree”). The right to receive students preferential loan is still available only for the citizens of the Republic of Belarus who receive their first full time higher education degree on a tuition fee basis at State Higher Education Institutions, Higher Education Institutions of Consumer Cooperatives and Higher Education Institutions of Trade Union Association. **Students of private higher education institutions do not have a right to obtain such preferential loans.**

The provision of the new Code edition on compensation mechanisms for accommodation outside the university student dormitory has not been amended either. The Code envisages such compensation for full time students whose education is funded through public funds – state and/or local budgets.

Regulatory requirement of Para. 5 categorizes the students from orphanages and those left without parental care as entitled to the compensation for accommodation.

Conclusions

In comparison to current rules and procedures for student financial aid allocation, **the new Code edition has not introduced significant changes in the legislation.**

4. EHEA Fundamental Values

- *[...] Implement the commitments made by the ministers at their meeting in Yerevan, as stipulated in the Yerevan Ministerial Communiqué [...]*
- *By mid-2017, the Ministry will conduct an analysis of national legislation and will submit to the Parliament its proposals for required measures in order to incorporate the principles of the Magna Charta Universitatum and Council of Europe recommendation Rec/CM (2012)7 on the public responsibility for academic freedom and institutional autonomy.*

- *By mid-2016, to develop a plan detailing legislative and policy measures aimed at enabling students and staff to self-organize freely and to register their organizations.*
- *By mid-2017, to introduce any required legislative measures.*

Comments

According to the Roadmap provisions, by mid-2017 the Belarusian Ministry of Education must submit to the Parliament its proposal for required measures to incorporate the principles of the Magna Charta Universitatum and Council of Europe recommendation Rec/CM(2012)7 on the public responsibility for academic freedom and institutional autonomy.

Article 1 “Basic terms of the current Code and its definitions do not include unique definition of academic value. **Terms ‘academic freedom’ and ‘institutional autonomy’ are not used in the new Code edition.**

For reference: the 2002 edition of the Law on Education included article 34 “Academic Freedom and Management Autonomy in Higher Education Establishments „withdrawn in 2009.

A. Incorporation of the Council of Europe recommendation Rec/CM (2012)7 into legislation

- *The guarantee of the right envisaged by Rec/CM (2012)7 for both institutions and individuals to be protected against undue external interference and for students and academic staff to teach, learn and conduct research freely without the fear of disciplinary action, dismissal or any other form of retribution, is not supported in the new Code edition.*

Article 31 “Fundamental student rights” and Article 52 “Academic staff rights” are not detailed enough. They are declarative and do not provide for concrete mechanisms to exercise those rights. **These articles do not even provide for the right to teach, learn and conduct research freely without the fear of disciplinary action, dismissal or any other form of retribution.**

At the same time, a number of articles neither contain any academic freedom restrictions nor create barriers for its arbitrary violations.

The academic freedom restrictions for both faculty members and students are envisaged in Article 18 “Education in higher education system” Para. 2.1, 3, 5.2, stating that students’ education should be based on state ideology.

Article 50 “Academic staff”, Para. 3 describes the university faculty positions that are filled on the basis of open competition. However, as previously, there is no legally binding procedure for the faculty replacement system based on an open competition. References to

competition guidelines approved by the Belarusian government do not guarantee protection against administrative arbitrariness when signing the employment contract with faculty members. The current rules and procedures fall under “Regulation on rules and procedures for open competition for faculty positions among the academic staff of higher education institutions of the Republic of Belarus” approved by the Council of Ministers Decree No. 806 as of 21 June 2011 and other regulatory acts. Faculty members do not have the right to sign tenure contracts (with unlimited duration), thus they are in a relatively vulnerable position. Under Decree No. 806, rectors of higher education institutions can sign a contract with the selected faculty members for a shorter term than the one they have been selected for and the law does not preclude such arbitrariness.

- *Ban on HEIs staff academic freedom restrictions through reference to civil servant status and similar issues*

The new Code edition does not envisage provisions prohibiting academic freedom restrictions in general and with reference to the civil servant status in particular.

- *Legally securing mechanism for continuous monitoring of fundamental values’ implementation*

The new Code edition does not envisage such a mechanism.

- *Widening institutional autonomy*

Changes related to higher education institution organizational autonomy

Article 204 “Management of higher education institution” has been amended in accordance with the current Education Code and it states that:

The candidates’ nomination for the position of the Head of a higher education institution is conducted on a competitive basis and in accordance with rules and procedures set by the higher education institutions’ Founder or an authorized agency unless otherwise is decided by the President of the Republic of Belarus.

