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**THE DEVELOPMENT OF A STANDARD-SETTING
INSTRUMENT ON ACADEMIC FREEDOM AND
INSTITUTIONAL AUTONOMY: THE ROLE OF PUBLIC
AUTHORITIES**

Feasibility Study
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Directorate General IV: Education, Culture and Heritage, Youth and Sport
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**Feasibility Study
for the Steering Committee for Higher Education and Research,
Council of Europe**

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**CENTRE FOR
EDUCATIONAL POLICY STUDIES**

Contents

1. INTRODUCTION	3
2. THE CONTEXT	3
2.1 Dealing with an everlasting paradox?	3
2.2 The Bologna Process: institutional autonomy, public responsibility	6
2.3 The Council's of Europe specific contribution	9
3. THE SUBSTANCE	11
3.1 What do we understand by university autonomy?	11
3.2 Academic freedom, institutional autonomy and public responsibility	13
4. CONCLUSIONS AND RECOMMENDATIONS	18
4.1 Conclusions	18
4.2 Recommendations	20
5. ANNEX: Main documents on academic freedom and institutional autonomy since the 1980s	22
6. REFERENCES	28

1. INTRODUCTION

1. The Steering Committee for Higher Education and Research (CDESR) decided at its 8th plenary session (Strasbourg, 5-6 March 2009) under item 5 of the agenda (*Academic freedom and institutional autonomy: the role of public authorities*):

“The CDESR:

- approved in principle the proposal to develop a standard setting instrument on academic freedom and institutional autonomy;
- mandated the Bureau to conduct a feasibility study in time for the 2010 plenary session, taking account of the outcomes of the debate;
- invited the Magna Charta Observatory to participate in this work;
- decided to organise, if possible, a Forum conference on this topic in autumn 2009 or spring 2010;
- mandated the Bureau to take any necessary further action, to involve other organisations and experts in this work as required and to report back to the 2010 plenary session.”

At the meeting on 2-3 July 2009, the CDESR Bureau undertook an extensive discussion to clarify both the emphasis and the scope of the study. Mr. Bastian Baumann, Secretary General of the Magna Charta Observatory, and Professor Pavel Zgaga joined the discussion on this item; the latter agreed to write a feasibility study for the next CDESR plenary session in 2010, with the support of the Bureau and Secretariat.

2. THE CONTEXT

2. The initiative to prepare and submit a proposal to engage further in developing a new standard-setting instrument on academic freedom and institutional autonomy as a key area of higher education policy has been established, of course, in a broader context. First of all, it was made within the context of previous Council of Europe activities in this area and with regard to the documents adopted so far.¹ On the other hand, it cannot be observed in isolation from respective general trends and developments of the last two or three decades in Europe and internationally. This chapter aims at analysing and presenting these contexts, listing some key documents on academic freedom, institutional autonomy and public responsibility, mainly in a chronological order.

2.1 *Dealing with an everlasting paradox?*

3. A number of books, essays and, last but not least, declarations defending and promoting academic freedom and institutional autonomy have been published in recent decades; more could be found if we were to search deeper into previous decades and centuries. Almost as a rule, these declarations have been inspired and adopted by academics and their associations. They mostly do not provide true standard-setting instruments but develop and declare *principles* which should be respected by the state and public authorities in general or request that they are doing so. They are often – if not as a rule – *international*: drafted and adopted by academics and sometimes also students from different institutions and different countries.

¹ We will return to this issue later; see 2.3.

On the other hand, in modern times an increasing number of countries have introduced a basic constitutional provision on academic freedom and institutional autonomy while through national legislation they impose *standards and rules* to regulate the fast-changing systems of higher education and research. In Europe, higher education legislation is chiefly *national* (in some cases regional): adopted by parliaments and/or governments. Due to ever growing European as well as global co-operation, initiatives have been made in recent times *to agree internationally on common standards in higher education*. This trend brings hopes along with a number of questions which should be reconsidered. While e.g. the issue of higher education qualification frameworks has been agreed and settled to a considerable extent, the issue of academic freedom and institutional autonomy still has to be systematically addressed. The reason for the ‘delay’ lies in the complex and demanding character of these two concepts.

4. At first sight, the relationship between internal academic claims and legal systems as well as ‘external power’ in general seems to be paradoxical – similar to the point of an old sophism which quotes a father who ordered his son: “You should not obey me!” The paradox of the relationship between the legislating and/or steering power and ‘knowledge power’ seems to be characteristic of both remote centuries as well as contemporary periods. Recently, on the occasion of the 20th anniversary of the Magna Charta it was articulated in the following way: “National governments do not allow the Universities to enjoy complete autonomy, in the majority of cases, but they are not able to dominate them, nor reduce them to a passive role” (Observatory, 2009, p. 61). It can be also found in official documents, e.g.: “universities need to be close enough to society to be able to contribute to solving fundamental problems, yet sufficiently detached to maintain a critical distance and to take a longer-term view” (Council of Europe, 2006, *Recommendation 1762*, 4.4).

However, nothing is wrong with paradoxes. Usually, they warn of controversies which we have to address because they are part of human life. In this way, they are productive. They warn of practical as well as conceptual and theoretical problems to be solved. The issue of academic freedom and institutional autonomy has always been controversial; it has been broadly discussed within academia, in politics and in the broad public. It has also found an expression in literature.

5. *Baudolino*, a literary hero of Umberto Eco, a world known Italian medievalist, semiotician, philosopher and – last but not least – novelist, told us an intriguing story about the origins of a medieval university, Bologna University. In the fifth chapter of the novel,² the Emperor Frederick Barbarossa is concerned with painful doubts: “I am bending every effort to bring all the cities of Italy under a single law, but, every time, I have to start over again from the beginning. Is my law perhaps wrong? Who can tell me my law is right?” In answering him, Baudolino, his servant, rejects the Emperor’s concerns by saying that “he isn’t emperor because he has the right ideas, but his ideas are right because they come to him”. The Emperor’s further dilemma is “how could all be persuaded to accept this beautiful idea” and he asks again: “Where the devil can I find someone who will define my rights without claiming to be above me?”

The servant responds immediately: “Perhaps a power such as that doesn’t exist, [...] but the knowledge exists”. He reminds the Emperor of people who “attempt to discover the truth

² See English translation: Eco, U. (2003). *Baudolino*. London: Vintage, pp. 51-62.

without listening either to bishop or to the king” and proposes him to make “a law³ by which you acknowledge that the masters of Bologna are truly independent of every other power. Once they are invested with this dignity, unique in the world, they will affirm that—in accord with true reason, natural enlightenment, and tradition—the only law is the Roman and the only person representing it is the holy Roman emperor.” Baudolino has a strong argument: “I’d like to see anyone stand up and say that doctors of Bologna aren’t worth a dried fig, when even the emperor has gone humbly to ask their opinion. At that point, what they have said is Gospel.” Supreme power and knowledge can cohabit; in fact, they need each another.

Frederic invited “four doctors of Bologna, the most famous” to express “an unchallengeable doctrinal opinion on his powers”. Three of them “expressed themselves as Frederick wished” but one of them, “a certain Martinus”, “was of different opinion”. The Emperor did not punish him; on the contrary: “Frederick promulgated the *Constitutio Habita*, with which the autonomy of the Bologna *studium* was recognized, and if the *studium* was autonomous, then Martinus could say what he wanted and not even the emperor could touch a hair of his head.”

6. There are myths and fictions and there is a historiography. At a certain point, Eco's story perhaps looks a little cynical: doctors' majority opinion could be apologetic and not in accordance with the principles of a genuine ‘pursuit of the truth’ or ‘critical thinking’. However, his story indicates that the origin of the *concept of university autonomy* as granted freedom and independence from ‘external’ power should not be understood in isolation (‘lonely thinkers in ivory towers’) but *in relation to ‘external’ authorities*. On the other hand, ‘independence’ understood in this way cannot be taken as the final argument to support a claim that apologetics is impossible within academia at all or to advocate that ‘external’ authority is free to affect academic internal governance in whatever way.

Eco’s fictional story is eloquent in its multilayered tissue but, of course, it is not a recognised reference point in today’s discussions on institutional autonomy and academic freedom. It is a literary fiction; an excellent one. In research papers, when we turn back to the past, the name of Wilhelm von Humboldt is usually most often referenced. However, it seems that modern reception and interpretation should be more frequently checked against the original. Humboldt’s conceptualisation of the relationship of the university and ‘external power’ is again a complex one. When speaking about “the principles ruling their [i.e. institutions of higher learning] administration” (which are “isolation and freedom”) he stresses that “the inward organization of these institutions must produce and maintain an uninterrupted cooperative spirit, one which again and again inspires its members, but inspires them without forcing them and without specific intent to inspire” (Humboldt, 1963).

