

Legislating for higher education in SEE countries: the language question (2005)

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1. Introduction

Work on drafting new higher education laws and university statutes in Central and East European countries and Central Asia has been in progress since the fall of communism and socialism at the turn of the 1990's, notably under the auspices of the Legislative Reform Programme for Higher Education and Research (LRP).¹ All the legal systems of the countries concerned are based on civil law, with constitutions and education legislation. Some constitutions are more specific than others about higher education or topics related to it, such as the issue of language of instruction. This issue bedevils the successful reform and integration of higher education institutions in SEE countries since, although the main state languages except Albanian share common roots and are mutually comprehensible, there are deeply-engrained historical and cultural obstacles to achieving consensus on language use. This is not of course only a problem in the SEE region. The list of 141 European minority languages prepared by Sabhal Mòr Ostaig, part of the UHI Millennium Institute, is indicative of a wider European issue.² Even where as in the United Kingdom there is no constitution, legislation which it would be politically impossible to repeal is illustrated by the Welsh Language Act 1993 and although there is no legislation as such, the encouragement given to higher education in Scots Gaelic at Sabhal Mòr Ostaig provides an interesting model for 'minority language' instruction by consensus.

After some introductory remarks on language problems in the SEE region, the paper will concentrate on the language policies of the Republic of Macedonia and how the South East European University (SEEU) has managed to adopt a modern 'flexible use of languages' policy designed to equip students to meet the needs of the modern employment market. It shows how over time it may be possible to resolve some of the difficulties, at least in Macedonia, by switching to a curriculum based on a steady acquisition of English as a common medium of international business, trade and academia.

2. Problems in the SEE region – Kosovo-UNMIK and Bosnia & Herzegovina

The problems in SEE countries are illustrated by the situations in Kosovo-UNMIK and Bosnia & Herzegovina. In Kosovo-UNMIK, Article 4.4(b) of the Constitutional Framework for Provisional Self-Government and UNMIK Regulation 2001/9 provide that Communities and their members shall have the right to receive education in their own language. UNMIK Regulation 2003/14 on higher education prohibits discrimination in access, etc on ground of language. However, in practice, higher education at the recognised public university, Prishtina, which prior to 1991 was bilingual, is delivered only in the Albanian language, which is the language spoken by the great majority of present inhabitants. A separate Serbian language university has been created in the northern part of the UNMIK-administered territory. This means that there is no common language between the two universities and no opportunities for collaboration or mobility, a problem unlikely to be resolved until the final status of Kosovo-UNMIK is itself resolved. Foreign language training is part of the curriculum, but it is difficult to envisage this being developed in poorly-funded state institutions. Kosovo-UNMIK now has about ten private higher education institutions which have been created since the Regulation 2003/14 provided for licensing: some of these concentrate on teaching in English.

¹ *Legislative Reform Programme in Higher Education and Research 1991-2000: Final Report* Strasbourg: Council of Europe CC-HER (2000) 40.

² <http://www.smo.uhi.ac.uk/saoghal/mion-chanain/en/>.

In Bosnia-Herzegovina the preparation of a Framework Law for higher education has been held up, in part, because of questions related to language. The Constitution of Bosnia and Herzegovina enshrines the basic constitutional principles and goals in view of the functioning of Bosnia and Herzegovina as well as a catalogue of human rights and fundamental freedoms, all of which represent the constitutional guidelines or limitations for the exercise of responsibilities of Bosnia and Herzegovina and of its Entities. Article III (1) of the Constitution of BiH does not list education as a responsibility of the Institutions of Bosnia & Herzegovina. Article III (3) a) provides that all governmental functions and powers not expressly assigned to the Institutions of Bosnia & Herzegovina shall be those of the Entities. Therefore, the Constitution of BiH assigns a competence over education to the Entities. However, it has been held by the Constitutional Court of BiH in its Partial Decision no. U 5/98–II of 19 February 2000 (hereinafter “*Partial Decision II*”) that Article II (3) of the Constitution of BiH gives to the Institutions of BiH a general competence to regulate all matters enumerated in the catalogue of human rights which cannot exclusively be left to the Entities since the protection has to be granted to “all persons within the territory of BiH”. It has therefore been argued that considering that Article II (3) 1) of the Constitution of BiH enshrines the right to education and considering that Article 2 of the First Protocol to the European Convention on Human Rights guarantees that no person shall be denied the right to education and that the provisions of the said protocol are directly applicable in Bosnia and Herzegovina pursuant to Article II (2) of the Constitution of BiH, the Institutions of BiH have a constitutional basis to regulate matters related to education in accordance with the findings of the Constitutional Court of BiH in the *Partial Decision II* case.