The main change is that candidates’ nomination for the position of a Head of a higher education institution is to be conducted on a *competitive basis*.

Nevertheless, most importantly, the new edition does not provide for the Rector’s (Head) election but rather an appointment.

Secondly, this article does not specify the implementation mechanisms and rather refers to rules and procedures set by the HEI Founder or an authorized agency unless otherwise is decided by the President of the Republic of Belarus. However, nowadays the another procedure set by the President (through the President’s Decree No.645 as of 8 November 2001) is in use when it comes to electing HEI’s Head.

Para. 2 of this article specifically states that Head of Higher Education State Institution is appointed and dismissed in accordance with rules and procedures set by the President.

Thus, changes in HEI organizational autonomy cannot be considered to be significant.

B. Changes related to HEI academic autonomy

The new Code edition provides for an insignificant widening of academic autonomy:

Article 211 “Higher education research and methodological system” offers to move from the curriculum approved by the Ministry of Education and other state agencies and to a flexible curriculum with more freedom for HEIs in developing their own curricula. Nonetheless, the law does not define which share of curriculum would be composed by a HEI itself and which share will still have to be approved by the Ministry.

Article 207 “Educational process organisation, general requirements for delivering higher education programmes” widens HEIs rights in terms of setting maximum study group capacity.

The new Code edition does not provide for more HEI human resources or financial autonomy.

- *Rec/CM(2012)7 envisages legal provisions to establish HEIs collegial forms of management and redistribution of powers in favour of HEIs collegial management system*

Redistribution of powers in favour of HEIs collegial management system is not provided for in the new Code edition.

Article 25 “Management of education establishment” was amended very slightly.

It still does not clarify the powers redistribution between the Head of an educational establishment and its self-governing bodies. Para .3 only declaratively states that “*The Head of an educational establishment shall cooperate with its self-governing bodies in managing this establishment*”.

The main self-governing body is the Educational Establishment Council. The new Code edition does not contain any provisions regarding concrete functions for such a Council or rules and procedures for its formation within HEIs. The general definition concerns all levels of education from nursery to university.

Rules and procedures for establishment, authority, composition and management of self-governing bodies are not set by the new Code edition. This task is delegated to the Ministry of Education.

The only difference between Article 25 of the new Code edition and the current Code provision is the possibility to establish an Academic (Research and Technical) Council and a

Student Council. However, the rules for their establishing or powers are not defined by the law. **The term ‘Student self-governance’ is not introduced in the Article 25 or any other part of the new Code edition.**

- *Legally securing the mechanism for dialogue and equal partnership of HEIs and public authorities to design higher education development strategies. Proposals by public authorities’ regarding such strategies should be advisory. HEI management should have the right to define HEI mission and priorities autonomously.*

The new Code edition does not contain provisions supporting and guaranteeing partnership between the HEIs and public authorities. Article 11 “Management in Education” does not mention the institutional management level in education system alongside the local and national ones. Contrary to supporting the rule of law, democracy, transparency, relying on public opinion and systematic education management principles, **the new Code edition secures education management system built on centralisation and directive principles leaving no room for partnership in developing education strategies.**

- *Legally securing HEIs right to manage their financial resources regardless of their source and in accordance with the objectives set by HEI collegial management bodies*

The new Code edition does not provide for more HEIs financial autonomy. Articles 129 and 130 do not introduce changes either to the budget period or forming budget based on expenses category when preparing HEI budget. They also do not widen HEIs rights to autonomously use the remaining budget or define rules for its use including the share for staff remuneration and staff financial motivation (applies to financial means received from public funds only). As it was set before, HEIs have a right to use financial means received from profit-generating activities at their own discretion (Article 130, Para. 4.).

- *Legally securing provisions to support HEIs fundraising activities to fund HEIs development from other than state sources*

The new Code edition does not provide a legal basis to support tax incentives systems for HEIs or other investments into education, targeted donations and foundations’ establishment.

- *Compulsory application of all these provisions to all HEIs irrespectively of ownership*

The new Code edition sets provisions that discriminate against private HEIs in terms of student preferential loans availability (Article 46 “Student preferential loans to finance the first higher education degree”) and possibility to fund their programmes from public funds (state or local budgets) (Article 129 “Financing higher education establishments, state organizations delivering graduate (post-graduate) educational programs, state educational establishments supporting education system management and state program for education system development”).

- *Legally securing public authorities guarantee to support international policy implementation that requires institutional autonomy and academic freedom*

The new Code edition's Chapter 12 "International cooperation in the field of education" (Articles 110-114) doesn't provide for any guarantee to support international policy implementation that requires institutional autonomy and academic freedom.