Therefore, the government “must remember, in fact, that its intervention is invariably an obstruction to attaining the desired results, that everything would proceed infinitely better without its help”. Institutions, on the other hand, have a specific purpose; on the bases of this purpose “it is easy to see that in the inner organization of higher institutions of learning everything depends on the preservation of the principle that knowledge is to be regarded as something not wholly found and never wholly findable, but as something ever to be searched out.” However: “As regards its outward, formal relationship to the government, we ask that the state assure it an abundance (both as to strength and variety) of spiritual energy by its choice of men, and guarantee them their freedom to do their work. This freedom is threatened

³ The reality behind the fiction apparently refers to *Authentica Habita* (1155); see e.g. W. Rüegg, *A History of the University in Europe*, Vol. 1 (1992).

not only by the state itself but by the very nature of institutional organization which, as soon as it is under way, takes on a certain color and spirit and likes to choke out anything not in keeping with it. This too the state must try to obviate” (Humboldt, 1963). This statement seems to be more in collision with the modern understanding of institutional autonomy.

Of course: 200 – and even more 900 – years later, the issue is put in a substantially different light. In fundamentals, the theoretical problem remains the same: how to balance ‘internal’ (‘epistemic’) and ‘external’ (e.g. political, economic etc.) powers in order to grant a ‘common good’. However, history has built many floors over these fundamentals which should be taken seriously in today’s reconsiderations. In this perspective, developments of the last 20 to 30 years are particularly important. A short analysis of that period is given in an annex to our study (see p. 22), but the rest of this chapter will focus on the last 10 years and, first of all, on discussions within the Bologna Process.

2.2 *The Bologna Process: institutional autonomy, public responsibility*

7. Academic freedom and institutional autonomy have not been the central categories of the Bologna Process; nevertheless, they have been continuously in the forefront of discussions (autonomy incomparably more frequent than academic freedom). The *Bologna Declaration* (1999) refers twice to university autonomy. An indicative case can be found at the end of the text where ministers refer to limitations on their action: “our institutional competencies”, “full respect of the diversity of cultures, languages, national education systems” and, last but not least, full respect “of University autonomy”. Academic leaders were invited to the Bologna conference – as proof of the respect for academia and as confirmation “of the fundamental principles laid down in the Bologna Magna Charta Universitatum of 1988” (i.e. 11 years earlier but at the same place): “Universities’ independence and autonomy ensure that higher education and research systems continuously adapt to changing needs, society’s demands and advances in scientific knowledge.”

The *Prague Communiqué* (2001) does not refer to university autonomy directly but confirms “that the involvement of universities and other higher education institutions and of students as competent, active and constructive partners in the establishment and shaping of a European Higher Education Area is needed and welcomed”. Thus, students were openly recognised as members of academic communities and as partners in the Process. On the other hand, the communiqué “supported the idea that higher education should be considered a public good and is and will remain a public responsibility”; i.e., it confirmed one of the key ideas which were – to a large extent – promoted within the Bologna Process by European students.

The *Berlin Communiqué* (2003) directly reconfirms “the principle of institutional autonomy” while stressing that “the primary responsibility for quality assurance in higher education lies with each institution itself”. Parallel to this, an important but rather ‘instrumental’ aspect of the institutional autonomy is verbalised in a form of “strong institutions”⁴ (a term which is characteristic of the recent period but not for the more distant past): “Aware of the contribution strong institutions can make to economic and societal development Ministers

⁴ The label “strong institutions” may be regarded as a ‘product’ of the EUA Graz Convention (May 2003: “improving academic quality by building strong institutions”); it was further promoted at the EUA Glasgow Convention (April 2005: “Glasgow Declaration: Strong Universities for a Strong Europe”): “Universities are open to working with society. Institutional autonomy and mission diversity are essential prerequisites for ensuring effective engagement” (p. 2).

accept that institutions need to be empowered to take decisions on their internal organisation and administration”.

A reconfirmation of the importance of institutional autonomy as well as public responsibility for higher education can also be found in the *Bergen Communiqué* (2005): “As we move closer to 2010, we undertake to ensure that higher education institutions enjoy the necessary autonomy to implement the agreed reforms, and we recognise the need for sustainable funding of institutions”. Yet, some further and more interesting issues were elaborated during preparation work for the Bergen Conference.

8. Somewhere at the ‘Bologna midway’ (2004-2005) there was an interesting debate within the BFUG working groups which focused more clearly – but in a specific context – and somewhat more closely on the issue of institutional autonomy and public responsibility for higher education. Further, under a specific light this debate already opened the question of a ‘mechanism’, i.e. a standard-setting instrument. At that time, the first phase of the Process was already accomplished and contours of the forthcoming European Higher Education Area were beginning to gradually appear. As a new group of countries applied to join at the Bergen conference, criteria for the admission of new members were drafted and discussed at the BFUG (BFUG, 2004) which included university autonomy and public responsibility. Similar efforts were made within a discussion on preparation of the Bergen Conference (“the vision 2010”) and its communiqué. A draft discussion document, prepared by the Bologna Secretariat and entitled “The European Higher Education Area – Realising the Vision” (first draft 19 October 2004; in the second draft of 11 November 2004 the title is omitted but the text is further developed) starts by stressing the voluntary character of the process and “a common understanding” expressed in Bologna Declaration and Ministerial Communiqués “that the following principles are inherent in the Bologna Process:

- Mobility of students and staff;
- Autonomous universities;
- Student participation in the governance of higher education;
- Public responsibility for higher education” (p. 1).

Further, a proposal was also made that these principles be written into the draft Bergen Communiqué and that, with the Ministers’ confirmation, they “will constitute an important element in the description of the EHEA”. A serious question was raised in that period, namely whether the Bologna Process needs “a mechanism for adjusting and developing the description of the EHEA” or at least “[s]ome basic rules for the steering of the process” (ibid., p. 2-3). On one hand, it was a period when the Process began to be observed as a “European success story”; however, certain dilemmas appeared on the other hand, for example, what should follow in the future – i.e. beyond 2010 when the EHEA will be fully functional – “[i]f one of the member states should unilaterally set aside agreed principles, standards or procedures” (ibid., p. 3).

A cascade of three options for steering the EHEA was set up in the document: (a) a continuation of the established procedures with minimalistic structures and no budget; (b) common guidelines should be developed and agreed; or (c) a legal instrument should be developed (e.g. a convention). The document ends with a recommendation “to commission a feasibility study of possible ways to set up a formal agreement on the EHEA, thus securing the principles, structures and continuing development” of the EHEA. As one can see from the Bologna archives, a feasibility study was not commissioned and from early 2005 these considerations were omitted from further drafts of the Bergen Communiqué. As we know

today, the first option of the abovementioned ‘cascade’ prevailed. However, dilemmas raised at that time have not been resolved and may be important in the current stage of the Process as well as in discussing the subject of the present study.

9. The *London Communiqué* (2007) is the only official Bologna document which refers both to institutional autonomy and academic freedom presented as values or “basic principles” as pronounced during preparation of the Bergen Communiqué. In paragraph 1.3 we read: “Building on our rich and diverse European cultural heritage, we are developing an EHEA based on institutional autonomy, academic freedom, equal opportunities and democratic principles that will facilitate mobility, increase employability and strengthen Europe’s attractiveness and competitiveness.” Some elements of the previous discussions on membership and future of the Process are echoed in this sentence.

10. The *Leuven/Louvain-la-Neuve Communiqué* (2009) continues in a similar way (which reflects part of the pre-Bergen debates): “We pledge our full commitment to the goals of the European Higher Education Area, which is an area where higher education is a public responsibility, and where all higher education institutions are responsive to the wider needs of society through the diversity of their missions. The aim is to ensure that higher education institutions have the necessary resources to continue to fulfil their full range of purposes such as preparing students for life as active citizens in a democratic society; preparing students for their future careers and enabling their personal development; creating and maintaining a broad, advanced knowledge base and stimulating research and innovation. The necessary ongoing reform of higher education systems and policies will continue to be firmly embedded in the European values of institutional autonomy, academic freedom and social equity and will require full participation of students and staff” (par. 4).⁵

11. It has been often stressed that the Bologna Declaration and Ministerial Communiqués are not legally binding; they are certainly not part of international law. However, statements on institutional autonomy and public responsibility for higher education briefly presented in the above overview have been confirmed by the highest national public authorities. These statements can, therefore, be taken as a political consensus at the present stage of the discussion and should be taken as a starting point for further work. They influence national developments; however, national developments as well as European co-operation have also influenced them.