The Draft Framework Law generally aims at providing each citizen of Bosnia and Herzegovina with equal access to higher education, and is designed to enable the equal and uniform representation of all universities in BiH and abroad, the recognition of foreign qualifications in BiH as well as the recognition abroad of diplomas obtained in BiH: these objectives are generally related to the right to education guaranteed to all BiH citizens under the Constitution of BiH. Different attempts were made at various stages in the lengthy drafting process to satisfy the wishes of users of different, although closely-related languages, (Serbian- which can be written in two scripts -, Croatian and Bosnian) to use one official language of administration while allowing the use of the others in teaching and research, so promoting equality and mobility, and for making some kind of financial provision to cover the additional costs of doing so. With the removal of most of the financing provisions from the latest draft of the law, as they would require constitutional change to implement, such provisions are unnecessary. However, the issue may well resurface once the final version of the law is adopted. As yet there is no attempt in the legislation to promote the use of English, although the draft Law does contain licensing provisions for private institutions.

3. The position in the Republic of Macedonia

The Republic of Macedonia (recognised by EU and UN as FYROM, hereafter referred to as Macedonia), has a population according to the 2002 census of just over 2m, of which about 65% have stated Macedonian ethnicity, 25% Albanian, ca. 4% Turkish, ca. 3% Roma and 3% others.³ Use of ‘mother tongue’ language follows the same general pattern. In pursuance of the theme ‘no one shall be discriminated against by any public authority on the ground of language,’ the principal issue, therefore, is to try to provide equal rights in access to education to citizens speaking two entirely different languages: the official state language Macedonian (a language of the South Slavonic group written in the Cyrillic alphabet) and Albanian (a unique Indo-European language written in the Latin alphabet.) In practice most urban and many rural-based citizens with Albanian mother tongue also speak Macedonian, having learned it compulsorily at school, but relatively few of Macedonian mother-tongue speak Albanian. The western regions of Macedonia dominated by Albanian-speakers have close historical, family and related ties to Albanian-dominated Kosovo which between 1991 and the conclusion of the conflict in 1999 was officially dominated by the Serbian language. Macedonian-speakers, on the other hand, often have close links with Serbia and Montenegro or with Bulgaria: the

³ CIA World Factbook 2005: Macedonia.

Macedonian language has many similarities with the other South Slavonic languages Serbian (and Croatian and Bosnian) and Bulgarian but none with Albanian.

Prior to 2000, higher education in Macedonia was delivered exclusively in the Macedonian language, apart from a small teacher-training section in Albanian. The South East European University (SEEU) was a politically-negotiated international response to demands for recognised higher education in Albanian. It set out to help to solve the problem of under-representation of Albanian-language students in higher education in Macedonia while being open to students from all ethnic groups. Macedonia's international obligations allowed the OSCE and the Council of Europe to successfully argue for a change in state policy which allowed SEEU to open. In 1988, prior to the independence of Macedonia, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1353(1988) on access of minorities to higher education: as is well known this says that education is a fundamental human right and therefore (sic) access to all levels, including higher education, should be equally available to all permanent residents of the states signatory to the European Cultural Convention (ECC). Macedonia acceded to the ECC in 1995, ratifying the separate European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1997. The 1988 Recommendation says that member states with minorities should avoid prescribing the exclusive use of the official language. It also recognises the fundamental liberty to engage in higher education activities and to establish institutions for that purpose. Such institutions, it says, should be officially supported once their satisfactory quality has been established – on a non-discriminatory and fair basis – and a genuine demand has been demonstrated; language should not be a criterion for recognising institutions or qualifications. Also, broadly, members of the European Higher Education and Research Areas are voluntarily committed to bring some degree of uniformity to the higher education systems of the wider Europe while maintaining diversity of approach. They aim, through changes to legislation or otherwise, to create a framework of comparable and compatible qualifications seeking to describe them in terms of workload, level, learning outcomes, competences and profiles. The uniformity of approach is intended to increase opportunities for student mobility, the European Union target of at least 20% of students by 2010 considered achievable given the emphasis on common language learning within the Common European Framework (CEF) to be discussed later, usually English.

Albanian fits the definition of a regional or minority language in the European Charter for Regional or Minority Languages (ECRML) (1992), which entered into force in 1998. ECRML was signed by Macedonia in 1996 but by 2005 had not been ratified so the state is at the time of writing not obliged by the Charter's terms to promote and protect the use of Albanian in education. However, in 1998, Macedonia ratified the more comprehensive Framework Convention for the Protection of National Minorities (FCPNM) (1995), which obliges Parties to promote equal opportunities for access to education at all levels for persons belonging to national minorities. Parties are obliged, within the framework of their education system, to recognise that persons belonging to national minorities have the right to set up and manage their own private educational and training establishments, not in itself entailing any financial obligation for the state.