By mid-2016 Belarusian government should have developed legal and policy provisions aiming to provide students and faculty rights to freedom of association and assembly. By mid-2017 these legal provisions should be implemented. However, there is no evidence that any provisions were put in place or that any legal amendments to widen students and faculty rights will be adopted.

The new Code edition preserves without changes the declarative provisions on students and faculty rights to freedom of association and assembly.

Article 31 "Fundamental student rights"

1.23. Participation in professional unions, youth and other public associations conducting legal activities.

Article 52 "Rights of academic staff"

1. Under the law, the academic staff has a right to:

1.10. form professional unions, other public associations conducting legal activities.

First of all, these provisions of the new Code edition are the same for all students and faculty members without any reference to age requirements for students or taking into account an education level. This legal provision contains no details on HEIs students and faculty in the new Code edition.

Moreover, the implementation procedure and responsibility for the failure to implement are not defined.

There are no links to provisions of other legal acts.

The right to establish and register public associations or other non-profit organisations is regulated by the Civil Code and the Law on Public Associations. Under the Civil Code, students and faculty members can form an association to achieve common goals and interests by establishing the only legally available form of organisation – Public Association. Under the Article 117 of the Civil Code, a public association is a voluntary citizen association established in accordance with law and incorporated on the basis of common interests to satisfy immaterial needs. A special law regulating the legal status of public associations is the Law "On Public Associations" No.3254-XII as of 4 October 1994. The analysis of this law and other regulatory measures related to public associations' registration, their activities,

including access to funding shows that **Belarus has not created a favourable environment for establishing such organisations. The legislation in this field is restrictive.**

The main restrictions are: a) state registration procedure is based on authorization , not declaration and is very complex leaving room for arbitrary refusal to register any newly established organizations; b) ban on unregistered public associations' activities. Any violation may result in a jail term of up to 2 years (Article 193.1 of Criminal Code); c) legislation sets significant restriction on access to funding from both local and foreign source for public associations s; d) significantly restricted right of public associations to hold a peaceful assembly as well as restricted freedom of expression.

The implementation of the Roadmap provisions should have provided for at least a transition from the authorization to declaration form of state registration for public associations. Besides, it would require abolishing Article 193.1 of the Criminal Code that envisages a jail term for participating in activities an unregistered non-profit organization.

Conclusions

The new Code edition does not provide for significant changes in terms of fulfillment of Roadmap commitments related to academic values . The amendments reflect a very insignificant increase of HEIs academic autonomy.

Both the current Education Code and the new Education Code editions cannot be considered as the law of direct application that would secure rights and responsibilities of legal entities in the framework of the implementation of the Roadmap provisions in most cases.

The Articles on rights and freedoms of the participants of education processes are declarative and abstract. There are no specific provisions covering implementation mechanisms. The Articles typically entrust the Ministry of Education or other state agencies with developing specific provisions for implementation mechanisms or refer to other legal acts by the President, which shall have supremacy over legal acts and regulations of other state bodies and officials.

As a consequence, the Code typically does not define the responsibility for failing to implement these legal provisions. However, Article 8 "Principles of law on education" requires to establish liability for non-compliance with legislation on education.

The new Code edition does not link its provisions to provisions of other legal acts.

General Conclusions

2017 is a crucial year in the context of the implementation of the Roadmap for Belarus Higher Education Reform (Roadmap) and fulfilment of commitments by Belarussian government

In current situation and given that proposed amendments to the Education Code should be approved by the Parliament, no more than 25-28% of the Roadmap obligations will be implemented into Belarusian legislation. This number is based on the education experts' analysis and evaluation of the state of affairs.

Practically speaking, Belarus will fail to implement its obligations in terms of:

- establishing Independent Quality Assurance Agency;
- introducing changes to the system of mandatory work placement upon graduation for those whose education was financed by public funds;
- abolishing the discrimination in providing financial support to students to fund their first degree;
- implementing academic values.

It can be concluded that there are no positive developments in those areas that initially were of a great concern to the EHEA members. These issues were behind excluding Belarus accession to the EHEA from the agenda in 2012.

The Belarussian government is set to fail to fulfill its commitments on implementing the Roadmap provisions within the agreed time period with respect to incorporation of the social dimension and the EHEA fundamental values into the Belarusian legislation.

In view of the current state of affairs, it is proposed to extend the Roadmap implementation timeline for 2-3 years and to maintain international control over its implementation process.



About the Eastern Partnership Civil Society Forum

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