12. Institutional autonomy has also been addressed in several recent documents drafted and adopted by European Union bodies. Thus, in a Communication from the Commission to the Council and the European Parliament (of 10 May 2006) it was underlined that the core condition for the success of the Lisbon Strategy and the agent of a move towards an increasingly global and knowledge-based economy lies in modernisation of Europe’s universities, in particular their internal governance systems. “Universities will not become innovative and responsive to change unless they are given real autonomy and accountability. Member States should guide the university sector as a whole through a framework of general rules, policy objectives, funding mechanisms and incentives for education, research and

⁵ Later, there is another paragraph which should not be forgotten in this context: “Higher education institutions have gained greater autonomy along with rapidly growing expectations to be responsive to societal needs and to be accountable. Within a framework of public responsibility we confirm that public funding remains the main priority to guarantee equitable access and further sustainable development of autonomous higher education institutions. Greater attention should be paid to seeking new and diversified funding sources and methods” (par. 23).

innovation activities. In return for being freed from overregulation and micro-management, universities should accept full *institutional* accountability to society at large for their results.” (Commission, 2006, p. 5) The document underlines primarily the development of strategic priorities, professional management of human resources, investment and administrative procedures as well as overcoming fragmentation into faculties, departments and other units.

In the same direction, the Council Resolution of 23 November 2007 invited the member states to “[t]ake the necessary measures to modernise higher education institutions by granting them autonomy and greater accountability to enable them to improve their management practices; to develop their innovative capacity; and to strengthen their capacity to modernise their curricula to meet labour market and learner needs more effectively; and to enhance access to higher education, thereby meeting the requirements of economic and technological competitiveness and broader societal goals” (Council, 2007, p. 4).

2.3 *The Council of Europe’s specific contribution*

13. Issues related to academic freedom, institutional autonomy and the role of public authorities have in recent times appeared in the forefront of CDESR activities. Two themes addressed and systematically elaborated should be specifically mentioned here: one on *public responsibility for higher education and research* (resulting in a conference in 2004; see Weber and Bergan, 2005) and the other on *higher education governance* (a conference in 2005; see Kohler and Huber, 2006).

Within the first theme, a complex idea from the early period of the Bologna Process was elaborated in some details: “the idea that higher education should be considered a public good and is and will remain a public responsibility” (Prague communiqué, 2001).⁶ In this – somewhat enigmatic – formulation, two concepts which were elaborated in relatively different contexts were put together: *public good* and *public responsibility*. A public good coupled with a public responsibility can be interpreted as a way to respond to the concern “that higher education may not be accessible on equal terms to all qualified candidates” (Bergan, 2009, p. 47): a concern which has been very realistic in a period of an exponentially growing number of students everywhere. It has a lot to do with the right to education and with providing circumstances which enable “all qualified candidates” to fulfil their plans. Therefore, there is a public responsibility for higher education – a responsibility of public authorities to design and maintain a system which enables individuals to meet their expectations and institutions to carry on their mission in an autonomous way. On the other hand, there is a public responsibility of higher education: their institutional accountability. Thus, the coupled concepts of public good and public responsibility also bring implications for the relationship between public authorities and higher education institutions.

According to recommendations adopted by the 2004 conference, public authorities should ensure institutional autonomy to both meet society’s expectations and to fulfil the whole range of higher education purposes: “in keeping with the values of democratic and equitable societies, public authorities ensure that higher education institutions, while increasing their autonomy, can meet society’s multiple expectations and fulfil their various purposes, which include personal development of learners, preparation for active citizenship in democratic

⁶ In the Berlin communiqué (2003), “Ministers reaffirm their position that higher education is a public good and a public responsibility.” This concept has not appeared in later communiqués.

societies, development and dissemination of advanced knowledge and preparation for the labour market” (Weber and Bergan, 2005, p. 235).

There was a similar conclusion at the second conference in 2005: “Institutional autonomy is essential for ensuring academic freedom, which constitutes one of the core values of higher education. Public authorities should establish and maintain an appropriate legislative framework that ensures institutional autonomy and provides for adaptability of structures and flexibility of methods within the basic principles of good higher education governance. The legal framework concerning governance should apply equally to both public and private institutions” (Kohler and Huber, 2006, p. 214). As an issue for further consideration, it was also suggested “to elaborate on what the autonomy of higher education institutions in the modern societies includes” (p. 215).

14. In the recent period, the Council of Europe has already contributed two important formal documents in this specific area: *Recommendation 1762 (2006) on academic freedom and university autonomy* (adopted by the Parliamentary Assembly on 30 June 2006) and *Recommendation CM/Rec (2007)6 of the Committee of Ministers to member states on the public responsibility for higher education and research* (adopted on 16 May 2007).

15. *Recommendation 1762* recalls at its very beginning the Magna Charta Universitatum and it reiterates “that the fundamental principles and rights of academic freedom and institutional autonomy are essential for universities, and that continued observation of those values is for the benefit of individual societies and humanity in general”. In the continuation, the document “reaffirms the right to academic freedom and university autonomy” and sums up the main principles in four clear messages:

- academic freedom in research and in training as a necessary guarantee;
- institutional autonomy as a manifestation of the mission of the university;
- a history lesson that the violation of academic freedom and institutional autonomy resulted in “intellectual relapse” as well as social and economic stagnation; and, on the other hand, that “the isolation of an ‘ivory tower’” can also lead to similar negative effects; universities have had always to “react to the changing needs of societies” (4).

Recommendation 1762 was adopted with “the advent of the knowledge society” when “a new contract has to be reached between university and society”. Commenting on this statement, it can be said that in Europe after 1990 this was the first document to have focused on academic freedom and university autonomy and approved by the highest political forum and not by an academic association.

While readjusting academic freedom and institutional autonomy to meet contemporary conditions, fundamental “principles should also be reaffirmed and guaranteed by law, preferably in the constitution”, that is, on political bases. This statement should not be viewed simply as a ‘gift’ from outside to academia but as an argument that: “the requirements and needs of the modern world and contemporary societies can be best performed when universities are morally and intellectually independent of all political or religious authority and economic power” (7). Therefore, granting “academic freedom and autonomy is a matter of trust in the specificity and uniqueness of the institution” with long traditions; however, they “should remain a subject of a continued and open dialogue between the academic world and society at large” (10). In the modern period, “[a]ccountability, transparency and quality assurance” have evolved as basic “preconditions for granting academic freedom and institutional autonomy” in a renewed contract between society and universities.

Finally, Recommendation 1762 set a task for the Council of Europe and its relevant bodies which “should act to the effect of reaffirming the vital importance of academic freedom and university autonomy and contribute to an open political dialogue on the understanding of these concepts in the complex and changing reality of our modern societies” (12). On the other hand, co-operation with the Magna Charta Observatory is also recommended (13). Further, “The Assembly [...] invites the Committee of Ministers to require recognition of academic freedom and university autonomy as a condition for membership of the Council of Europe” (14). This is, at least, an element for a possible future standard-setting instrument.

16. *Recommendation CM/Rec (2007)6 of the Committee of Ministers* was the next step on this path. It focuses on *public responsibility for higher education and research* as “an integral part of the academic heritage of Europe and a cornerstone of the efforts to establish a European Higher Education Area by 2010”. In an annex, public responsibility for and of higher education is elaborated in details. The following link between public responsibility, academic freedom and institutional autonomy is established: “Public responsibility should be exercised with due regard for the need of higher education and research institutions and systems, as well as their staff and students, to act freely and efficiently in the pursuit of their mission. Public authorities therefore have a responsibility to promote autonomy for higher education and research institutions as well as academic freedom for individual members of the academic community” (3).

3. THE SUBSTANCE

3.1 *What do we understand by university autonomy?*

17. The concepts of academic freedom and institutional autonomy have passed through turbulent times over the last three to five decades. Between the 1960s and 1980s, societal and cultural expectations regarding higher education changed profoundly while the higher education sector expanded enormously in practically all European countries. Higher education transformed from an elitist to a mass system – with a number of consequences, including in the area of academic freedom and institutional autonomy. The transition from the 1960s to the 1970s, characterised by mass student protest movements, reconsiderations of the ‘critical potential’ of universities etc., put issues of the *academic freedom* in the front of debates while *institutional autonomy* was predominantly understood as a guardian of that freedom (‘academic autonomy’). In that period, it is almost impossible to find claims about e.g. the financial or managerial aspects of autonomy.

There is a large consensus in the literature that, with the 1980s, a new period in the development of higher education commenced. As regards the subject of this report, at the beginning of this period the issue of academic freedom remained in the very fore of (mainly academic) discussions. These were still the polarised times of two superpowers with conflicts, tensions and contradictions across the international arena which were also reflected in the world of higher education. Academic freedom was often taken as an integral part of the fight for freedom and democracy in various parts of the world while institutional autonomy was usually understood simply as an opposition to state interference in typical academic affairs.

On one hand, however, the deep political and economic changes of the 1980s led to *legislative reforms* which gradually transformed the traditional nature of the relationship between the

state and higher education institutions in ever more European countries. When assessing this period, the Eurydice study on “two decades of reform in higher education in Europe” made the following observation: “One of the most significant reforms observed has been the increased autonomy given to higher education institutions, especially universities, in most European countries” (Eurydice, 2000, p. 19).⁷ On the other hand, in a monograph linked to a project initiated by the Council of Europe in the early 1990s one can already find a quite concise description of the changing times: “Since 1981, discussions in higher education in western Europe have been and are dominated by three topics: budget cuts, quality assessment and institutional autonomy. The political changes in 1990 in central and eastern Europe gave those discussions a completely new dimension” (Veld, Füssel and Neave, 1996, p. 7).