The Constitution of Macedonia states that parents have the right and responsibility to ensure their children's education (Art. 4); that all citizens have an equal right to education; and that basic education is compulsory and free (Art. 44). Private education institutions may be established at all levels except basic education (Art. 45). The Constitution was amended following the 'Ohrid' Framework Agreement of August 2001. Article 7(6) of the Constitution provides that 'In the units of local self-government where at least 20 % of the population speaks a particular language, that language and its alphabet shall be used as an official language in addition to the Macedonian language and the Cyrillic alphabet. With respect to languages spoken by less than 20% of the population of a unit of local self-government, the local authorities shall decide on their use in public bodies.' Article 48(4) of the Constitution provides that 'Members of communities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in another language, the Macedonian language is also studied.' Among other changes in legislation to accommodate this provision, changes in the higher education law in 2003 have permitted publicly-funded institutions to offer courses taught in the Albanian as well as in the Macedonian language.

Prior to that, only private (i.e. non-state founded) institutions could do so, which was a cause of major concern in the country. The revised Article 95 of the Law on Higher Education provides:

‘1.The Macedonian language is a language of instruction in the higher education institutions. In accordance with this Law and the Statute of the higher educational institution, in order to express, nurture and develop their identity and other peculiarities, the members of the communities shall have the right to acquire their education in the State higher education institutions, through certain study programmes in the language of the community, different than the Macedonian language. The State will provide financing for higher education in the language that is used by at least 20% of the population in the Republic of Macedonia.

2. Teaching at the private education institutions may be done in the languages of the members of the communities that are not in majority or in some of the world languages. When the language of instruction is a language of the members of the communities that are not in majority or a world language, the Macedonian language is studied as a separate subject and Macedonian will be used as language of instruction in at least two other subjects.

3. Elementary education as well as the education in the didactical and methodical subjects for secondary school teachers may be held in the languages of members of other communities that are not in majority in the Republic of Macedonia. The lectures in the institutions of higher education can be held in one of the world languages for certain study programmes of foreign languages, for parts of study programmes in which professors-guests from abroad take part and study programmes for which the lectures are held in the Macedonian language and in accordance with paragraph 2 of this Article. The institutions of higher education may offer that the lectures for the complete study programme are held in Macedonian language and in one of the world languages in parallel.

4. In the private institutions of higher education, the lectures can be held in the languages of members of the communities, which are not majority in the Republic of Macedonia or in foreign languages. When the lectures are held in the languages of members of the minority communities in the Republic of Macedonia or in foreign language, the Macedonian language shall be studied as a separate subject and the lectures shall be held in Macedonian at least for another two subjects.

5. When the lectures are held in the languages of members of the communities that are not majority in the Republic of Macedonia, in accordance with paragraphs 2, 3 and 4 of this Article, the Macedonian language shall be studied as a separate subject and the lectures shall be held in Macedonian language and at least other two subjects of the study programme will be studied in Macedonian. The subjects shall be determined with the statute of the institution of higher education, which will determine the fund of lectures, determined in the Rules of norms and standards for establishing the institution of higher education and realising the activity of higher education.

6. In the state institutions of higher education, as part of determining the conditions at the competition for enrolment of students in the first year of studies, the universities shall provide equitable representation of citizens, who belong to the communities that are minorities in the Republic of Macedonia through an additional quota, determined by the Government of the Republic of Macedonia.’

Taking advantage of paragraph 4 of this Article, which is essentially unchanged from 2000, the concept of a ‘flexible approach’ to language use was adopted by SEEU during 2002-2003⁴, as the policy of ‘flexible use of languages’ dates back to Council of Europe Committee of Ministers Recommendation R(98)6 concerning modern languages. The Recommendation encourages teaching programmes at all levels that use a flexible approach, taking into account the ECRML and the FCPNM. The Recommendation promotes the genuine intercultural outlook encouraged by bilingual

⁴ This followed meetings between the Rector and other SEEU staff with the relevant officials of the Council of Europe in Strasbourg,

and bicultural education, and points to the need for adequate numbers of suitably trained language teachers. The 'flexible language policies' are also mentioned in Article 5.3 of Council of Ministers Recommendation R (98)3 on access to higher education. SEEU has faced questions about its policy to develop flexible language use in a cost-effective way, which is in line with these two Recommendations, although it became apparent over the first four years that some members of the local European diplomatic community seemed unaware of their contents. This is not the place to describe the policy in detail, but adjustments to curricula consequent on adopting '3 plus 2' instead of '4 plus 1' first and second cycles from October 2005 are almost certainly necessary if the correct balance is to be drawn between learning professional subjects and language skills.