18. The new period shifted accents of the discussion on academic freedom and institutional autonomy. At least in Europe, academic freedom seemed to be protected better than ever before. Besides the provision on academic freedom in national legislation, the *Recommendation Concerning the Status of Higher-Education Teaching Personnel* was also adopted on the international level (UNESCO, 1997). With regard to institutional autonomy, legislative reforms caused another shift in emphasis: *state control* over several aspects of academic life has been removed since then and the *autonomy – accountability* dichotomy has been installed instead. This shift has not only increased autonomy but also transferred a number of complex tasks – i.e. administrative, managerial and financial – to higher education and research institutions. Thus, along with the traditional *academic autonomy* (teaching and research), financial, organisational and staffing autonomy entered institutions.⁸

In the previous period institutions were not involved much in these tasks, at least not in Europe (particularly not on the Continent); therefore, this change is not easy. Previous experience of quite direct state control over the management and financing of institutions was a strong reason why the concept of autonomy was understood more as ‘independence’ and why it was predominantly focused on its traditional aspect – academic autonomy, self-governance, protection from ‘external interference’. Shifts which occurred in the late 20th century have changed this understanding importantly and definitively. Autonomy is no longer an exclusively ‘philosophical’ concept; today it is perhaps more often discussed as an ‘instrumental’ concept. While there has been a general trend in Europe there have also been particular and various changes in different countries and institutions.

19. It is simply no surprise if a recent exploratory study finds that autonomy is today a concept that is “understood differently across Europe” (Estermann & Nokkala, 2009, p. 9). Of course, the concept is understood differently also across other continents⁹ and – last but not least – has been differently interpreted over time. Today, on a relatively general level we still approach it as a ‘universal value’, similarly as with respecting human rights, democracy and

⁷ “The main focus was on reforms in institutional management linked to the increase in autonomy granted to higher education institutions and to the reinforcement of links with the economic environment during the period under consideration. The same instruments often also influenced the regime for *financing* institutions and the procedures for *assessment and quality control* of the educational provision” (Eurydice, 2000, pp. 24-25).

⁸ “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. The common purpose of contributing to Europe’s development is not opposed to diversity; instead, it requires that each university should define and pursue its mission, and thus collectively provide for the needs of individual countries and Europe as a whole. 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” (EUA Lisbon Declaration, 2007, p. 2).

⁹ See e.g. Anderson and Johnson, 1998.

the rule of law. Yet, on a more concrete level, it involves a constantly changing relationship between the state and higher education institutions which depends on national contexts, circumstances, academic and political cultures. It is not an 'ideal' which countries and/or institutions will move close to one day in the future but more a set of agreed and recognised basic principles which should direct the action of different actors. However, there is a large consensus that, in the contemporary period, it was the Magna Charta that formulated these principles in the most comprehensive way.

20. The discussion of understanding university autonomy has not been immune to myths. Ulrike Felt distinguishes three "*basic myths*": (1) the university is an institutional space free of politics and power relations; (2) universities once lived in a "golden age" of basic research; and (3) the university professor embodies in its ideal form the unity of research and teaching (Felt, 2004, pp. 24-26). These are myths only, yet also "the glue which holds together an incredibly diverse type of organisations" (p. 24). Like with another myth, the myth of the 'ivory tower',¹⁰ they are functional in reality – but reality nevertheless functions in a substantially different way. Therefore, when dealing with the problems and contradictions of contemporary times it is important to demythologise 'common understandings'; myths are "the glue which holds together" but they can also be the glue which impedes people in their movement.

The most common academic myth seems to be the idea of 'absolute autonomy'. It is true that reality often proves that more could be done if ossified procedures set up by the state were loosened, set free. Thus, we still listen to complaints from universities that they need 'more autonomy' or 'full autonomy'. These complaints may be well grounded and 'more autonomy' could in many cases bring positive results; however, the concept of university autonomy would be seriously simplified and endangered if it was put on a continuum with 'full state control and no autonomy' on one end and 'full autonomy and no more state control' on the other. Autonomy is relative; it is "to be understood as a continuous negotiation redefining academic positioning, a procedure rather than a status for universities to enjoy" (Felt, 2004, p. 39).

3.2 *Academic freedom, institutional autonomy and public responsibility*

21. Knowledge is a value, a specific human value. Yet, the logic of knowledge production, if we may use a modern term, does not necessarily follow people's expectations, wishes or demands. If we use more traditional vocabulary, the 'pursuit of the truth' or 'disinterested research' has to follow 'its own law' (*auto-nomia*), its own 'rules'. Since the times of Socrates' extremely bothering questioning and since the early scholarly disputes it has been known that the search for truth can only be successful "without listening either to the bishop or to the king" as Umberto Eco says. *Authority of an argument* instead of an argument of authority: on this basis knowledge is actually built. This is the initial point in knowledge production which we call here *epistemic autonomy*. It reminds us of *academic freedom* which is, however, often regarded as derivative of other basic rights. Academic freedom as an expression of epistemic autonomy is *sui generis*. As encompassed by the freedom of education, academic freedom is "an independent fundamental right" (Veld, Füssel and Neave, 1996, p. 56).

¹⁰ In contrast to the common comprehension that links the metaphor of the 'ivory tower' with centurial academic traditions, Rosovsky (Rosovsky, in: Hirsch and Weber, 2002, pp.13-14) attributes its first application to universities or scholars to H.G. Wells in *The New World Order* (1940).

On the other hand, the concept of *university autonomy* (institutional autonomy) does not relate directly to freedom or basic rights, it is rather “an institutional and procedural implementation of the educational freedom”, its “protection vis-à-vis the State” (p. 57). Institutional autonomy is *functional*; external authority’s interference in ‘academic business’ is useless – it would harm both authority and ‘academic business’. This argument has been known for centuries; it has always provided bases for negotiating the ‘contract’ between society (represented by authorities) and the university. Traditionally, it put a demarcation line between ‘external powers’ and ‘university towers’; nevertheless, the relationship between society and the university has never been interrupted. The university cannot live on its thoughts only and society needs knowledge to survive and progress.

Joseph Bricall and Fabio Roversi Monaco, two of the distinguished founders of the Magna Charta, recently noted that “the traditional ‘contract’ between society and the University was based on separation, but today there is a need for interaction” (Observatory, 2009, p. 48). In this way, we can also read the first sentence of the *Fundamental principles* (Magna Charta, 1988): “The university is an autonomous institution at the heart of societies differently organized because of geography and historical heritage”. The concept of autonomy does *not exclude* the university from society; on the contrary, autonomy should be understood as a *cohesive capacity*: “it produces, examines, appraises and hands down culture by research and teaching”. This is even more necessary today when approaching the so-called knowledge society. “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.” However, autonomy should not be confused with autarchy (Zgaga, 2007, pp. 95-96).

22. The relationship between society and the university make it clear that autonomy should not be mixed with sovereignty either. Autonomy allows universities to fulfil their basic mission – producing, examining, appraising and handing down culture by research and teaching if we use a definition from above – without any external interference. Autonomy does not impose or oblige universities to govern, i.e. to organise social subsectors etc. On the contrary, university autonomy remains a pure idea until the point where it is not recognised by authorities: “university autonomy is an important part of the higher education framework and can only exist if public authorities make adequate provisions for autonomy in the legal and practical framework for higher education” (Bergan, 2009, p. 48).

Of course, autonomy does not impose or oblige universities to organise social subsectors; however, they do influence society in several ways. The knowledge produced, examined, transmitted from universities etc. is of vital interest in one respect or another for all parts of society. Students come from ‘outside’ and graduates return with their higher education qualifications to the ‘external world’ and take important roles there. Even routine operations on a campus interfere with society: communication, catering, security protection etc. If every single university interfered with society in its own autonomous way there would be a lot of trouble for all. And vice versa: there would be a lot of trouble for all if external authorities were to unrestrainedly interfere in academic affairs.

23. At this point we come to *public responsibility*: in this case public responsibility *for* (as well as *of*) higher education and research (Weber and Bergan, 2005). The right to education – encompassing the academic freedom as argued above – is not only a fundamental right; in the democratic order of today it is also a legal obligation and public authorities have a duty to assure conditions which enable everyone to fulfil their rights without violating the equal rights

of others. Of course, authorities must also preserve legal order. In other words, they are responsible for the legal and practical framework for higher education.

An overall principle today is that authorities should assure access to *quality education for all* and, in the case of higher education, for specific reasons, access on equal terms for all qualified candidates. Education in general and, specifically, higher education is too important for society at large to be left as a private business to individuals (not to mention eventual ‘private business’ of higher education institutions). In this sense, higher education is treated as a public good: open access to knowledge requires public responsibility. The *framework* (e.g. qualification framework, quality assurance etc.) within which higher education is delivered is within the responsibility of public authorities (Bergan, 2009, pp. 45-47).

24. Thus, academic freedom, institutional autonomy and public responsibility form a *triangle*; its angles are interdependent but they also give the field a lot of dynamism. Public authorities have a responsibility to set the basic rules and regulations of society; however, some stipulations could conflict with the principles and needs of specific sectors (but not necessarily conflict with the law). Therefore, setting rules is not enough; the question of how to deal with a potential collision in practice should be also addressed. While some collisions are real, others exist in theory (they are not less important though): the fact that university laboratories have to observe general safety regulations may theoretically be in contradiction with institutional autonomy; nevertheless, few would argue that for reasons of principle universities should not be bound by obligations to ensure the safe operations of their laboratories.

On the other hand, in a situation of gradually transferring certain responsibilities from public authorities to institutions, academic freedom could become – not only in theory – endangered. It should be kept in mind that even if the rationale for developing institutional autonomy was specifically to ensure academic freedom, there is no automatic link between the two. Members of the academic community may enjoy a high degree of academic freedom even if their institutions have a low degree of autonomy and, conversely, a highly autonomous institution may offer its members only a limited degree of academic freedom. In other words, in the today’s relationship between university autonomy and the state, university autonomy does not subsume academic freedom; as argued already above, academic freedom is a right *sui generis*. The problem cannot be presented on a straight line; it requires the drawing of a triangle.

25. Yet, the triangle composed of academic freedom, institutional autonomy and public responsibility obviously suffers for some “twilight zones” (Bergan, 2009, pp. 50). For example, it is granted that there is no monopoly on the definition of truth but all possible views are not acceptable (in society; within academia this issue can be treated in a more ‘liberal’ way).¹¹ A number of issues are open today, from human cloning to history teaching (related in different ways to both institutional autonomy and academic freedom), which urge

¹¹ See e.g. Immanuel Kant (1964, p. 55) who proposed a differentiation between the *public and private use of one’s reasons*: “The *public* use of one’s reason [der *öffentliche* Gebrauch seiner Vernunft] must always be free, and it alone can bring about enlightenment among human beings; the *private use* of one’s reason [der *Privatgebrauch*] may, however, often be very narrowly restricted without this particularly hindering the progress of enlightenment.” By the “public use” he understood “that use which someone makes of it *as a scholar* before the entire public of the *world of readers*”, i.e. it is related to what we call academic freedom. Kant was strongly convinced that “the world of readers”, i.e. a scholarly Parliament, gives best grounds to abolish unacceptable views in an autonomous way. However, he did not deny restrictions regarding the “private use” of reason which is “that which one may make of it in a certain civil post or office with which he is entrusted”.

academia to provide responses to society immediately but, on the other hand, research and scholarly discussions need time. ‘External’ pressures to speed them up may harm all. On the other hand, autonomy cannot be an excuse to exclude abuses of autonomy (e.g. corruption within institutions) from a critical discussion. These issues are not marginal to the concept of autonomy and academic freedom; they are key issues to test the strength of these concepts in today’s and tomorrow’s societies.

26. A major issue has been raised in the recent period across the world which may have significant consequences for the dynamic (dis)harmony within a triangle of academic freedom, institutional autonomy and public responsibility: *the university as an entrepreneurial institution*. It requires drawing another triangle – or perhaps a square marked by *university autonomy, academic freedom, state and market forces*. The expanding higher education and research sectors of the last few decades have encountered a serious limitation: public funds which drove both sectors in the past are no longer sufficient. Institutions have to search for other sources. Market forces have entered the game.

On one hand, this means that institutions should develop more intensive and richer contacts with society beyond the ‘university towers’; in some respects this could bring positive results (not only financially). However, real processes and relationships with the ‘external powers’ are much more complex. For example, “research findings are increasingly transformed into intellectual property that can be turned into marketable commodities, thus contributing to economic development in a rather visible way. Industry, on the other hand, contributes more and more to the education of ‘knowledge workers’, thus taking a role long considered to be a university monopoly” (Felt, 2004, p. 33). Thus, the traditional roles of different actors and their relations are becoming blurred.

Is university autonomy a necessary component of an entrepreneurial university? Can enterprises take over some traditional roles of universities? What could be the consequences? Entrepreneurialism is not possible with certain autonomy; however, is academic autonomy in this case a necessary condition? Is it perhaps superfluous? And what is the role of academic freedom in this context? A challenge of entrepreneurialism reshapes the traditional norms, organisation and practices of higher education institutions as well as the goals and purposes of the higher education sector in general.

27. On the other hand, parallel to the *growing entrepreneurialism* in higher education one can hear claims that institutions should be given *more autonomy*. This is absolutely logical: the shift from a ‘traditional’ to a ‘modern’ model is not possible until the definition of institutional autonomy is widened to include e.g. organisational, financial, staffing etc. autonomy (like with any ‘modern’ enterprise). Here it seems that today’s university modernisation is walking along a sharp edge. United in the classical idea of the university, the higher education and research of today seem to be forced to decide to either join (economic) prosperity and development or to retain (cultural) their identity and traditions. Higher education and research have always had to serve both – prosperity and development as well as identity and tradition – but they now find themselves in a situation of uneasiness. They are put in front of a difficult dilemma: *either prosperity or tradition*? It is a dilemma which can decisively contribute to how the traditional triangle of academic freedom, institutional autonomy and public responsibility is reinterpreted.

28. The turn of millenniums we just passed was a peak point of ‘the greatest economic boom in history’ as it has often been declared. Deregulation, privatisation and markets became

sacred words which seemed to have no alternative – at least no alternative when the public sector is under discussion. This has been promoted as a path to prosperity which everyone deserves. The provision of public education has practically everywhere been put in question and accused of not being efficient and quality. ‘Values’ became an explicitly economic term; its ethical connotation came in its shadow.

Numerous authors have been warning of the extreme and thoughtless application of the theory of ‘the invisible hand’ to areas like education. The belief that the ‘invisible hand’ co-ordinates human actions best and that free enterprise will make a life better for everyone, even for those who now look disadvantaged, was critically assessed already many decades ago. What seems to be the key criticism of today is that the ‘invisible hand’ theory, when applied to every corner of social life, makes such things as *polity* and *public spaces* or *public care* and *public good* totally redundant. Higher education as a public good could be part of this redundancy.

Parallel to the growth of the power of the world market we are witnessing a decrease in power of the state. The more higher education institutions become involved in market business, the more urgent it is to widen their institutional autonomy to include organisational, financial and staffing aspects.¹² The state is withdrawing from administering higher education; universities are more autonomous and are building partnerships with industry. Perhaps universities will be ‘fully autonomous’ one day – but would a consequence be the withdrawal of the state from its public responsibility?¹³

29. In this relatively dark perspective, the known American sociologist of education Michael W. Apple critically noted recently: if “[s]chools are to be treated with the same market-oriented logic as bread and cars” then “[d]emocracy is no longer a political concept”; “rather it is wholly an economic concept in which unattached individuals – supposedly making ‘rational’ choices on an unfettered market – will ultimately lead to a better society”. However, “public institutions are the defining features of a caring and democratic society” he adds (Apple, 2008, pp. 12, 14-15).

Derek Bok, a highly experienced higher education analyst, formerly President of Harvard University, has the following answer to these obscure challenges: “The university’s reputation for scholarly integrity could well be the most costly casualty of all. A democratic society needs information about important questions that people can rely upon as reasonable objective and impartial. Universities have long been one of the principal sources of expert knowledge and informed opinion on a wide array of subjects [...]. Once the public begins to lose confidence in the objectivity of professors, the consequences extend far beyond the academic community”. Namely, any damage to the reputation of universities “weakens not only the academy but the functioning of our democratic, self-governing society” (Bok, 2005, pp. 117-118; also see Kohler and Huber, 2006, p. 46).

30. Responding to the challenges of our time, the complex *university autonomy – academic freedom – state – market forces* relationships should be seriously reconsidered. In addition,

¹² However, this trend is not running automatically. Complaints from universities have not been reduced in the recent period; on the contrary, it seems they have increased. Partly this could be a ‘psychological effect’: everyone is complaining. On the other hand, the process of devolution is often accompanied with the evolution of (new) rules and regulations (e.g. in evaluation and accreditation) which also reflect particular political philosophies in particular environments.

¹³ See e.g. “a proposal for a public research agenda”: What is the Public Role of the University? – *European Educational Research Journal*, VIII, No. 2, 2009; http://www.wwwords.co.uk/eej/content/pdfs/8/issue8_2.asp.

they should be reconsidered not only with regard to ‘prosperity’ but also ‘tradition’. Finally, they should be reconsidered as regards the full range of purposes of higher education:

- preparation for the labour market;
- preparation for life as active citizens in democratic societies;
- personal development; and
- development and maintenance of a broad, advanced knowledge base (see Weber and Bergan, 2005, p. 27; Kohler and Huber, 2006: p. 6; London Communiqué, 2007, 1.4; Leuven/Louvain-la-Neuve Communiqué, 2009, 4).