Whatever the policy adopted, the curriculum must pass the scrutiny of the Licensing and Accreditation Board of the Republic of Macedonia, since courses which do not convey required professional competences will not be acceptable for recognition of diplomas. Successful completion of a higher education programme in the Republic of Macedonia, as in other neighbouring countries, has hitherto depended on the ability to learn facts and to be able to repeat them in a written examination, rather than on the acquisition of competences including language competence.

4. A solution: gradually substituting the English language

The Council of Europe's *Common European Framework* for language learning provides a common basis for the elaboration of language syllabuses, curriculum guidelines, examinations, textbooks, etc. across Europe. It describes in a comprehensive way what language learners have to learn to do in order to use a language for communication and what knowledge and skills they have to develop so as to be able to act effectively. The description also covers the cultural context in which language is set. This provided the basis for the new approach to language learning in SEEU. Given the objectives of the *Framework*, and in accordance with the law, SEEU requires students to have a solid knowledge of Albanian and Macedonian languages. This helps the process of integration of students, and consolidate linguistic and cultural diversity, one of the greatest strengths and defining characteristics of SEEU. SEEU's work allows students from both major language groups to follow higher education of a quality comparable to western institutions. Nevertheless, it is obvious to all that given the high level of competition in the new marketplace of higher education from systems originating outside the SEE region, in particular from the United States, and the relatively poor funding of state education, the only way in which a student can achieve personal goals which include a high standard of living is to have a good command of an international language, in practice the English language. It is recognised that success in the modern world depends in most subjects on having a good command of a modern international language related to the subject discipline. It is not only for professional reasons. The European Union takes the view that learning to communicate in common languages helps to tackle xenophobia and ultra-nationalist backlashes as a primary obstacle to European mobility and integration, and as a major threat to European stability and to the healthy functioning of democracy.

Whether this means that the actual teaching has to be carried out only in English is another question entirely. SEEU takes the view that it does not necessarily aid the economic and social development of the country or the region to attempt to exclude local languages from the teaching process, as is the case in some private providers, not least because as yet there is an inadequate cadre of senior professors able to teach in English. The law envisages either teaching in the 'languages of the communities,' in practice Albanian, or in foreign languages. A mixed approach means that Macedonian must also be studied. The flexible use policy therefore has high cost. The policy of SEEU is to help students in international subjects such as Business Administration (BA) and Communications Sciences and Technologies (Computing Branch) to reach at least the level of B2 independent user. However, achieving this is not based solely on the number of hours of instruction undertaken at SEEU: many students arrive at SEEU having already reached A1 or A2 level. It is not the University's sole responsibility to provide language tuition within the Common Framework: as this makes clear, it is necessary for common language learning *to be encouraged, put on an organised footing and financed at all levels of education by the competent bodies.* So the state also has a

responsibility to encourage and finance language learning at all levels. One contribution of SEEU to this, with government financial support, is to help with the provision of well-trained teachers in Albanian-language schools. SEEU also has the right to expect the government to help with the costs of providing high level language tuition in the national interest but so far this has not happened.

The ground is prepared for a possible next step if the law is further liberalised during the course of 2005-2007. It is possible to envisage a one or two year foundation programme as part of the National Qualifications Framework in which students concentrate on gaining language, IT and other generic skills leading to entry to or completion of Year 1 of the three-year first cycle degree, depending on ability and performance. After that, professional subjects could be taught in English. However, the current law is not flexible enough to allow study programmes to be responsive to student needs. As it is, now all students entering SEEU must take the TOEFL exam (Pre-TOEFL) in order to enrol. The results represent a proportion of the points required for entry. For prospective students in all faculties a minimum score of 300 is required (Pre-TOEFL has a maximum score of 500). In addition, the results of the TOEFL score will be used to place students in the appropriate Basic Skills in English (BSE) course. Given that the various Faculties at SEEU have different requirements in terms of students' knowledge of English, minimum scores from 300-400 points are required. There are not absolute guidelines for the admission of students based on Pre-TOEFL, so in practice, SEEU may choose to vary these requirements in the light of demand. It allows the gradual introduction of teaching in English in the third year of the first cycle, and in the second cycle in Business Administration and Computing, with some availability of teaching in English in law (Public and Private International Law including European Law) and Public Administration (related to accession to the European Union). This implies a strategic restructuring of basic and special purposes English courses.

5. Conclusion

Issues of language are of fundamental importance to the different communities which make up countries in the SEE Region. By preserving and protecting their use in higher education while opening up possibilities for students to learn English as a medium of international communication, institutions can enhance the prospects for employment and personal development of their students. However, it is necessary that laws recognise this. While the Kosovo-UNMIK and draft Bosnia & Herzegovina legislation place no obstacles in the path of these developments, there is a long way to go before either country is in a position to realise them. By contrast, the Macedonian law is still somewhat restrictive and arguably needs further refinement if the goals established by SEEU are to be fully achieved and disseminated to other parts of the Macedonian higher education system.