4. CONCLUSIONS AND RECOMMENDATIONS

4.1 Conclusions

31. There may be an impression that the more we discuss academic freedom and institutional autonomy the more we repeat already agreed basic principles. Yet this is just the initial impression. The problem has changed over time and today – in an atmosphere also marked by the forthcoming formal declaration of the European Higher Education Area¹⁴ in March 2010 – several aspects need to be addressed and reconsidered – and perhaps also solved – anew. Existing texts are not always sufficient to interpret the current situation.

Does it presuppose a *new standard-setting instrument* or just a *new set of principles* – this is another question. The term itself – standard-setting instrument – is fairly vague and open to interpretation. In fact, broadly i.e. nationally or internationally agreed principles usually act as a kind of ‘instrument’: when they strike at the ‘heart of reality’ they have obvious impacts on institutional and individual practices. However, their impact can be vague and limited. For these reasons, principles should be transformed into ‘instruments’. A declaration adopted by a distinguished forum may already have an echoed effect and a recommendation taken by public authorities on the international level may have an even stronger impact. When principles from declarations and recommendations are transferred into national and/or international (e.g. a convention) legislation the most efficient and focused ‘instruments’ can be attained. Yet, legal instruments could also be without a cutting edge if they lack support in terms of political willingness and also culture (shared values; legitimacy etc.).

32. There is an open-ended list of issues which are quite new and should be reconsidered in relation to institutional autonomy and academic freedom; they may have consequences for setting European standards in an area of activity such as higher education and research. For example:

¹⁴ First of all, the common European Higher Education Area presupposes a set of common principles but also ‘frameworks’ and ‘structures’ built on them. Institutional autonomy and academic freedom belong among ‘agreed principles’; yet it is not very clear how these principles are applied and what are real practices across the Area. Based on its Autonomy Project (Estermann & Nokkala, 2009), the EUA announced very recently that it is leading a project to develop a scorecard that will benchmark university autonomy on the national level across Europe. The ‘autonomy scorecard’ will establish a reliable European benchmark of university autonomy and accountability and will serve as both a reference for national governments wishing to benchmark their progress on governance reforms vis-à-vis other systems, and help raise awareness among universities of the differences that exist in Europe. The scorecard will also help record trends and progress on a regular basis, thus effectively contributing to consolidation of the European Higher Education Area by improving comparability and promoting modernisation of the sector. – See <http://www.eua.be/eua-news/view-item/article/943/>.

- What are the main characteristics of the public responsibility for academic freedom and institutional autonomy? How much are they already included in the existing documents? At which points are new definitions needed?
- ‘Public responsibility for higher education and research’ and ‘new public management’ are often discussed as controversial and quite opposite concepts. Is a balance possible?
- What does a true European institutional autonomy landscape look like? Is there more or less ‘external interference’ in recent practices?
- Is the implementation of standards and procedures in quality assurance, in both higher education and research, opening up the question of whether the traditional external control is just acquiring a new form?
- There is a vague distinction employed today between ‘true universities’ and other higher education institutions. Should autonomy be addressed only to the former or to all of them? What are the arguments?
- There is also a distinction between public and private higher education institutions. Should autonomy, academic freedom and public responsibility be addressed solely to the former or to both types? What are the arguments?
- Institutional autonomy and academic freedom: are they still closely interrelated concepts? Is there an emerging collision and/or contradiction between them?
- An individual with a strong devotion to intellectual work is still the basis of institutional quality and evaluation exercises predominantly depend on individual contributions; however, the growing institutional autonomy and emerging ‘strong universities’ would demand a new understanding of the relationship between the institution and an individual academic staff member.
- In today’s practice, the teaching–research nexus is not characteristic of every single academic staff member. Is academic freedom based exclusively on teaching coupled with research and earmarked only for the Humboldtian Ideal Professor – or should it be earmarked to all members of the academic community?
- What is the specific role of students regarding academic freedom and institutional autonomy?
- There is a number of other issues (and legal instruments) which have a close connection but are not necessarily connected to the existing documents (or legislation) on academic freedom and institutional autonomy, e.g. intellectual property rights, moral and legal implications of genetic research, possible limitations of academic freedom etc.
- As already said, the Bologna Process and the emerging European Higher Education Area have also brought new challenges to the area of academic freedom and institutional autonomy; a discussion on its ‘global dimension’ opens some dilemmas about European specifics and global trends (e.g. academic freedom as a universal value; a balance between global academic co-operation and competition etc.).
- Etc., etc.

33. Based on the outcomes of our study *the following main conclusions* can be drawn:

- (1) There is room and a need for the development and redefinition of principles as well as room for a new policy recommendation; however, action should avoid overlapping existing instruments (e.g. the Magna Charta) and focus on academic freedom and institutional autonomy from the perspective of the public responsibility for higher education.
- (2) Within structures of the Council of Europe, two recommendations were recently adopted in this area (Parliamentary Assembly, 2006; Committee of Ministers, 2007).

They partly elaborate on separate topics and partly overlap; they do not address a number of the issues listed above and, therefore, a more integrative and updated approach on the same topic would be productive.

(3) Academic freedom is today much better covered by international standard-setting instruments while institutional autonomy has not yet been adequately addressed by intergovernmental bodies.

(4) A comparative overview of legal frameworks and concrete practices in member states is obviously needed to take further steps regarding this subject. Close co-operation with the Magna Charta Observatory will be very helpful at this point as will the outcomes of the ongoing European University Association (EUA) 'Autonomy Project'.

4.2 Recommendations

34. On the basis of this study a conclusion has been drawn above that *there is room for the reconsideration and redefinition of principles* as well as *for the development of a standard-setting instrument*. The question which cannot be fully answered here is – *what kind of instrument*.

As has already been presented at CDESR previous meetings, the Council of Europe has an important mission in setting European standards in the various areas of its activity. Technically speaking, there are several options to establish a new instrument: **(a)** a policy statement and/or declaration of the Standing Conference of Ministers of Education; **(b)** a recommendation by the Committee of Ministers to member states or by the Parliamentary Assembly; or **(c)** a White Paper adopted by the Committee of Ministers. These options are less binding but they have considerable political and moral weight. Finally, the Council of Europe also adopts **(d)** conventions which as international treaties have very strong legal and other consequences. Another option could be that **(e)** the Council of Europe proposes an instrument (e.g. in the form of joined document) to the BFUG in order for it to be discussed and adopted within the Bologna Process.

With regard to practices and experiences in this area, the *most feasible options* seem to be **(a)** and **(b)**, followed by **(e)**. However, other options should not be totally left aside at this stage. The proposal of a new standard-setting instrument requires a comprehensive preparatory phase.

35. So far, the CDESR with its double composition has proved to be a suitable and effective forum to address and elaborate on open issues of European higher education. A possible new project on academic freedom, institutional autonomy and public responsibility should be developed in a similar way as previous ones (e.g. on public responsibility for higher education etc.).

Different scenarios are, of course, possible. The work could start in small groups with an interpretation of the existing documents (recommendations, declarations etc.) and/or with synthesising them into one updated document (replacing previous ones). It would also be possible to start with a symposium or conference and to focus on details in working groups later. Diverse approaches to the issue should be encouraged and diverse actors (higher education and research partners) should be involved.

The following scenario is proposed for further consideration:

1. Setting up a *project working group* with a dual task:

(a.) to elaborate on open issues in relation to existing instruments and/or documents and aiming at identifying and closing any gaps between them; and

(b.) to map out and elaborate on legislative frameworks and institutional practices across European countries.

Any attempt to develop a new standard-setting instrument should start from an analysis of facts and evidence collected previously. The work should start by confronting the principles of academic freedom and institutional autonomy with problems and dilemmas encountered in practice. The ‘conflict approach’ should not be avoided in the project; on the contrary, it should comprise a starting point.

The group could be formed by the CDESR members, eventually with a few external experts (giving expert support and also working on an eventual survey), and in close co-ordination with the CDESR Bureau.

Co-operation with actors who were responsible for preparing previous Council of Europe recommendations (Parliamentary Assembly, 2006; Committee of Ministers, 2007) is necessary. Close co-operation with the Magna Charta Observatory is necessary as well.

2. On the basis of the WG work as well as materials collected and provided, *consultations and/or symposia* are organised to discuss findings in a broader context and to identify and draft the elements of a possible standard-setting instrument. Pros and cons should be brought face to face on this occasion. Procedural questions should also be discussed.
3. On these bases, the WG will reconsider the project findings and materials in light of comments from the consultation and/or symposium conclusions and recommendations and will draft a *recommendation* (a standard-setting instrument).
4. The draft recommendation together with project findings and materials from the WG and previous consultation comprise bases for organising an *international conference* which discusses the proposal in detail and in a broader context. The conference tests the proposal which is, in case of positive reactions, passed over to the authority which will be asked to *approve* it.
5. Materials from the conference will be edited and published as a *monograph* (the Council of Europe’s higher education series).
6. Project period: 2 years.

5. ANNEX:

Main documents on academic freedom and institutional autonomy since the 1980s

It is broadly accepted in contemporary literature that the governance of higher education in Europe has changed substantially since the 1980s (e.g. in 't Veld, Füssel, Neave, 1996; Wolff, 1997; Eurydice, 2000; Kehm and Lanzendorf, 2006; Neave, 2009), primarily as a result of ongoing general social, economic and political processes. In the past, national systems were deeply influenced by the state (particularly continental Europe) but this role has started to change: the state has been withdrawing from direct institutional governance and its influence has started to be restricted to setting general objectives (structures, degrees, qualifications). This was a conceptual turn – a move away from the traditional “interventionary” towards the new “facilitatory state” (Neave and van Vught, 1991): higher education institutions received more *autonomy* but a strong demand for *accountability* appeared in parallel.

During the last two decades of the previous century, these developments were reflected with mixed feelings. It was obvious that the Europeanisation process was bringing new opportunities to the higher education sector – also with regard to institutional autonomy; however, there were many dilemmas on the new role of national governments in their relationship with higher education which has remained a national responsibility. In this atmosphere, a far-reaching decision on launching the Erasmus programme was accepted; on the other hand, there were already clear signs that Eastern Europe – a geopolitical area where the issue of academic freedom and institutional autonomy became a particularly ‘hot issue’ with the social and political transition – will see profound changes which deeply influence higher education as well. In the context of a fast changing Europe it became obvious that everywhere new opportunities as well as ‘hot issues’ should be approached in a totally new way. Despite a broad discussion of these issues in practically each European country, a decisive breakthrough did not occur at the national but at the international level.

The Magna Charta Universitatum is undoubtedly the central and most influential document of recent decades in this area. Its external stimulus was preparations for the 9th Centenary of the Bologna University while, on the content side, this was an opportunity “to relaunch the traditional concept of higher education, underlining the decisive role it has played in European history and in the development of Europe” and to diminish “a degree of risk involved for universities, in the sense that higher education policy might be determined by others, beyond universities” (Observatory, 2009, p. 45). The text was drafted in 1987 by an eight-member drafting group appointed by delegates of European Universities and signed in Bologna on 18 September 1988 by 388 Rectors (660 from 78 countries to date)¹⁵ from Europe and worldwide. It was soon translated into many languages and spread all over the world; it has received broad recognition from academic as well as political arenas.

On the occasion of celebrating the 20th anniversary of the *Magna Charta*, the main actors reminded that “[t]he initiative was intended to promote the role of the universities in the service of society as a whole” and, on the other side, to respond to “a need to proclaim the principles of certain universal truths” (Observatory, 2009, pp. 46, 47). The core of these “truths” is contained in the following four “fundamental principles”:

¹⁵ See http://www.magna-charta.org/magna_universities.html.

- “1. *The university is an autonomous institution at the heart of societies [...]. To meet the needs of the world around it, its research and teaching must be morally and intellectually independent of all political authority and intellectually independent of all political authority and economic power.*
2. *Teaching and research in universities must be inseparable if their tuition is not to lag behind changing needs, the demands of society, and advances in scientific knowledge.*
3. *Freedom in research and training is the fundamental principle of university life, and governments and universities, each as far as in them lies, must ensure respect for this fundamental requirement. [...]*
4. *A university is the trustee of the European humanist tradition; its constant care is to attain universal knowledge; to fulfil its vocation it transcends geographical and political frontiers, and affirms the vital need for different cultures to know and influence each other.”¹⁶*

Declarations adopted at various international meetings are not necessarily immune to amnesia. The Magna Charta is a document adopted at the right time and well-echoed; however, the source of its growing influence during the last two decades can be – at least partly – ascribed to a decision to launch an *Observatory on universities’ fundamental values and rights* and to monitor implementation of the principles outlined in the document of 1988. This decision was made at the Magna Charta 10th anniversary and, in April 2000, the Magna Charta Observatory was established in Bologna as a non-profit organisation, founded by the University of Bologna and the European University Association (EUA; a successor of the Association of European Universities – CRE). Since then, the Observatory aims to gather information, express opinions and prepare documents relating to the respect for, and protection of, fundamental university values and rights.

Eleven years later, at the same place, another far-reaching document was signed: the *Bologna Declaration*. This was not a simple coincidence. Its aim was to respond to the challenges of the time, similarly as the *Magna Charta*,¹⁷ and to connect higher education with “the European process” as “an increasingly concrete and relevant reality” (Bologna Declaration, 1999). This was the point where a European *academic initiative* met with a European *inter-governmental (inter-ministerial) initiative*; a point where a need for a new ‘contract’ between academia and public authorities seems to emerge: a reconfirmation and reaffirmation of the importance of academic freedom and institutional autonomy within a new dimension, the ‘European dimension’. The *Magna Charta* – two years before the fall of the Berlin Wall – already argued that Europe can exist and should exist beyond its divisions and that, in fact, it has been in existence for almost a millennium if the history of universities is borne in mind. However, the impact of the Magna Charta – as well as the Bologna Declaration – has been much broader: they are not limited to Europe but have received global responses.

¹⁶ See <http://www.magna-charta.org/magna.html>.

¹⁷ In its sixth paragraph, the Bologna Declaration paid homage to the Magna Charta: “European higher education institutions, for their part, have accepted the challenge and taken up a main role in constructing the European area of higher education, also in the wake of the fundamental principles laid down in the Bologna Magna Charta Universitatum of 1988. This is of the highest importance, given that Universities’ independence and autonomy ensure that higher education and research systems continuously adapt to changing needs, society’s demands and advances in scientific knowledge.”

There are also traces of similar discussions on academic freedom – but less on institutional autonomy – earlier in the 1980s and even before.¹⁸ Thus, at its conference in Siena in 1982 the International Association of University Professors and Lecturers (IAUPL; an NGO maintaining official relations with UNESCO) adopted a *Declaration of Rights and Duties Inherent in Academic Freedom* (the Siena Declaration). In its preamble, a dichotomy of the contemporary “growth and development of higher education” and “dangers for principles and values essential to the idea of a free university” is established. The Declaration addresses the role of the university, conditions for freedom in a university,¹⁹ rights as well as duties inherent in academic freedom and concludes with “the defence of academic freedom” as the principle “central to the concept of a free university in a free society”. The Declaration understands defending academic freedom “as the duty of the international academic community”.

On the other hand, it should be reminded that on 10 September 1988, i.e. only a week before the signing ceremony of the *Magna Charta Universitatum* took place in the European city of Bologna, the World University Service – an international NGO with national committees in 44 countries and in consultative status with the UN Economic and Social Council, UNESCO and FAO – adopted at its general assembly in the South American capital Lima *The Declaration on Academic Freedom and Autonomy of Institutions of Higher Education*. The main target of the Lima Declaration is again academic freedom and it understands defending academic freedom “as the duty of the international academic community”. It links academic freedom to human rights and in particular to the right to education. In contrast to the Siena Declaration, the Lima Declaration distinguishes quite carefully between *academic freedom* and *institutional autonomy*.²⁰

Academic freedom does not contain only “freedom of thought, conscience, religion, expression, assembly and association”, “the right to carry out research”, “the right to teach” etc., that is, freedom and rights which are often directly linked to individual teachers and researchers, but also those of students: “All students of higher education shall enjoy freedom of study”; “All institutions of higher education shall guarantee the participation of students in their governing bodies”.

In the Lima Declaration, *institutional autonomy* still comes after *academic freedom*: “The proper enjoyment of academic freedom and the compliance with the responsibilities mentioned in the foregoing articles demand a high degree of autonomy of institutions of

¹⁸ It would be interesting to step back to consider even older documents, e.g. the *Statement of Principles on Academic Freedom and Tenure* (1940) endorsed by US higher education institutions, but that would exceed the scope of this study.

¹⁹ “The conditions necessary to ensure freedom in the university are university autonomy and academic freedom.” The document predominantly focuses on academic freedom while the term university autonomy is quite marginal in the text (it appears three times only). This is typical of that period; a stronger focus on institutional autonomy only came later.

²⁰ See the following two definitions:

“a) ‘*Academic freedom*’ means the freedom of members of the academic community, individually or collectively, in the pursuit, development, and transmission of knowledge, through research, study, discussion, documentation, production, creation, teaching, lecturing, and writing.”

“c) ‘*Autonomy*’ means the independence of institutions of higher education from the State and all other forces of society to make decisions regarding its internal government, finance, administration, and to establish its policies of education, research, extension work, and other related activities.”

Autonomy is not restricted to universities only: “d) ‘*Institutions of higher education*’ comprise universities, other centres of post-secondary education, and centres of research and culture associated with them.”

higher education.” The *raison d’être* of institutional autonomy is the *protection and execution of rights and freedom*. Therefore, institutional autonomy is “value-based”; it is not primarily “instrumental”, i.e. a matter of organisation, management, effectiveness etc. On the other hand, it is linked with *responsibility for and of higher education*, e.g. institutions “shall pursue the fulfilment of economic, social, cultural, civil, and political rights of the people” and “shall address themselves to the contemporary problems facing society” while “[s]tates are under an obligation not to interfere with the autonomy of institutions of higher education as well as to prevent interference by other forces of society”.

Echoes of the Lima Declaration (rather than the Magna Charta) can be found in two quite detailed documents written in an atmosphere characteristic of African higher education at the beginning of the 1990s: *the Dar es Salaam Declaration on Academic Freedom and Social Responsibility of Academics* and *The Kampala Declaration on Intellectual Freedom and Social Responsibility*. The first one was adopted by delegates from six academic staff associations in Tanzania on 19 April 1990. Its starting point is based on the concept of “Education for Human Emancipation”: education is the basic right and the state has obligations to guarantee access for all, to provide an “agreed minimum proportion of the national income” and to take “affirmative action [...] to redress historical and contemporary inequalities”. The main chapter (II) is devoted to “Academic Freedom” while the next two chapters (III and IV) are shorter and elaborate “Autonomy of Institutions of Higher Education” and “Social Responsibility”.

Paragraphs on “*Rights and Freedoms*” are worded in a similar but partly more detailed way (an indication that rights and freedoms have not yet been understood as ‘self-understandable’ in society at large?) than the Lima Declaration. The key position of Chapter III is that institutions “shall be independent of the State or any other public authority in conducting their affairs” while the state “is under obligation not to interfere with the autonomy of institutions”. On the other hand, “democratic means of self-government” are stressed in the text and a provision is made that “[n]o armed” as well as no “intelligence and security personnel or forces” enter the premises and grounds of institutions. Finally, in Chapter IV, clear fingerprints from the Lima Declaration on the “social responsibility” of academics and higher education institutions can be found.

Similarly, the Kampala Declaration was adopted a few months later by “the participants in the Symposium on ‘Academic Freedom and Social Responsibility of Intellectuals’ within a context of “struggles for democracy and human rights and members of the African intellectual community” on 29 November 1990. Its starting point was again the right to education strengthened in a Preamble with a position that “[t]he struggle for intellectual freedom” is “an integral part of the struggle of our people for human rights”. Its architecture is very similar to *the Dar es Salaam Declaration* but there are also some new, obviously radical articles like e.g.: “The intellectual community has the responsibility to struggle for and participate in the struggle of the popular forces for their rights and emancipation” (Article 22). Such statements remind us of the struggle for academic freedom in unkind social and political circumstances which Europe may also remember from its far and recent past; however, the quoted sentence is unimaginable as an integral part of a similar document of today. Nevertheless, the contrast is challenging.

In the recommendations and resolutions of the Kampala Symposium, participants also “called for the creation of a Pan African Organisation to monitor, document and disseminate information on abuses of academic and intellectual freedom and repression, harassment,

intimidation and detention of intellectuals”. There is not enough evidence to say that this proposal received any firm grounds later; yet, a similar idea was realised in Europe at the threshold to the new millennium – the Magna Charta Observatory.

The Europe of the early 1990s was to a large degree characterised by a growing process of Europeanisation (Maastricht Treaty, 1992; progressing EU enlargement etc.) and by a deep ‘transition’ process in Central and Eastern Europe. Both processes influenced developments in the higher education sector yet specific issues of academic freedom, institutional autonomy and public responsibility also came to the front. Within this context, another important document was drafted and approved; this time within the UNESCO framework: the *Sinaia Statement on Academic Freedom and University Autonomy*. As in some other cases, it was a result of an international conference (Sinaia, Romania, 5-7 May 1992).²¹

Ambitions of the document were clearly different from documents like the Magna Charta or the Lima Declaration; it is short and mainly reiterates accents developed in similar previous documents. However, it states openly at the beginning that “there is a need to forge a new understanding between universities and society” and it ends by urging “UNESCO to give the matter of academic freedom and university autonomy its utmost attention and to prepare an *international instrument* for the protection and promotion of these values” (italics P.Z.). The idea of preparing “an international instrument for the protection and promotion” of academic freedom and university autonomy is of particular importance for our study.

The Sinaia Statement brought a concrete result. Within a file of documents for the 26th UNESCO General Conference in Paris in 1993 one can find a *Study on the desirability of preparing an international instrument on academic freedoms* (document 27 C/44, dated 17 August 1993). Therefore, this document – more than 15 years old – addressed a similar question as the present study does. The first three pages analyse the historical background, starting in 1966 when a special intergovernmental conference convened by UNESCO adopted the *Recommendation Concerning the Status of Teachers*, prepared in close collaboration with the ILO. Despite its age, this document is still a reference today. However, with regard to academic freedom, it “provides no more than vague indications as to what such academic freedom might be.” Then, the study lists documents of the 1980s, including the *Magna Charta*, comments that “these declarations reflect the concern of the academic community” and notes “the need to ensure co-ordination and follow-up in this field”.

Further, the study finds that “academic freedom is closely linked with human rights” and that “the possibility of developing an appropriate international instrument can be considered within that framework” while, on the other hand, “the autonomy of higher education institutions is vital to the unrestricted exercise of academic freedom”. It finds it necessary to explore these concepts in order to arrive at a clearer definition of their scope. The document brings forward two potential courses of action: (a) *the first approach*, focusing on the close relationship between *academic freedom and human rights* with measures aimed at preparing an international standard-setting instrument on the *status of teachers in higher education*; and (b) *the second approach*, focusing on the *interdependence of academic freedom and university autonomy*, with the aim of preparing an appropriate document dealing with these two topics, jointly with the non-governmental organisations concerned with higher education and with the international academic community.

²¹ See *Academic Freedom and University Autonomy*. CEPES-UNESCO: Bucharest, 1993.

The second part of the study deals with action in regard to academic freedom and discusses the relationship between human rights, academic freedom and the status of higher education teachers. It is considered “desirable that protection of the academic freedoms of this category of personnel should be assured through an international standard-setting instrument relating to the status of higher education teachers”. Indeed, such an instrument was prepared during the next few years and adopted in the form of *Recommendations Concerning the Status of Higher Education Teaching Personnel* at the 29th session of the UNESCO General Conference in Paris on 11 November 1997. This document is today widely known and used in practice.

The UNESCO feasibility study of 1993, on the other hand, also discusses “action to guarantee the autonomy of higher education institutions, in support of the efforts of the international academic community” which is “far more complex”. The study also states that “the autonomy of higher education institutions has not, in certain regions of the world received as much attention as the matter of academic freedom.” It recommends that some in-depth studies should be undertaken in regard to spheres in which institutional autonomy can be exercised, institutional authorities, the extent of self-management and the relations between the institutional bodies and the public authorities.

At this point, the study concludes “that it is more difficult, and seemingly premature, to envisage adopting at present an international standard-setting instrument that might be acceptable to a majority of Member States”. It finds preferable to focus eventual further efforts “on lending support to non-governmental organizations concerned with higher education and to the international academic community in order to prepare a document resulting from their own discussions”. With regard to the form, the study believes that such a document “could be adopted by an international meeting of representatives of the international academic community organized with the support of UNESCO”. In contrast to the first approach (*Recommendations Concerning the Status of Higher Education Teaching Personnel*), the second approach has not resulted in a concrete document. However, the issue remains an important topic on the UNESCO agenda today.

In the meantime, a discussion of academic freedom and institutional autonomy continued at European universities. In a series of documents initiated by the academic community, at least one more can be briefly analysed: *The Erfurt Declaration on University Autonomy* (1996). It was a result of a colloquium organised in March 1996 at the University of Erfurt, re-established after the re-unification of Germany. A group of scholars from Western and Eastern European countries joined in a discussion entitled “Between autonomy and external control – a university in search of the golden means” and provided a number of insights into the issue (Wolff, 1997). On the second day of the colloquium, participants adopted the Declaration with an eloquent subtitle: *Towards the Responsible University of the Twenty-first Century*. The Declaration is particularly interesting for its ‘architecture’: it consists of ten theses divided into five blocks (each one with two dichotomised theses). The ‘architecture’ reflects the bipolar character of autonomy while the text equilibrates the state and the university, e.g.: “The state must respect academic freedom and academic autonomy”. – “The university must conduct itself as a responsible and cohesive community, not an anarchistic or irresponsible association” etc.

There was no follow-up to the Erfurt event. However, there were many complex events at the end of the 1990s which overshadowed initiatives like this one. Not only was the Magna Charta Observatory created, but general developments in European higher education started to be dominated by the Bologna Process.

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